

The European Constitutional Settlement

Andrew Moravcsik

Princeton University

1. INTRODUCTION

THE EU has reached a plateau. For five decades, the primary concern of European integration was summarised in the 1950s era technocratic slogan embedded in the Treaty of Rome's preamble: 'Ever Closer Union'. Today, its primary concern is how to fashion a stable constitutional order that realises the slogan in the now moribund draft constitution: 'Unity in Diversity'. The fundamental issue facing European unification is no longer to comprehend where it is going, but to grasp what it is. This subtle change in wording is significant, for it marks the maturity of the European Union's constitutional order.

This is something new. For decades professors, politicians and pundits alike offered a one-sided analysis of integration – a view with a bias toward constant 'spillover' of functional problems and the increasing need for centralised policy making. Unless atavistic nationalism or ethnocentrism intervened, so it was argued, the functional logic of the EU is such that it is destined to integrate until a federal state is achieved. Academics term this view 'neo-functionalism'; politicians speak of the 'the Monnet vision'. In Walter Hallstein's famous metaphor, this was the 'bicycle theory' of integration: if we do not keep riding the bicycle forward, we will all fall off. Even though most Euro-enthusiasts deny that a centralised pan-European state is their goal, many implicitly affirm this ideal by supporting almost any proposal for further integration.

Yet most striking about proposals for constitutional change in the EU today is their conservatism. The EU has just completed its most successful decade ever, with monetary union, enlargement from 12 to 27, the completion of the common market, and burgeoning activity in foreign policy and internal security. Yet from a constitutional standpoint, most of this is incremental change within a constitutional order fixed by the Maastricht Treaty of 1992. Even the proposals for reform – such as those in the draft constitution – are conservative. To be sure, the constitution would have to adjust voting weights and the structure of the Commission, expand slightly the use of qualified majority voting and the prerogatives of the

Parliament (at the expense of the Commission), and reinforce essentially inter-governmental cooperation in a number of areas, including immigration and foreign policy. Yet none of this envisions institutional change or a decisive expansion in the substantive scope of policy making under the 'Community method' akin to what the Single Act of 1986 or the Maastricht Treaty brought about.

Perhaps, we are starting to glimpse a 'European Constitutional Settlement' – a stable endpoint of European integration in the medium term. Europe may expand geographically, reform institutionally and deepen substantively, but all this will take place incrementally and within the existing constitutional contours of European institutions.

Such predictions about the future, of course, must be viewed with some scepticism unless they are based on an analysis of the past and present. I proceed in two stages. First, I analyse recent historiography on the EU, highlighting a 'New Synthesis' that views integration as a rational response to exogenous pressures of interdependence. Second, I pose the question whether current arrangements are stable against both exogenous shocks and spillover. Is pressure for future progress, whether endogenous or exogenous, likely due to substantive, institutional or normative pressures? I conclude that new challenges to functional effectiveness, institutional stability or normative legitimacy are unlikely to undermine the European Constitutional Settlement.

2. THE NEW SYNTHESIS: A TRIPARTITE EXPLANATION OF EUROPEAN INTEGRATION

Over the past decade, a consensus view has emerged among political scientists and historians concerning the deeper causes of the evolution of European integration. Most scholars now believe that the preponderance of evidence supports a synthetic explanation drawing on 'endogenous' theories of political economy, Nash-bargaining theory in a non-coercive setting, and 'international regime' theory – all within a view of state decision making often termed a 'liberal inter-governmentalist' view. We shall refer to this view as the New Synthesis.

This tripartite New Synthesis rests on the assumption that national governments are instrumental actors that engage in policy coordination in order to address common functional challenges. Within that widely accepted class of models for understanding international cooperation, states are assumed to go through three stages (see Table 1): (1) they formulate preferences in response to functional policy interdependence, (2) they engage in interstate bargaining to achieve Pareto-improving solutions and resolve distributional conflicts, and (3) they delegate or pool sovereignty in international institutions to extend, implement, or enforce those bargains (Moravcsik, 1997; Lake and Powell, 2000). The synthetic element of the explanation lies in the fact that each of the three stages is explained separately: the first with issue-specific theories of policy externalities

TABLE 1
International Cooperation: A Rationalist Framework

<i>Stages of Negotiation</i>	<i>National Preference Formation</i>	<i>Interstate Bargaining</i>	<i>Institutional Choice</i>
Alternative independent variables underlying each stage	What is the source of underlying national preferences? Economic interests or Geopolitical interests?	Given national preferences, what explains the efficiency and distributional outcomes of interstate bargaining? Asymmetrical interdependence or Supranational entrepreneurship?	Given substantive agreement, what explains the transfer of sovereignty to international institutions? Federalist ideology or Centralised technocratic management or More credible commitment?
Observed outcomes at each stage	Underlying national preferences	Agreements on substance	Choice to delegate or pool decision making in international institutions

Source: Moravcsik (1998, p. 24).

arising from interdependence, the second with non-coercive Nash-bargaining theory, and the third with theories of 'international regimes'. Consider each in turn.

a. Interdependence and the Nature of National Preferences

As recently as a decade ago, the bulk of the scholarly historiography on the EU claimed that economic integration is not an end in itself, but a means to manipulate 'high politics' (Cohen, 1993; Verdier, 1994). In this view, the EU was founded primarily to address real and perceived geopolitical threats or realise federalist ideals (Grieco, 1990; Gowa, 1994).¹ European integration aimed to promote unity against the Soviet threat, to prevent war from ever again breaking out between Germany and its neighbours, or to suppress nationalism in favour of a European federalist ideal. The Euroscepticism of individual leaders such as Charles de Gaulle and Margaret Thatcher, and the Europhilic tendencies of counterparts such as Konrad Adenauer, Helmut Kohl and François Mitterrand, are often cited in this regard. This view remains firmly ensconced in the folk history of European integration, often repeated by politicians and pundits – not least, perhaps, because it provides such a simple and compelling justification for the European project.

¹ This historiographical tendency is even stronger in the various essential episodes stressed, in particular including the British rejection of European membership in the 1950s, the French rejection of British membership in 1963, and the Maastricht Treaty committing to economic and monetary union.

Over the past two decades, this view has been increasingly challenged by a different scholarly view, which stresses the immediate substantive benefits of EU policies, notably economic integration. In explaining the economic issues which have dominated the EU agenda to this day, this explanation follows modern theories of the political economy of foreign economic policy or 'endogenous' theories of commercial policy. These theories view trade liberalisation as 'a response to, rather than a source of, large trade flows', and one which governments are more likely to pursue if 'the benefits outweigh the costs' (Lawrence, in Baier and Bergstrand, 2004). The commercial interests of domestic producer groups dominated, which in turn reflected their respective positions in the global market – with more competitive sectors supporting regional liberalisation in their respective areas. At the same time, however, support for producer interests is constrained by the need to provide public goods. This is the view advanced in standard models, such as that proposed by Becker (1983) and Peltzman (1989), in which governments promote the interests of powerful producers within broad constraints set by more general, electorally-mediated, demands for regulatory protection, economic efficiency or fiscal responsibility (Majone, 1996).

This is the view adopted by New Synthesis scholars, and it explains empirically much of the European integration we have observed over the past half century (Milward, 1993; Majone, 1996; Moravcsik, 1998). The interests of European governments consistently converged across a wide range of issues in response to a 50-year regional boom in intra-industry trade and investment, which made Europe by far the most interdependent region in the world. Between 1950 and 1975, this took the form of a rapid post-war shift in trade from a North–South to a North–North pattern of trade and investment. (In agriculture, the critical trend was rather the failure of domestic support schemes and the unattractiveness of a global free trade alternative.) In the 1970s and 1980s, rising foreign direct investment and capital mobility undermined the autonomy of national industrial and macroeconomic policies, creating greater pressures for monetary cooperation. Important changes in the priorities, policies and preferences of national governments appear to have reflected shifts in the domestic and international economic environment. Examples include the strong positive impact of French devaluation in 1958 on business support for liberalisation, the rapid British response to economic exclusion from the EEC in the early 1960s, and the response to global trends toward liberalisation of service provision in the 1980s. Sustainable monetary initiatives emerging in times of macroeconomic convergence and dollar depreciation, as was the case just prior to each oil crisis and again in the late 1980s, the effects of the two being difficult to separate. Throughout, European integration has been dictated primarily by the need to adapt by policy coordination to these technological and economic trends, as well as exogenous shocks.

Consistent with the general model, cross-national and cross-temporal variation in commitment to integration reflected three factors. First is *relative position in*

international markets. Regionally competitive sectors like German industry, French agriculture or British services provision were consistently able to convince their governments to support cooperative policies tailored precisely to suit their commercial objectives. In negotiating the Single European Act of the 1980s, regulatory competitiveness remained the decisive concern: France placed special emphasis on a reduction of regulatory barriers on food products, Britain pressed for service deregulation, and Germany sought general reduction in industrial trade barriers. Second is *domestic public fiscal constraint.* Foreign economic policy making tended to promote business interests until confronted with an intolerable fiscal burden strong enough to challenge the basic domestic consensus on taxation and regulation. Both French pressure for a common agricultural policy (CAP) and French support for the Single European Act (SEA) was a response to an increasingly unsustainable fiscal burden of domestic subsidisation. Third is *variation in domestic regulatory policies.* Domestic policies favouring producers are constrained by the public fiscal limitations or by conflict with general regulatory objectives. Whether we examine the customs union and monetary cooperation or secondary policies in areas such as transport, atomic energy, external tariff policy, industrial and R&D policy, and social policy, cross-issue variation in national positions consistently mirrored global market competitiveness, macroeconomic constraints and regulatory commitments.

This is not to deny entirely any role for geopolitical concerns and federalist ideology stressed by traditional accounts of integration. There is substantial evidence that some European countries, notably Germany in the Treaty of Rome, the 1960s and the Maastricht negotiations, may have been influenced by geopolitical and ideological considerations. The likely outcome without the impact of geopolitical concerns would have been a trade arrangement closer to the free trade area (FTA) repeatedly proposed by Britain, backed by a series of bilateral and global multilateral trade and investment agreements. Such an arrangement would likely have enticed Britain to participate even earlier and, as a result, would have permitted – as the French always rightly feared – no more than *ad hoc* bilateral arrangements for agriculture.

Yet the core of European integration to date – tariff reductions, the single market, elimination of customs formalities, industrial standardisation, services deregulation, foreign policy coordination and internal security policy – was motivated by issue-specific (generally commercial) concerns. The importance of such factors is most clearly seen in recent revisionist historiography of the man most widely cited as an ‘ideological’ European statesman: Charles de Gaulle. De Gaulle’s opposition to Europe is almost universally viewed as a function of his traditional realist and nationalist ideology – his ‘certain idea of France’ – which ruled out commitment to supranational institutions. A close reading of French government deliberations reveals an obsession with the need to secure export markets in order to bolster French agriculture – a concern de Gaulle referred to

as ‘the most important problem facing France except Algeria’ (Moravcsik, 1998, pp. 179ff.).

There has been an interesting debate in recent years concerning enlargement, which appears at first glance not to fit the model of issue-specific management of policy interdependence. Some have argued that eastern enlargement – unlike the previous Nordic enlargement – was driven in part by a desire not to undermine promises made in the name of the European ideal. Yet in many ways even this ‘exception’ proves the rule. Enlargement was pursued most heavily by those front-line countries with economic interests and concern about border controls. Moreover, the concern with stabilisation appears to have been driven primarily by a concern about socioeconomic interdependence, rather than broader geopolitical concerns and the prevention of war. Finally, insofar as Eastern enlargement was idealistically motivated, it was counterbalanced by strict efforts to limit the consequences of such a step. The GDP of the 10 new members of the EU totalled only 3 per cent of the GDP of existing members, and their demands on existing EU budgetary spending, agricultural policy and free movement rules were carefully restricted.

Having examined competing explanations of national preferences, the first stage of the rationalist framework of international cooperation, we turn now to the second stage: interstate bargaining. National preferences are often heterogeneous. How, then, do we explain the specific terms of the substantive bargains on which governments agree?

b. Asymmetries and the Nature of Interstate Bargaining

Most major steps forward in European integration have taken the form of amendments to the Treaty of Rome. The New Synthesis treats interstate negotiations to advance European integration as bargaining games over the precise terms of mutually beneficial cooperation. Such negotiations tend to be coordination games with distributional consequences.² In such bargaining games, the configuration of national preferences (endogenised in the preceding section) defines a ‘bargaining space’ of potentially ratifiable agreements, all of which are equilibrium outcomes that all governments prefer to unilateral or coalitional alternatives. Such agreements extend along a Pareto-frontier of efficient bargaining, in which all possible joint gains have been exploited. Since alternative agreements generally impose differential gains and losses on countries, governments are rarely indifferent among them. Thus they often dispute the precise nature of policy coordination, its speed and scope, and the associated side payments. Interstate negotiation is the process of international collective choice through

² This is the core of modern bargaining and negotiation analysis. See Raiffa (1990) and Sebenius (1991).

which potential agreements are identified and one is selected. Any theory of bargaining must explain both the *efficiency* and the *distributional consequences* of integration.

Two broad conjectures have been advanced to explain the efficiency and distributional outcomes of EC negotiations: the supranational and intergovernmental bargaining theory hypotheses. While these rubrics invoke a language specific to theories of regional integration, the underlying theoretical questions are general.³ The supranational hypothesis, traditionally held by practitioners and historians of European integration, stresses the decisive role of leading supranational officials. Visionary supranational officials such as Jean Monnet and Jacques Delors are, in this view, necessary to provide the political entrepreneurship required to overcome inefficient bargaining and to influence distributional outcomes.

The intergovernmental hypothesis argues, to the contrary, that an underlying demand for cooperation, not the entrepreneurial supply of information, imposes a binding constraint on negotiations. Efficiency is relatively unproblematic because interested governments are able to act as their own political entrepreneurs, or construct efficient institutions – notably the European Council, various coordination committees within the Council of Ministers, and the Council Secretariat – to help them bargain efficiently. Negotiators focus instead primarily on the distribution of benefits, which are decisively shaped by the relative power of national governments, understood in terms of ‘asymmetrical policy interdependence’. Patterns of interdependence underlie credible threats to veto, exit and exclude other governments, as well as, though secondarily, linkages between issues and offers of side payments. Whereas the supranational view assumes that transaction costs are high relative to the gains from agreement for all actors except supranational officials, the intergovernmental view assumes transaction costs are low and therefore the pattern of state preferences and power, in particular the opportunity costs of forgoing agreement, is the decisive determinant of specific agreements.

Historians have uncovered considerable evidence that traditional histories – which historian Alan Milward dismisses as ‘the hagiography of the European saints’ – exaggerates the role of supranational political entrepreneurs (Milward, 1993). Generally representatives of the most interested national governments are better informed. Technically, the Commission remains reliant on national officials, particularly in complex areas like the CAP and monetary policy. The political information and judgement of Commission and Parliament officials is even less

³ What assumptions should explanations of international economic negotiations make about the distribution of information, the sources of bargaining power and the resulting influence of third parties? The predictions of bargaining theory are notoriously sensitive to shifting assumptions about the information, strategies and tactics available to actors, as well as their preferences, yet few analyses of EC negotiations render such assumptions explicit. For a critique along these lines, see Eichengreen and Frieden (1993). More generally, see Harsanyi (1977).

reliable. Supranational officials tended to ignore political constraints and render overly optimistic judgements about the political feasibility of their preferred options.

One example demonstrates how misleading the historical literature can be. Few challenge Ernst Haas's claim of 1956 as the year when 'Monnet's doctrine of a strong, united Europe . . . resting on a large common market came into its own' (Haas, 1958). The truth was precisely the opposite: Monnet begged Konrad Adenauer and others to reject the customs union, an idea he believed to be without 'political content', in favour of the creation of highly regulated Euratom and transport unions, which were more in keeping with his *dirigiste* style of economic management. Only when the national governments repeatedly rejected his entreaties did he, reluctantly, support the policies that today form the EU's core. It would be the same over the coming years. In the 1960s, Hallstein pressured de Gaulle to accept greater centralisation of Commission control. In the 1980s, Jacques Delors advocated a more pro-French and federalist monetary union in the run-up to Maastricht. And only recently activists in the European Parliament supported draft constitution. All were futile, even counterproductive, efforts demonstrating a remarkable lack of political judgement. For 50 years, it has been member governments, not supranational officials, who initiate and mediate major EC negotiations. Ideas that appear to be proposed by international actors were actually managed behind the scenes by major governments through classical diplomatic means, as in the case of the Spaak Report, the design of the CAP, Schmidt and Giscard's EMS proposal, and the Delors Report on EMU.

There exists only one major exception to the dismal record of supranational entrepreneurs.⁴ The White Paper drafted by Arthur Cockfield, working with Delors, in preparation for the SEA was the only unambiguous case of a successful major supranational initiative that was not first proposed in a similar form by a member state. In addition, between 1979 and 1985, Parliament and Commission officials encouraged the mobilisation of multinational firms into a coherent political force; they became strong supporters of the SEA. Initiation and mobilisation by supranational officials may well have increased the efficiency of the SEA agreement by opening up the possibility of common interests in non-tariff barrier (NTB) liberalisation, though they did not alter distributional outcomes. Delors' own account clearly recognises member state opposition to any other proposals; he shelved his preferred proposals for monetary and institutional reform and became a late convert to trade liberalisation. Parliamentary demands for fundamental institutional reform were never taken seriously, but its demands – more weakly supported – for internal market reform were.⁵

⁴ On scattered exceptions, see Sandholtz (1992) and Pierson (1996).

⁵ This permits us to refine the theory to propose a more precise reason for exceptional entrepreneurial influence. For a more detailed argument based on these cases, see Moravcsik (1999).

Distributional outcomes have tended rather to mirror the relative bargaining power of governments, understood as the pattern of issue-specific asymmetrical interdependence. Governments were consistently constrained by credible threats to veto, which reflected the domestic ratifiability of agreements. This was the primary concern particularly of the less forthcoming governments, such as those of Britain and France in the 1950s, Britain and Germany in the 1970s, Germany and Britain in the 1990s, and even de Gaulle's France in the 1960s. Within these constraints, governments that perceived themselves as benefiting most (in domestic political terms) from any core agreement – as Germany benefited from industrial tariff reductions in the 1950s, France from agricultural liberalisation in the 1960s, Britain from the SEA in the 1980s, and France from the EMS and EMU agreements – proved most willing to compromise in order to achieve it. At the same time, governments were willing to accept only modest losses on any given issue, and not at the expense of powerful interest groups. Thus, for example, the basic bargain of the 1960s – German acceptance of agricultural imports from France in exchange for French acceptance of German industrial imports – was possible only once French industry had been rejuvenated by devaluation and modernisation, and German agriculture was guaranteed high EU support prices.

Of particular relevance to those interested in the sequencing and scope of regional integration are the explicit threats of exit and exclusion employed by governments, which altered the negotiated outcome when they were credible. Britain's structural vulnerability to exclusion offers one consistent example. Harold Macmillan in the initial accession negotiations, James Callaghan in the EMS negotiations, Margaret Thatcher in the SEA negotiations, and John Major in the Maastricht negotiations were all explicitly threatened with exclusion. All four prime ministers responded by seeking to block agreement among the others, often by linking the negotiations to security threats – either withdrawal of troops from Europe or an Anglo-French nuclear alliance. When this failed, they compromised. As predicted by bargaining theory, the compromises they reached reflected the perceived relative costs and benefits of exclusion. In an area like the Maastricht social protocol, where the British government perceived advantages from non-participation, it welcomed exclusion. In areas like tariff and monetary policy, where it perceived disadvantages from exclusion, it sought to compromise.

This helps to explain the dynamics of enlargement. Each previous round of EU enlargement has gone through a parallel and predictable negotiation process. In each round of enlargement, applicant countries have consistently found themselves in a weak negotiating position vis-à-vis their EU partners, and accordingly have conceded much in exchange for membership. And this effect has increased over time. EU member states and the new members both benefited from EU enlargement, but new applicants benefited more, and this puts the latter at a bargaining disadvantage. The basic asymmetry of interdependence, and thus power, is evident from the simple fact that the collective GDP of the next 10

TABLE 2
Average Relative GNP Values of New Member States in Successive EU Enlargements

<i>Rounds of Enlargement</i>	<i>GNP of Applicants/GNP of Existing Members</i>	<i>GNP Per Capita of Applicants/GNP of Existing Members</i>
1st Enlargement (1973): UK, IRE, DK	20%	79%
2nd Enlargement (1981): G	2%	48%
3rd Enlargement (1986): ES, P	7%	42%
4th Enlargement (1995): S, SF, A	8%	115%
5th Enlargement (2000+): PO, H, CZ, SK, SL, BU, RO, LA, LI, ES, MAL, CYP	3–5%	14%

applicants for membership totals no more than 3–5 per cent that of the current EU15 – less than any other major enlargement of the EU (see Table 2).⁶ This is roughly the weight of Mexico's economy as compared to that of the United States. This is one clear way in which sequence has mattered in European integration. The order of accession has meant that early members have a greater impact on existing policies. Subsequent members find themselves in a weaker bargaining position vis-à-vis the first movers and the structure of the EU – notably the CAP, which favours early members France, Italy and even Germany, but has been strikingly disadvantageous to the United Kingdom. There are, however, more ambitious arguments about sequence, to which we now turn.

Having examined competing explanations of interstate bargaining, the second stage of the New Synthesis explanation of international cooperation, we turn now to the third stage: institutional delegation. All other things equal, national governments do prefer not to delegate sovereignty. Yet cooperative bargaining outcomes are often accompanied by commitments to pool and delegate national sovereignty. The EU contains among the deepest and most varied institutional commitments of this kind in the modern world. How, then, can we explain the range of institutional substantive bargains on which governments agree?

c. The Credibility of Commitments and Institutional Delegation

Traditional explanations of the pooling and delegation of sovereignty within the EU stress the motivating force of federalist ideology. In this view, governments pool sovereignty to the extent that national leaders believe in the European project. This view predicts that support for institutional pooling and delegation will vary by country, or perhaps by the partisan and personal beliefs of national leaders. We should, for example, expect to observe the governments of countries

⁶ Greece, which entered alone under unusual circumstances, is an exception.

where federalist sentiment is strong, such as Germany, Belgium or Italy, in favour of delegation.

As with an idealistic analysis of the substantive preferences of states, historical analysis has called this view into question. Institutions were designed deliberately to commit European governments more credibly to decisions concerning the extension, implementation or enforcement of European integration under conditions of uncertainty, issue linkage and positive-sum gains. This is consistent with the core tenets of international regime theory, which (drawing on transaction-cost economics) predicts the institutionalisation of international relations under precisely such circumstances where institutional support for 'diffuse reciprocity' can resolve collective action problems by institutionalising legislation and adjudication. The logic here is instrumental, not idealistic. This is the view defended by the New Synthesis view.

Delegation and pooling have been employed to implement or enforce prior agreements by pre-committing governments to greater compromise and thus more efficient decision making. Qualified majority voting was reserved for nested decisions managing daily policy decisions within broadly accepted goals, while major constitutive decisions, including those within the Treaty establishing the CAP and commercial policy, remained subject to unanimity. Consistent with this purpose, EU institutions are subtly designed with informal norms that encourage common policies while permitting governments to impede decisions and directives that threaten vital interest. Similarly, the Commission has a unique power to propose legislation to the Council of Ministers, which member governments could revise only unanimously, though in practice this function has been largely taken over by the heads of state and government, acting unanimously through the European Council. These powers are carefully delegated. From the French government's careful calculation of safeguards and veto rights in the Treaty of Rome to the Thatcher government's careful calculation of the likely voting outcomes of all 279 proposals in the single market White Paper, governments have carefully calculated the consequences of delegation and pooling for their substantive interests.

The evidence strongly supports this view. National positions are subtly disaggregated by issue, with national positions tracking substantive goals, as the credible commitments view predicts, rather than remaining ideologically coherent. In the 1950s and 1960s, for example, Charles de Gaulle and his successor Georges Pompidou, a classic Gaullist opponent of supranational power in other respects, supported a measure of EU independence and extensive European fiscal prerogatives in agricultural and foreign trade matters, because he sought to commit Germany to the CAP. Under the EMS, France sought to establish more binding supranational monetary institutions, while Germany resisted them without strict prior economic convergence. Under the EMU, France sought supranational monetary institutions open to political guidance, while Germany

sought more autonomous institutions, albeit within clear guidelines. To be sure, idealistic acceptance of the EU has played some role in concrete decisions to delegate sovereignty, particularly in motivating broad institutional reforms unconnected with specific issue areas. Anglo-French preference for the European Commission over the European Parliament, as well as the converse position held by Germany, appears to reflect public and parliamentary ideology. De Gaulle's opposition to Commission power, the unwillingness of German leaders to act on their scepticism of autonomous supranational institutions, even leaving aside the anomalous positions of Benelux and Italy, or opponents like Denmark, the process-level evidence suggests that German, French and British positions on the EP are grounded in personal, public or parliamentary opinion. On the most important institutional issues that national governments face – those involving the EU mandate, qualified majority voting and the construction of autonomous EU powers – delegation and pooling of sovereignty in EU institutions are not, as Eurosceptics charge, a conspiracy of die-hard federalists to implement a European vision.

d. Sequencing and the Historical Institutional Critique

The tripartite causal explanation of European integration advanced by 'New Synthesis' scholars is controversial not simply because some continue to challenge the adequacy of its three component parts: issue-specific preferences driven by policy interdependence; interstate bargaining on the basis of preference intensity; and ideological rather than instrumental theories of delegation. It has also been challenged by 'neo-functional' or 'historical institutionalist' (HI) theories, which view integration not solely as an endogenous response to exogenous shifts in structural variables, but as a process of recursive 'spillover' in which policies and institutions give rise to autonomous dynamics and 'unintended consequences', which then influence further integration. In sum, the HI perspective develops the view that European integration is 'path dependent'. The basis of these theories lies in theories of increasing returns and institutions drawn from economics and political science.

This conjecture was developed initially by Ernst Haas in the 1950s, who termed it 'neo-functionalism'. Haas, following Monnet, argued that integration, once launched, would continue to generate feedback or 'spillovers', and thus further deepen the integration process.⁷ This can occur in two ways (George, 1985). Previous decisions can induce changes in national preferences, which promote further integration. This 'social spillover' argument is generally applied to economic adjustment, but some also stress ideological or ideational changes. Alternatively, international institutions may alter the terms under which governments

⁷ See Haas (1958). For a critical assessment, see Moravcsik (2005).

negotiate new bargains by empowering supranational officials – a process we may term ‘political spillover’. Most advocates of HI, like their neo-functional predecessor, do not explicitly claim that it displaces a structural rationalist view entirely. Yet many HI theorists nonetheless maintain that feedback and spillover effects are so massive as to swamp any consistent effort to develop consistent theories of national preferences or strategies.⁸ The force of this argument lies in the claim that the consequences of these decisions may be unforeseen, unintended or undesired.⁹ In other words, if governments are constantly forced to react to unintended consequences of previous decisions, HI theorists ask: What sense does it make to speak of governments *choosing* Europe?

Yet neither socioeconomic nor political spillover provides a plausible alternative to the ‘New Synthesis’ view. As regards the first, the structural economic trends underlying national preferences – trade liberalisation, agricultural subsidisation, capital mobility, regulatory harmonisation, macroeconomic convergence – do not appear to have been induced primarily by prior decisions. The swiftest period of export expansion in post-war Europe was in the 1950s and early 1960s, before the EC could have had a decisive impact. British industrial exports, for example, had completed the bulk of their shift from the Commonwealth to the Continent, with decisive consequences for Britain’s EC policy, before Britain joined the EC. Existing econometric models of trade flows suggest that only a modest percentage of the post-war increase in European trade can be attributed to policy changes; nearly all the increase, at least until the 1980s, reflects structural factors like geographical proximity and per capita income (Frankel, 1997). (The effect on agricultural trade is, as would be expected, much higher.) The same can be said of decisive economic trends such as rising capital mobility, disinflation, financial liberalisation and disenchantment with industrial policy. West European countries were greatly influenced by these structural trends, whether or not they were EC members (Andrews and Willett, 1997). Finally, insofar as European integration reinforced these trends, the historical record suggests that they were, in fact, foreseen and desired by national governments. In some cases, among them the EMS and EMU, governments appear to have employed the EC explicitly as a scapegoat. Even where this was not the case, the analysis above reveals that nearly all governments were generally well aware of the likely short- and long-term policy consequences of integration. In this

⁸ Two leading theorists make this explicit. Pierson (1996) is by far the most sophisticated study, since it specifies conditions under which we should expect to observe such effects. See also Sandholtz (1993).

⁹ As Perry Anderson (1996, p. 17) puts it, ‘If all historical undertakings are subject to the fatality of unintended consequences, the more deliberate they are the more pronounced the gap may become. The “construction of Europe” . . . was bound to lead to . . . a persistent pattern of consequences that disconcerted and foiled the intentions of its architects’.

regard, the public statements of governments can be misleading.¹⁰ Governments often have an incentive to deny or simply ignore their responsibility for certain outcomes – CAP surpluses, monetary discipline and downward pressure on social spending, for example – that they deliberately engineered.

Explanations stressing ‘political spillover’ have enjoyed somewhat more success, particularly in explaining the autonomous development of European law – and, in particular, the successful assertion of the supremacy of European law by the European Court of Justice (ECJ). There is no doubt that this evolution was unintended by the framers of the Treaty of Rome and that it came about because supranational officials – the ECJ judges – were able to convince national judges to recognise European law and to refer cases to the European body (Burley and Mattli, 1993). The causal process as a whole is more complex, involving a particular set of domestic incentives, but it clearly involves some political spillover of consequence for the EU (Alter, 2001). At the same time, however, there is little evidence that the increased powers of the ECJ, while perhaps important for ensuring compliance, had other strong impacts on the overall trajectory of the Treaty of Rome.

A potentially more consequential variant of ‘political spillover’ would stress the unexpected consequences of majority voting and Commission implementation by certain governments – an argument most often advanced in studies of British policy. A cottage industry of research looks to individual majority decisions that unexpectedly undermined the interest of a given state. Others point to the existence of ‘joint decision traps’, where governments are locked into undesirable policies by the need to muster unanimous support for any new legislation or treaty amendment. This is commonly cited as an explanation of CAP surpluses or the absence of a fully developed EC social dimension.¹¹

Yet three empirical findings call the significance of ‘political spillover’ into question. The first is that, as we have seen, supranational political entrepreneurs like Jean Monnet and Jacques Delors have had limited influence on major inter-state negotiations. The second is that, as we have also seen, the construction of an international regime in which legislation is voted over the opposition of minorities and rules are enforced against the obstruction of the recalcitrant – in short, the transfer of sovereignty and autonomy to supranational institutions – was not an unintended consequence of major EC decisions. It was their primary purpose. Governments were hardly unaware that they were assuming risks of being outvoted or overruled; to the contrary, we have seen that they repeatedly calculated the consequences in great (and, for the most part, accurate) detail. The third is the striking continuity and incremental nature of changes in national

¹⁰ For partial scattered exceptions, see Pierson and Leibfried (1995).

¹¹ See Scharpf (1988, 1996) and Pierson (1996). The studies on Britain are too numerous to cite. For an overview of Commission activities, see Cram (1997).

positions. Against a background of slowly deepening commitment to integration, the relative positions of Britain, France and Germany on issues such as agricultural liberalisation, safeguards on internal tariff reductions, GATT negotiations and competition policy, have remained relatively constant. This finding undermines any spillover explanation that rests on the assumption that national interests are unstable, and thus that commitments made at one time are likely to have unpredictable consequences at some future date.

On balance, HI theorists are thus correct to note that integration has politically significant consequences, notably shifts in the preferences and institutional environment in which future decisions are made, but that only in exceptional cases are these consequences unintended or unwelcome. More strongly supported by the historical record would be a weaker version of HI, one that stresses intended rather than unintended 'lock-in' effects as a secondary force behind regional integration. Insofar as future shifts in preferences were foreseen, intended, even desired, HI provides an account of the consequences of integration consistent with the (more static) treatment of individual decisions presented here. This should be viewed not as an alternative to an instrumental interpretation of integration, but as an extension of it (Moravcsik, 1997).

3. THE EUROPEAN CONSTITUTIONAL SETTLEMENT

The historical analysis of European integration discussed in the preceding section provides a basis on which to evaluate its current status. We have seen that movement forward toward European unity has tended to reflect explicit, concrete and conscious national policy goals connected in the collective management of economic and other sorts of policy interdependence. Positive 'spillover' has not been a decisive factor in pushing the EU to where it is today.

Those who believe the EU is in crisis argue that the status quo is unstable because it is not providing the concrete policy outputs, procedural safeguards or ideological legitimacy that European citizens desire. This will create 'spillovers' that undermine the EU, posing a choice whether to integrate further or slip backwards. This is the essence of the widespread contemporary discussion of a European 'democratic deficit', and the ill-fated constitutional project designed to redress it. In the analysis below, I shall argue that, far from being in crisis, the EU seems stable in the face of any likely challenge. While an exogenous shock can never be ruled out, no current trend – substantive, institutional or normative – is likely to destabilise the organisation. No overriding need to manage new issues, nor spillover, negative or positive, will force fundamental constitutional change in the EU. The EU rests on a stable 'European constitutional settlement'.

One way to see this is to examine the recent debate about the proposed new European constitution. Perhaps the most powerful arguments that negative

spillovers will force constitutional change in the EU do not rest on pressures for substantive policy coordination, but changes in normative beliefs about it. We have seen that, in the past, the EU has not relied heavily on normative, as opposed to pragmatic, sources of support. Current critics argue, however, that this view is dated. The EU now handles increasing areas of sensitivity, which will force a more democratic structure on it. In sum, the EU must democratise or decay.

It is not hard to see why so many observers of the EU view it as democratically illegitimate. Only one branch of the EU is directly elected: the European Parliament (EP). The EP is institutionally weaker than its national counterparts, and its elections are decentralised, apathetic affairs, in which a small number of voters act on the basis of national rather than EU concerns. The European Commission is widely perceived as a remote technocracy. The ECJ, with 15 appointed judges, is unusually powerful by the domestic standards of most European countries. Most powerful among Brussels institutions, the Council of Ministers assembles national ministers, diplomats and officials, who often deliberate in secret. Right-wing critics believe the EU is infringing on personal liberty. Left-wing critics view the EU as a throwback to the fiscally weak, neoliberal state of the nineteenth century, which legally constructed markets with a limited range of balancing social policies.

This discourse is not entirely distinct from pragmatic policy making. Legitimacy has two meanings with regard to the contemporary EU – one philosophical and one practical. Some use it to designate the extent to which the EU is consistent with basic democratic principles, others to refer to the level of support and trust for the EU among European publics. The conventional view today, held with redoubled force after the referenda, is that the EU has a ‘double’ legitimacy crisis, because crises in these two areas are related: the weakness of public support *follows from* the lack of philosophically defensible democratic credentials. Critics of current EU institutions, both among Europhiles and Europhobes, argue that EU decision making is both unstable and illegitimate because it is not based on direct democratic consent. There is no reason to believe that over the past decade this has been the most widespread public argument for fundamental constitutional reform of the EU. It was on the basis of such beliefs, more than anything else, that the recent constitutional convention was called. Such beliefs were the single most important justification for the EU’s recent constitutional experiment.

The criticism that the EU is democratically illegitimate rests on questionable foundations. As regards abstract democratic legitimacy, most critics reach negative conclusions by comparing the EU to idealised conceptions of Westminsterian or ancient-style democracy, rather than the real-world practices of the national democracies the EU would replace. Abstract democratic legitimacy must be judged using reasonable and realistic criteria. No existing government lives up to abstract, utopian standards of imaginary republics. It is far more reasonable to

adopt the following standard: is EU governance as democratic as the (presumptively legitimate) domestic decision-making procedures of its member states in dealing with similar issues? When we rephrase the question this way, the claim that the EU is democratically illegitimate is unsupported by the evidence. This conclusion holds, I argue, no matter what mainstream philosophical conception of democracy one starts from: libertarian, pluralist, socialist or deliberative.¹²

a. The Libertarian Critique: ‘Superstate’ or ‘Limited Government’?

Some question the stability of the European constitutional compromise from a libertarian position. The libertarian conception of democracy, dating back to John Locke and others in early modern Europe, views it as a means to ensure limited government by checking the arbitrary and corrupting power of the state. For libertarians, the European constitutional compromise has created a Brussels ‘superstate’. This is not just a figment of the tabloid imagination. Arbitrary rule by national and supranational technocrats – ‘bureaucratic despotism’ in Brussels, as Oxford academic Larry Siedentop puts it in *Democracy in Europe* – is a widespread concern among free marketers and libertarian conservatives.

Yet the European superstate is an illusion. The European constitutional compromise imposes exceedingly tight constraints on policy, combining elements of the consensus democracy of the Netherlands, the federalism of Canada, the checks and balances of the US, and the reduced fiscal capacity of Switzerland. We have already seen that the EU, broadly speaking, does not tax, spend, implement, coerce or, in most areas, monopolise public authority. It has no army, police and intelligence capacity, and a minuscule tax base, discretion on spending, and administration. As for constitutional change in the EU, it requires unanimity, often with public ratification, in the member states – a standard higher than any modern democracy except perhaps Switzerland. Such a system is deeply resistant to any fundamental transformation to basically alter the ‘regulatory’ nature of the European state without broad consensus among a wide variety of actors. This is why the EU influences only between 10 and 20 per cent of European policy making. And this is unlikely to change.

Even more importantly, from the Lockean perspective, the EU’s ability to act (even where it enjoys unquestioned legal competence) is constrained by exceptional checks and balances among multi-level institutions. The EU is not a system of parliamentary sovereignty but one of separation of powers, with political authority and discretion divided vertically amongst the Commission, Council, Parliament and Court, and horizontally amongst local, national and transnational levels. The Commission must propose (by majority), the Council of

¹² This argument in this section is developed in a detailed and fully footnoted form in Moravcsik (2002, 2004, 2005).

Ministers must decide (by supermajority), European parliamentarians must assent (by absolute majority) and, if the result is challenged, the European Court must approve. National parliaments or officials then transpose directives into national law, and national bureaucracies implement them. Formally, this makes everyday legislation as or more difficult to pass as constitutional revision would be in most advanced industrial democracies. Only the exceptional interdependence of European states, which creates important convergence of interest, makes legislation possible at all.

Thus it should not be surprising that the most striking characteristic of the EU as a constitutional system is the carefully limited substantive scope of its mandate. In 1988, Jacques Delors famously predicted that in 10 years '80 percent of economic, and perhaps social and fiscal policy-making' in Europe would be of EU origin. This prediction has become a fundamental 'factoid' in discussions of the EU – often cited as a claim that 80 per cent of law making in all issues in Europe already comes from Brussels. Yet recent academic studies demonstrate that the actual percentage of EU-based legislation is probably between 10 and 20 per cent of national rule making. Many areas remain essentially untouched by direct EU policy making, including taxation, fiscal policy, social welfare, health care, pensions, education, defence, active cultural policy, and most law and order (Moravcsik and Töller, 2007). None of these policies appears a promising candidate for 'communitarisation'. The single market has been declared complete, though incremental expansion continues. In other areas – defence policy, immigration and asylum, law and order, fiscal policy, social policy, even indirect tax harmonisation, should it come to pass – EU policy plays a subordinate role. EU policy in these areas tends to proceed by unanimity, with a subordinate role, if any, for the Commission, Parliament and Court.

There is thus a considerable literature on the expansion of EU activity in areas such as immigration, social policy and defence. Yet this is in most respects misleading. Even in areas where there is considerable progress, it remains quite limited. Cooperation in immigration, for example, consists largely of 'soft' norms for national policies, coordinated activity vis-à-vis third countries, the exchange of data, codification of existing international obligations, and administrative coordination of parallel national policies (such as the granting of visas and passports). Measured by the scope of meaningful policy discretion, EU immigration controls remain secondary to national ones.

b. Pluralist and Social Democratic Critiques: Is the EU Representative?

Many question the stability of the European constitutional compromise from the perspective of a pluralist conception of democracy, which stresses the need for EU activities to be accountable to and representative of popular views. To them, the EU policy process, even if under broad constraints, seems unduly to

favour national bureaucrats and ministers at the expense of parliaments and publics. In some matters, moreover, semi-autonomous supranational authorities, such as the ECJ, the European Central Bank (ECB), and the Commission's Directorate-General for Competition, wield considerable autonomy and discretion. These long chains of delegation dilute the impact of public pressure. Overall, the lack of direct democratic participation seems to imply that the EU is an insulated cartel of supranational and national technocrats bent on regulating citizens free from public scrutiny. This, it is argued, can introduce a form of arbitrary rule into the EU that is objectionable not because it is extensive, as libertarians would argue, but because it is biased.

Yet the EU employs two robust mechanisms of democratic oversight: direct accountability via the EP and indirect accountability via elected national officials in the Council. Over the last two decades, the EP has been supplanting the Commission as the primary interlocutor vis-à-vis the Council in the EU legislative process. The EP now enjoys the right, late in the legislative process, to accept, reject or amend legislation in a manner difficult for the member states to reject. The EP is directly elected by proportional representation within nation-states, and often acts independently of ruling national parties. The EP, which tends to reach decisions by large majorities, is most active in precisely those areas where public preferences are strong, such as environmental policy, oversight of the Commission and social policy.

Indirect accountability, exercised through the European Council, the Council of Ministers and national implementation, plays an even more important role in ensuring accountability. In the European Council, now consolidating its position as the EU's dominant institution, elected national leaders wield power directly, setting the agenda for the EU as a whole. In the Council of Ministers, which imposes the most important constraint on everyday EU legislation, permanent representatives, officials and ministers act under constant instruction from national executives, just as they would at home. In countries that have made it a priority, such as Denmark, national parliaments consider many EU policies before they are legislated. All countries are free to do the same and, as we have seen, member states enjoy considerable discretion as regards implementation of EU rules.

A corollary of this sort of cross-cutting accountability is openness. In contrast to the impression of a cadre of secretive Brussels gnomes, EU officials in fact work under transparency and public scrutiny more intense than that found in almost any of its member states. With 20 commissioners and their staffs, 15 national delegations, over 600 parliamentarians, hundreds of national ministers and thousands of national officials, *ex ante* parliamentary scrutiny in some countries and *ex post* parliamentary scrutiny in nearly all, and the ultimate need for domestic implementation, there can be no such thing as a monopoly of information in the EU. The EU legislative process works slowly and openly, with no

equivalent to ruling by executive decree or pushing legislation swiftly through a friendly parliament. Recent comparative research reveals that the EU's regulatory process is as transparent and open to pressure from interested parties as those of either the US or Switzerland.

Some object that the EU relies too much on power delegated to autonomous technocrats and judges in order to resolve essentially political questions involving the sensitive apportionment of cost, benefit and risk – as in the case of the central bank and constitutional court. Yet there is little that is distinctively 'European' about this pattern of delegation. Political commentators agree that the late twentieth century has been a period of the 'decline of parliaments' and the rise of courts, public administrations and the 'core executive'. Democratic accountability in such bodies is imposed not simply through indirect control through majoritarian institutions, but also through complex systems of indirect representation, selection of representatives, procedural norms and precise balances among branches of government. The key point for understanding European integration is that EU judges and technocrats enjoy the greatest autonomy in precisely those areas – central banking, constitutional adjudication, criminal and civil prosecution, technical administration and economic diplomacy – in which many advanced democracies, including EU states, also insulate themselves from direct political contestation. The same Europeans who challenge the democratic legitimacy of the EEC tend to criticise the unwillingness of Americans to pass 'fast-track' trade legislation – even though the insulation of both institutions has similar functional roots. The EEC is, in this sense, 'fast-track' for post-war Europe.

Some pluralists advance a more 'social democratic' argument. A 'European social policy' is required to represent Europeans. European social policy has generated an enormous academic literature and considerable political attention, focusing primarily on the innovative 'open method of coordination' (OMC). EU member states are engaged in the OMC, which leads them to exchange information, benchmark policies and evaluate results. Again, the academic literature is enthusiastic. Leading constitutional lawyers view this process as a striking formal innovation. Leading policy analysts view it as a fundamental shift in the nature of regulation, if not modern state formation. Leading political philosophers and social theorists view the consensus on social welfare as the central element in an emerging European identity. Leading Socialists view it as the basis for balancing the 'neoliberal' tendencies of the EU. Students of social policy view it as a promising road for future spillover and integration in an 'historical institutionalist' mode.

Yet there is little evidence that any of this matters for policy outcomes. Controlled empirical studies of the process of European social policy cooperation agree that its substantive results to date have been extremely modest, if present at all. There is some sketchy evidence that governments may have used the information exchange to help plan social reforms, but no solid evidence either of any impact on or policy learning with regard to substantive policy, though some

studies point to the ways in which certain governments have improved their administrative procedures, perhaps in part as a result of OMC lessons.

More fundamentally for our concern here, little evidence suggests the existence, viewed from the perspective of the national governments, of an underlying problem of negative policy externalities that an EU social policy could plausibly mitigate. Studies of a potential ‘race to the bottom’ among European governments in social policy, for example, have produced little evidence that such problems are significant in the present or inevitable in the future. As a constraint on social spending, nearly all analysts agree that domestic demographic, fiscal and policy constraints weigh larger than regional interdependence or policy-making externalities. Moreover, given that the central issue facing European governments is how to consolidate and stabilise welfare systems, it is unclear that any European social policy – except a neoliberal one – is justified. Finally, to the extent that there are policy externalities to social policy, there is no agreement on the distributional implications of such a policy. To take only the simplest aspect, how would a European social policy balance the claims of rich and poor countries? To be blunt, to what extent should European intervention in social policy aim to redistribute wealth toward a German worker and to what extent toward a Polish one? The inability to overcome these challenges explains why, although there is considerable discussion of social policy in Europe today, concrete progress and the range of realistic proposals are modest.

c. The Deliberative Democratic Critique: Does the EU Create Passive Citizens?

This leads us to a final democratic ideal around which one might expect a critical backlash to form: deliberative democracy. Even those who concede the existence of limited government and democratic accountability in the EU often criticise the European constitutional compromise for failing to promote the transnational political parties, identities and discourses that might help render European political participation more active, extensive and meaningful to the citizen. This view is related to widespread support among political philosophers for more ‘deliberative’ or ‘strong’ democracy in the belief that it will reconnect to the political process an apathetic and passive citizenry.

The deliberative democratic critique of the EU rests on the curious premise that the creation of more opportunities for direct participation or public deliberation would automatically generate a deeper sense of political community in Europe or, at the least, muster greater popular support for EU institutions. As a general claim, there is good reason to doubt that this is the case. No correlation exists between democratic pedigree and popularity. ‘Insulated’ institutions – constitutional courts, some regulators, police forces – are often the most trusted and popular with the public. Legislatures are generally disliked, to put it charitably.

And the EU itself has not increased in popularity with the significant expansion in the powers of the EP over the past five years. Even if increased participation were desirable, it is unlikely to occur. European voters do not fully exploit their current opportunities to participate in existing European elections. Nor have they shown much interest in efforts to include 'civil society' in the workings of the constitutional convention. Research suggests that this is not, as the deliberative critique implies, because they believe that their participation is ineffective or that institutions like the EP are unimportant. Institutions are not the problem. One is forced to conclude that it is because they do not care.

Why are they apathetic? The most plausible reason for apathy is that the scope of EU regulatory activity tends to be inversely correlated with the importance of issues in the minds of European voters. Of the five most salient issues in European societies today – health care, education, law and order, pension and social security policy, and taxes – none is primarily an EU competence. Amongst the next 10 issues in the minds of the public, only a few (managing the economy, the environment and the issue of 'Europe' itself) could be considered major EU concerns. In contrast, the affairs of the EU – trade liberalisation, agriculture, removal of non-tariff barriers, technical regulation in environmental and other areas, foreign aid and foreign policy coordination – tend to be of low priority in most European polities. Monetary policy lies somewhere in the middle. The central problem of deliberative democracy is thus to give voters sufficient incentive to care about EU politics and deliberate about it intelligently. In a world without salient issues, new institutional avenues for participation, such as referenda and constitutional conventions, do not necessarily encourage rich deliberation by an engaged population. Instead they lead to unstable plebiscitary politics in which individuals have no incentive to reconcile their concrete interests with their political choices. This is the lesson of referenda on recent treaties. Consider the Irish referendum on the Nice Treaty, in which public opinion shifted by dozens of percentage points in response to offhand statements by the Commission president, driving citizens in one of the countries that benefits most per capita from EU membership to vote against an innocuous document. Ignorance was so great that the slogan 'If you don't know, vote no' carried the day. This is no way to inspire serious democratic deliberation – or a perception of legitimacy.

The recent episode of constitution making can be seen as a grand political experiment to test whether democratisation of the EU is required, or whether the European constitutional compromise is stable in the face of criticism. The explicit reason for holding a constitutional convention was precisely the hope that it would circumvent haggling and national vetoes and activate instead a broad public mandate. European federalists in the Spinelli tradition hoped finally to realise their dream of an active and engaged pan-European citizenry. Pragmatists hoped to combat rising apathy and cynicism towards the EU by radically simplifying the Treaty of Rome, more clearly delineating national and central

prerogatives, and creating opportunities for democratic participation. Everyone gambled that an open, web-savvy twenty-first-century re-enactment of Philadelphia in 1787 would engage citizens and politicians of all stripes, sparking an epochal public debate on the meaning and future of the EU. It is increasingly clear that this democratic experiment was a failure, despite the utterly reasonable content of the constitutional draft. The constitutional convention attracted little public interest, the result was modest, and the political costs now threaten to sink the entire project. Few Europeans were aware of the convention's existence, and only a handful could explain what happened there. When testimony from civil society was requested, professors showed up. When a conference of European youth was called, would-be Eurocrats attended. So the task of preparing a constitutional draft was left, as tasks so often are in EU affairs, to parliamentarians, diplomats and Brussels insiders. Two hundred *conventionnels* came, they deliberated and, 16 months later, little had changed.

The resulting document is conservative: a constitutional compromise that consolidates a decade or two of creeping change. European governments took few steps towards democratising the EU, beyond a continued expansion of the powers of the EP. Those who mobilised were disproportionately extreme Eurosceptics with intense anti-European feelings, who exploited public ignorance to breed conspiratorial suspicion among largely apathetic but broadly pro-European publics. And now, despite the modesty of the constitutional treaty, politicians are being forced to pay back their borrowed public support with interest, as they guide the proposed document through national referenda.

To transform the EU into an active participatory democracy, it would be necessary to give Europeans a far greater stake in creating new political cleavages based on self-interest, as occurred historically in past episodes of democratisation. Amongst the most plausible proposals of this kind is that by Philippe Schmitter of the European University Institute, who proposes that agricultural support and structural funds should be replaced with a guaranteed minimum income for the poorest third of EU citizens, a reform of welfare systems so as not to privilege the elderly, and a shift in power from national citizens to immigrants (Schmitter, 2000). This is a coherent scheme for reinvigorating European democracy targeted at the groups most dissatisfied with European integration today – the poorer, less well-educated, female and public sector populations. Yet Schmitter's proposals have a Swiftian quality about them. (No wonder he coyly calls them 'modest proposals'.) Such schemes would surely succeed in 'democratising' the EU, but only at the expense of its further existence. The impracticality of such schemes demonstrates the lack of a realistic alternative to current, indirect forms of democratic accountability. Proposals of this kind would achieve prominence, but only at the cost of the EU itself.

The EU generates opposition in forums, such as referenda, that offer a nearly cost-free opportunity – both in terms of transaction costs and policy outcomes – to

express an opinion. The last time EU policies played an important role in a national election, however, was in the 1965 French elections, where 15 per cent of farmers came out in opposition to de Gaulle's policies, which appeared to threaten the CAP. The EU is a salient enough concern to generate sporadic protest, but it does not appear salient enough to generate concentrated opposition, let alone a major shift in partisan political cleavages.

4. CONCLUSION

The 'European Constitutional Settlement' appears stable. What has proven dysfunctional over the past five years is not the EU's policies, or its constitutional structure, both of which remain effective, but its constitutional discourse. This discourse rests on an enduring set of rhetorical illusions that have fuelled the European federalist movement since the Second World War. In this regard, perhaps the most attractive quality of the constitutional draft is that it began that difficult process by striking the classic phrase 'ever closer union' from the Treaty of Rome in favour of the more balanced 'unity in diversity'. We need to go further to recognise the EU as it is, rather than as we would wish it to be. This reflects a basic truth about Europe, namely that it has passed the point of no return and is now a 'mature' political system – one that does not need continually to move forward on a neo-functionalist bicycle in order to be stable.

The recent 'politicisation' of the EU, which many treat as an overwhelming and irresistible force, was in fact a self-inflicted wound.¹³ The perverse consequences are there for all to see. A better strategy, pragmatically and normatively, would be to depoliticise European constitutional evolution through an incremental, piecemeal strategy of implementing effective policies and modest institutional reforms – the 'Europe of results' of which Commission President José Manuel Barroso has recently spoken. Were it not for a needless constitutional debate, many of the domestic constraints on reform might well not exist, most notably the increasingly widespread requirement of referenda, rather than parliamentary ratification, of enlargement and smaller institutional reforms. This traditional EU strategy has been successful, and there is little reason to depart from it now. In practice, what this means is that pragmatic constitutional reforms should be submitted piecemeal for ratification by the member states, with deliberate efforts to depoliticise the subsequent debate. Surely a proposal to centralise European foreign policy – particularly if it were not presented as creation of a 'foreign minister', as was done previously, but (more accurately) as a bureaucratic redesign of the relationship between the Commission and Council – will not rouse masses of Europeans

¹³ For an extended analysis of this point, see Moravcsik (2006).

into the street to debate or defeat it. If support were sought in this manner, rather than by politicising the public through constitutional rhetoric, the EU's lack of salience would work for it rather than against it. In this regard – the reader will surely agree at the close of this paper on the past, present and future of European policy making – the EU's greatest tactical advantage is that it is, in a word, so boring.

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