

---

## France and Netherlands “No” Votes: Prospects for a Constitution for Europe

---

Marc G. Pufong

Valdosta State University

*Author’s Note: Readers should be alerted that due to the ongoing and changing nature of the debates on the EU Constitution, and given the lag in the conference presentation date and the proceeding publication, there may be marginal depictions in the article that may not fully reflect the current state of their events due to their recency.*

*As contemplated, a new Constitution for Europe will formally enter into force only upon its adoption by all signatory member countries. Following the “No” votes in two ratification-referenda rejecting the Constitution in May and June 2005 in France and the Netherlands, the European Council, using its Declaration 30 prerogatives, called for a “period of reflection” to facilitate debates in each of the member states. In doing so, the Council effectively upgraded the initial deadline to the end of 2008. In October 2005 the Commission presented a “Plan D,” a new impetus to included EU citizens as an ultimate source of EU policies. The idea of finding a “political solution” to the “unanimous only ratification impasse” which derails the process will go through the German presidency, to be followed by the Portuguese and then the French presidency in 2008. However, fraught with continued ambiguity, whether the Constitutional Treaty will in the end be fully ratified or again rescued (politically) by Declaration 30 remains uncertain. This article uses public opinion data and other primary information to reassess such a prospect. More specifically, it reexamines the how and why (politics) of the French and Dutch “No” votes, the motives and implications (effect), and the prospects for a formal ratification. It weighs further the odds that current “hold-out” member states would in the end ratify by delving into past ratification histories as well as existing procedures laid down in their constitutional provisions and laws.*

**Some fifty years ago, when six countries first took the lead to form a Community, it was more of an economic and technical collaboration . . . At long last, Europe is becoming one big family, without bloodshed, a real transformation clearly calling for a different approach.**

—Laeken Declaration (2001)

This article presents a detailed analysis of the 2005 French and Netherlands ratification-referendums and examines the ramification for rejecting the EU Constitution within the context of the ongoing European constitutional debate politics. Since the core of that debate revolves around the Member States that are currently “holding-out,” the article in the end anticipates within such a constraint a prospect of a formal ratification that would include the final adoption of a European Constitution. But before weighing into the ongoing public debate and positions of the yet-to-ratify Member States that are absolutely necessary for the process, the study puts into perspective the constitutional provisions that define and give effect to the ratification process, and above all, past ratification histories, to fully anticipate the final “likelihood to ratify.” While the empirical evidence presented gives content and legitimacy to the process of constitution-making in Europe, the conclusion reached, though important for a prospective study, is rightfully speculative. This is to be expected given the expectant unanimity decision rule imposed by law and used for ratification. Thus, in view of current EU reforms and ongoing enlargement imperatives, an agreement among the Member States for a Constitution for Europe will be possible if only in a drastically different form than originally anticipated. From both a theoretical and practical political perspective, this makes a lot of sense since at the very least it justifies the tremendous investments made in forging greater involvement between EU citizens, civil societies, and Member States since the failed French and Dutch ratification elections on a Constitution for Europe.

### **The European Union: Evolution and Context**

As the quote drawn from the *Laeken Declaration* above suggests, any discussion of an EU Constitution must put into proper context its evolution as well as its current need for expansion and deepening that necessitates the readjustment of its key historical instruments that bind Member States and citizens. Politically how such adjustments are negotiated and made creates political pressure points that must be diffused in the political process regardless of how one defines it. In its current format, the European Union was created on November 1, 1993 when the *Treaty on European Union* came into effect. Twelve of the current 27 Member States joined one of the Union’s predecessor’s agreements.<sup>1</sup> The idea of transforming the European Economic Community into a *European Union*, a single entity which would integrate all

aspects of European integration, officially emerged for the first time at the 1972 Summit of Heads of State and Governments in Paris. The final communiqué of the Summit highlights this fact by stating that

Member States of the Community, the driving wheels ... declare their intention of converting their entire relationship into a European Union before the end of this decade. (Communiqué of the Conference of the Heads of State and Governments 1972, 16; Piris 2006, 38-40)

However, the “Union” idea got lost in the turmoil of the economic crises of the seventies despite a supporting recommendation by the Tindemans Report apropos a “European Union” submitted at the request of Heads of State and Governments by Belgium’s Prime Minister in 1975. The idea would reappear ten years later at the Stuttgart European Council meeting in June 1983 where the Council would again reaffirm the “will to transform ... relations between the Member States into a European Union” (*Stuttgart Declaration* 1983). While the Spinelli Report (1984) commissioned by the European Parliament resulted in a draft instituting a European Union, the so-called “Spinelli Treaty” as it was termed then, though favorably received by that body on February 14, 1984, was never followed up by Member States. Thus, the Single European Act of 1986 would initiate these prior ideas but limited itself simply to recalling in its preamble the will of the High Contracting Parties “to transform their relations ... into a European Union” (Spinelli Report 1984). Therefore, the fall of the Berlin wall, the end of the Cold War, and the ensuing reshaping of Europe’s geo-political landscape in the early 1990s—some 20 years after the 1972 Paris Summit—finally triggered the formal establishment of the *European Union* (see *Treaty on the European Union* 1992). Yet, this too was not enough. While the new EU was established in a separate Treaty, the European Community, the Coal and Steel Community, and Euratom remained separate legal entities, governed by their respective founding treaties. Thus, in 2001 the European Council at the Laeken Council meeting charged the Convention on the future of Europe to merge these treaties into a coherent whole, and therefore, a “constitutional treaty.” In the end, the drafting and eventual proposing of a new Constitution for Europe to the EU Member States for ratification consistent with the mandate and spirit of the 2001 *Laeken Accord* was a significant undertaking. It represented at last one of those instances of orderly diffusion which started a while back at the Paris Summit

in 1972. On June 18, 2004 a draft version of that Constitution initially submitted by the Convention in July 2003 and considered the Intergovernmental Council (IGC) was unanimously adopted at the Brussels European Council meeting. On October 29, 2004 the Heads of State and Governments of the 25 EU Member States and three candidate countries meeting in Rome formally signed the official version of the *Draft Treaty Establishing a Constitution for Europe*. The next step was—and continues to be at this writing—the ratification of that document by the Member States, and more exactly the people of Europe through the various processes outlined in their respective constitutions and domestic laws (Vanhanen 2006; also see Figure 2 for the various ratification procedures).

### **The Ratification Process and Lingering Doubts**

In the interim, much has happened. Although there is now a draft text of a Constitution, it has not laid to rest deep questions pertaining to the constitutive nature and status of the European Union. Its viability as a polity is in constant contest and the influence of its citizens in that conceptualization are at best doubtful. Even if they remain sovereign within their respective states, their relationships within the Union in terms of their ability to influence Union-level policies that affect their lives are very minimal to non-existent. Questions of whether the constitutional text can be seen as an important step in forging a true European *constitutional settlement*, a true democratic space, or whether it is a mere pretense to consolidate *status quo* power at the community level are recurring ones (Bogdandy 2005; Habermas 2001; Maduro 2003; Moravcsik 2002, 2005, and 2006). Arguably answers to these questions depend on how one understands the complex issues being debated at the EU level and the interests at stake in the ratification processes currently underway at the Member State levels. This is especially true in France and the Netherlands, where the ratification-referendum campaign for the Constitution for Europe has been very polarizing (Donnelly and Wagner 2005; Harmsen 2005; Marthaler 2005).

As agreed upon by the EU Member States, only after the draft Constitution is unanimously adopted by all of the signatories will it be put into effect. *Declaration 30* of the Constitutional Treaty states, however, that if by November 1, 2006 only four-fifths of the Member States (at least 20) have ratified the constitutional text and the others are encountering ratification difficulties in doing so, the matter will be referred to the European Council

(*Declaration 30 Draft Constitutional Treaty on the European Union 2005*). Since this mandate is open-ended, the steps to be taken under a circumstance such as when a member state is encountering ratification difficulties is at the discretion of the Council. Just under what conditions the Council must act or not act and how is unclear. However, ratification at the Member State level is wholly within each state’s prerogatives. This, as contemplated by the draft constitution, depends on the ratification procedure that theoretically is based on the legal and historical traditions of each of the member countries. In most cases these procedures are consistent with procedures for ratifying international instruments laid down in Member State constitutions and laws (see Figure 2). For each EU member state, these procedures may include the *parliamentary* method of ratification, the *referendum* method of ratification, or both.

Under the *parliamentary* method, the text of the Constitution would be considered adopted following a vote on the ratifying text by the Member State’s parliamentary chambers which usually include the lower and upper house. Under the *referendum* method, a referendum is held whereupon the text is submitted directly to the electorates (citizens), who then vote *for* or *against* its adoption. For the Member States of the European Union, and in light of the multiple methods of ratifications, it is a reasonable assumption that any one or a combination of the methods would be used for the ratification of the EU Constitution. In the absence of a clear provision, additional requirements may include amending the constitution of a Member State where an existing constitution so requires before a parliamentary or popular ratification-referendum is carried out. For the EU Constitutional treaty, since *unanimity* is the standard requirement once ratified by all the EU Member States, an official statement will be issued notifying this action.<sup>2</sup>

In principle, November 1, 2006 was the initial target date for the Constitution for Europe to become effective in all 25 Member States of the Union. However, the French and Dutch referendum “No” votes rejecting the Constitutional treaty on May 29 and June 1, 2005 ushered in a reassessment of that date. Speaking for the European Council at a joint press conference held on May 29, 2005 after the French referendum results became official, Josep Borrell Fontelles, President of the European Parliament; José Manuel Barroso, EU Commission President; and Jean-Claude Juncker Prime Minister of Luxembourg and President European Council quickly reassured the EU public that the “No” votes *did not* end the ratification process. While EU leaders put forth an emphatic resolute front two weeks later, in its June 16

and 17, 2005 meetings, the European Council, representing the Heads of States or Governments, went much further. He emphasized in a written communiqué the following: “we do not feel that the date initially planned for a report on ratification of the Treaty, November 1, 2006, is still tenable, since those countries which have not yet ratified the Treaty will be unable to furnish a clear reply before mid 2007” (Council on the European Union 2005). To reinforce this point, the Council called for “a period of reflection, explanation, and discussion” to reassess the possibility of whether or not the Constitution is still necessary, and if so, how to proceed with ratification. The main idea was to give the countries more time to debate and to ratify the Constitution. Those who wished could also put ratification on hold.

As originally contemplated by the Council in June 2005, the period of reflection proposed by the Council, an upgrade from the initial deadline, was to last no longer than one year. However, in October 2005, the Commission presented a “Plan D”, where D stands for Democracy, Dialogue, and Debate. This gave new impetus to the debate on the future of Europe by encouraging new ways to draw citizens into the debate. While *Plan D* was triggered by the French and Dutch referenda, the Commission holds that the plan is far from being a rescue operation for the Constitution. Accordingly, it is limited in time to the reflection period but also serves as a starting point for a long-term democratic reform process in the European Union. The political thrust of *Plan D* is to create a citizens’ ownership of EU policies, thereby making them understandable and relevant as well as making EU Institutions accountable and reliable to the people they serve. In June 2006, a year later, a reevaluation of the state of ratification by the European Council under the Austrian Presidency yielded inconclusive results. While no substantive modifications were made, the Council again reassured the EU public that the process of ratification was on track and therefore had not been abandoned. It also proclaimed the end of 2008, the period under the French Presidency, as the possible deadline to achieve a solution to the constitutional deadlock. In doing so, the Council showed not only the willingness to adjust, but the ability to reflect on existing circumstances, notably to accommodate Member States who may not have ratified the Constitutional treaty, so that they may, if they choose to do so (Commission on the European Union 2005b).

In spite of these accommodations, the fact remains that the French and Dutch “No” votes, coming from two of the Community’s important founders, constitute a psychological set-back for the effort to ratify the document that is predicated on the Union of ideas that they founded. Optimistically,

**Figure 1. Current Member State Positions on the Draft EU Constitution**

Ratification Denied (2)	Ratification Upheld (14)	Nearly Ratified (1)	Ratifying Soon or Declared (1)	Ratification Delayed or Hold-Outs (7)
France	Austria: May 11, 2005	Germany	Finland**	Czech Republic
Netherlands	Belgium: Feb. & Jun. 13, 2006*		Bulgaria***	Denmark
	Cyprus: Jun. 30, 2006*		Romania***	Ireland
	Estonia: May 9- 2006			Poland
	Greece: Apr. 19, 2005			Portugal
	Hungary: Dec. 30, 2004			Sweden
	Italy: Apr. 6, 2005			United Kingdom
	Latvia: Jun. 2, 2005*			
	Lithuania: Nov. 11, 2004			
	Luxembourg: Jul. 11, 2004*			
	Malta: Jul. 6, 2005*			
	Slovakia: May 11, 2005			
	Slovenia: Feb. 1, 2005			
	Spain: Feb. 20, 2005			

Source: Constructed by author

\* Denotes Member States ratifying *after* France/Netherlands rejections (N=5)

\*\* Member State Parliament ratified December 5, 2006, send to the President for approval (pending)

\*\*\* Ascending Members to ratify upon becoming members on January 1, 2007

de Schoutheete (2006), for example, sees positives in such a rejection. He argues instead that the constitutional treaty remains central to whatever realistic scenario one might imagine for the state of the European Union. While de Schoutheete view is consistent with the EU Commission’s *Plan D for Democracy, Dialogue Action Plan and Debate* adopted on October 13, 2005, Moravcsik (2006), in a similar vein, sees it as a difference in politics. He argues that all modern constitutional systems politicize some functions and depoliticize others, but they do so for reasons that are normatively as well

as pragmatically justifiable (Moravcsik 2006). He faults the EU Constitutional treaty for lacking both a normative content and a substantive justification—the basis, he contends, for its rejection in France and the Netherlands.

Yet, there are to be sure many other reasons for rejecting the draft constitution in both countries. More recently, in June 2006 the Council generated much doubt with its renewed confidence for a ratification end-game advanced and now slated for 2008. While it is doubtful what the real motives were behind the Council’s renewed confidence for the postponement since in theory its actions amounted to an upgrade of the existing ratification deadline, politically the question becomes how such confidence translates in practice to the actual viability of a Constitution for Europe. Thus, questions such as whether the constitutional project is now effectively abandoned, or following the Council’s own logic, whether it will be salvaged by German, Portuguese, and French Presidencies depends on how one understands the French and Dutch referendums, the underlying messages sent by voters of both countries, and ultimately the effect of the messages on the attitudes of Member States that are currently “holding out” prospects for adoption (see Figure 1). Again, for this study, pre-and-post-referendum exit polls, surveys, and other primary sources from both countries and around the Union, are key data and information sources for the assessment and analysis supplied here.

### **EU Member States’ Ratification Regimes and Past History**

After the initial rejection of the draft constitution by French and Dutch voters, the EU Council in June 2005 issued a call for a “period of reflection,” a period during which broad debates would take place in all Member States. However, one year later, with opinions still divided and ratification uncertain, the European Council agreed yet again to continue the period of reflection through 2008. With Germany assuming the EU Council Presidency<sup>3</sup> in 2007 and the French in 2008, plans are underway for an active role in advancing EU constitutional reform. On the question of whether the EU can function absent a constitution, the answer is clearly a yes, but for how long? Accordingly, while the EU can continue to function on the basis of existing treaties on the *Nice Treaty* framework, this framework would provide for a Union of no more than 27 Member States. Two options are, therefore, in order. Either the enlargement will have to stop after the accession of Bulgaria and Romania in January 1, 2007, or the treaties will have to be amended, a solution anticipated by the constitutional treaty but which now seem impossible in light of the

French and Dutch referendum and the more immediate the now “hold out” member states.

With regards to the state of ratification of the constitutional treaty, as shown in Figure 1, thus far all 14 EU Member States in column 2 have ratified the draft constitutional treaty. They include Austria, Belgium, Cyprus, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Slovenia, and Spain. Of the 14 Member States, only Spain and Luxembourg ratified the Constitution by having both a consultative referendum and parliamentary approval. The remaining twelve Member States all did so by parliamentary ratification alone.<sup>4</sup> For different reasons, the seven Member States in column 5 are considered the “hold out” states. They are the Czech Republic, Denmark, Ireland, Poland, Portugal, Sweden, and the United Kingdom. It is important to observe here that the “hold-out” Member States are worthy of further examination if not solely for their decisive position in determining whether there will in fact be an EU Constitution under the prevailing unanimity rule.

Germany, in column 3, has ratified the Constitution in part, and thus is classified as “near completion.” In column 4 is Finland, which effectuated a complete ratification in December of 2006. On Tuesday December 5, 2006, a 200-member Finnish Parliament voted by 125 to 39 in favor of ratification, with 32 absent and four abstentions, thus clearing the way for the government to take a decision proposing ratification to the Finnish president. According to the BBC and various media services, the aim was to formalize that country’s ratification by Thursday, December 14, 2006, when EU leaders gathered in Brussels for an end-of-year summit and where the Finnish presidency had to present its year end and last assessment of the state of the Union reform and the constitutional treaty (“Finnish Parliament Approves” 2006).

Bulgaria and Romania, who acceded to the Union on January 1, 2007, marked the successful completion of the fifth enlargement (also presented in column 4). Both Member States automatically ratified the EU Constitution upon accession to the Union, thereby bringing the total EU Member States to 27, 18 of which would have ratified as of that date. Lastly, as represented in column 1 of Figure 1, both France and the Netherlands, for reasons discussed in this study, rejected the draft constitutional treaty in separate referendums in 2005. As discussed previously, assuming the vaguely worded *Declaration 30*—which provides for possible European Council intervention before a Constitution for Europe can be put into force, it must be unanimously ratified by all EU Member States. Figure 2 presents various Member States’

ratification regimes drawn from their constitutions and laws while Figure 3 presents both the qualitative and quantitative information on the Member State’s current status on the constitutional treaty, previous referendum history, and quantitative vote counts generated in past referendums.

---

**Figure 2. Member States’ Constitutions and Ratification Procedures**

---

Member State	Constitution/Procedure
Austria	(p) Simple majority of the Congress (and of the Senate if its competences are affected) of two-thirds of the Congress (and of the Senate if as above), if the transfer of powers implies Constitutional reform (Articles 50, 42, and 44).
Belgium	(p) Treaties affecting citizen rights must be approved by both Houses. If they affect the competences of the Regions, the Councils of both must also approve them (Article 163).
Cyprus	(p) Adopted by the Cabinet and approved by the House of Representatives (Article 169).
Czech Republic	(p) Approval by three-fifths of the Congress and the Senate (Articles 10 and 39).
Denmark	(pr) Approval by a majority of five-sixths; otherwise, a referendum (Articles 20 and 42).
Estonia	(pr) Simple majority and other procedures (Articles 120 and 121).
Finland	(pr) By law. Simple majority or two-thirds majority if it affects the Constitution (Article 94).
France	(pr) By law (Articles 52-55 and 88). Discretionary referendum at the initiative of the President (Article 11).
Germany	(pr) By law. Majority of two-thirds of the <i>Bundestag</i> and two-thirds of the <i>Bundesrat</i> (Articles 23 and 79).
Greece	(pr) By law. Majority of three-fifths (Article 28).
Hungary	(p) Majority of two-thirds of both Houses (Article 2a).
Ireland	(pr) No specific rule. Each reform of the EU requires a parallel reform of the Constitution by means of referendum (Articles 29, 46, and 47).
Italy	(pr) Ratification by both Houses; no referendum (Articles 80 and 75).
Latvia	(pr) Parliamentary ratification, but if half the parliamentarians so wish, a referendum must be held (Article 68).
Lithuania	(pr) Parliamentary ratification; referendum required for treaties which affect major aspects of the lives of Lithuanians

**Figure 2. Member States’ Constitutions and Ratification Procedures (cont.)**

Member State	Constitution/Procedure
Lithuania (cont.)	(Articles 135, 1 and 5).
Luxembourg	(pr) By law. Approved by two-thirds of members of parliament (Articles 37, 49 and 114).
Malta	(p) There are no constitutional regulations unless ratification requires Constitutional amendment.
Netherlands	(p) By two-thirds parliamentary majority (Article 91).
Poland	(p) By parliamentary procedure, the conditions of which are established in another Act of Parliament (Article 90).
Portugal	(p) Parliamentary majority (Article 161).
Slovakia	(p) Majority of three-fifths (Articles 7 and 84).
Slovenia	(p) Majority of three-fifths (Articles 3 and 8).
Spain	(p) Absolute Majority of both Houses (Article 93).
Sweden	(p) Approval by three-quarters of the members of the <i>Riksdag</i> (Article 10.5).
United Kingdom	(p) Parliamentary majority.

Source: Various, and mostly constructed by author

\* (p) Denotes Member States that use Parliamentary ratification

\*\* (r) Denotes Member States that use Referendum election that involve the people

\*\*\* (pr) Denotes Member States that use both Parliamentary and Referendum processes to ratify

**Figure 3. Member States’ Status and Propensity to Use Referendums**

Member State	Current Status on EU Constitution	Previous Referendums Activity and Year	Previous Referendum Voting Percentages
Austria	Ratified (Rbp)	Membership (1994)	Yes (66%); No (33%)
Belgium	Ratified (Rbp)	No	–
Cyprus	Ratified (Rbp)	No (reunification referendum held in 2004)	–

**Figure 3. Member States’ Status and Propensity to Use Referendums (cont.)**

Member State	Current Status on EU Constitution	Previous Referendums Activity and Year	Previous Referendum Voting Percentages
Czech Republic	No (NyR)	Membership (2003)	Yes (77%); No (23%)
Denmark	No (NyR)	Membership (1972)	Yes (53%); No (33%)
		Single Act (1986)	Yes (42%); No (33%)
		Maastricht I (1992)	Yes (41%); No (42%)
		Maastricht II (1993)	Yes (49%); No (37%)
		Amsterdam (1998)	Yes (41%); No (34%)
		Adoption of the <i>euro</i> (2000)	Yes (41%); No (46%)
Estonia	Ratified (Rbp)	Membership (2003)	Yes (67%); No (33%)
Finland	Ratified Soon (Rbp)	Membership (1995)	Yes (57%); No (43%)
France	Failed to Ratify (Rejr)	Enlargement (1972)	Yes (68%); No (32%)
		Maastricht (1992)	Yes (51%); No (49%)
Germany	Nearly Ratified (Rbp)	No	–
Greece	Ratified (Rbp)	No	–
Hungary	Ratified (Rbp)	Membership (2003)	Yes (84%); No (16%)
Ireland	No (NyR)	Membership (1972)	–
		Single Act (1987)	–
		Maastricht (1992)	–
		Amsterdam (1998)	Yes (94%); No (6%)
		Nice I (2001)	Yes (46%); No (54%)
		Nice II (2002)	Yes (63%); No (37%)
Italy	Ratified (Rbp)	Constituent mandate for the EP (1989)	Yes (88%); No (14%)
Latvia	Ratified (Rbp)		Yes (67%); No (33%)
Lithuania	Ratified (Rbp)	Membership (2003)	Yes (91%); No (9%)
Luxembourg	Ratified (Rbpr)	No	–
Malta	Ratified (Rbp)	Membership (2003)	Yes (54%); No (46%)
Netherlands	Failed to Ratify (Rejr)	No	–
Poland	No (NyR)	Membership (2003)	Yes (77%); No (23%)
Portugal	No (NyR)	No	–
Slovakia	Ratified (Rbp)	Membership (2003)	Yes (94%); No (3%)
Slovenia	Ratified (Rbp)	Membership (2003)	Yes (66%); No (34%)

**Figure 3. Member States’ Status and Propensity to Use Referendums (cont.)**

Member State	Current Status on EU Constitution	Previous Referendums Activity and Year	Previous Referendum Voting Percentages
Spain	Ratified (Rbpr)	No	–
Sweden	No (NyR)	Membership (1994) Adoption of the <i>euro</i> (2003)	Yes (52%); No (47%) Yes (42%); No (56%)
United Kingdom	No (NyR)	Membership (1975)	Yes (67%); No (33%)

Sources: Various, constructed by author

(Rbp) – Ratified by Parliament = (14)

(Rbr) – Ratified by Referendum = (0)

(Rbpr) – Ratified by Parliament and Referendum = (2)

(NyR) – Not yet Ratified = (7)

(Rejr) – Rejected by Referendum = (2)

Together both Figures 2 and 3 provide information from which to infer whether the current “hold-out” Member States will in the end ratify the Constitutional treaty. Also, a careful read of Figure 2 in conjunction with Figure 1 establishes that only two of the seven “hold-out” Member States—Denmark and Ireland—have provisions in their constitutions that explicitly require them to hold referendums and the five other EU Member States do not (see Figures 1 and 2). However, Figure 3 confirms that all seven “hold-out” Member States except Portugal have in the past used the referendum process as a vehicle to ratify various EU related treaty provisions.<sup>5</sup> Under the category of “nearly ratified” and “ratifying soon or declared” are Germany and Finland. While their constitutions and laws require the use of either parliamentary *ratification* or *referendum* method for ratification (see Figure 2), only Finland has used the *referendum* method in the past.

However, while in May 2005 Germany took the initial steps to achieve parliamentary approval for the draft EU Constitutional Treaty, it is yet to be formally signed by the president of that country to give its full ratification effect. With Germany’s impending occupation of the Presidency of the European Council in spring of 2007, the final approval of the Constitutional Treaty is now very likely. What seemed somewhat probably unlikely earlier

this year is now factual, with Finland’s November 5 parliamentary ratification endorsing the draft EU constitution. Finland became the sixteenth EU Member State to adopt the draft Constitutional treaty, after Estonia ratified it in May 2006. According to *The International Herald Tribune*, during Finland’s EU presidency, Finnish officials, represented by its Foreign Minister Erkki Tuomioja, discussed ways of reviving the treaty during unofficial talks with the other 24 Member States and concluded that for the most part the majority of EU countries want to build on the proposed treaty. To surmise, Mr. Tuomioja stated, “Our consultations with EU Member States fortunately have shown that no one wants to go back to square one. The constitution treaty,” he said, “will form the basis for upcoming negotiations” (“Finnish Parliament Approves” 2006).

#### **The Current Hold Out Member States: Yet to Ratify**

The “hold out” Member States according to Figure 1 are the seven that have not yet ratified and do not otherwise fall under the other categories listed. Because the very notion of a “hold out” is decisive in delaying if not denying the prospect of ratifying the EU Constitution under current unanimous ratification rule, a closer examination is in order to establish the current state of debate within these countries before examining the implication of French and Dutch “No” votes.

The first in the current “holdout,” list is the Czech Republic. Initially the Czech government made known its inclination to hold a referendum on the EU Constitutional Treaty. While that perhaps still remains the case, no date has since been set. Thus far, the signal sent by the Czech Republic’s President has been mixed at best. According to a BBC Report of May 23 2006 assessments, Czech President Vaclav Klaus, an avowed Eurosceptic, asserted that ratification was not on the agenda in the Czech Republic and that “All the political forces in the Czech Republic consider the treaty to have practically stopped after it was rejected by France and the Netherlands.”<sup>6</sup> Speaking as recently as November 13, 2006, Vaclav Klaus again expressed frustration when he stated that “the erroneous Europeanization, the ambitions to create the supranationalist Europe, is based on unjustifiable assumptions” and “to say such things is politically incorrect, because the wind in Europe these days blows in a different direction” (Klaus 2006). According to an assessment of the forces behind Czech eurosceptism, Mr. Klaus’s view of Czech eurosceptism is an exaggerated one. Beneš (2005) argues instead that while

events surrounding the post-cold war political and economic transformation provide a filter for understanding the source of Czech euroscepticism, Czechs are fundamentally euro-optimistic, a recognition of the economic advantages of EU membership. In the end, all of these points to a status of ratification that is probably but not impossible.

The second country on the “holdout” list is Denmark. While Danish officials initially expressed approval of the original text of the draft Constitutional treaty, they postponed the originally planned referendum on the treaty after the French and Dutch “No” votes rejected the Constitution. Also, according to a BBC report, in May 2006, Per Stig Moeller, Danish Foreign Minister, seems to be backtracking on his country’s initial position to ratify the constitution in a statement which he asserted that “nobody really knows what will happen, nor when, if at all, there will be a referendum in Denmark.” But more concretely was his suggestion that since it is unlikely that the constitutional treaty would be ratified in all the Member States, a number of possible scenarios should be considered. What this means is very unclear, but past Danish history of ratification is a good guide. In 1992, Denmark rejected the *Maastricht Treaty* but adopted it in a second vote after winning the opt-outs option in 1993. Danes also voted “No” in a 2000 referendum on whether to accept the EU-wide currency, the *euro*. Thus, while it is entirely possible that history might repeat itself, following these remarks, the state of ratification in Denmark today is obviously uncertain.

The third country in the “hold out” list is Ireland. The Irish government also stopped preparations for a referendum on the constitution after the French and Dutch “No” votes. However, a *White Paper* by the EU Commission on the constitution issued in October 2005 surmises a positive direction for ratification. Also, according to the BBC’s (2006) account titled “EU Constitution: Where Member States Stand,” the Irish government maintains that the EU constitution is a good document which Ireland would like to see ratified and implemented. In May 2006 for example, Prime Minister Bertie Ahern confirmed his support for the constitution, describing it as “the right choice for Ireland” as he reiterated the view that such a document would “enable the EU to function more efficiently, more democratically, in a way that is easier to understand” (BBC 2006). While in 2001 Irish voters rejected the *Nice Treaty* before approving it in 2002, the current state of activities shows a positive trend toward possible ratification in Ireland.

Poland is fourth among the “holdout” Member States. Thus far the message has been bullish. Holding steadfastly on the view that the original

text of the draft EU Constitution pushes for more integration than European citizens are willing to accept, Polish President Lech Kaczyński has instead called for a brand new constitution. According to a BBC (2006) report on “Where Member States Stand,” Kaczyński has since made statements that assert categorically that “the Constitution has practically no chance of being ratified in Poland, neither by referendum nor by parliamentary vote” account. Thus, in light of the inflexibility exhibited in public statements relative to the constitution, the consensus view is that this country’s plans for a referendum are currently on hold. The state of ratification in Poland is thus very uncertain. The only history of a Polish referendum was the EU membership referendum in 2003 which had a 77-23 percent vote in favor of joining the Union (see Figure 3). This information does not provide much to infer support in either direction on the Constitution.

Portugal is the fifth in the holdout list. The Portuguese government position has been that a referendum will be held only after a final text has been agreed upon by all 25 Member States. While statements by Portugal’s Prime Minister Jose Socrates have been positive, it is unclear how waiting for a complete agreement by all Member States will work in the “unanimous decision” standard upon which ratifying the EU Constitution is predicated. According to a BBC report, of March 9, 2006, Prime Minister Jose Socrates reiterated his belief that the constitution is not dead when he asserted that “Europe needs a constitutional treaty in order to go further and if it is not this exact text, something else will be found” (BBC 2006). While the public statement of the Portuguese government has been positive, it is still in the “hold out” column. Even with no history of previous ratifications of EU instruments in Portugal, the positive public statement of the Portuguese government leads to the consensus conclusion that the state of ratification in Portugal seems not only possible but positive.

Sweden is the sixth in the “holdout” Member State list. As with most of the EU Member States, Sweden set aside its ratification plans after France and the Netherlands “No” vote. Still dogged by the 2003 referendum that rejected the *euro*, the main political parties in Sweden are seemingly reluctant to stake their political capital for a referendum to ratify the EU Constitution. Indeed, the opposition parties raise principle objections to the very existence of the EU Constitution. Thus, they query the notion of a referendum to ratify a constitution that may be unnecessary and which does not, in their view, make fundamental changes in the existing EU treaties (BBC 2006). Therefore, judging again from past referenda (in 1994 voting for membership, and in

2003 voting against the *euro*), it is unclear what the state of ratification really is in Sweden.

The last of the seven hold-out states is the United Kingdom. With the exception of its membership election, held more than two years after its entry to the Union in the 1970s, the United Kingdom (UK) has never held a referendum on any policy question relative to the European Union. The UK government position all along has been cautious but decidedly in favor of ratification of the constitutional treaty. Thus, initially the government of Prime Minister Tony Blair had declared that the UK would put the treaty to a referendum in spring 2006, but these plans were shelved after French and Dutch voters rejected the constitution. Blair had hoped that the public could either accept the Constitution or reject it without rejecting the messenger who supported it. This posture became evident in his address to the parliament to a direct question on French/Dutch rejection in which he performed an about face when he told the parliament that “realistically, given the ‘No’ votes in France and the Netherlands, ratification could not succeed unless and until those votes were changed” (BBC 2006). On January 10, 2006, Jack Straw, former Foreign Secretary in the Blair administration, quipped that while at best one could surmise that the constitution was “in limbo” it was as well difficult to argue that it is not dead, meaning perhaps that there was no hope left that the constitution could be ratified in Britain in the near future. This rather pessimistic comment from Foreign Secretary Straw, clearly with a much different tone than the official government position, would follow yet again with a much optimistic one. Indeed, on February 2, 2006 Mr. Blair indicated willingness to return to issues that surrounded the European constitution as he indicated that the Union of 25 states could not function properly with today’s rules of governance (Donnelly 2005).

Clearly, the state of the EU Constitution and now the Reform Treaty in the post Blair United Kingdom remain positive, but this conclusion needs to be qualified with several caveats. While the British government never exhibited hostility towards a Constitution for Europe, Prime Minister Blair, then the prime supporter favored a referendum. According to a BBC report, Gordon Brown, the new Prime Minister insists that as long as the UK’s “red lines” negotiated by Tony Blair relative to areas of national security, justice, and social services are protected, the idea of a referendum might be off the table (see BBC NEWS at [http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk\\_news/politics/6987261.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/politics/6987261.stm)). While the constitution is yet to be ratified, the Brown administration is poised to play a major role only if other EU leaders heed to

this warning—not to cross the negotiated protected “red lines” on national security, justice, and social services. Mr. Brown’s message is clear, while a public referendum remain an option; it is possible that his administration might opt for a parliamentary ratification instead of a referendum if it serves its domestic public interest. As noted, the United Kingdom’s last referendum was on June 6, 1975, two-and-a-half years after joining the European Community. The question then was whether to remain a member of the European Community. Two-thirds, or 67 percent, of those who cast their votes then said “Yes,” with one-third, or 33 percent, casting their votes against (see Figure 3). Because of the low stakes or indifference in terms of actual public direct benefit to a Constitution for Europe, it is difficult to assess the result of a public referendum in the UK in the event one is proposed under a new British government.

### **The French and Dutch “No” Votes and Their Implications**

#### **French Politics and Ratification-Referendum of May 29, 2005**

On May 29, 2005 French voters rejected the draft Constitution for Europe presented to the public for ratification. With 54.7 percent of French voters casting their ballot against ratification and with a high turnout of over 69 percent, the ultimate result and effect of the message was unambiguous (see Table 1a). Both the main parties—the governing, conservative *Union pour un Mouvement Populaire* (UMP) and the *Parti Socialiste* (PS)—were in favor of the constitution, but both parties also had dissidents campaigning for a “No.” The far left and the far right were opposed, as well as the trade unions, some farmers’ groups, and groups affiliated with anti-globalization movements. According to news reports, hours after the votes were cast French politicians took turns on television proclaiming their view of the referendum. As the exit polls were made public it soon became clear to both opponents and supporters that the lessons from the referendum were primarily *national* rather than European. That is, the reasons for rejecting the treaty stem from specific national concerns about the impact of European integration on domestic polities, economies, and societies—a complicated picture which in the view of some analysts does not lend itself to bifurcated analysis (Ross 2005; Taggart 2005).

In a televised interview on May 29, 2005 only minutes after the polls had closed, President Chirac claimed to understand the French voters’ “concerns and worries” and would “respond by giving the actions of his government

**Table 1a. Percentages of Party Votes and Share in the 2005 French Referendum on the EU Constitution**

Political Parties	Percent of "No" Votes by Party (Partisan Support)		Percent of Party Sharing "No" Votes (Partisan Share)
	Yes	No	No
1 Far Left Parties	6	94	5.8
2 <i>Parti Communiste Française</i> (PCF)	2	98	10.6
3 <i>Parti Socialiste</i> (PS)	44	56	29.8
4 The Greens ( <i>Le Parti Vert</i> )	40	60	8.5
5 Total Left Wing Parties	37	63	54.7
6 <i>Union pour un Mouvement Populaire</i> (UMP)	80	20	7.5
7 <i>Union pour La Democratie Française</i> (UDF)	76	24	5.0
8 <i>Mouvement Pour la France</i> (MPF)	25	75	4.5
9 <i>Front Nationale</i> (FN) and <i>Mouvement Nationale Republicain</i> (MRN)	7	93	19.5
10 Total Right Wing Parties	73	27	36.5
11 No Party (Others)	31	69	9.0
12 Number of French Voters for the 2005 EU Constitution Treaty referendum	12.7 million		15.4 million

**Table 1b. Socio-demographic in French EU Constitutional Referendum 2005**

1 France's Mainland Departments votes May 29, 2005 referendum	12 of 94 Departments voting "Yes"	84 of 94 Departments voting "No"
2 Highest Votes Recorded in the May 29, 2005 referendum	66.5 percent voting "Yes" recorded in Paris	69.5 percent voting "No" in economically depressed areas of Pas- Pas-Calais; 60 percent

**Table 1b. Socio-demographic in French EU Constitutional Referendum 2005 (cont.)**

		“No” in Languedoc-Roussillon and Picardy regions; Lowest “No” recorded in Brittany and Alsace
3	Socio-economic Breakdown in the May 29, 2005 referendum	High Percentages of “Yes” also found among “Professionals and Executives,” “Citizens aged 65 above,” and “Practicing Catholics” (*)
		79 % “No” from blue collar workers; 67% “No” from white collar workers; 71% “No” from the unemployed; 64% “No” from Public Sector Employees

Sources: *Le Monde TNS-Sofres Exit Poll* May 29, 2005 and mostly reconstructed by author.

(\*) Actual percentages for these latter groups unavailable

renewed vigor” (Chirac 2005). Mr. Chirac renewed vigor started almost immediately. In a cabinet shake up, the first casualty was the French Prime Minister Jean-Pierre Raffarin, who was forced to resign after serving just three years in that office. Mr. Raffarin was replaced by Dominique de Villepin, then the interior minister and formally France’s foreign minister. He took office as the new French Prime Minister on May 31, 2005—two days after the May 29 elections. Replacing de Villepin at the Interior Ministry was Nicolas Sarkozy, the head of President Chirac’s *Union Pour un Mouvement Populaire* (UMP) party and France’s most popular right-wing politician. Considered by most analysts to be the clear beneficiary of the 2005 referendum fallout, Mr. Sarkozy took over the Interior Ministry while retaining his leadership at the helm of the UMP, although he had originally been forced out of the Finance Ministry by President Chirac when he took up the UMP leadership position.

Clearly, the effect of the election in France’s political party dynamics was obvious. Not only could President Chirac no longer effectively make Sarkozy, now the head of UMP, responsive to his demands, but both men publicly evinced different reactions to the “No” referendum result. While Sarkozy argued forcefully that the correct response to the “No” vote should be to take innovative, courageous, and ambitious action to counteract the public fears, Chirac as noted above, claimed instead that he understood the French publics’ concerns and worries. But Chirac’s understanding amounted to little other than a cabinet reshuffle. President Chirac, who never provided an answer to the French public on why a Constitution for Europe was necessary, seemingly also lacked a clear understanding as to why the French voters had rejected it, nor could he explain what could be done to satisfy public concerns (Baldwin 2006). Mr. Chirac’s weakened position was also paralleled by the disarray shown within the *Parti Socialiste* (PS) which, divided by the referendum, blamed the Chirac government for the defeat of the Constitution for Europe. François Hollande (2005), the leader of *Parti Socialiste* got it right when he stated on the night of the referendum that the French public had used the “No” vote as an opportunity to express their “anger and exasperation” at the actions of the President Chirac and his government. To Mr. Hollande in specific and to other *Parti Socialiste* (PS) party leaders in general, it was clear that the “No” vote was primarily a reaction to high unemployment and the unsatisfactory internal social and economic situations within France. This was a bold recognition and admission of the disunity within the Socialist Party that caused a split among party electorates and contributed to the rejection of the Constitution. Mr. Hollande’s admission in the end perhaps bolstered his position within the party and led to the ousting of his opponent, Laurent Fabius, from his post as the Deputy Leader of the *Parti Socialiste* (Baldwin 2006; Mény 2005).

*Winners and Losers.* The exit poll in France’s weekly, *Le Monde TNS-Sofres*, for May 29, 2005 documented what amounted to winners and losers that emerged from the referendum. Laurent Fabius, the Deputy Leader of the *Parti Socialiste* for example, was seen by the majority of the French voters as someone who benefited least from the “No” outcome and therefore was a clear loser. However, Jean-Marie Le Pen, the leader of the National Front party (*Front Nationale*, FN) was seen widely as a clear winner, a resurgent view especially after the divisive 2002 elections. The French Communist Party (*Parti Communiste Française*, PCF), the extreme left-wing party, was also seen as another big winner in its ability to assert a

renewed relevance in the French political landscape. In many ways, the May 29, 2005 referendum strengthened the extreme and marginal forces at the expense of mainstream parties in France—a conclusion viewed as a repudiation of “elite positions” after the 2002 national and 2004 local and EU-wide elections. With an overall turnout of 69.34 percent, the May 29 election turnout percentages were almost identical to those of the 1992 referendum on the *Maastrich Treaty* which had an overall turnout rate of 69.69 percent, a ratio considerably higher than any EU-wide elections in France. However, we should also put into perspective France’s 1972 referendum on the issue of whether or not Britain, Denmark, Ireland and Norway could join the then European Economic Community, which passed by 70 percent. To echo one commentator, in terms of the political party alignment of French voters, “it is clear that the ‘No’ side brought together the periphery of the French party system and those outside it” (Taggart 2005). To be sure, most exit polls established that a majority of the negatives on the treaty came from far left voters; the Communists, the far right, and those without political party affiliations (see Table 1a).

### **France “No” Voters: Who and Why?**

Who voted “No” and why? Although the key question sought by French officials when President Chirac announced the scheduled referendum in 2004 was the ratification of a Constitution for Europe, the “No” response a year later was *reactionary*, unexpected, and unrelated to the core question of ratification. It was a combination of protest and anti-establishment responses to forces that were fundamentally domestic in nature and that reflected the French public’s insecurity and concerns over issues of unemployment, poverty, and domestic party politics issues. Ross (2005), for example, echoes this same point more stridently as he observes that “the French “No” signaled that segments of the French electorate found the “social model reform” promoted indirectly through EU market liberalization to be unacceptable whatever its social cost. This outcome of course could have been anticipated given what we know about the role of the referenda as an instrument for political decision-making. In their very nature, referenda minimize and grossly underestimate the already single issue under review not only because they force a “Yes” or a “No” answer but because they invite, at the very least, public dissent in the form of protest votes. Lacking an outlet to voice other competing issues at the time, the public protest/dissent is cast instead on the slated referendum. In essence, the inherent risk that an uninformed electorate

might take the opportunity to pass judgment on the governments performance on matters unrelated to the referendum is always present.

As evident in Table 1, the left which emerged for the most part as the winners from the May 29, 2005 referendum in France saw the “No” outcome as a poignant message to the government and its unworkable social and economic policies. For their part, the right was left wondering and their response—as evidenced by Mr. Chirac’s post election televised speech—was in the order of “heeding to the people’s message” and “changing the cause of national policies” consistent with that message. However, Dominique de Villepin, the successor of Jean-Pierre Raffarin as the Prime Minister and head of the French government, in a speech spoke very little of reconciliation but more about reducing *unemployment*. In the short term, de Villepin’s position was strategic considering that unemployment was a major concern among French electorates who voted to reject the Constitution, as cited in exit polls. Undoubtedly, the May 2005 referendum reflected three dormant problems facing France: economic and social problems, unemployment, and the relative unpopularity of Chirac’s UMF party coalition with the Socialist Party and socialist Laurent Fabious.

For de Villepin, the incoming head of government after Jean-Pierre Raffarin’s dismissal, the politically safe stand to take was to promise as he did that he was committed to solving France’s unemployment problem. Politically this was important, since he immediately stood as a viable contender for the 2007 presidential elections. The exit polls and subsequent *Eurobarometer* survey revealed that three different camps of voters formed the main “No” opposition to EU Constitutional ratification in France. The first was the extreme right who voted nearly unanimously against ratification. That is, of the 15 million people who cast their ballots against ratification, one-third came from extreme right wing voters. Second, the extreme leftists were equally successful at persuading their supporters to vote “No” (see Table 1a). Third, and finally, the moderates who remained were split, with a majority of the supporters of the *Parti Socialiste* (PS) and the Greens (*Le Parti Vert*) voting “No” in spite of their parties explicit recommendation to the electorate to “Yes” vote the Constitution for Europe.

Interestingly, the make-up of the “No” camp reversed France’s left wing party pro EU politics support since the 1992 *Maastricht Treaty* referendum. Ironically, in 1992 while the left overwhelmingly supported the *Maastricht Treaty*’s ratification, the split came instead from the center right wing parties. In terms of demographics, in the May 29, 2005 referendum on the EU

constitutional treaty, unlike the *Maastricht Treaty* 14 years ago, the working-class voters were predominant among the “No” electorates. Seventy-nine percent of blue-collar workers and 67 per cent of white-collar employees voted to reject with a significant number of “No” voters also coming from *rural* France. Table 1b shows high support levels for the EU Constitution mostly among the highly educated and the urban elites. On the whole, when compared to this and other past elections, the group arguably responsible for shifting the election to the “No” side was France’s middle class.

For example, 62 percent of middle-class voters in 1992 voted for ratification of the *Maastricht Treaty* and the treaty was ratified, whereas in May 2005, an overwhelming 53 percent of the middle class voters voted “No” and the EU Constitution in the end was not ratified. Understanding the French middle-class electorates’ concerns as lying in the persistently high unemployment level—at 10.2 percent overall and rising to 25 percent among the youth—undoubtedly represents a starting point for ascertaining that their votes were a major force and, therefore, remain a critical factor in explaining the failure to ratify the EU Constitution in France regardless of the trend exhibited in Table 2. Clearly, Table 2 shows the opposite. With tracking poll results from a variety of sources for the period March 2005 through May 2005 showing positive French “support” for a Constitution for Europe, the May 29, 2005 referendum and outcome represent a paradox. The split among the classes voting for and against support for the Constitution on the Election Day is obviously critical in explaining the electoral dynamic in which the middle class French voters determined the outcome.<sup>7</sup>

**Table 2. Percentage of French Public Interest/Support for the Constitution during the 2005 Campaign Compared with Similar Support for Maastricht in 1992**

August 28-31 1992 <sup>a</sup>	March 9-10 2005	April 1-2 2005	April 15-18 2005	April 27-28 2005	May 9-10 2005	May 11-12 2005
63	47	64	61	61	69	60

Source: Generally from *Sofres Polls* and other sources based on 40 percent of respondents March - May, 2005

<sup>a</sup>Note the French public support for *Maastricht Treaty* three weeks before referendum was held on September 20, 1992.

**Motivations and Implications of the French “NO” Vote**

Did the French “No” vote on the EU Constitution amount to a protest or antiestablishment vote? Perhaps both, but clearly the former is more likely than the latter. As noted previously, the nuance that surrounds referendum issues designed to illicit a yes or a no answer needs to be put into a proper perspective. First, a classic “protest vote” election is one in which everything else being equal, the opposition party is unable to convince its supporters to back policy initiatives associated with the status-quo government. For the May 29, 2005 French ratification election, the left-wing parties showed an across-the-board opposition to the Constitutional Treaty at 63 percent versus 27 percent of the right-wing parties, among which was the government in power. The overall party shares of the vote also reveal the same profile pattern in confirming the pattern of a protest vote (see Table 1a).

However, while reasons for voting against the Constitution vary widely, inferences made from opinion data from sources such as *Sofres*, *IPSOS*, and *Eurobarometer* conducted shortly after the May 29, 2005 French referendum point in the same direction. The “No” result of the election day revealed deep differences between “high public expectations” on the EU and “low level of confidence” in the EU’s capacity to solve problems important to the French public. According to *Eurobarometer* however, the main motivation of 55 percent of the “Yes” votes lies in the perception that the pursuit of a European constitution was indispensable. Among these voters, 39 percent indicated that the pursuit of a European constitution was vital to France and 16 percent indicated long-standing support for European constitution. Generally, the losing “Yes” voters in the May 29, 2005 French referendum appeared to have been motivated by their attachment to and, therefore, high expectation of and confidence in the European Union. This was largely a *Union Centered* perspective among the voters.

The converse is true as well for the winning “No” side. Seen in an anti-Euro or *Euroseptic* posture, the May 2005 referendum can be seen as a retrospective vote on the 2004 enlargements and a warning to the French political elites about moving too fast with future enlargements. Here the issue of Turkey’s inclusion was central for French “No” voters. Three explanations tend to support such a view. First, all post referendum surveys confirm that the “Yes” votes represented “the desire to strengthen the EU’s position relative to other major powers such as United States, China, and India.” Second, the surveys also confirmed a “desire to further a European construction, and thirdly, a desire to maintain France’s strength in Europe” (Baldwin 2006).

However, the 2004 European enlargement and possible Turkish accession issues relative to the “No” votes rejecting the Constitution need to be put into proper context. According to polls, a majority of the French public’s enthusiasm for the EU had been dampened by the May 2004 enlargement that saw the entry of ten new Member States from central and Eastern Europe into the EU.<sup>8</sup> Accordingly, the French public saw the enlargement as raising more questions about the “pace” and “direction” of European integration than it provided answers, and the Turkish ascension was viewed as indistinguishable from previous accessions. To confirm, an *IPSOS Poll* of September 28, 2004 revealed that well over 56 percent of the French public opposed Turkish entry into the European Union (*IPSOS Poll* 2004). Thus, given the proximity of the September 2005 poll’s revealing insights into the French public attitude, it is a reasonable assumption that the May 29, 2005 ratification referendum rekindled latent negative public sentiment towards both enlargement and Turkey accession debates among the French public and political parties.

How important was the draft Constitutional text or content in the larger scheme of the French ratification referendum decisions? Clearly, it was not that important. While in the end the voting pattern of the French elections revealed clear preferences for France’s “domestic context” issues—notably, party politics, social issues, unemployment, and poverty; 2004 ascension apprehension; and future Turkish ascension issues—over the “constitutional text,” the treaty text itself was partly its own worst salesman. The document was overly long, highly complex, and ambiguous. Furthermore, most French readily associated the EU Constitution with the former right-wing party president, Giscard d’Estaing, who presided over the Convention on the Future of Europe and who drafted the Constitution. Lastly, is the consequence that an ambiguous document would not be acceptable to French accustomed to a well structured, readable, and very understandable French Constitution.

In summary, the main motivations for the French “No” from the public’s perspective were the domestic political and economic issues. It was not the actual text of the constitution that led to its demise. According to post referendum survey results, and most notably *Eurobarometer*, the most frequent reason for voting “No” (at least 46 percent) was the “fear that the proposed EU Constitution would make France’s unemployment situation worse than before,” with another 40 percent of the “No” voters reporting that they simply intended to express their frustration with the French government’s policies. Also, 34 percent of the “No” voters said that they saw the EU Constitution as being “too liberal,” and another 20 percent cited the Turkish candidacy as

their major reason for voting to reject the treaty. However, and perhaps owing to the previous Danish and Irish elections, another one-third of French “No” voters assumed that a rejection of the treaty for the reasons provided would bring about a renegotiation of the Constitution to be in line with French domestic concerns. Looking at the *immigré* or “foreigners factor” in France in the ratification election, France’s popular newspaper, the *Libération*, reported that 49 percent of French voters who took part in the election indicated that the fact that there were “too many foreigners in France” motivated their participation. Of the 49 percent reported, over 67 percent indicated that they voted against ratifying the draft EU Constitution.

Thus, as noted above, the answer to the question of whether the French “No” votes were protest votes is very obvious. In the end, while the overall effect of the “No” votes was a consequential rejection of the draft constitution, the *motivation* for the “No” was a combination of economic and social factors instigated by the document, even if these factors could not have been addressed by a Constitution focusing on EU centered activities. It is obvious that lacking a domestic outlet to vent their frustration on what were purely unaddressed domestic questions, the French voters showed no hesitation in venting their anger at the ballot box on an EU level issue, a decision that in the end brought down ratification of the EU Constitution. Thus, the victorious “No” vote on the 2005 referendum was in the end a retrospective judgment inflicted on the French government and its inability to solve unemployment problems and promises made since the last regional and Europe-wide elections in 2004.

### **The Dutch Referendum Campaign: How the “Yes” Failed**

For an elective referendum—that is, one not required by law and which failed—the question is why have referendum at all? According to de Beus (2005) the Dutch government had committed to seek its citizens’ opinion at the level of states in a referendum for two reasons. First, while the government was somewhat certain about the constitutional dimension of an EU treaty binding its citizens in an enlarged Union, it was unsure about the degree of knowledge and commitment of ordinary Dutch people—its own constituencies. However, on June 1, 2005, three days after the French “No” vote, a vast majority of the Dutch voted against the European Constitutional Treaty. They did so with a resounding majority of 61.1 percent “No” to 39.5 percent “Yes.” The turnout rate was 63 percent, a much higher rate than in most recent and average Dutch electoral turnout in domestic and European parliamentary elections. Over 62 percent of those voting to reject the Constitutional treaty

were young, less educated, and female. Since the Dutch constitution provides for a parliamentary ratification of international commitments in lieu of a referendum, the June 1, 2005 referendum was the first time in history that the Dutch parliament sought to consult its citizens through a national referendum on a matter concerning the European Union. This first posed more questions than it provided answers when the people responded with a resounding negative.

The answer to the question of how the Dutch—who are not only a Community founding member, but one of the most pro-European Union Member States—could reject the Constitutional Treaty lies perhaps in the nature of the campaign for ratification lodged by the Dutch government (de Beus 2005; Harmsen 2005; Marthealer 2005). Right away there were noticeable differences between the Dutch and French campaigns to ratify the draft EU Constitutional Treaty. For one, unlike the French campaign, which started with the announcement on Bastille Day 2004 by President Chirac and which ended with a similar outcome, the Dutch campaign started quite late, but with much of its past history favoring an eventual ratification on June 1, 2005. But it did not happen. Why? First, the government started the “Yes” campaign for the ratification of the EU Constitution roughly six weeks before the referendum deadline—too late to recalibrate any unforeseen failure if one happened. Also, starting at the same time with the government were major Dutch political parties who not only advocated a “Yes” position for the draft constitutional document but were part of the Dutch governing coalition led by a pro-Union Prime Minister Jan Balkenende. These parties represented 85 percent of the seats in the Dutch lower house of Parliament.<sup>9</sup> With only a few political parties taking positions against ratification, it seemed very likely that the constitution was all but ratified as the June 1, 2005 deadline approached. Also, the fact that the Constitutional treaty enjoyed broad support from major trade and employers’ associations also enhanced the expectation that the “Yes” victory was surely on its way. Above all, *Eurobarometer* pre-referendum survey data reports also revealed high Dutch support levels for the EU-centered activities. For example, over 76 percent of Dutch respondents viewed the European Union as a “good thing,” by far the third highest percentage among the 25 EU Member States, while 59 percent saw their country as having “benefited” from EU membership, the tenth highest percentage in the Union (*Eurobarometer* 2004). These facts more likely than not settled complacency in the Dutch “Yes” camp.

On the other hand, notable proponents for the “No” campaigners against the Constitution were the Socialist Party (SP); the *Christen Unie* (CU), an orthodox protestant party; the Political Reform Party (SGP); *Pim Fortuyn List*; Group Wilders, a populist party set up by Geert Wilders; the Edmund Burke Foundation; and *Elsevier*, a newsweekly publication. However, with a short campaign period, some prominent Dutch opinion leaders on the “No” side sought to influence parts of the electorate directly rather than engage in a regular campaign through political parties. Some leaders also took advantage of the obvious flaws in a hastily put together Dutch referendum campaign by the Dutch governments.<sup>10</sup> The Dutch parliament, controlled almost exclusively by the pro-EU constitution governing coalition political parties, had hastily established by decree an *Independent Referendum Commission*. Fundamentally, it became a matter of “learning by doing,” a noble but yet novel idea in a country which had never before had a referendum. Establishing such a commission in a relatively short time—with only four months from the date of the legislation to the election—was a huge advantage to the opposition groups who were set to generate confusion in the hopes of defeating the ratification of the EU constitution in the Netherlands.

In retrospect, the unprepared “Yes” campaign spear-headed by the Dutch government was its own worst enemy. Yet far from this, what the government actually accomplished defied logic. Both de Beus (2005) and Harmsen (2005) provide extensive commentary on this failed venture at a referendum campaign management. The *Independent Reform Commission* charged with referendum-campaign organization responsibilities was far from being independent. It shared organizational responsibilities with two Dutch ministries (Domestic and Foreign Affairs). The Commission is said to have distributed campaign flyers that had huge amounts of text inserts instead of short and appealing statements accentuating the positives of an EU Constitution. In some cases, members of the Dutch government who were pro-constitution emphasized to the Dutch people the negative effects and consequences of rejecting the EU Constitution instead of its advantages. In the end, certain facts stood out as significant in shaping how we understand the dynamics of the failed Dutch campaign to ratify the EU Constitution. First, the creation of a novel form of consultation, quite different from the ordinary legislative elections, was key in generating confusion. It required a rapid process of adaptation in a relatively short period of time, and the inexperience of Dutch political elites in this novel process proved to be all too significant in shaping the failed ratification campaign. Also, there appeared to be a gross

underestimation of the extant investment required to give structure to the referendum. Lastly, Dutch government officials did not plan nor did they adjust for the potential polarizing effect of a referendum campaign predicated on a simple “Yes” or “No” answer on what really was and still is an illusive topic under contestation—notably, a constitution without an immediate gratification attached.

### **Going Negative: How the “NO” Succeeded**

Notwithstanding the evidence above, the fact that the “No” camp was composed of the extremes of the Dutch political spectrum perhaps underplayed their advantage. During the relatively brief ratification campaign, the “No” proponents succeeded in accentuating Dutch citizens’ concerns and anxiety relative to the following core issues, notably the proposed draft Constitutional treaty, EU integration, and EU politics in general. Among the issues overly dramatized by the “No” proponents in the ratification-campaign were the loss of national sovereignty to an EU Super-state, which potentially would diminish what primarily was the Dutch influence at the EU level; Turkey’s impending entry to the Union; the position of the Netherlands as the biggest per capita contributor to the EU; negative sentiments about Brussels; negative sentiments about the current Dutch government; and lastly, the disdain and pedantry of the government pro “Yes” campaign (Harmsen 2005). In the end, the “No” camp was successful in attracting a clear majority of Dutch voters by taking advantage of a vulnerable political system where political parties tend to represent only a marginal fraction of the electorate.

Unlike the French pre-referendum survey data that revealed strong support levels prior to the election, a *Eurobarometer* survey revealed that during the last weeks before the Dutch referendum relative support for the Constitutional treaty was gradually declining. In March 2005, opinion polls showed a small majority for the “Yes” or the pro-ratification, but in April the “Yes” and “No” were both around 50 percent. In May, however, and through the election on June 1, 2005, support levels for the Constitutional treaty continually declined, and after the French “No” on May 29, 2005, the difference between “Yes” and “No” got even larger. Yet, the large turnout at 62.8 percent and the large difference between “Yes” votes at 38.4 percent and “No” votes at 61.6 percent came as a surprise to most observers. After the referendum, support for European integration in the Netherlands seems to be lower than ever. The outcome in favor of the “No” side was a major defeat of the “Yes” camp, including not only the center-right cabinet of Mr. Jan Peter Balkenende—

consisting of Christian Democrats, conservative liberals, and social liberals—but also social democrats, greens, employers’ associations, trade unions, leading newspapers, indeed the entire establishment of the nation.

The magnitude of the “No” proponents at 61.5 percent was such that it carried a majority across all major segments of Dutch society. It was a land slide. Politically, the “No” coalition were radical—socialists, orthodox Christians with a leftist touch, and right-wing populists—groups that ordinarily do not win elections in the Netherlands because they are either too extreme or hold views that are out of the mainstream of Dutch electorates. Viewed geographically, the “No” proponents won the majority in all twelve Dutch provinces and in all major cities except Utrecht, where the “Yes” took 51.1 percent of the votes. Viewed sociologically, the “No” won a majority across all educational categories; income categories; and age cohorts, except the oldest—those over 65—where the “Yes” registered 52 percent of the votes. Predictably there were variations in the “No” votes. For example, education, again as in the French referendum, continued to be the most reliable indicator of attitudes of voters toward European integration. There was a clear graduation in the proportion of “No” voters, running from 51 percent of those with high formal educational level up to 82 percent among those with a low educational level. Similarly, income and European attitudes showed a largely consistent correlation, with 51 percent of the highest income group voting “No” in contrast to 68 percent of those in the lowest income category who voted “Yes.” Table 3 presents a catalogue of distinct positions between the “No” and “Yes” Dutch voters relative to their overall attitude on issues and conversely how these issues influence their positions towards the overall direction of the European Union.

A careful examination of the voting profiles of “Yes” and “No” Dutch voters on the basis of party identification reveals a clear, expected division between the mainstream and extremes of Dutch politics. Predictably, supporters of smaller political parties with characteristics of strong protest elements voted overwhelmingly “No.” These fringe parties were the Socialist Party (SP), *Pim Fortuyn List*, and the Group Wilders, a populist party set up by Geert Wilders. However, a picture that emerged on June 1, 2005 was very interesting depending on the voting intentions of the various political parties in this and in the most recent election. Certainly, as shown in Table 4, there were as expected sharp differences between the Dutch government’s coalition parties and the opposition political parties relative to the “No” and “Yes” votes in support for the EU constitution. This of course was unusual and

**Table 3. Issues Accounting for the “No” and “Yes” Votes in the 2005 Dutch Referendum on the EU Constitution**

---

Voters’ Reasons Provided for the “No”	Percentages
The Netherlands pays too much attention to the EU	62
The Netherlands will have less control over its own affairs	56
Too little influence in comparison with other countries	55
The Netherlands will lose its own identity	53
The Netherlands is becoming too dependent on the EU	46
The provision of information was poor	44
Because of increasing bureaucracy	38
Because of the negative effect of the <i>euro</i>	37
Loss of jobs to foreigners	33
The EU has more disadvantages than advantages	31
Voters’ Reasons Provided for the “Yes”	
Europe tackles cross-border problems	58
The advancement of co-operation between Member States	56
The EU has more advantages than disadvantages	56
More efficient decision making in Europe	51
More efficient and less bureaucracy	43
The new constitution is an improvement	40
The constitution fits well with integration	40
A greater counterweight relative to the USA	38
I have faith in Europe	36
The constitution guarantees you security and peace	33

---

Sources: *Flash Eurobarometer* (2005b); See also ANP Dutch Print Media and NOS Broadcast News Agency, available online at [http://www.nos.nl/nosjournaal/dossiers/europesegroundwet/o2o6o5\\_tabel\\_redenken.html](http://www.nos.nl/nosjournaal/dossiers/europesegroundwet/o2o6o5_tabel_redenken.html).

---

contrary to previous Dutch elections. Supporters of the big three government coalitions—Christian Democrats, Democrats ’66, and Liberals (VVD)—voted in the majority to support the draft constitutional treaty. The electorates of both the Christian Democrats and Democrats ’66 did so by a three to one margin, while Liberals (VVD) supporters were more divided by a 57-43 majority in favor of the draft Constitutional treaty. The liberals to a larger extent than the other two governmental coalition parties displayed a lack of

**Table 4. “No” and “Yes” Votes on the Draft EU Constitution by Political Parties**

---

Political Party	Percentage of “No” Voters	Percentage of “Yes” Voters
Christian Democrats	24	76
Democrats '66	24	76
Liberals (VVD)	43	57
GreenLeft	45	55
Labor (PvdA)	58	42
Christian Union	83	17
Pim Fortuyn List (LPL)	94	06
Wilders Group	95	05
Socialist Party	96	04

---

Source: Maurice de Hood <http://www.peil.nl>, June 2, 2005

---

ability to rally their electorates to support their cause, a weakness traceable to the ratification campaign.

The significant divergent reading in party votes that is obvious in Table 4 is explained by other factors such as protest votes and anti-establishment voter defection besides the organizational and campaign missteps noted previously. This of course begs the question of what happened. Two explanations are in order here in light of the dynamic of a Dutch referendum campaign tied to the larger trend of its political context in general. The first factor, that it was a *protest vote*, flows from situations where, as in this case, the opposition party is unable to convince its supporters to back a policy initiative that is associated with the government. The second proposal, that it was an *anti-establishment vote*, flows from situations where the electorates exhibit an across-the-board disaffection from all of the mainstream political parties. Which applies in the Dutch case? The results in Table 4 show previously sustained support for mainstream parties currently in power. Part if not most of it is because such support from the electorate as a whole inevitably leads to the conclusion that in order to tip the balance to the “No” for the opposition parties, a substantial “defection” must have occurred in the Dutch referendum election of June 1, 2005.

**Post Referendum Reactions to the French and Dutch “No”**

On Sunday May 29, 2005 as the *Associated Press* reported that roughly 57 percent of French voters had rejected the EU Constitution, the news of that rejection spread across Europe and around the world almost immediately. The initial figure, however, would later be revised to 54.5 percent “No” and 45.5 percent “Yes.” Given the importance of the ratification referendum of a Constitution for Europe, which in principle requires *unanimity* for its adoption, the French rejection was cause for immediate reaction within the Union. In a press release issued in London, Jack Straw (2005) the Foreign Secretary of the United Kingdom, an obvious skeptic of Britain’s possible ratification prospect, stated that “the French rejection of the EU Constitution raises profound questions about the future of Europe.” In France, opposition leaders, rejoicing over the obvious defeat of the EU Constitution on May 29, 2005, were already calling on French President Jacques Chirac to resign. In a televised statement that evinced both idealism and realism, President Chirac (2005) characterized the French “No” to the Constitution as a “sovereign decision of the French people” that his government must respect. Recognizing the effects of such a rejection on his country’s ability to fend its EU interests, Chirac reiterated France’s commitment to respect and honor its obligations within the Union.

In light of the French “No” vote and its possible ramification on the Europeans constitutional project and the overall EU expansion, the reaction from Brussels was immediate. The unanimous response from EU leaders was that the ratification process must continue. In a joint statement issued by the President of the European Parliament, Mr. Josep Borrell Fontelles; the then President of the European Council and Prime Minister of Luxembourg, Mr. Jean-Claude Juncker; and the President of the European Commission, Mr. José Manuel Barroso, they expressed their regrets to the French “No” choice. They urged national leaders to do more to explain the complexity of European integration properly to their citizens. While exhibiting concerns on how the French “No” might influence further ratification of the Treaty, they called both for further analysis and for “yet to ratify” Member States to “have the same opportunity to complete the ratification process as well” (Juncker, Fontelles, and Barroso 2005). Furthering the “must continue” theme at a press conference convened at the behest of the European Council, Mr. Juncker, the President of the European Council, went on to exclude any possibility of additional renegotiation of the draft constitutional treaty as he insisted that the “constitutional treaty was not dead.” To underscore the “not

dead” position even further, Mr. Borrell, President of the European Commission, observed that “it would be a grave mistake to suspend the ratification process” since the French rejection of the Constitution could be said to be applicable only to France regardless of its importance and place in the Union (European Council 2005). Clearly, as could readily be observed from their expectations to continue with the EU Constitution ratification beyond the rejected countries, it seemed almost inconsequential whether the EU Constitution required a unanimous acceptance in all Member States before its adoption.

In concession remarks made on June 1, 2005, Jan Peter Balkenende, Prime Minister of the Netherlands, though visibly uncomfortable, showed remarkable control as it became obvious that the Dutch had also rejected the draft Constitution. In a prepared statement revealing a regrettable sense of losing, and yet showing understanding as to why Dutch citizens rejected the Constitution, Balkenende observed that while he was indeed disappointed, so too were many other people whom along with many political parties and civil society who campaigned for the “yes” to ratify the EU Constitution. While the failure to ratify is indeed disappointing, he continued, “there is also good news on the high turnout and the energetic debate that has emerged all over Europe” on this matter (Balkenende 2005). Speaking on the position of the country in his capacity as the Prime Minister and head of the Dutch government, Balkenende reiterated the same “must continue” position echoed by EU leaders. Specifically, Balkenende observed that “the Dutch government believes this ratification process should now continue as planned in other countries since in the end, it will be important for us to see how each country has responded to the treaty.” He observed further that, “the Netherlands as one of the founding member-states of the Union, will remain a constructive partner within Europe for taking on the problems that matter to all of us” (Balkenende 2005). However, perhaps anticipating the possible backlash resulting from the Dutch rejection of the EU Constitutional project, Balkenende (2005) observed that “Europe . . . must ‘do justice’ to the Dutch ‘NO’ because the voters’ concerns about losing sovereignty; the . . . pace of change, in which the public did not feel involved, and . . . the high financial contribution made by the Dutch people was understandable.” To these issues, he concluded, the European Union must take account as it moves forward.

On June 2, 2005, a day after Dutch voters joined the French voters in rejecting the European Constitution, the European Parliament (EP) also weighed in with its own reactions to the consequences of the “No” votes in

both elections. In an extraordinary meeting that had in attendance Margot Wallström, the Vice-President of European Commission, and several representatives of EU Member State national parliaments, the European Parliament’s Constitutional Affairs Committee by a majority spoke in favor of continuing the ratification process of the EU Constitution. They also stressed the EU Parliament’s responsibility not to ignore the clear message of disapproval voiced by the public in both France and the Netherlands. Following the event timeline, it is interesting to note that the June 2, 2005 EP Constitutional Affairs Committee’s steadfast decision to continue the constitutional ratification in the “yet-to-ratify” Member States was the impetus of the Council conclusion of June 15-16, 2004. In its conclusion, as noted elsewhere, the European Council called for a “period of reflection, clarification, and discussion” on the future of Europe, with the intent to reconnect the citizens with the European project and to decide the fate of the Constitution. This was followed yet by the EU Commission’s reaction when it too registered the so-called *Plan D* in October 2005, a proposal intended to encourage new ways to include EU citizens into the debate of the future of Europe.

Although criticized as largely lacking in clarity, the outline on how to proceed after the June 2005 proposal for a period of reflection was issued by the Council on the European Union on June 16 and 17, 2006 (De Clerk-Sachsse 2006). In the meantime, different views on the best way forward have emerged. Germany’s then Chancellor Gerhard Schröder and then French President Jacques Chirac were outspoken supporters for nothing other than a complete ratification. This has changed. Germany now has a new Chancellor and the EU Constitution still awaits final approval after ratification by the Bundestag at least in new and improved form. In France, the Constitution was rejected. The successor to Mr. Schröder in Germany, Chancellor Angela Merkel, took over EU Presidency in the spring of 2007, and proposed keeping the text intact but in the end proposed changes to address concerns that led to the rejection of the constitution in France and the Netherlands. In the United Kingdom, as also discussed previously in this study, there were first talks of ratification through referendum and later its suspension. At the very least, Prime Minister Tony Blair and former Foreign Secretary Jack Straw evinced different perspectives on the matter. Mr. Straw left office in 2005 and Blair followed in 2007, and the fate of UK’s stance is in the now within the hands of Blair’s successor and new Primer Minister Gordon Brown. To these differing positions, EU Commission President Barroso has repeatedly warned that any decision on the future of the Constitution must be made collectively,

or as he puts it, “any unilateral initiative . . . must be avoided.” The Constitutional treaty, he reminds EU Member States, was signed collectively, and the situation must be reexamined collectively.

It is clear that the French and Dutch “No” votes have both short and long term ramifications on issues being negotiated at the EU level. On the short run is the likelihood of tainting current negotiations, especially the EU-Turkey ascension issue and further expansion as well as other security issues. Also heightened by the French and Dutch “No” to the EU Constitution are fears of the greater likelihood that it may become very difficult to reach consensus on sensitive issues at the EU level. A backlash may also be Member States’ acute sensitivity to the fact that they may be seen only as single-mindedly preoccupied with their own national interests over larger EU interests in each negotiation. In particular, concerns that France or any other EU Member State may now oppose even more decisively other Union agenda, though very speculative, are well founded. Lastly, given the significance and dominance of certain domestic issues, such as unemployment in France and the fear of EU super-state dominance in the Netherlands, the Turkish accession may now be even more difficult than before.

### **Prospect for a Constitution for Europe**

Whether the Constitutional Treaty will in the end be fully ratified remains unclear. The French and Dutch “No” votes and their overall implication for a complete ratification, a necessary outcome under the unanimity standard required, while possible, raise more doubts than hope. That is, there are more reasons to believe that the chance of a formal ratification of the draft Constitution for Europe in its current form is all but diminished. In 2001, the *Laeken Declaration* established that the European Union was at a crossroads. That declaration was made on the eve of large-scale European enlargement and in the midst of a broad debate on the Union’s future. This observation was true then and remains the same today. With modest gains made since the enlargement in 2004 and a text of a non-ratified Constitutional Treaty in hand since October of that year, serious questions relative to the nature and status of the European Union still persist.

These questions revolve around issues of domestic security and insecurity in terms of the lost autonomy, sovereignty, and actual belonging within a super European space. What is also equally clear so far is that the nature of intercourse in Europe has changed. Today’s Europe is more than just an

economic Union. Thus, beside the constitutional treaty, the Union, which makes up most of Europe today, has instituted European citizenship; adopted a wide range of citizens' rights; controls on its own monetary policy in twelve countries; and has developed plans soon for a border police, immigration laws, and a decisive influence over its tax and spending policies. While it is still debatable whether these developments so far are drastic enough, they raise complicated questions that a constitution for Europe must engage rather than avoid. For example, questions of domestic insecurity of the nature that increased expansion would undermine sovereignty and foster unemployment flowing from the French/Dutch referenda must be taken seriously.

Clearly since the inception of the pioneering Coal and Steel Community in 1951, the process of European integration has achieved substantial political goals: peaceful co-existence, improvement of living standards, and economic and political solidarity among Europeans. Core means were undoubtedly economic, among which of course are the four economic freedoms and the free competition policy. But there were also explicit legal and political means. The founding treaties gave birth to a *new legal order*, the legitimacy of which rested on the common constitutional traditions of the Member States. As the process of integration unfolded, as new competences were assumed in the seventies, eighties and nineties, the political nature of the communities became more explicit. At the same time, the constitutional nature of the European legal order was overtly affirmed. Arguably, the weakest point could be that the Union underwent constitutionalization without an engaged constituent polity, that is, without direct popular input. The fact that the Union delved into a functional constitution which was never debated and approved by European citizens is indeed at the root of the Union's *democratic deficit* amply discussed in the literature today.

The Union, therefore, needs a Constitution that citizens can regard as their own in order to overcome not only the very legitimacy of what it does in the name of the people, but that invokes a genuine social contract. The *Laeken Declaration* was an initial recognition of this reality in providing a concrete response. It opened up a constitution-making process which departed substantially from the previously “quasi-diplomatic” mode of treaty-making that was characteristic of intergovernmental conferences. An important novelty of the Laeken process was the mandate to a deliberative Convention to come up with proposals for a constitutional order for the Union. The Convention, therefore, was supposed to instill a more democratic procedure, absent tone, in the making of a constitution that involved all the parties, including the people

as well.

Assuming the Union has been involved in constitution-making since the EU Communities' very inception, a much more variegated set of stakes was included in this process. Indeed, most of the members of the Convention were parliamentarians, not government representatives. In addition, the Convention's works were transparent and open to public influence and criticism. The political tensions that emanate from Europe's sheer diversity and from the breadth of constitutional visions and traditions became evident. Despite all this, the Convention succeeded in putting forward one single draft Constitution for Europe. However, today amidst ratification difficulties its very coherency is in question. In the minds of its critics the constitution is either a step in forging a truly European democratic constitution or a mere exercise in consolidating the Union structure and power.

As the jury of the people of most Member States render their verdicts in the form of votes in referenda on most of these matters some projections are pertinent. First, the Convention exercise amplified the long-held notion that the EU had moved from economic to the constitutional and political space. The Convention made the constitution-making process more reflexive. A much more variegated set of stakeholders were directly included in the process and the political tensions that emanate from Europe's sheer diversity, its breadth of traditions, and competitive constitutional visions were exposed. Second, the very title *Draft Treaty Establishing the Constitution for Europe* suggested that the product it yielded was temporary and, therefore, in process. But what is the nature of this process? It is a recognition that the EU constitution does not emanate from scratch, but rather through the careful and incremental forging of a constitutional structure with multiple roots: roots in EU law, in common national constitutional traditions, and in international law.

Also, an important part of the process of European constitution-making has been a *fusion* of national constitutional traditions. Democratic constitution-making implies the *appropriation* of the Constitution by its citizens bound by interests, not by tradition. This aspect of fusion makes the implications for national constitutional arrangements more readily apparent. The continued insistence on the role and importance of democracy is an obvious aspect of this fusion and is reflected in efforts to make the emerging constitutional structure comply with democratic principles and to offer a contribution to the rectification of the EU's democratic deficit. These measures include efforts to strengthen EU-level democracy as well as to strengthen national (parliamentary) involvement in EU activities.

Also, the draft Constitution must be characterized as a hybrid between a nation-state constitution and an international treaty—hence *constitutional treaties* where true sovereignty is maintained, and if not, vested in the people. This is important if the Union’s double legitimacy—one springing from the will of the national Member States and another from the will of the European citizens—is to be preserved. In this sense, the draft mostly retains strong vestiges of the system in place in characterizing a cooperative intermestic and federalist structure—a hybrid of domestic and international federal system. Also, the draft and the process of forging it were evocative of a clear move beyond intergovernmentalism. For example, the compelling language of the Charter of Human Rights—now an integral part of the draft Constitution—offers further testimony to the entrenchment of a supranational European Union.

These developments mirrored the *Laeken Declaration*’s commitment to a real and ongoing transformation. The Convention’s activities amplified the long-held view that the EU has entered an opened constitutional space. While the push to reconstitute evokes several questions, it also provides several opportunities for dialogues with the respective Member States relative to the exact contours and roles the Union ought to and must play to maintain its legitimacy and for the state’s and citizens to maintain both their autonomy and sovereignty. In a real sense the draft Constitution is both an argument and an attempt to find a new balance between a Europe of states and a Europe of citizens. The Constitutional Treaty is not only a pact among citizens, nor is it merely a contract among states. It is both. It is an attempt to implant in practice principles of fundamental rights, rule of law, and democracy as a guidepost of a nation. In actuality, the claim for direct legitimacy is only partially heeded: the citizens of Europe should be included directly or via their representatives in EU law-making, but the institutional channels for doing so are still democratically deficient.

Finally, the pessimistic outlook from the French/Dutch election apart, the end of the Convention in June 2004 signaled a constitutional moment. From that signal the EU Constitutional text was drafted. Yet the fate and future of that constitution today remains uncertain at the established ratification deadline. Some things, therefore, are clearer than others, but one thing is clear. We can no longer seriously hold that the European Union is merely a functional organization with aims that undermine existing sovereign space. The Union today is genuinely a political community that is both useful and needed, whose constitution will sooner than later be adopted. Yet we should be surprised that

the question of the nature and viability of the EU constitutionalism under the ongoing debate is tied up with the questions of transferability from that of the state tradition (Walker 2003, 2004a, 2004b, and 2005; Weiler 1999 and 2003).

### Conclusions

There is perhaps much agreement to the conclusion that the French and Dutch rejection of the Constitution in 2005 may have left the Union in a turbulence that questions its legitimacy, its institutional capacity, and its ability to confront possible consequences of its continued reform and enlargement. Indeed, post referendum *Flash Eurobarometer* (2005a and 2005b) surveys involving retrospective planning of the campaigns and actual decisions made by voters in both countries testify to these facts. Accordingly, a survey of the French post referendum voter opinions surmised that the reasons people voted “No” were based chiefly on national and/or social themes, which in their views took precedence over EU considerations. For one, the Dutch “No” was more EU-centered and less about local economic conditions since only 21 percent of the voters indicated concerns about their economic situation and a large 65 percent of Dutch voters indicated that they thought a rejection would “allow for a renegotiation of the Constitution in order to place greater emphasis on social policies.” The majority of French citizens, 62 percent, believed that a “No” victory would also allow a renegotiation of the Constitution to come to a more social text and to defend better the interests of France.

Protest vote or not, the differences in expectation by voters from these two founding countries may be explained in part by looking back at past promises and differences in opinion between Eurosceptics and the Eurocentrics about the proper role of the Union. In the 1980s, for example, many promises were made about European integration to include great payoffs of growth, prosperity, and competitiveness. EU citizens, through their Member States, were asked to endure short-term suffering for benefits that would accrue in the long hall. While Eurocentrics still hold much hope of a unifying Union, eurosceptics are manifestly out of patience. Briefly, they are of the view that these promises have not materialized. For example, in France after 20 years, the experiences of ever-greater inequality, chronic mass unemployment, more poverty, and squeezes on traditional social programs with no apparent end in sight are not viewed by any means as part of the EU promise of economic growth and prosperity. Thus, the 2005 referendum on the Constitution in some measure was a catalyst for French citizens to reexamine the past and

recalibrate their anxiety so that threats to the French “social model” could be seen as coming from the EU itself. More succinctly, the French “No” signaled that parts of the French electorate found the social model reform promoted indirectly through EU market liberalization totally unacceptable.

Elsewhere around Europe, British reactions were telling. On May 29, 2005, as it became clear that the “No” had won by rejecting the draft EU Constitution in France, and before the Dutch referendum two days after, Jack Straw (2005), British Foreign Secretary, hurriedly made the following comments:

The European Union is a union of democracies; the people of France have just cast their vote on the treaty and voted ‘No’ by a clear margin. We must respect that result and we do . . . the result raises profound questions for all of us about the future direction of Europe . . . in the United Kingdom this constitutional treaty will only be ratified by a referendum of the people of the United Kingdom.

Considering the complexity of issues triggered the “No” vote in France relative to the real issue for the referendum, notably approving a Constitution for Europe, Mr. Straw’s statement raised more questions on the future of the EU Constitution than answers. The very prospect of a negative vote in just one country, the object of Straw’s comment, and the real possibility that such would affect all other Member States was real when the constitution was drafted by the Convention. However, this possibility was never addressed to protect the Constitution from the prospect of a single Member State from acting as a spoiler to prevent its implementation. The question now is whether the French and Dutch referendum spells the end for the constitutional project. The history of past ratification may be a good guide. It is a known fact that the Danish referendum in 1992 on the *Maastricht Treaty* and the Irish vote on the *Nice Treaty* in 2001 both represented instances where EU treaties were initially rejected and for which politically acceptable alternatives for handling these rejections were negotiated and ratification later achieved.

In spite of arguments to the contrary, the drafters of the constitution seem to have settled this as well with the inclusion of *Declaration 30*, estimated here as the equivalent of a political opportunity for further negotiation. In the Final Act of the Intergovernmental Conference, this rescue provision simply states,

. . . if, two years after the signature of the *Treaty Establishing a Constitution for Europe*, four-fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council. (*Declaration 30 2005*)

As argued, it is pursuant to this authority that in June 2005 the European Council called for a “period of reflection” to provide a breathing-room on the initial reporting deadline of November 1, 2006 on the status of the ratification process. While the main idea was to give Member States that were yet to ratify the Constitution more time to debate and to ratify, a year later the Council, using this provision yet again, recommitted to a further extension through 2007 and perhaps 2008. In a very calculated language designed to deflect what by now has become a shroud political attempt to rescue a failed project, the Council also acknowledged the various initiatives taken by the Member States within the framework of the national debates (Commission of the European Communities 2005b and 2006a) as well as the events organized by the Austrian Presidency, notably the “Conference on the Sound of Europe” in Salzburg on January 27-28, 2006. And lastly, the Council also reaffirmed its commitments for a democratic and transparent Europe beyond the reflection period, to “a Union that delivers the concrete results citizens expect, in order to strengthen confidence and trust” (Council on the European Council 2006). At best these statements hold to no precise formula and state no guidance except for a broad timetable; they are, to be sure, the clearest indications on political cause undertaken by the European Council and Heads of Government of Europe relative to the EU Constitution.

What then is the future for a Constitution for Europe given these insights? Before speculating whether the constitution will in the end be ratified or significantly overhauled, one must first address a couple of things that may hinder but not undermine such an outcome. The continued session of “reflections, clarification, and discussions” and their continued extensions reveal two fundamental flaws about the European Council: its inability to be persuasive on whatever “political visions” it may have for Europe and its sheer lack of “political will” tied to leaders who can champion the “content” of its vision in the interest of the Union as a whole. It is estimated—and the public opinion polls bear this out—that EU citizens are either doubtful or indifferent to the aims of the Union and, therefore, lack any real collective hope for a better future. This should come as no surprise in light of the recent collapse in EU

projects such as the Constitution for Europe and the extensive, endless, and at times divisive debate over Turkey’s candidacy to the Union. The current power vacuum or void in a visionary pan-European leader cannot be overstated, if only to be compared with past visionaries such as Jean Monnet, Robert Schuman, Paul-Henri Spaak, Alcide de Gasperi, and Konrad Adenauer, who unselfishly charted the course of what heretofore has been a relatively economically successful and peacefully integrated Europe.

*The Leadership Factor.* Is a leadership vacuum affecting policy outcome in the European Union? While Prime Minister Tony Blair and President Jacques Chirac heads of governments of Britain and France left the positions early in 2007, they did so with sagging credibility that significantly undermined their capacity to guide, influence, or inspire a “political Europe” at a time when Europe needed it most. With new leadership now in both countries with Nicolas Sarkozy replacing Chirac in France and in Britain, Gordon Brown it is still too early think of them as any thing other than what they currently are, new leaders to these new powerful offices. Beside leaders from France, Germany, and Britain, no other EU leader has stood up to shoulder the leadership weight so much needed during these times of crises in the European Union. The jury is still out with the new experiment brokered by German Chancellor Angela Merkel, an improvement of the Constitutional Treaty currently being presented to member states with the intent to engage the “hold out” Member States to a politically negotiated track to speed an eventual ratification of the treaty in these countries. While much is expected from the new German Chancellor Angela Merkel who took EU Presidency after the departure of Germany’s much astute leader Chancellor Gerhard Schröder, she has kept pace with her promise not to “cherry picking” bits of the constitution but to “give a boost” to the entity of constitutional package. Indeed, a BBC (2005b) report in May 2005, citing a German paper *Sddeutsche Zeitung*, had Merkel proposing to keep the EU Constitutional text intact by attaching a declaration on the “social dimension of Europe” to address properly some concerns that led to its rejection in France. She is quoted as saying that she still supported the text approved by the German Bundestag and that all the actions to be taken under her presidency in 2007 would serve to bring Europe closer to agreeing on the European constitution. However, in October 2006, Reinhard Silberberg, Germany’s State of Secretary, while confirming the Chancellor’s measured outlook on the EU Constitution, seems to be lowering the expectations on what the German presidency would actually accomplish during this tenure (Silberberg 2006).

Again, two deferments from the initial ratification deadline exhibited thus far by the Council on the European Union also suggests the lack of a credible leadership to engage a union-wide agenda for the benefit of all Member States. No commitment surely benefits eurosceptics and the current “holdout” Member States to the detriment of those who have already committed to the treaty through ratification. Surely as contemplated by the Council, the reflection period gives the “holdout” Member States more time to reassess their positions to formalize a decision leading perhaps to the ratification of the draft Constitutional treaty. However, given the level of complexity of events, procedures, and unanticipated circumstances encountered, the period of the “reflection” suggests a real possibility that the seven “holdout” Member States may not all be able to complete the ratification process. Thus, a chance remains that the whole ratification process might come to halt, a very likely outcome which invites two questions that seriously must be considered before the 2008 reflection deadline lapses. The first is whether the rigid standard imposed requiring all 25 Member States to ratify before the constitution is adopted is realistic. The second is whether the constitution is more likely to be ratified by all Member States if it were to require the so-called “cherry-picking” of the necessary rather than all provisions in the current text or a decision rule short of unanimity? If the *unanimity* standard is unrealistic, then a scaled down version, as currently provided under *Declaration 30* for the Council’s intervention, could be amended further to include an extraordinary standard short of unanimity for a formal adoption of a constitutional treaty amendment.

In the end, for all it’s worth the good news about the rise and specific use of referenda in Europe, especially in light of the controversy generated in the French and Dutch referendum, is that in future it will be harder for critics who claim that the EU is inherently undemocratic to continue evoking that line of reasoning. Member State governments, pro-Europeans groups, and civic society in general seized the opportunities that referenda offered<sup>11</sup> since absent such an institutional mechanism, as seen in the level of anxiety generated by the France and Netherlands referenda, what appears perhaps as a new era of direct democracy could even lead to the unraveling of the European Union.

*Acknowledgement: I would like to thank the anonymous reviewers of the GPSA Proceedings; Joe Trachtenberg, the editor in-chief; and the editorial staffs for their immense support, and lastly, the discussant and panelists of the European Union Panel at the Savannah 2006 GPSA*

*meeting for their constructive suggestions.*

### Notes

<sup>1</sup> They either joined the European Coal and Steel Community (which came into existence on July 23, 1952 and ceased to exist exactly 50 years later), the European Economic Community (which came into existence on January 1, 1958), or the European Community (which came into existence on July 1, 1967 as a merger of ECSC, EEC and the European Atomic Energy Community.

<sup>2</sup> For a critique of referendum model and proposal for a new electoral mechanism that would give Europe's voters a greater say in major EU projects, see Tøger Seidenfaden (2006). For other insightful assessment see Wagner (2005).

<sup>3</sup> According to *EurActiv.com*, “German Chancellor Angela Merkel promised to give a boost to the constitutional issue during the German presidency in 2007.” She was quoted as saying that “the text must be something which deserves the name ‘Constitution’ and not merely an institutional set of rules.” See <http://www.euractiv.com/en/future-eu/constitutional-treaty-reflection-period/article-155739>.

<sup>4</sup> Spain's consultative referendum was held on February 20, 2005 and saw a “Yes” victory of 77 percent to 17 percent for a Constitution for Europe with a relatively low turnout rate of 42 percent of the voting electorate. In a second consultative referendum held on July 10, 2005, a month after the French and Dutch citizen's rejection and despite postponements announcements made by other Member States, Luxembourg citizens approved the EU constitution by 56.56 percent “Yes” to 43.48 “No,” with an overall turnout rate of 86.27 percent of the electorate, despite “compulsory voting” in the country. While the “Yes” campaign had the support of all parliamentary parties, the “No” campaign attracted a varied group, from left-wing anti-globalizationists to far-right sympathizers (*Eurobarometer* 2005c and 2005d; Hausmer 2005).

<sup>5</sup> These Member States are the Czech Republic, Denmark, Ireland, Poland, Sweden, and the United Kingdom.

<sup>6</sup> Vaclav Klaus (2006) chimes in with his skeptical view on a debate organized

by the Czech Center for Economics and Politics, the U.S. Foundation for Economic Education, and the European Foundation.

<sup>7</sup>For one, these results were obtained from 40 percent of respondents, with roughly 60 percent indicating “undecided” on how they will vote on May 29, 2005 election day.

<sup>8</sup>When categorized by political party, the objection to Turkish entry by the French Public was remarkable. While 74 percent of *Front Nationale* (FN) supported, 72 percent of *Union pour la Parti Democratie Française* (UDF) and 63 percent of UMP also support Turkish entry, but a majority of *Parti Socialiste* (PS) expressed opposition.

<sup>9</sup>The major ruling political parties constituting 85 percent of the seats in the Dutch parliament were Christian Democrats, the Liberals, and Democrats '66 and two opposition parties, the Labor and GreenLeft parties.

<sup>10</sup>The Independent Referendum Commission (an institutional framework) was charged with setting the election date, preparing summary of the Constitution for distribution to voters, and distributing subsidies to campaigning groups.

<sup>11</sup>The EU Commission, for example, used both the *Plan D* project and *White Paper* on Communication Policy proposals to run active campaigns as well as to convince EU citizens of the central merits of the Constitution.

### References

- Associated Press*. 2005. “Exit Polls Say France Votes No on EU Constitution.” May 29. British Broadcasting Company. (BBC). Available online at [http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk\\_politics/4592469.stm](http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4592469.stm).
- Baldwin, Richard. 2006. “Trail to Failure...:” May. *Center for European Policy Studies*. Available online at <http://wwwceps.be>.
- Balkenende, Jan Peter. 2005. “Concession Remarks by the Prime Minister of the Netherlands.” June 1. British Broadcasting Company. (BBC). Available online at <http://news.bbc.co.uk/1/hi/world/europe/4596005.stm>.

- Beneš, Vít. 2005. “Why Vaclav Klaus Isn’t the Only Czech Eurosceptic.” *EurActiv*. Available online at <http://www.europesworld.org/SearchbyAuthor/tabid/66/Default.aspx?AuthorId=5>.
- Beus, Jos de. 2005. “A Dutch Correction of the European Way.” *European Studies Association Review* 18(4).
- Bogdandy, Armin von. 2005. “The Prospect of a European Republic: What European Citizens are Voting On.” *Common Market Law Review* 42: 913.
- British Broadcasting Company. (BBC). 2005a. “Exit Polls Say Dutch Votes No on EU Constitution.” June 2. Available online at [http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk\\_politics/4592469.stm](http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4592469.stm).
- \_\_\_\_\_. 2005b. “Exit Polls Say France Votes No on EU Constitution.” May 29. Available online at [http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk\\_politics/4592469.stm](http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4592469.stm).
- \_\_\_\_\_. 2006. “EU Constitution: Where Member States Stand.” May 9. Accessed January 24, 2007. Available online at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/3954327.stm>.
- Chirac, Jacques. 2005. “Déclaration du Président de la République Suite au Référendum sur le Traité Constitutionnel Européen.” May 29. *Palais de l’Elysée - Paris*. Available online at [http://www.elysee.fr/elysee/francais/interventions/discours\\_et\\_declarations/2005/mai/.29995htm](http://www.elysee.fr/elysee/francais/interventions/discours_et_declarations/2005/mai/.29995htm).
- Communiqué of the Conference of the Heads of State and Governments, Paris. 1972. *Bulletin of the European Community*. October 19 and 21. Paragraph 7, 10-1972, p 16.
- Commission of the European Communities. 2005a. “Action Plan to Improve Communicating in Europe.” SEC 985 July 20.
- \_\_\_\_\_. 2005b. “The Commission’s Contribution to the Period of Reflection and Beyond: Plan-D for Democracy, Dialogue and Debate.” Brussels, 13.10.2005 COM, 494 final. Available online at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0494en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0494en01.pdf).
- \_\_\_\_\_. 2006a. “White Paper on a European Communication Policy.” Brussels, 1.2.2006, COM, 35 final. Available online at [http://ec.europa.eu/\\_communication\\_white\\_paper/doc/whitepaper\\_en.pdf](http://ec.europa.eu/_communication_white_paper/doc/whitepaper_en.pdf).
- \_\_\_\_\_. 2006b. “Communication from the Commission to the European Council: The Period of reflection and Plan D.” Provisional Version, Brussels, 10.5.2006, COM, 212.

- Commission on the European Union. 2005a. “Action Plan to Improve Communicating in Europe by the Commission.” SEC (2005)985 - 20/07/2005.
- \_\_\_\_\_. 2005b. “European Commission’s ‘Listen, Communicate, Go local’ – New Commission Approach to Dialogue and Communication with European Citizens.” July 20. *Action Plan to Improve Communicating Europe*, IP/05/995, Brussels. Available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/995&>.
- \_\_\_\_\_. 2006. “White Paper on a European Communication Policy.” January 2. Brussels, 1.2.2006, COM(2006) 35 final. Available online at [http://ec.europa.eu/communicationwhite\\_paper/doc/white\\_paper\\_en.pdf](http://ec.europa.eu/communicationwhite_paper/doc/white_paper_en.pdf).
- Council of the European Union, Luxembourg Presidency. 2005. “Declaration Following the Results of the Referendum in France on the Treaty Establishing a Constitution for Europe.” May 25. Josep Borrell Fontelles, Jean-Claude Juncker, and José Manuel Barroso. Available online at <http://www.eu2005.lu/en/actualites/communiqués/2005/05/29ref/index.html>.
- Council on the European Council. 2005. Presidency Conclusions. Brussels June 16-17, 2005, 10255/05. Available online at <http://www.eu2005.lu/en/actualites/conseil/2005/06/17conseur-concl/conseil.pdf>.
- \_\_\_\_\_. 2006. Presidency Conclusions. Brussels June 15-16, 2006, 10633/1/06. Available online at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/90111.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf).
- Declaration 30*. Draft Constitutional Treaty on the European Union. 2005. Available online at [http://europa.eu.int/constitution/en/ptoc164\\_en.hmn](http://europa.eu.int/constitution/en/ptoc164_en.hmn).
- De Clerk-Sachsse, Julia. 2006. “After the European Council: A Europe of Projects Without a Plan?” June. *CEPS Online Bookstore*. Available online at [www.euractiv.com](http://www.euractiv.com).
- De Schoutheete, Philippe. 2006. “Scenarios for escaping the constitutional impasse.” Summer. Available online at [http://europesworld.link.be/europesworld/PDFs/Issue3/EW3\\_2.4\\_de\\_SchoutheeteScenarios\\_for\\_escaping.pdf](http://europesworld.link.be/europesworld/PDFs/Issue3/EW3_2.4_de_SchoutheeteScenarios_for_escaping.pdf)
- Donnelly, Brendan. 2005. “The UK Debate.” May. Available online at <http://www.fedtrust.co.uk/admin/uploads/PolicyBrief11.pdf>.
- Donnelly, Brendan, and Markus Wagner. 2005. “What do French voters want from the European Constitution?” May. Available online at <http://www.fedtrust.co.uk/admin/uploads/PolicyBrief11.pdf>.
- Eurobarometer*. 2004. “#62, December 2004.” Available online at [http://europa.eu.int/comm/public\\_opinion/achieves/eb/eb62first\\_en.pdf](http://europa.eu.int/comm/public_opinion/achieves/eb/eb62first_en.pdf).

- \_\_\_\_\_. 2005a. “The European Constitution: Postreferendum Survey in France.” June. Brussels: European Commission. Available online at [http://www.europa.eu.int/constitution/ratification\\_en.htm](http://www.europa.eu.int/constitution/ratification_en.htm).
- \_\_\_\_\_. 2005b. “The European Constitution: Postreferendum Survey in the Netherlands.” June 1. Brussels: European Commission. Available online at [http://www.europa.eu.int/constitution/ratification\\_en.htm](http://www.europa.eu.int/constitution/ratification_en.htm).
- \_\_\_\_\_. 2005c. “The European Constitution: Postreferendum Survey in Luxembourg.” July 10. Brussels: European Commission. Available online at [http://www.europa.eu.int/constitution/ratification\\_en.htm](http://www.europa.eu.int/constitution/ratification_en.htm).
- \_\_\_\_\_. 2005d. “Post Referendum Survey on the Draft Treaty on the Constitution for Europe: Spain.” February 20. Available online at [http://www.europa.eu.int/constitution/ratification\\_en.htm](http://www.europa.eu.int/constitution/ratification_en.htm).
- European Council. 2005. “Council Declaration on French Referendum.” May 29. Brussels: European Commission.
- “Finnish Parliament Approves Troubled European Constitution.” 2006. *The International Herald Tribune*. Accessed December 5, 2006. Available online at [http://www.iht.com/articles/ap/2006/12/05/europe/EU\\_POL\\_Finland,EU\\_Constitution.php](http://www.iht.com/articles/ap/2006/12/05/europe/EU_POL_Finland,EU_Constitution.php).
- Flash Eurobarometer*. 2005a. “The European Constitution: Post-Referendum Survey in France.” June. Brussels: European Commission.
- \_\_\_\_\_. 2005b. “The European Constitution: Post-Referendum Survey in the Netherlands.” June. Brussels: European Commission.
- Fontelles, Josep Borrell, Jean-Claude Juncker, and José Manuel Barroso. 2005. “Council Declaration on the Referendum in France on the Treaty Establishing a Constitution for Europe.” *The Luxembourg Presidency of the Council of the European Union*. Available online at <http://www.eu2005.lu/en/actualites/communiqués/2005/05/29ref/index.html>.
- Habermas, Jürgen. 2001. “Why Europe Needs a Constitution.” September - October. *New Left Review*. Available online at [www.newleftreview.net/NLR24501.shtml](http://www.newleftreview.net/NLR24501.shtml).
- Harmsen, Robert. 2005. “The Dutch Referendum on the Ratification of the European Constitutional Treaty 1 June 2005.” *EPERN Referendum Briefing No 13*. Available online at <http://www.sussex.ac.uk/sei/1-4-2-9.html>.
- Hausmer, Pierre. 2005. “Luxembourg’s Referendum on the Ratification of the European Constitutional Treaty.” June 1. *EPERN Referendum Briefing No. 14*. Available online at <http://www.sussex.ac.uk/sei/1-4-2-9.html>.

- Hollande, François. 2005. “Speech on May 29, 2005.” Available online at <http://www.parti-socialiste.fr>.
- IPSOS Poll. 2004. September. Available online at <http://www.ispsos.com/news/default.aspx>.
- Juncker, Jean-Claude, Josep Borrell Fontelles, and José Manuel Barroso. 2005. “Declaration Following the Results of the Referendum in France on the Treaty Establishing a Constitution for Europe.” May 29. *The Luxembourg Presidency of the Council of the European Union*. Available online at <http://www.eu2005.lu/en/actualites/communiqués/2005/05/29ref/index.htm>.
- Klaus, Vaclav. 2006. “Euro-sceptics Gear-Up Efforts Against EU Constitution.” December 1. *EurActiv.com*. Available online at <http://www.euroactiv.com/en/constitution>.
- Le Pen, Jean-Marie. 2005. “Declaration on 29 May, 2005.” Available online at [http://www.frontnational.com/doc\\_interventions\\_detail.php?idinter=74%0Dwww.cepremap.ens.fr%0D%0](http://www.frontnational.com/doc_interventions_detail.php?idinter=74%0Dwww.cepremap.ens.fr%0D%0).
- Maduro, Miguel Poiars. 2003. “Contrapunctual Law: Europe’s Constitutional Pluralism in Action.” In *Sovereignty in Transition*, edited by Neil Walker. London: Hart Publishing.
- Marthaler, Sally. 2005. “The French Referendum on Ratification of the Constitutional Treaty.” May 29. *EPERN Referendum Briefing No 12*. Available online at <http://www.sussex.ac.uk/sei/1-4-2-9.html>.
- Mény, Yves. 2005. “Europe Bewildered, France Adrift.” *European Studies Association Review* 18(4). Available online at <http://www.eustudies.org>.
- Moravcsik, Andrew. 2002. “In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union.” *Journal of Common Market Studies* 40: 603.
- \_\_\_\_\_. 2005. “Europe Works Well Without the Grand Illusion.” *Financial Times*. June 14.
- \_\_\_\_\_. 2006. “What Can We Learn from the Collapse of the European Constitutional Project?” *Politische Vierteljahresschrift*, 47, Jg, Princeton University’s European Union Program. Available online at <http://www.princeton.edu/~europe/June>.
- Piris, Jean-Claude. 2006. *The Constitution for Europe: A Legal Analysis*. New York: Cambridge University Press.
- Ross, George. 2005. “What Counts in This Crisis?” *European Studies Association Review* 18(4).

- Seidenfaden, Tøger. 2006. “Saving Europe from the Tyranny of Referendums.” Available on line at <http://216.109.125.130/search/cache?p=www.europesworld.org&prssweb>.
- Silberberg, Reinhard. 2006. “A Preview of Germany's EU Presidency: The Status of the Federal Government's Preparations.” October 4. Speech by State Secretary. Available online at <http://www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Rede/2006/061004SilberbergEuropa.html>.
- Spinelli Report. 1984. “Draft Treaty Establishing the European Union.” *Bulletin of the European Communities* 2(February): 8-26.
- Straw, Jack. 2005. “Comments on the French “No” Vote on the EU Treaty.” June 1. British Broadcasting Company. (BBC). Available online at [http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk\\_politics/4592469.stm](http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4592469.stm).
- Stuttgart Declaration: Solemn Declaration on European Union*. 1983. *Bulletin of the European Communities*. June 19. Luxembourg: Office of Official Publications.
- Taggart, Paul. 2005. “The Politics of Bifurcation: The 2005 Referendums in France and the Netherlands.” *European Studies Association Review* 18(4).
- Vanhanen, Matti. 2006. “A Europe of Results.” December 5. Speech, General Affairs and External Relations, Justice and Home Affairs, Transport, Telecommunications and Energy, Joint Parliamentary Meeting on the Future of Europe in Brussels. Available online at [http://www.eu2006.fi/news\\_and\\_documents/speeches/vko49/en\\_GB/177612/](http://www.eu2006.fi/news_and_documents/speeches/vko49/en_GB/177612/).
- Wagner, Markus. 2005. “Yes, No, Yes: The Fickle French?” *The Federal Trust for Education and Research, the EU Constitution Project Newsletter*. Accessed May 5 2006. Available online at [http://www.fedtrust.co.uk/admin/uploads/News\\_May\\_05.pdf](http://www.fedtrust.co.uk/admin/uploads/News_May_05.pdf).
- Walker, Neil. 2003. “Postnational Constitutionalism and the Problem of Translation.” In *European Constitutionalism Beyond the State*, edited by J.H.H. Weiler and M. Wind. Cambridge: Cambridge University Press.
- \_\_\_\_\_. 2004a. “Europe’s Constitutional Momentum and the Search for Polity Legitimacy.” In *Altneuland: The EU Constitution in a Contextual Perspective, Jean Monnet Working Paper 5/04*, edited by Weiler and Eisgruber. Available on line at <http://www.jeanmonnetprogram.org/papers/04/040501-01.html>.
- \_\_\_\_\_. 2004b. “The Legacy of Europe’s Constitutional Moment.” *Constellations Journal* 11: 368-92.

- \_\_\_\_\_. 2005. “Legal Theory and the European Union: A 25th Anniversary Essay.” *Oxford Journal of Legal Studies* 25: 581-601.
- Weiler, Joseph. 1999. *The Constitution of Europe*. Cambridge: Cambridge University Press.
- Weiler, Joseph. 2003. “In Defence of the Status Quo: Europe’s Constitutional Sonderweg.” In *European Constitutionalism Beyond the State*, edited by J.H.H. Weiler and M. Wind. Cambridge and New York: Cambridge University Press. 74-102.