

*ConstEPS Working Paper 2007/7*

## **The Constitutional Treaty Debates as Revelatory Mechanisms Insights for Public Sphere Research and Re-Launch Attempts**

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# The Constitutional Treaty Debates as Revelatory Mechanisms Insights for Public Sphere Research and Re-Launch Attempts

Christoph O. Meyer, London, May 2007

## *1. Introduction*

The European Union has manoeuvred itself into what some authors have called a 'constitutional trap' (Diedrichs and Wessels, 2005). The French and Dutch No's to the Treaty establishing a Constitution for Europe (TCE) in 2005 have cast fundamental doubts over the prospects of root and branch reform of a Treaty framework, which has been originally devised for a much different and much smaller community. As calls for greater participation of citizens have become ever louder, it will become increasingly more difficult to justify denying citizens a say on future amendments of the Treaty, not to mention a re-launch of a Constitution-making process. Conversely, without a reform of the current framework it will be arguably hard to remedy some of the central problems, which have contributed to the erosion of the 'permissive consensus' on European integration in the first place. By this I mean the lack of direct democratic say over the appointment of key political personnel, the lack of accountability in the process of European governance, and last but not least, the problems for the increasingly larger Union to act effectively and coherently, especially but not only in area socio-economic welfare and competitiveness.

I want to argue that a close analysis of public debates on the TCE is relevant to this *problematique* in at least two ways. First, it can help to reveal the overall level of information and publicity as well as the changing role of themes, issues and actors from the start of the Convention on the Future of Europe to the Decision to initiate a period of reflection after the referendum outcomes in France and Germany. This is arguably crucial to understanding the level of public awareness and knowledge about the TCE and why in the course of the debate public opinion became more opposed the TCE. Secondly, a detailed analysis of the debates across old and new EU member states is of direct relevance for normative as well as practical questions about whether or not to progress with or even re-launch the constitutionalisation process. Without a minimum level of cross-national debate,

engagement of foreign actors in national public spheres and an orientation to a European interest, most theorists of democracy would question the legitimacy of aiming for a Constitution-like document in the first place. Analysing the degree and kind of Europeanization of public debates with regard to the TCE help us not only to confirm or modify the findings of some 15 years of European public sphere research and thereby provide a basis for providing empirically-grounded but normatively oriented policy on the future of the TCE.

The main empirical basis for this chapter will be the results of an extensive media content analysis of ratification debates in six countries, which has been conducted by the members of the ConstEPS project at the Jean Monnet Chair at the University of Bremen (Liebert, forthcoming). I will relate these findings to previous insights from public sphere and media discourse research and explore how these findings help to modify or challenge the existing ‘state of the art’. I will argue that the findings are largely consistent with previous research, but that they highlight for the first time the particular problems affecting the quality and Europeanization of public debates in new EU member states from Central and Eastern Europe. New media coverage of the EU is affected by problems of a lack of professionalisation, training, resources and independence among journalists, a lack of interest in institutional and identity issues combined with a lack of knowledge about the EU, and concerns about a lack of say and status within the EU. Coming back to the initial question about the future of the TCE and a potential re-launch of the constitutional process, I will argue that such a re-launch would be premature for the foreseeable future, but that opportunity structures for European-wide voting on political representatives and issues need to be created to develop the potential for cross-national debates and increase citizens involvement in EU politics.

## ***2. The State of the Art in Public Sphere research – Is there “A” State of the Art?***

The past five years witnessed a surge in studies at different levels of scholarship focusing on the Europeanization of public discourses and public discourses (Hagen, 2003; Klein, et al., 2003; Koopmans, 2004a; Trenz, 2002; Meyer, 2002; Steeg, 2002; Eriksen, 2005; Langenbucher and Latzer, 2006). Most of the research was concerned in some way or another with the ‘communication deficit thesis’, i.e. whether the economic and political

integration has been matched by an increasing interpenetration, synchronisation and possibly convergence of national public discourses towards a European sphere of publics (Schlesinger, 1999) or a common communicative space (Eriksen, 2005); this is considered necessary from the perspective of cross-national identity formation, increasing cross-national trust and allowing for opinion-formation about and scrutiny of European governance. The ability for cross-national opinion formation within a communication community is also considered as a precondition for a full-blown democratisation and constitutionalisation of the European Union as a state - if not nation-state like body (Grimm, 1995). Habermas himself emphasises an inverse causality, emphasis the importance of creating opportunity structures for debate and democratic practice, which will provide an impetus for an emergent public sphere at European or even transnational level (Habermas, 1995). Given that empirical evidence for a Europeanization of public discourse was running far behind normative theories, a number of large research projects have set out to conduct large-scale quantitative and qualitative coding of media content (Koopmans, 2004a; Latzer and Sauerwein, 2006; Sifft, et al., 2007), usually of the press, but some also of television news and the internet (de Vreese, et al., 2001; Koopmans and Zimmermann, 2003).

In their empirical inquiry, many of the key studies make the distinction between horizontal and vertical Europeanization (Koopmans, 2004a; Sifft, et al., 2007). Horizontal Europeanization of media discourses refers to an emergence and intensification of cross-national debates about issues of collective concern, whereas vertical Europeanization focuses on debates - be they bottom-up or top-down – which involve EU actors and/or themes in national spheres. Sifft et al make the useful distinction between Europeanization as a trend or process, asking the ‘how fast’ question, as a quality (they call it level), asking the ‘how much/good’ question, and in terms of geographical scope, asking the ‘how far’ question (Sifft, et al., 2007). Until recently most of the public sphere research has been concentrated on snapshot situations or changes within a relatively short space of time.

### *Horizontal Europeanization*

How is horizontal Europeanization measured in practice? In the context of the public sphere debate, it is not sufficient that the same topic is discussed at the same time with the same criteria of relevance as Eder and Kantner have argued (Eder and Kantner, 2000), but

there also needs to be discursive interaction (Steeg, 2002) or ‘reciprocal resonance structures’ (Tobler, 2001) between different national debates in order to speak about a Europeanization public discourse. However, without the yardstick of democracy theory, vertical Europeanization could be observed already if there are increasing references to foreign (EU) politicians, interest groups, or news media within national public discourse over time. Yet, the empirical findings from the longitudinal studies mentioned above suggest otherwise. Peters et al. (Peters, et al., 2005) have found that ‘[a]ll five national newspaper demonstrate either no clear pattern or even a slight decline over time in their attention to other European countries.’ Koopmans found that horizontal Europeanization trends were weak in the issue fields covered by the study (Koopmans, 2004b). Looking at the different issue areas this finding is perhaps not surprising given that many policy areas have been increasingly subject to European level regulations and coordination, so one would expect a degree of trade-off between horizontal and vertical Europeanization as a reflection of real shifts in political power and activity. In other words, the more attention the news media play to EU politics, the more they less they are interested in national politics of other countries. In acknowledging this redistribution of public attention, the EuroPub-Group also adopted an aggregate perspective and still found a net-increase in the Europeanization of public discourses as far as political claims are concerned.

Even though one finds little empirical evidence for a significant increase in transnational debates at this aggregate level, case studies of different controversies ranging from tax policy (Tobler, 2001), Haider/Austrian elections (Steeg, 2004), to the accession of Turkey (Wimmel, 2004) indicate the potential for transnational communicative reciprocity and common discursive frames. Of course these are studies of carefully selected single cases, rather than of broad issue areas as in the previous longitudinal studies. Still, they do show that certain questions can become transnationally politicised and debated, especially when national politicians, and not EU-Commissioners, are at the heart of controversies as in the Tobler (Lafontaine) and the van de Steeg studies (Haider). Moreover, in the case of the Stability and Growth Pact my own studies have shown that national politicians are increasingly drawn into the coverage in so far as they are acknowledged as significant EU-actors with conflicting goals (Meyer, 2005a). This personalisation can be quite problematic from the perspective of discourse ethics because both debates entailed a certain element of demonisation of these foreign national politicians (Haider and Lafontaine), which would have been unacceptable within national discourses. Generally, it seems that cross-national

debates are highly episodic and issue-dependent and, if they do occur, they are often very asymmetric in terms of who observes and reacts to whom.

Another, probably less problematic dimension of horizontal Europeanization from the perspective of reform and policy effectiveness, is the moderate increase in cross-national comparisons on the economic performance of other EU countries (Meyer, 2005a). This means that national public discourses are increasingly comparing quantitative data and political evaluations of their own policy performance with those of other countries when debating these particular policies. Even though evidence of real learning across boundaries is still limited, we do see first indications of an emergent discourse in each country centring on its own competitiveness *within* Europe, and to regard its own ranking within Europe as an indicator of successful or failed policies. This is particularly true for those countries, which have a strong European orientation and are doing badly in relative terms such as Germany, Portugal and Italy. The increased availability of data on national policy performance means that opposition parties have found additional and potent ammunition against the government in the battle for public opinion. Of course, there are differences in the degree to which countries frame their policies in this way, but since every country is likely to be worse than the European average in some policy areas, the main phenomenon should not be limited to countries, whose economies are doing badly.

### *Vertical Europeanization or EU-ization*

One way of investigating the vertical Europeanization phenomenon is to ask whether EU themes are more frequently and prominently covered over time in national media. Here, the findings of are moderately positive. My own research indicates that we have seen over the last ten years the emergence of a geographically and socially restricted public discourse in Brussels, revolving around particular elites, including Brussels-based journalists, who read similar publications and can and do engage in transnational debates, not always, but frequently enough to call it cohesive (Meyer, 2002). The number of accredited journalists working for EU 15 based news media has almost doubled between 1990 and 2002, from 333 to 638. It is, however, striking that correspondent figures until about 2000 rose particularly strongly for North European countries (especially Germany, UK and Netherlands), whereas the figure for Southern European countries showed at best a slight increase (particularly for French and Spanish media) (Meyer, 2002).

At the aggregate level, however, the evolution of correspondent figures in Brussels testifies to the rising importance of Brussels on the national news agenda. With more resources the focus of EU coverage has changed and become more diverse. The typical Brussels story in the old days provided either very technical information or an anecdotal reflection of single market harmonisation, including the notorious straight bananas and square strawberries story. Today, Brussels is being continuously covered (except for the summer recess) and is making the headlines frequently. This is also reflected in my own longitudinal data based on a keyword-scanning analysis of headlines in quality newspapers in the UK, France and Germany.

More sophisticated data from media content analysis have been generated by two major research projects coordinated in Bremen and Berlin (Peters, et al., 2005; Koopmans, 2004b). They confirm and elaborate the general finding that EU-ization has clearly increased over time. The Bremen-Group examined newspaper coverage at various points in 1982, 1989, 1996 and 2004 and concluded that ‘we can observe a clear trend of Europeanization, as the percentage of articles referring to European institutions increases up to at least 20 % in four out of five newspapers. Overall, the appearances of the European Union, in general, and of the European Commission increased more than three times from 1982 to 2003, while the European Parliament remained at a relatively low level since 1989’ (Peters, et al., 2005). The Berlin/Europub-Group found in their claims-making study even stronger empirical support for what they call ‘vertical Europeanization’ trends, but noted substantial differences across policy-fields, less so than between countries (Koopmans, 2004b). So one can safely assume that media awareness of the EU has increased and with it the scope and depth of public discourses about political issues relating to the EU.

Whether the degree of vertical Europeanization is sufficient or still inadequate if measured against the real importance of what is happening is a moot point, which cannot easily be answered without some objective indicator of what real importance is (it is sometimes argued that at least 50 percent of all national laws today originate from the EU). Peters et al. argue on the basis of their longitudinal data that the coverage of EU politics has increased from 2 percent to 10 percent between the 1980s and 1990s, but remains still less prominent than the overall coverage of international affairs, and is furthermore in no position ‘to challenge the dominance of debates about domestic politics’ (Peters, et al., 2005). More importantly, however, for the purposes of our thesis is that media coverage has been in a catching up mode, namely that due to a number of inertia factors, vertical Europeanization

only set in with some delay after the momentous political decisions about the future evolution of the EU had been taken in 1987 and in 1991/2. We are therefore faced with an asynchronous Europeanization of media coverage in terms of the sheer level of publicity.

### ***3. Public Sphere Research and the Constitutionalisation Process: Lessons to be learnt***

The probably most interesting finding stems from research about the media coverage of processes leading to Treaty change (Liebert, forthcoming; Gleissner and de Vreese, 2005; Garry, et al., 2006; Packham, 2003; Kurpas, 2007). The evidence from the media coverage of the European convention indicate, firstly, that the higher expectations regarding the visibility of the Convention method have not been met in terms of the quantity and continuity of coverage across the whole process (Packham, 2003; Kurpas, 2007), secondly, that common European frames in coverage regarding the evolution of the EU and the TCE existed in the quality press amongst continental European states (Packham, 2003; Kurpas, 2007; Trenz, 2005), but, thirdly, that transnational debates were hardly developed (horizontal dimension) and cross-national conflict cleavages dominated issue-related debates linked to left-right cleavages for instance, particularly in the later phase of the Convention and the following IGC when governmental actors became more involved (Kurpas, 2007; Kurpas, et al., 2005). To some theorists of deliberative democracy such as John Dryzek (Dryzek, 2000) the relative lack of extensive public debate and its national focus do not necessarily constitute a problem as long as the deliberative process itself meets certain criteria. Indeed, the very absence of public scrutiny and potential for scandalisation inherent in media democracies can be considered a precondition for the real arguing and persuasion to take place. However, when it comes to adopting and ratifying the outcome of the deliberations, public debate takes centre-stage again and the questions posed about the qualities of these debates, including their level of Europeanization become crucial again.

This is why the empirical focus of the Bremen ConstEPS project on the ratification debates in the printed press of selected member states is so necessary and important (Liebert, forthcoming). It provides systematic quantitative and qualitative evidence of the press debates about the constitutional treaty, going beyond traditional public sphere research by looking also actor constellations and argumentative strategies (Packham, forthcoming; Maatsch, forthcoming; Rakasanova, forthcoming; Wyrozumska, forthcoming; Evas,

forthcoming). A common coding scheme was developed and applied by a number of researchers from old and new member states. The focus on the debates in new EU member states is particularly valuable as it highlights the often overlooked issue of geographical scope and contributes to the debate about how far a European public sphere extends to countries frozen politically, culturally and economically for decades in the Soviet sphere of influence. In order to measure Europeanization of debates, ConstEPS uses the terms of vertical and horizontal Europeanization as other scholars from the Europub and the DFG-funded project did, but define them somewhat more narrowly than Sifft et al. (Sifft, et al., 2007). For instance, the definitions of segmented Europeanization as references to EU events, actors but exchanges limited to MS communication community (Liebert, forthcoming), would fall in previous studies under the term vertical Europeanization. Vertical synchronisation in turn is defined as synchronisation and convergence of MS communication communities as a result of top-down EU mechanisms. Synchronisation and convergence as such could be also the result of horizontal Europeanization processes, which is defined as 'cross-boundary mutual observations among different communication communities'. Finally, the project adds two more dimensions: European transnationalisation and supranational Europeanization. The former is defined in terms of overlapping and interacting debates involving foreign (European/non-European?) speakers and arguments, while the later is defined in terms of discourses referring to a collective European identity.

What are the key findings from the perspective of public sphere research and what can we learn from them? The case studies cover the period from fall 2004 to fall 2005 and take cases, which are very different in terms of the political process and context of ratification. France was going to hold a referendum on the Treaty, the UK government had promised one but campaigning had not yet started, the Czech Republic and Poland which agreed on ratification by referendum after some debate, but decided to postpone the referendum after the Dutch and French votes, and Estonia and Latvia which ratified by parliamentary assent. This makes only for one country with a clear cut referendum campaign comparable to the case of Ireland's vote on the Nice Treaty (Garry, et al., 2006). In one country, the Czech Republic, the governmental campaign had just started and was then stopped, while in the other cases campaigning had not yet started or was limited to the fact that ratification was by parliamentary assent. Unsurprisingly the level of debate in the press varied substantially as far as the results from the key-word scanning approach indicate. While there is not break-down of the numbers per newspaper and questions about comparability in the

outcomes of key word-scanning across different types of media products, the sheer numbers do provide at least an indication of the salience of the issue in national spheres: the case of France generated 4071 articles, the Czech case 970, the UK 943 articles, the Polish 699 and the Latvia and Estonian cases about 350 (Liebert, forthcoming). The difficult question, as generally for other studies trying to assess the level of Europeanization of discourses, is to decide on adequate benchmarks for whether this is 'little' or 'a lot'. An interesting dimension of comparison could be the level of coverage of the IGC or indeed the Convention on the future of Europe.

Leaving the methodological problem of measuring salience aside, a qualitative reading of the chapters reveals that the coders characterised the French debate as very vigorous (Maatsch, forthcoming), while the Czech debate with a vocal and polarising TCE-sceptic President Klaus comes next (Rakasanova, forthcoming), closely followed by the UK (Packham, forthcoming), where both opposition and government were trying to keep a potentially explosive issue out of domestic politics as long as possible and despite campaigns of some media to the contrary. The Polish paper explicitly noted the low level of public debate and its elitist nature (Wyrozumska, forthcoming), a finding, which is generally shared by the study of the Baltic republics (Evas, forthcoming). This finding can in part be explained by variations in the political context (referendum-campaign vs parliamentary ratification) between the various countries. Previous research on Europeanization has revealed that the visibility of political conflict both within a state and between state, particularly between well-known political figures, is a key variable to explain salience. However, a second variable should be the immediacy, specificity and relevance of the issue at stake, which varied between countries in terms of immediacy given differences in time-tables for decisions, but the specificity and relevance should be similar as the Constitutional Text was the same. From this perspective, one may need to bring in other variable as well to explain why the overall level of debate in those countries apart from France was relatively low from the perspective of enabling citizens to form their own opinion about the TCE.

At the same time, the overview paper of Liebert highlights some of positive aspects for the Europeanization/transnationalisation of discourses through ratification debates about the TCE (Liebert, forthcoming). The first positive aspect is that most of the debates, except for the French one, included a good deal of observation of other countries. This was particularly relevant for those countries, where the mode of ratification, parliamentary or direct voting, was publicly contested. This in turn gave rise to debates about the nature of

the TCE, to what extent it shifted competences to the EU and impacted on citizens' lives and whether it was compatible with national constitutions. To decide this question some political actors thought to justify their position not only with reference to the actual text and politico-legal argument, but also by appealing to the pre-accession discourse of belonging to the European family: would having a referendum place the country inside or outside of the European mainstream (Rakasanova, forthcoming; Evas, forthcoming)? It is interesting to note how the debate about this later question shifted after the French and Dutch, which was criticised in the debate by TCE advocates and gave the sceptics a boost as it allowed them to be against the TCE and be 'a good European'. Being against the Constitutional Treaty was no longer synonymous with being against European integration as the supporters of the TCE in the Czech Republic, Poland and the Estonia had argued. The studies find also a relatively high proportion of 30 to 44 percent of foreign nationals in the debates among the new Member State (frequency/prominence?), which seems to be a high figure. Only in France was the proportion substantially lower with 23 percent, which is consistent with the generally high-degree of self-centredness attributed to it by the case study. The case studies of the three new member states suggests that mentioning foreign nationals does equate necessarily to impact on domestic debates, except for the case of the Czech Republic where TCE-critical president Vaclav Klaus engaged in heated debates with both domestic and European actors. In contrast, the paper of Wyrozumska on the Polish case noted the lack of linkage between the coverage of EU summit policy and foreign leaders' statements and the specific concerns expressed in the domestic debate (Wyrozumska, forthcoming). In the cases of Latvia and Estonia, the debates were of low intensity and salience, and the elitist bias evidenced by legal arguments about the compatibility of TCE and national constitutions.

The high proportion of foreign actors cited in public debates contrasts with findings of public sphere research regarding relatively low levels of horizontal Europeanization *during routine periods of EU politics* (Sifft, et al., 2007). However, it is quite compatible with other studies of transnational interactions, probably even more interactive than in this case, which show that certain crises and issues are conducive to higher levels of transnational discursive interactions as Tobler (Tobler, 2002) and Wimmel (Wimmel, 2004) have already shown. The ConstEPS findings do also seem to corroborate the existence of asymmetries in mutual observation and communicative interaction between countries (Tobler, 2001; 2002) and is compatible with expectations that smaller and less influential countries are much more interested in the political decisions and indeed debates in larger more influential

countries than vice-versa. An additional explanation for this asymmetry may be that Eastern enlargement itself had been a contentious issue in old member states, not least in the context of findings that public voting in EU referendums can in part be predicted by fears of immigration (de Vreese and Boomgaarden, 2005). Fears regarding the migration of labour from East to West, however unfounded, were linked in the French debate to the second and even more salient issue about how the TCE enshrined a neo-liberal order with perceived negative impacts across a range of sectors, not just for French plumbers (Maatsch, forthcoming).

The ConstEPS findings are thus in many ways compatible with key findings of previous studies of the European public sphere and the Europeanization of public discourses. It confirms the significance of different kinds of opportunity structures for public participation, the key role of prominent political actors and cross-party conflict over Europe, and the high inertia against transnational and issue-focused debates. With regard to opportunity structures, the case of France demonstrates that referenda on Treaty changes can be an impetus for vigorous domestic debate about European issues, but they are by now means a guarantee that these issues are discussed in a way that gives space to European voices and speakers and that ensures transnational debates. Perhaps the most significant findings of the research is how the French vote changed the path of the constitutional debates in other countries, most notably the Czech Republic and the UK, and thus demonstrated that the ratification of the TCE can also work as an impetus to transnational politicisation and Europeanization of media discourses. Once the TCE was cast into question, it became the stimulus to debates that might have been in many ways more appropriate during or immediately after the Convention on the Future of Europe. This raises serious questions about the role of public debate in the succession of deliberative, intergovernmental and ratification states, which will be explored further below.

The other important insight of the ConstEPS projects concerns the differences between old and new member states as well as between the new member states. So far, most of the public research has focused on the EU-15 and has not analysed debates in the countries of Central and Eastern Europe. The generally lower level of public debate about the TCE, its elitist bias with a strong dependence on individual political actors or commentators, the lack of linkage between foreign and domestic news coverage indicates that the context variable for media coverage of the EU in the new member states are quite different from

those in the EU-15. In this context, I would argue that the Czech is the exception rather than the rule.

One important factor to explain the relatively low-key and elitist bias is that EU-related news until 2004 was narrowly focused on the issue of each country's accession to the EU, meaning either a highly technical and direct focus on the implications of adopting the acquis and meeting EU demands with the consensual normative frame of wanting to belong to the European family again by joining the EU (however misguided this idea). The linkage between accession and the TCE debates was noted by a number of papers. Looking more generally closely at the role of the news media in the new member states, a study by Sophie Lecheler of Brussels Correspondents from New Member States (Lecheler, 2006) shows how a combination of resource scarcity, limitations of space, and low levels of knowledge among copy-editors and readership impede a continuous and detailed coverage of the EU considerably more than for journalists from the EU-15. The audience/readership in the new EU-12 has generally very little interest in questions of institutional design and European identity, a regular topic for the German, French and British quality press, but is considerably more focused on bread-and-butter issues with direct effect. The legacy of the media coverage of the accession process is thus that there was a low level of awareness about the scope of EU activity and its identity dimension. Journalists found it hard to explain how the TCE issue was different from the debate about accession.

Moreover, the media structure in new member states and journalistic training and standards are some ways still in the process of transition in many of the newly acceded countries. There are relatively fewer national quality papers and public broadcasters, which are known to carry more and better EU news. Instead the media landscape is characterised by intense and relatively fluent competition, driven in part by foreign owners' narrowly commercial interests, and high levels of dependency among the younger journalists on post-communist journalists turned proprietors. Moreover, the post-1990s generation is more involved in news production, whereas the older generation is often setting the tone of commentaries and analysis without knowing much about how the EU works. The Polish paper notes a number of inaccuracies and distortions in analytical and commentary pieces, which reveal not only a strong Eurosceptic bias but also unusual levels of ignorance even for UK standards (Wyrozumska, forthcoming). Even though and perhaps because public opinion in many of the new EU-12 has been broadly supportive of the TCE and links it logically to having said yet to accession, there has been relatively little debate, except for the Czech

case. Hence, the news media in the new EU-12 appear badly equipped, both in terms of resources, expertise and journalistic norms, to interpret a complex issue such as the TCE in terms of what the different parts and provisions really mean and what is genuinely new rather than just reformulated or renumbered.

Ironically, this may have worked to the advantage of TCE supporters. Despite a lack of information and opinion formation, public opinion here is still prepared to give the EU the benefit of the doubt. This is in marked contrast to the Netherlands, for instance, where the lack of information about the issues at stake in the referendum was the most important reason for those who voted No according to the post-referendum opinion poll (Eurobarometer, 2005a). The lack of information is by no means new in the history of European integration, but mediatisation and politicisation mean that the Lindberg's permissive consensus has been eroded in the EU-15 at a much faster pace than in the newly acceding member states: The principle of 'When in doubt, say No' can be expected to spread to the new EU-12 in the coming years as there is no reason to expect them to be isolated from the mediatisation and politicisation trends so prevalent in the old member states. The swing may be even more violent and rapid than in the old member states given the problems regarding the aforementioned factors affecting the quality, diversity and continuity of EU coverage in these states.

### ***Learning lessons for the future of the TCE: Business-as-Usual, Re-launch or Revolution?***

What can the findings of public sphere research in general and ConstEPS in particular tell us about the future of the TCE? At first glance, one could question whether there is any significance whatsoever. The history of European integration is replete with crises, false starts, and temporary paralysis after governments' had cast vetoes and negative referenda had blocked the ratification of Treaty amendments. So, one could argue that the crisis-rhetoric is overdrawn and one could go back to 'integration business as usual', i.e. wait for economic and political circumstances to change, add-in a few symbolic compromises to the text of the TCE and give the French and Dutch an opportunity to change their views just as the Irish and Danish have done in the past. However, the clear No votes by two rather large and traditionally quite Europhile electorates indicates that business-as-usual will not work. More importantly, media content and public opinion research suggests that the current crisis is related to the maturation of long-term trends of what I call asynchronous

mediatisation and politicisation of EU politics, rather than one-off events that could be explained with reference to situational factors and peculiarities of each case.

Despite strong arguments to differentiate between both cases, particularly regarding the intensity with which the debate was conducted (high in France, little and late in the Netherlands), the post-referendum analysis by the Commission's Eurobarometer series also suggests that there is an important commonality (Eurobarometer, 2005a; b): Few of the citizens were motivated by concerns related to any particular provisions of the constitution, but were concerned by Eurosceptic macro-issues such as in the Netherlands (loss of sovereignty, identity) or indeed the neo-liberal bias of European integration in general (the Left in France). Both of these issues are long-standing in nature since the Single European Act and Maastricht were in no significant way altered by the TCE. Neither did the provisions of the TCE affect in a significant way the distribution of competences, the decision-making rules or the scope and goals of socio-economic policies. Other particular concerns in the referendum campaigns in the Netherlands and France were more specific, but also retrospective in nature such as the questions of CEEC Enlargement, Turkey's candidate status and the joining of EMU (at too high an exchange-rate, NL). In a rare feat of successful scientific prediction Claes de Vreese argued that citizens would reject the Treaty if there were high levels of anti-immigration sentiments, pessimistic economic out-looks, and/or unpopularity of a government (De Vreese, 2004).

One way of interpreting these findings is that the content of the Constitutional Treaty and possibly even any conceivable constitution do not really matter currently for understanding public debates and referendum outcomes concerning it. The debates are easily high-jacked by, I would argue, the dead-weight of the integration Past and multiple dissatisfactions of the Present. I would thus interpret the debates and referendum outcomes in France and the Netherlands at least in part as an opportunity for citizens to express their dissatisfaction about past Treaty amendments and the way in which they were passed with little visibility and domestic consultation in most member states (except in Britain where the EU has been politicised for a long time). As argued above, the asynchronicity of European integration and public debate has led with some delay to a mediatisation and politicisation of European politics as witnessed in the empirical evidence of vertical Europeanization of media discourse. The increase in 'monitoring European governance' (Sifft, et al., 2007) has contributed to eroding the permissive consensus on European integration and has given way to a wide-spread lack of trust among the EU-15 in political elites as far as European integration is concerned. Hence, 'when in doubt say "No"'. This means also that

‘constructive ambiguity’ inherent in EU primary law and declaratory politics, which has often paved the way for compromises in the past does not work any longer. Ambiguous and multiple-use hybrids such as the TCE do not sell in referenda. Only if the TCE had a clear identity and unique marketing point would it be possible to communicate it effectively. The dilemma is that such a document is increasingly difficult to agree on in a Union of the 27. Hence the appeal of Sarkozy’s proposal to depoliticise the process and go back to a mini-Treaty comprising the generally accepted provisions.

The second important finding of public sphere research relates to the limitations of horizontal Europeanization. While the ConstEPS project does show that there is observation of foreign speakers, it’s the political context and incentives for such observations, which is decisive. There was relatively little cross-national debate before the French referendum campaign started and public opinion began to shift. The intense observation of foreign speakers in other countries is only logical given that the TCE can only come into force if all countries ratify. The public debates in France themselves were hardly an example of embeddedness in transnational debates (Maatsch, forthcoming). Hence, it seems clear that the deficits with regard to horizontal Europeanization, in particular affecting the larger EU countries hinders citizens from seeing the shortcomings of their own government’s performance in terms of negotiated outcomes in a comparative perspective and thus better understand how certain EU decisions and in particular Treaty amendments are compromises and are necessarily not in all respects beneficial to everyone involved (Kurpas, et al., 2005). The negative reaction in many of the new member states to the French No only underlines the strong perception that the TCE should not be seen as a solely national affair and that French voters can be accused to that extent for acting selfishly. As long as national events with a European dimension are covered by the media in this way, national referenda on EU Treaty amendments will become increasingly difficult to win, especially in a European Union of 27 at a time when the most Eurosceptic countries had not even voted on the TCE. European public sphere research shows that media coverage often follows opportunities to make political choices and that referenda are much more intensely covered than parliamentary ratifications of Treaty amendments, and for that matter, European Parliament elections.

What can we learn for the future of the TCE? There are, as always short, medium and long-term recommendations. The short-term realistic one is that under the current conditions a re-launch attempt, even for an in multiple ways improved constitutional treaty is futile. If one worries about the legitimacy of the EU, one should concentrate on helping

it contribute to the solution of problems, i.e. focus on improving its output-legitimacy. In so far as this arguable requires a reform of the cumbersome and veto-prone Nice voting rules, a de-politicised Treaty amendment with standard parliamentary ratification should be pursued. It could bring in the TCE solution to reforming QMV as well as new provisions for flexible integration and pioneer-groups. In order to avoid the charge of circumventing citizens will (which is somewhat spurious given that only two-out of 27 countries have said No), one should avoid the temptation of extending QMV to new policy areas or bringing in the Charter of Fundamental Rights. What one could do, however, is using the Treaty amendment to provide more opportunities for citizens to express their views on European issues in order to avoid the 'fait accompli-syndrome' and allow for the personalisation of EP elections (with candidates standing for Commission president) and the Europeanization of national elections. One would also need to rethink the conditions under which the EP could be given the right of legislative initiative as well as allowing for European-wide referenda on carefully defined issues or in response to high-threshold citizens petitions. This would in the medium term ease the pressure on Treaty/constitution referenda to be turned into scapegoats for the sins of the past. In the long-term, the European Union and its citizens do need and deserve a constitution. However, such a document should not be a hybrid such as the TCE but in all respects significant respects a constitution with strong-selling points, including possibly direct elections of the Commission President. In order to stimulate serious and cross-national debates the rules need to be changed in at least two-ways. First, the Referenda need to be held at the same time and supported by cross-national campaigning platforms/structures (Meyer, 2005b), and second, a super-QMV needs to be introduced as suggested by Andrew Duff (Kurpas and Micossi 2007: 6), together with credible and workable options for those countries who say 'No'.

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