

The European Union: Rhetoric and Reality

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You will find that I am less enthusiastic about encouraging democratic participation and deliberation than my colleagues, particularly Professor Føllesdal. As I have chosen a more populist mode of presentation today, I hope I don't insult anybody's intelligence by summarizing academic research in a relatively non-academic way.

I will pose the question and I would like to start by responding very briefly to what my distinguished colleague said. I will address the question that Jo Shaw raised about what we can learn from the failure of the European constitutional project in a sense of the explicit constitutional treaty. But I think there are serious things that scholars, not just of law and political philosophy but also political science, can bring to bear on this question of what we can learn from the constitutional project, and it is in that vein that I analyze it.

Professor Shaw referred to unnamed people who might take what she called an unconstructive view of the failure, saying "it was a narrow escape" and "I told you so." I do say both of those things, but the essential argument is this that whereas it is true that most of us would I think support the substantive content of changes in the constitution – at least I would and I think my colleagues do. The changes are modest but I think that they are by and large good. The constitution was not primarily about substantive content, in fact its substantive content was modest. The constitution was about political legitimation. It was a different strategy to try to legitimate the European Union, or if you want to be vulgar about it, it was a strategy of public relations and it was a strategy to make the European Union and its reforms more popular, more politically palatable. In that sense and with regard to that goal the constitutional project failed utterly. I think we can learn lessons from this failure about what is possible in terms of democratising international institutions in general in the EU in particular.

I do think we can and are ensured to go back to the more elite-driven process that we had before. If we can't go back to a more elite-driven traditional EU process then we have to live with what we have got now without substantial democratisation, because democratisation will a) make the situation worse; and b) is normatively not justifiable in this case. My aim is to make that into a constructive view by outlining a different perspective of what we learn here. This view is based on a fundamental difference with Professor Føllesdal to some extent on how to assess political institutions. The primary purpose of a modern constitution, it seems to me, is to reach a reasoned and normatively justifiable judgment about what things should be subject to direct political participation and deliberation and what things should not. Not since the ancient Greeks has anybody even pretended to assert that all things should be discussed in common participatory fora, and even then surely they were not. Modern political systems certainly do not do this, and many things are exempted from direct participation, ranging from human rights to trade policy, diverse regulatory issues, the things that involve experts and there are many reasons why this is so.

The criterion, and here I will quote Andreas Føllesdal to try to establish some grade of agreement, is whether or not a given constitution “remains responsive to the best interests of citizens” – now there are three words that are important there, (1) *responsive*, it is a representative institution and it represents interest, (2) *the best interest*, it doesn't represent all interests at all times but only those that the constitution-makers would deem to be those that are normatively justifiable of being represented, and that is a difficult and complex judgment and (3) *citizens*. It is in the final analysis what people want, the best things that they want, that the constitution is designed to create, and I think the current EU system is more capable of meeting that standard than any more participatory or more democratic system that has been proposed. Primarily not because the issues are technical or that experts have to deal with them or they are things like human rights that we traditionally give to courts or because it involves central banking and things like that. All those things are true, but it's not the core argument. The core reason is because in certain areas and particularly in its relationship to various biases and tendencies in domestic policies the EU will be more representative of European interests if it is less democratic. *More representative because it is less democratic* it is this paradox that I want to explore. I will in the following address the general topic of the conference, which is the possibilities and limits of the EU and then its democratic legitimacy, because I think the two questions are very closely connected.

The starting point for understanding the constitutional process in Europe is to understand that there is a rhetorical gap in Europe, an existent 50 year rhetorical gap. In Brussels people don't say what they do, instead they offer an idealistic justification for things and that's what the constitutional process was about. It was the process of selling the EU as a grand constitutional project. Very explicitly from Joscha Fischer through to the very end, the strategy was that if you appeal to people with this grand constitutional rhetoric and with the rhetoric of democracy they will like Europe better, they will generate political support and the EU will be more legitimate. And this results in a perpetual overselling of Europe. People constantly, and particularly those who are in the European

business, are pressing for more centralisation of policy in Europe. They tend to sell Europe in terms of these grand idealistic goals rather than in terms of pragmatic results. The result of that, paradoxically, is disappointment and fear. The rhetoric of European integration is constantly a rhetoric of disappointment, of things that should have happened, that could have happened, that might happen and didn't, and that is where we are right now, where people have an idea in their mind, at least those people who work in the area of Europe have an idea and they feel disappointed that it was not achieved.

The moment that something like the constitution doesn't work out people immediately start talking about the collapse and dissolution of the European Union and they wring their hands in Brussels international capital about this. The idea is that it is a permanent setback to the European process when something like this happens, because it is constantly being judged against this idea of an ever closer union to a state. So in an odd sense, even though if you talk to anybody, they will all say, "oh, we don't believe in the United States of Europe", but most people who are in the European business act as if they believe in the United States of Europe in the sense that they are rarely prepared to oppose outright efforts to promote greater centralization of power and they focus disproportionately on those areas where they wish there were greater cooperation. That's not true and increasingly untrue of all scholars, but it is surprisingly true of practitioners particularly the kind of people who were involved in promoting the constitutional project.

I want to argue, in contrast, that what exists today in Europe is not a frustrated movement toward an ever closer union, but in fact a stable European constitutional settlement, a stable arrangement with integrity that in fact defines a certain relationship between Europe and the member states. Furthermore, I want to argue that that current compromise is *effective, stable, and legitimate*. It is actually better in many respects normally (XX normatively? XX) and more positive than the alternatives. But it is only effective in those things that it currently does or with incremental movement in areas like justice and home affairs, and those areas are largely at home, managing socioeconomic interdependence and that would include to a certain extent immigration, although I hear that that function remains largely national, particularly important with regard to third country known as island immigration, which is what the political issue is really about. So only in these areas at home and abroad – in projecting civilian power globally – do we have Europe's comparative advantage in international politics. I want to argue that viewed against the baseline of the existing stable, effective and legitimate European constitutional settlement, European democracy, a greater participation in democracy would be counterproductive from the point of view of representing the best interests of European citizens.

The European Union is currently not a failure or something that is headed for failure, but it is in fact a remarkable and stable success. One needs to take a very broad historical perspective and ask what has been achieved in the broader scheme of things. First of all policy; a lot of numbers are thrown around regarding the share of EU policy-making, estimates up towards 80 per cent are based on misquotations of people who didn't say what they were said to have said. The right number is something in the order of 15-20 per cent of the rule-

making of all kinds, including budgetary, goes through the European Union. So it is a minority share, but it is a very important one, and it's overwhelmingly focussed in the areas of the customs union and trade policy, regulatory policies the monetary union and for a certain amount of foreign and internal security policies.

Secondly, although it is politically controversial, it's in some way natural or not so surprising that the European Union has been able to enlarge from six to fifteen to twenty-five. In world historical perspective I think this is actually quite extraordinary. If the American President were to come back to Washington from a meeting with for example the President of Mexico and said, well we just would like to run a few institutions jointly. Let's choose the Supreme Court and the Federal Reserve and the department of agriculture and any trust division of the justice department, the President would be impeached instantly. If we said we were going to float 8 per cent of Mexican GDP for a decade, as was done for Portugal, the President would be impeached instantly. The idea that one would expand a well-functioning institution to states, which are less than long-term democracies is really quite striking, and it shows the multicultural and geographical attractiveness of the European project.

Thirdly there are the institutions and it is striking and unique internationally that the EU has things that look very much like a Supreme Court and an elected Parliament, a Central Bank and so on, and finally – and this I really want to impress upon people, because it is important – when we want to think about why we should be satisfied with a status quo; This is an institution of world historical importance. It's older than most nation states in the world, and certainly older than most democracies. It's the only successful new form of macro-governance to emerge in a hundred years since the rise of the social welfare state by Bismarck in Germany. Fascism rose and fell, communism rose and fell, but the EU is something distinctively new, a new way of structuring power though it is made up of elements that we know, and it is the only successful innovation of its kind in a hundred years. Even if you take a more modest view of it, it is certainly the most successful and ambitious international organization in history. The EU has achieved all this and I think most people would agree that it's stable, nobody is going to reject it, and nobody is going to pull out because the economic cost above all is prohibitive of doing so. You can argue about whether Italy will be in the monetary union in ten years, but you can't argue about whether it is going to be in the customs union or in the regulatory co-operation. It is increasingly clear from enlargement that outsiders have no alternative. This is the game in town and it's a relatively effective one.

Why did the new constitution fail, particularly when this constitution didn't have a whole lot of new content in it and was largely ratifying the status quo? If everything is so wonderful, and so modest, then why is it that the constitutional project failed? The first thing to notice is that the new constitution didn't pass but that this doesn't matter very much. People were faced with the choice between the status quo and the status quo; the status quo in one symbolic garb and the status quo in another symbolic garb.

My own view is that if you said in 1998, 2000 or 2002 that our political goal is to establish a European Foreign Minister, a shift in voting ways, and a modest

expansion of parliamentary powers, and a little reform of the Commission, and we have five years to do it, then you could have done it. It's not such a monumentally large agenda despite the difficulties of Amsterdam and Nice, but certainly it doesn't amount to a whole lot. What this suggests is in fact that the system is already substantively stable even though those people who are making idealistic proposals don't propose major substantive change. In other words, there is no *grand projet*, as the French would say, for Europe.

Social policy is a joke in Europe and I think it should be acknowledged as such. Pensions, healthcare, etc. are also in the future going to be dealt with domestically. Taxing and spending is 98 % domestic in Europe and is going to stay that way for the foreseeable future. Economic reforms, as everybody from the social democrats to the liberals now agrees, needs to be done nation by nation. A CAP reform is something that will emerge but only by very tough bargaining over a long period of time. Defence and foreign policy moves forward incrementally in important ways but not in ways that have a great constitutional significance. Ditto I would argue with immigration policy, which I think is the most interesting area constitutionally. And I would agree with Professor Shaw, that human rights are how we deal with individual rights and Justice and Home Affairs.

The difference between the constitution and any other major effort to reform the EU in history is that it had no basic *grand projet*, it had no substance of content, and that is of considerable significance if you are judging how stable the organisation is, whether there is this constitutional settlement. I would also say that the strongest argument for constitutional reform, and the one that Joschka Fischer would make, is that it was most important for foreign policy making in the EU. The areas in which it has a comparative advantage vis-à-vis the United States are actually in those areas it already controls. Things like enlargement of the European Union are, without a doubt, the single most cost-effective instrument for promoting peace and security in the post cold war world. Just compare it to the American blundering around for 1.5 trillion dollars worth of military goods in Iraq to try to generate regime change. Real regime changes are the kind of things you see in Eastern Europe, and you could see in Turkey if the political consensus were there. I think Americans would actually respect Europeans more if they just came out and said that, rather than pretending oddly as if having military forces as robust as those of the United States is the way that they generate respect in the world today.

Dr. Hallstein's metaphor was always the so-called "bicycle theory", if the EU doesn't keep moving forward toward an ever closer union you fall off the bicycle. My view, stolen shamelessly from the Economist, is: No, it's a tricycle! You can just stop wherever you want to, and in fact, constitutional engineering in a sophisticated way is about the side-end where you stop in that sense.

I will now turn to the argument that the European Union is bad because it is not under democratic control, because it is a technocracy. This starts to engage the issues that Professor Føllesdal raised. The first thing to notice about EU is that it is not a superstate, which it is often claimed to be. Compared to the US federal government, which is by Swedish standards hardly a centralized government at all, but it is still responsible for 70 % of public spending in the United States. The EU is responsible for 2 % of European public spending, and

it is not going to increase in the immediate future. Civilian employees – forget about the American army for the moment – there are two million five hundred thousand of them in the US, there are ten to thirty thousand of them in Europe depending on whether you want to count all those translators and chauffeurs and the people that take the files back and forth between Strasbourg and Brussels. Active military in the US is 1.5 million, EU has none, but they may get up to 60,000 if the optimists are right, which still isn't 1.5 million. The potential military then would only be 2 % of European (XX US? XX) military, and you can compare the federal judiciary just to satisfy people like Professor Shaw, who might say, yes, but the real power with the EU lies in its legal structure, but even there the US federal government really has a lot more clout.

The EU is not some kind of superstate out of control, it's really a very limited form of government. I have always in debates with my British counterparts pointed out, that they should love the European Union because it is a lacking and limited government almost to a perfect extent. Then you might say from the Swedish point of view or from Professor Føllesdal's point of view, yes, but it's not really under the kind of deliberative participatory democratic control that we expect of governments in the world today. I think that is really an uncharitable reading of what goes on in the EU. The dominant institution in the EU is the European Council, and the Council of Ministers. Those bodies are made up of directly (XX indirectly? XX) elected ministers and all you have to do is to go through the decisions and see how they vote to see how tight their political control actually is. It is very transparent and not very corrupt.

I did meet the former Swedish commissioner, Anita Gradin, who took out Edith Cresson. Edith Cresson is a great example of how corruption can't survive in the European Union. This is a woman who was corrupt as Prime Minister of France even by French standards, which is saying something, and she comes to the EU and she does something tiny – she gives a small contract to some hometown person, who is not quite qualified. The Swedish commissioner takes her out just like that, because this system has so many pressure points and it is so transparent that you just can't get away with that kind of thing. There is also not very much money, which makes it easier not to be corrupt.

There are checks and balances between different branches of government. And finally, there is domestic implementation. If you only have ten thousand officials then you are not going to implement your own regulations. They are implemented by national governments and they are under the same democratic control they would be if it were national legislation. So national control is strong. Finally, if the EU is, as I have argued, stable, effective, under abstract democratic control – why do not the people like the EU? This perception is based almost entirely on events like the recent referenda in France and in the Netherlands. People say “look, when you give these people a chance to vote, they vote it down, they aren't happy with what the EU is doing”.

I think this is extremely misleading leaving aside the fact that there wasn't very much substance of content to the constitution, so it is very unclear what people were voting on. The differences are more fundamental. First of all, voting in the referenda was not a response to EU policy. Citizens, when you actually poll them, are relatively satisfied with the scope of EU policy-making today.

They want to see a little more foreign policy, a little less of this or that but they are either happy with it or they don't care. The constitutional provisions *per se* like the Foreign Minister were popular. The EU doesn't undermine social protection or expand immigration to an unappreciable degree. There is complete agreement in the literature on social policy in Europe that the binding constraints in social policy provision are demographic, fiscal, and political. Criticism of enlargement is a little more important, but most of it had to do with Turkey, which is not going to happen for twenty years and it is going to happen under terms, no free movement of people that violate the rhetoric of most of the people that opposed the constitutional background in the Netherlands and in France.

But most importantly, if you poll people, and this is not true of Sweden, but it is interestingly true in most European countries; EU institutions are more popular – and this is important because Professor Føllesdal stressed the word “trust” – and more trusted than national governmental institutions. But that might not be true of Sweden, so some countries might not be as comfortable with this as others. However, for the most part the EU is actually an improvement in trust in government for Europeans, and that is a documented empirical fact.

Secondly, most voters were not concerned about EU policy, they were concerned about national policy. They don't like national unemployment and social welfare cuts. They protest violently against incumbent governments, and they are concerned about national third country immigration policies. They took it out on the EU, because they couldn't figure out what the constitution was about, because it wasn't about anything substantive. But that is not a reason for us as people, who are trying to reach an enlightened judgement about the EU, to follow them in doing that.

Now, here is the most important point and the point that I stress in the recent articles that I have written, and that is *democratic reform can't create public support or public legitimacy* even if you tried it. There are a number of reasons for this, and the most important ones are three:

1) Government is generally unpopular these days.

The problem is not that the EU is unpopular it's that the government is unpopular.

2) Participation does not generate public trust.

It is one of those things that we believe in, in a naïve sort of way that institutions in which we participate like parliaments or elections are more popular than those in which we don't, like courts or the army or the executive bureaucracy, but that is statistically untrue in almost every Western democracy. In fact, it is the less participatory institutions that are more popular. You will not make the EU more popular by making it more participatory and you won't make it more trusted. Both of those things are very closely polled, and it is very consistent across people. And the final and most important reason is that:

3) EU issues are not salient in the minds of voters, and therefore *cannot* play a major electoral role.

I am not saying that EU issues are technical or that it is a good thing that people don't care about them or anything like that, I am saying that the average voters can keep in their head at any given point in time about 1.5-1.8 issues. There are different sub-sectors of the population that keep different issues in their mind and it adds up to 3 or 4 in any given election cycle. Of those three or four issues, the important ones are taxing and spending, social welfare provision, education, infrastructure, pensions, healthcare and things like that and none of those are EU issues.

If you look at a recent symposium and one of my articles on this, published on the European Voice.com website, there are a couple of people that work on elections whose verdict is that it is completely absurd to think that you could have an educated debate about the kind of issues that the EU deals with. The reason is not because people wouldn't educate themselves, but that they don't have any incentive to do so given the very low level of salience of these issues. The structure of the Bosnian stabilization force and things like that are not major issues. Even for a major, politicised EU issue like the Services Directive, the democratic procedures in the EU work and even *that* is not a first rank electoral issue. So opening up the EU to electoral competition will simply *not* generate the kind of voter education and attention that Professor Føllesdal wants it to have.

A summary of the European referendum voter is that he first of all is angry at politics generally. He takes it out on the EU and when you force that person to address EU issues – you say that you can't get upset about third country immigration policies, or social welfare policies, focus on the EU – he falls asleep. And this is an inherent fact, it cannot be changed, unless you were to move social welfare and all these other policies into the EU, which some people have proposed as a way of generating deliberative democracy. But I think that puts the cart before the horse. It's insane to move issues that should not be in the EU into the EU just to have a better democratic debate.

My bottom line is that this is not a failure of Europe. Europe is successful in its traditional strategy and its political legitimacy is surprisingly successful. It is a failure of the rhetoric of Europe. It is a failure about how we think about Europe and how we try to legitimate it. This leads to the one thing that bothers me most about voting down the constitution and that was the political rhetoric. You tried to shift from a model for Europe as an "Ever closer union", which I think if there is a stable, effective, legitimate European constitution settlement is no longer a useful slogan for Europe – it has a kind of 1950s technocratic feel to it – and you try to replace it with "Unity in diversity" and this I like.

I think this does reflect the fact that what is in place is a constitutional compromise, a constitutional settlement, and I think we should defend it!