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Conclusions: Comparative Federalism and the Constitutional Treaty

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This volume has drawn on the experience of some prominent federal and confederal systems in order to shed light on the transformations of the EU that may be brought about by the Constitutional Treaty signed in October 2004. This concluding article will focus on some key points that emerge from the case studies and offer some comparative reflections applied to the European Union. Four broad issues appear to have a particularly strong bearing on the evolution of the EU. The first is naturally the significance of the Constitutional Treaty itself, and the impact it is likely to have on the nature of the EU's political system. Secondly, there are questions of how the division of policy-making competences is likely to evolve and whether a dual or a cooperative form of con/federalism is taking root. Here the evolving role of subsidiarity may be important, as several of the authors in this volume have suggested. Thirdly, how will dispute resolution between the two main levels of the EU system be managed and, in particular, is the balance between the judicial and the political elements likely to be altered? Lastly, how will the changing nature of the EU affect the practice of democracy in, and popular identification with, the Union, and what role will be played by the evolution of collective identification with the individual European nations and with Europe as a whole? The following sections address each of these issues in turn. In conclusion, I offer some reflections on the ratification process.

KEY WORDS: EU, future of Europe, Constitutional Treaty, federalism, division of competences

The Constitutional Treaty and the Nature of the European Union

The debate on the constitutionalization of the European Union was not born with the European Convention and the adoption of the Constitutional Treaty. It already has a respectable pedigree in the field of political and legal studies of the EU, comprising two main themes. First, many legal scholars have persuasively argued that over time

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the EU treaties have undergone a process of constitutionalization – mainly through rulings of the European Court of Justice (ECJ) – that have transformed a set of treaties into a quasi-constitutional document and in turn transformed the EU into a jurisdiction in its own right based on a distinctive legal order.¹ Secondly, a normative debate has emerged over whether the EU should adopt a constitution so as to give a ‘proper’ legal framework to an entity that has turned into a highly developed political system (Grimm, 1995; Habermas, 2001).

With the latter debate in the background, what is the significance of this Constitutional Treaty and of the ‘constitutional discourse’ it has generated in the EU? The Convention method certainly represents a break with the traditional Intergovernmental Conferences, and the debate around the ‘Constitution’ may have generated a degree of pan-European public debate, at least at the elite level (Shaw *et al.*, 2003). The most intense constitutional debate is still to come, most notably in those states that have chosen to ratify the treaty by referendum, and the impact is likely to be significant. Moreover, the Constitutional Treaty will certainly deepen that process of ‘constitutionalization’ mentioned above, thanks to the way it was drafted and its very name, if not by virtue of its provisions. The fact that an unprecedented proportion of states are likely to use referendums to ratify it, further suggests that the treaty is perceived as qualitatively different from its predecessors. But in other ways, the document falls short of being a European constitution. As is evidenced by the provisions for ratification – unanimity in the IGC negotiations and separate ratification in the 25 states, each of which must vote in favour – it is still a treaty between states and not a supreme law adopted by a self-governing European *demos*. Thus, the failure of one or more states to ratify the treaty will present a key test of this process of constitutionalization.

The process of constitutionalization has already deeply transformed the EU from its birth as the European Coal and Steel Community. Is the EU now on the verge of becoming a federal state, under the Constitutional Treaty? The Swiss and American experiences, in different ways, show that the answer to this question may not always be unambiguous. Switzerland’s transition from a confederation of states to a federal state was not initially entirely clear-cut and a number of legacies of the past have remained well into the twentieth century. In the early US, as Delaney shows (this volume, p.), a great deal of ambiguity and conflict as to the meaning of the ‘original pact’ was not fully clarified until after the 1861–65 civil war. Baier argues that by the very fact of using constitutional language, the Constitutional Treaty moves Europe in a more federal direction. And yet, while this is largely true, there appears to be consensus among the contributors that the treaty will still fall short of turning the EU into a federal state. As Hable points out, the treaty does not make substantial constitutional changes to the nature of the EU. Indeed, if the expression had not effectively been discredited by partisan usage in the UK, it would be tempting to conclude that the treaty is indeed an exercise of constitutional ‘tidying up’. In any case, if it does not make the EU a federal state, it will strengthen certain federal elements. The EU is likely to continue to face pressures for further integration, but it is likely to proceed in its traditional piecemeal fashion, thus avoiding a ‘big-bang’ transformation into a fully-fledged federation, at least for the foreseeable future. Paradoxically, if the EU fails to transform itself into a federal state, the creeping centralization noted by many authors, coupled with an obfuscation of the lines of responsibility and

accountability is likely to continue as the member states seek to preserve the vestiges of state sovereignty. While nationalists will welcome this, democrats have reasons to be worried, as discussed in more detail below.

The ability of the EU's constitutional architecture to adapt to these pressures will be important. Journalistic commentaries on the Convention process and the Constitutional treaty, especially in the UK, have often compared the European experience unfavourably with the American one. From a pragmatic point of view, however, the fact that this constitution is unlikely to achieve iconic status may well turn out to be a blessing for the EU, as constitutional amendments and adaptation to changing circumstances may well be easier to accomplish if the constitutional charter is not 'sanctified'. It is true that many federal states, including Canada, Germany and the US, have evolved over decades or even centuries with their constitutional frameworks virtually unchanged. By contrast, Switzerland has seen frequent constitutional amendments and the adoption of two entirely new constitutions. The EU has been in a state of almost continuous constitutional change since 1986 and appears similar to the Swiss case in this regard. From his Belgian perspective, Wilfried Swenden (this volume, p.203) sees merits in this method of incremental transformation and piecemeal constitutional change, considering it better suited to a complex, multi-national political system such as the EU.

Much of the debate about federalism assumes statehood and yet, as Börzel makes clear, federalism is not necessarily wedded to statehood, and the EU need not be conceptualized using traditional state-centric categories (see also, Koslowski, 1999). This is certainly seductive at an abstract, quasi-normative level but appears to me to be more problematic from an empirical, positive standpoint. I would argue that any discussion of federalism in the context of the European Union cannot ignore statehood entirely for the obvious reason that the EU is composed of *states*, and not just any states but those states such as France that have historically defined what it is to be a state.

The Division of Competences and the Principle of Subsidiarity

One of the main tasks of the Convention, and indeed the challenge that inspired the workshop from which this volume originates, was to clarify the division of competences between the states and the Union. Judged against this yardstick, the Constitutional Treaty represents very little progress on the status quo ante. Despite early pressures in this direction by the German *Länder*, the Convention ruled out the adoption of a catalogue of competences so that the Treaty has largely left unaltered the division of competences (Börzel, this volume p.253).

Is this necessarily a negative outcome for the EU? Some authors, such as Swenden (2004), have argued against the adoption of a catalogue of competences for the EU. In this volume, both Baier and Church and Dardanelli show that federations have always been bedevilled by the necessity of adapting relatively rigid legal structures to the rapidly changing context in which they operate. Baier vividly points out that the founders of the Canadian federal state were unable to predict which areas of public policy would be crucial in the future and this ultimately led to a more decentralized system than originally envisaged: some marginal issues are now dealt with at the federal level while the provinces control crucial areas of policy-making. Moreover, the need to adapt to changing circumstances tends to lead to departures from the letter of the

constitution in the exercise of power and competences, and often to a wholesale blurring of the division of competences in the context of an increasingly cooperative system. In this light, the Convention's rejection of a catalogue of competences in favour of a relatively open distribution of responsibilities may be seen as a wise decision.

Furthermore, the possibility of reaching an 'ideal' distribution of competences by consensus is nothing more than an illusion. Most such attempts draw from the literature on fiscal federalism (e.g. Oates, 1999; Alesina and Wacziarg, 1999), which is largely economic in character. Yet, their economic approach ignores the profoundly political dimension of the allocation of policy-making competences. Hable refers to a recent example of the application of the theory of fiscal federalism to the division of powers in the EU which found agriculture and defence to be the two policy areas most out of line with the theory's predictions/prescriptions.⁴ Anyone familiar with the history of the EU, the distribution of preferences among its states and its decision-making rules, would scarcely be surprised to find that agriculture is dealt with at the central level while defence is decentralized in Europe. Closely related to this issue are those of fiscal harmonization and redistribution. The political nature of the debate is even more clearly on display here than in other policy areas. As indicated by the experiences on the one hand, of Germany and Canada – with extensive territorial re-distribution, and Switzerland and the US, with little or no territorial re-distribution – on the other, the conflict between advocates and opponents of significant fiscal powers and redistribution at the central level is in essence an intensely political conflict between equality on the one hand and freedom on the other. More equality between citizens across the federation almost inevitably implies less fiscal freedom for the component units, while the preservation of the latter almost invariably perpetuates inequalities. In the pluri-national context of the EU, of course, this conflict is further exacerbated by the desire to retain re-distribution and fiscal powers within national control as defining features of the nation state. Likewise, it could be argued that there is a strong theoretical rationale for running defence at the Union level, as the resulting economies of scale and of rationalization would enable the EU to enhance very significantly its military capabilities in relation to defence expenditures. However, for reasons of both substance and symbolism – ranging from different geopolitical objectives to the status of the national service – it has proved very difficult for the EU to make progress in this field.

At a theoretical level, different distributions of competences produce different models of federalism. As Börzel reminds us (this volume, p.248), two main types have been identified in the literature: dual and cooperative federalism. While in the former competences are allocated by policy sectors rather than policy function, in the latter the central level legislates and the regional level implements, and regional fiscal autonomy is limited. The pre-Civil War US and, to a lesser extent, Canada are the classical examples of dual federalism, whereas Germany is the paradigmatic model of cooperative federalism, with Switzerland also displaying many cooperative features but not fully fitting into either model. The distinction between the two types has become less clear-cut however, as dual systems have acquired cooperative features over time. In the light of this categorization, the EU can be defined as a largely cooperative system, in which the division of competences is primarily by policy function – legislation at the

Union level and implementation at the state and regional levels – and the states' involvement in policy-making at the central level is pervasive.

The exercise of policy-making competences by the Union thus remains based on the principle of conferral, i.e. that competences are conferred on the Union by its member states, which retain all powers not explicitly delegated to the Union. This is in line with the constitutional practice in Switzerland, Germany and the US, but not with Canada and Belgium where residual competences lie with central government. However, as Baier and Swenden show, the Canadian and Belgian constitutions spell out in detail the powers delegated to the provinces and the regions, giving them a constitutional guarantee. What sets the EU apart from the countries analysed in this volume, however, is the degree of asymmetry of the system, which is left largely unaltered by the Constitutional Treaty. While in these federations, with the partial exception of Belgium, all regional units have the same policy-making powers and are thus in the same relationship with the federal centre, this is not the case in the EU.

In considering the likely evolution of the division of competences in the EU under the Constitutional Treaty, the historical evolution of the main federations is instructive. Here the German (and, to a lesser extent, the Swiss) experience is one of slow but significant centralization over time, to the point where some question whether Germany has become a 'unitary state in disguise' (Abromeit, 1992). By contrast, as Baier shows in his contribution to this volume, Canada has largely resisted this shift of power to the federal level despite the centralist bias of the 1867 Constitutional Act and the fact that the federal level has retained control over the bulk of taxation. The different degrees of centralization in Germany and Switzerland on the one hand and Canada on the other appear closely related to the pattern of evolution of welfare policies in the three countries. While in the other federations, the shift of policy-making powers to the centre has gone hand-in-hand with the expansion of welfare programmes run at that level, this is less true of Canada where welfare policies have remained overwhelmingly in the hands of the provinces. In accounting for this Canadian exception, beyond the role played by the heterogeneity of preferences among the provinces, Baier argues that clarity of jurisdictions, based on the double listing of powers in the constitution, has been crucial. In contrast, strong identification with the federation has contributed to legitimating centralization in Germany, while the weakening of differences between cantons together with the flexibility of the constitution have permitted the limited amount of centralization seen in Switzerland.⁵

Both Börzel and Church and Dardanelli expect further centralization of power in the EU, albeit at a gradual and incremental pace. Börzel also argues that the current division of competences leaves the Union with a problem of 'output legitimacy' as well as of 'input legitimacy' – or the 'dual legitimacy problem'. The lack of output legitimacy is created by the absence of significant stabilization and redistribution policies at the Union level coupled with the constraints that other features of the EU system – chiefly state aid and budget deficit rules – place on state policies in these areas. The Constitutional Treaty's failure to confer taxation powers on the Union prevents it from engaging in substantial redistribution, which means, according to Börzel (this volume, p.254), that the EU's output legitimacy will remain deficient.

What are the lessons for the EU from these experiences, and can subsidiarity, as outlined in the Constitutional Treaty, play an important role in this context? Many

observers, especially in the UK, are more concerned with limiting the shift of powers from the states to the Union rather than increasing it. In this respect, the Constitutional Treaty's provisions related to subsidiarity may be significant, though it is unclear how effective national parliaments will be in policing subsidiarity, given their patchy record at overseeing European affairs thus far coupled with the problem of their general overload.⁶ The provisions of the Constitutional Treaty in the area of competence allocation and subsidiarity thus do not constitute a dramatic change for the EU, and their impact is likely to be limited.

Inter-governmental Relations and Dispute Resolution

Whatever the allocation of competences across the various levels of the EU political system, inter-governmental relations are a crucial aspect of governance in multi-level systems. Inter-governmental relations take place both vertically and horizontally. Vertical relations are also shaped by the form of bicameralism in a system and the overall nature of the representation of regional units at the federal level. While horizontal relations are usually conducted on the basis of equality of participants, vertical relations between the federal centre and regional units usually take on a hierarchical character both because of the widespread principle that federal law prevails over regional law and because of the usually greater resources at the disposal of the federal centre. Hence, vertical relations between levels of government typically generate jurisdictional conflicts that need to be resolved through various channels for the system to work effectively. Two broad types of dispute resolution mechanisms are usually distinguished in the literature: judicial and political. The former entrusts a judicial body, such as a constitutional court, with the power to rule on conflicts between the federation and regional units, while the latter relies on political mechanisms such as negotiations between executives and inter- or intra-party agreements.

If we contrast political and judicial safeguards, a number of delicate questions arise. Three are particularly relevant. Considering flexibility and adaptability first, political safeguards seem to be superior to judicial ones as they allow for negotiations, compromises and pragmatism to an extent that courts usually do not. Secondly, with regard to democratic safeguards, neither system seems to be unambiguously superior to the other since both may be argued to be democratically deficient, albeit for different reasons.⁷ One important aspect is that in the context of inter-governmental negotiations, the balance of power between the regions and the centre, and the relative size and power of the regions, are critical variables. Inter-governmental negotiations produce an asymmetrical pattern of influence which tends to favour the larger and more powerful regions, which may find themselves in a stronger position vis-à-vis the centre, and to disadvantage smaller and weaker regions. Under a judicial system, on the other hand, there is more symmetry and equality of protection but also greater rigidity and formalism. As Baier argues, political and judicial channels of conflict resolution exist in all systems – albeit in different combinations – and tensions between the two are inevitable, though complementarity and interchangeability usually prevail.

In all these respects, the countries reviewed here provide different models. As Baier shows, Canada has developed a very strong form of executive federalism where there is

little formal representation of the provinces through the upper chamber of the federal parliament, the judicial channel is also weak, and jurisdictional conflicts are regulated through inter-governmental negotiations between the provincial governments and the federal government. The executive nature of this system is further exacerbated by the Westminster form of government at both the federal and the provincial levels, which allows executives to dominate their respective parliaments. Swenden (this volume, p.191) argues that Belgium is also a case of political rather than judicial resolution of jurisdictional conflicts, though political parties rather than executives are the protagonists and agreements are thrashed out in inter-party and intra-party negotiations. The dissolution of state-wide parties has facilitated this process. Switzerland has also moved significantly towards a form of executive federalism. The traditional form of cantonal representation through the Council of States has become a weak form of representation, and executive channels linking cantonal executives with the Federal Council are increasingly important fora of policy-making and conflict resolution. In addition, the judicial channel is virtually absent in Switzerland. As was the case for many in the early US, any ultimate judicial authority on the constitution is still perceived in Switzerland as an infringement of the democratic rights of the sovereign people. However, in comparison to Canada, the drift towards executive federalism in Switzerland is tempered by the semi-presidential system of government⁸, which empowers parliaments at both the federal and the cantonal levels, and by the pervasive role of direct democracy. Germany provides an example of a balanced system where, on the one hand, vertical inter-governmental relations are extensively formalized through the crucial role of the Federal Council, while on the other the Constitutional Court is a powerful judicial umpire. Even more powerful, as Delaney shows, has been the Supreme Court in shaping US federalism, chiefly through access to the Court provided to individual litigants. Indeed, the US is the pre-eminent example of judicial regulation of inter-governmental relations.

Both political and judicial mechanisms of inter-governmental relations and dispute resolution are present in the EU. The EU appears to be an intermediate case where a strong judicial context effectively protects the small states but where large states have a disproportionate bargaining power vis-à-vis the centre in more political areas. The fate of the Growth and Stability Pact illustrates this quite well. The judicial dimension, however, has become very important in the EU, which makes the US experience all the more relevant for Europe. Although the ECJ has not been designated to perform the role of ultimate judicial arbiter, it effectively performs this role already, despite the fact that many policy areas are held 'concurrently' by the Union and the states which makes judicial policing of the division of competences rather difficult. Moreover, the ECJ provides interpretations of European law but relies on state courts for its implementation and, in contrast to the American experience, it has been the relationship with state courts rather than the relationship with individual litigants that has allowed the ECJ to impose its interpretation. In a similar fashion to the early US, however, the question of so-called *kompetenz-kompetenz* is still unresolved in the EU, caught between the central level's desire to ensure uniformity of the law and the states' determination to defend their sovereignty. Above all, in Delaney's words, there remains a 'fundamental disagreement over the meaning of the original political contract' (this volume, p.226).

How is the Constitutional Treaty going to affect this? On the one hand, it will expand the judicial sphere by bringing new areas under the remit of the ECJ and by giving legal force to the Charter of Fundamental Rights. The impact of the latter, in particular, will be crucial as it will affect the relationship between member state and Union fundamental rights. As Hable (this volume, p.148) argues, it is possible that applying the Charter will accelerate the ECJ's transformation into a fully-fledged constitutional court. At the very least, the balance between the political and the judicial channels of dispute regulation will be altered to the latter's advantage. However, the political dimension is likely to remain prevalent as the state constitutional courts will want to retain the ultimate authority to rule secondary European law *ultra vires* or in conflict with fundamental rights enshrined in a state's constitution. Moreover, as Delaney (this volume, p.235) argues, the manner in which the Constitutional Treaty is to be ratified will reinforce the states' claim to *kompetenz-kompetenz*. If the US experience is any guide for the EU, increased access to the ECJ for individual litigants may turn out to be a mixed blessing, as it could pit the Court against its counterparts at the national level, which enjoy far more power and legitimacy than the US state courts of the first half of the nineteenth century. In any case, as Baier argues, political channels of dispute resolution are highly effective in the EU, so the best option for the Union is to preserve them and complement them with a limited degree of judicial review rather than going down the road of a fully judicial model, not least because the Canadian experience shows that 'in the battle between political and judicial safeguards of federalism, the political safeguards tend to win out' (this volume, p.219).

Governance, Democracy and Identities

As Baier argues, executive federalism in Canada has long been criticized for its democratic deficit (this volume, p.210). Cooperative federalism has also been criticized for blurring the lines of responsibility and accountability between citizens and office-holders. As discussed above, the European Union has developed many features typical of both executive and cooperative federalism, which many authors believe have contributed to the so-called 'democratic deficit' in the EU.⁹ In this respect, Börzel expects the cooperative nature of the EU system to deepen, as further centralization of policy-making competences is likely to go hand in hand with continuing – if not deepening – state involvement in decision-making at the Union level. The Constitutional Treaty appears to confirm this interpretation, as it strengthens member states' involvement at the Union level – through the new office of president of the European Council – while leaving largely unaltered the division of competences between the two levels.

The main contribution of the Constitutional Treaty in terms of enhancing democracy in the EU appears to be strengthening the Parliament through extension of its involvement in policy-making, extension of the co-decision procedure and the granting of some control over the comitology system. Progress on simplification has been more limited, however. As Hable shows (this volume, p.150), while the Constitutional Treaty formally proposes to end the pillar system, the second pillar re-emerges through 'the back door'. Moreover, although there is a reduction in the number of legislative instruments, this improvement has been offset by the creation of a fixed-term president of the European Council and the 'double-hatted' Foreign Minister. Where

the Commission is concerned, the failure to make it genuinely elected by Parliament means that rather than choosing between the parliamentary and the presidential model, as debated in the literature,¹⁰ the Constitutional Treaty has maintained a middle way. Our set of case studies does not offer any clear guidance as far as executive-legislature relations are concerned, for each of the systems features a different model and none is clearly superior to the others. The model embodied in the Constitutional Treaty combines elements resembling features of the Swiss and the German systems. While the relationship between the Commission and Parliament mirrors to a significant extent that between the Federal Council and Parliament in Switzerland, the powerful role played by the Council of Ministers and the European Council echoes that of the Federal Council in Germany. The impact of the President of the European Council on the functioning of this system is difficult to predict, beyond the widespread fears of turf wars with the President of the Commission. In sum, in this area as well, the provisions of the Treaty are more a sign of continuity with the current system than an embrace of radical reforms.

The final point I would like to touch upon is the role of identities in shaping the mid- to long-term development of the European Union. Both Church and Dardanelli and Swenden stress the importance of identity factors in providing legitimacy to political systems. Swenden shows how the imposition of French as the only official language in Belgium eroded the legitimacy of the unitary Belgian state up to the post-First World War period, whereas the granting of full linguistic and cultural autonomy to Flanders has boosted support for the Belgian political system among Flemings in the more recent period. Church and Dardanelli (this volume, p.161) show that respect for minority languages is a key aspect of Swiss identity and a unifying factor for the country. Regarding the EU, Church and Dardanelli stress that further integration and *a fortiori* a transition to a federal state would only be legitimate if accompanied by a strengthening of popular identification with the EU, which seems unlikely in the absence of policies of explicit identity-building. Swenden summarizes one of the key dilemmas to be faced in relation to such policies: on the one hand, 'the entrenchment of national languages may prevent the emergence of a European demos' (this volume, p.189); on the other hand, preference for a single *lingua franca* could lead to resentment and a further erosion of the EU's legitimacy. The relationship between Quebec and the rest of Canada provides a clear example of the issues at stake. The pattern of collective identification in the EU is also linked to how public policy responsibilities are allocated across its various levels of government. As Swenden argues, the EU does not need as 'thick' an identification among citizens as do European national states as long as it does not engage in large-scale redistribution. It follows that a dramatic rise in the intensity of citizen identification with the EU political system would be required to legitimize the Union's acquisition of significant fiscal and redistributive powers, as many on the left advocate.

Final Remarks

Although it is not a revolutionary document, the Constitutional Treaty has the potential to profoundly shape the evolution of the European Union in the coming decades. The way it was drafted constitutes a significant innovation, and the final agreement

represents a remarkable achievement for the EU. Before it can acquire legal force, however, it has to clear the most difficult hurdle – ratification in all 25 states of the Union. Ratifying EU treaties has never been an easy process (remember Maastricht) and this time the task is more demanding than ever. Not only are there now 25 states but, at the time of writing, no fewer than ten have declared their intention to ratify the treaty by referendum. Among those states that have pledged to hold a referendum are some, such as the Netherlands, that have never held a referendum before, and others in which referendums are very rarely used, such as the UK, which makes managing campaigns and predicting outcomes a tall order. Strong undercurrents of Euroscepticism and anti-government feelings in a number of countries are likely to make the exercise all the more difficult. All those that believe this treaty, despite its shortcomings, represents progress for the EU should take part in this debate so as to make the decisions on ratification – be they parliamentary or popular – as enlightened as possible. In this context, we, as academics, have the professional duty to let our expert knowledge shed light on some of the most controversial issues in this debate. The comparative analyses of federal systems presented in this volume and these concluding notes have been drafted in this spirit of academic contribution to public debate. We hope readers will find them a valuable contribution.

Notes

¹See, among many others, Weiler (1999) and Delaney in this volume.

²See Breuss and Eller (2003).

³Here the focus is on ‘dynamic’ centralization over time, not ‘static’ centralization at the time of writing. By dynamic centralization I mean the extent to which powers have shifted from the regional to the federal level over time, while by static centralization I refer to the proportion of policy-making competences exercised at central level relative to the regional level at a given point in time. For instance, the former is greater in Switzerland than in Canada while the reverse is true of the latter.

⁴See Raunio (1999) and Holzhaecker (2002) on the difficulties national parliaments face in monitoring policy-making at the Union level and Vergés Bausili (2002) and Raunio (2004) for a discussion applied to the constitutional Treaty in particular.

⁵See Shapiro (1986) and Le Sueur (1991), among many others, on the debate on democracy and judicial review.

⁶See Lijphart (1999: 119) on the semi-presidential nature of Switzerland’s executive-legislature relations.

⁷The literature on democracy in the EU expands rapidly. See Andersen and Eliassen (1996) and Føllesdal and Koslowski (1998) for the standard ‘democratic deficit’ argument and Moravcsik (2002), Zweifel (2002) and Crombez (2003) for sceptical views.

⁸See, among others, Lord and Beetham (2001) and Hix et al. (2003) for the debate on parliamentarism and presidentialism in the EU.

References

- Abromeit, Heidrun (1992), *Der verkappte Einheitsstaat* (Opladen: Leske & Budrich).
 Alesina, Alberto and Wacziarg, Romain (1999), Is Europe Going Too Far? *Working Paper* 6883 (Washington, DC: National Bureau of Economic Research).
 Andersen, Svein and Eliassen, Kjell (eds) (1996), *The European Union: How Democratic is it?* (London: Sage).

- Bruss, Fritz and Eller, Markus (2003), *Efficiency and Federalism in the European Union – The Optimal Assignment of Policy Tasks to Different Levels of Government*. IEF Working Paper No.50 (Vienna: University of Economics and Business Administration).
- Crombez, Christophe (2003), The Democratic Deficit in the European Union – Much Ado About Nothing?, *European Union Politics*, 4(1), pp.101–20.
- Føllesdal, Andreas and Koslowski, Peter (eds) (1998), *Democracy and the European Union*. (Berlin: Springer).
- Grimm, Dieter (1995), Does Europe Need a Constitution?, *European Law Journal*, 1(3), pp.282–302.
- Hain, Peter (2003), The International Affairs Interview, *International Affairs*, 79(5), pp.951–61.
- Habermas, Jürgen (2001), Why Europe Needs a Constitution, *New Left Review*, 11, pp.5–26.
- Hix, Simon et al. (2003), *How to Choose the European Executive: A Counterfactual Analysis, 1979–1999*. Working Paper, London School of Economics, accessed at <http://personal.lse.ac.uk/HIX/Working%20Papers/HNR-How%20to%20Choose%20the%20EU%20Executive-June03.pdf>.
- Holzacker, Ronald (2002), National Parliamentary Scrutiny over EU Issues, *European Union Politics*, 3(4), pp.459–79.
- Keating, Michael (1998), What's Wrong with Asymmetrical Government?, *Regional and Federal Studies*, 8(1), pp.195–218.
- Koslowski, Ray (1999), A Constructivist Approach to Understand the European Union as a Federal Polity, *Journal of European Public Policy*, 6(4), pp.571–68.
- Le Sueur, Andrew (1991), The Judges and the Intention of Parliament: Is Judicial Review Undemocratic? *Parliamentary Affairs*, 44(3), pp.283–97.
- Lijphart, Arend (1999), *Patterns of Democracy* (New Haven, CT: Yale University Press).
- Lord, Christopher and David Beetham (2001), Legitimizing the EU: Is There a 'Post-Parliamentary Basis' for its Legitimation?, *Journal of Common Market Studies*, 39(3), pp.443–62.
- Moravcsik, Andrew (2002), In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union, *Journal of Common Market Studies*, 40(4), pp.603–24.
- Oates, Wallace (1999), An Essay on Fiscal Federalism, *Journal of Economic Literature*, 37(3), pp.1120–49.
- Raunio, Tapio (1999), Always One Step Behind? National Legislatures and the European Union, *Government and Opposition*, 34(2), pp.180–202.
- Raunio, Tapio (2004), Towards Tighter Scrutiny? National Legislatures in the EU Constitution. Constitutional Online Papers No. 16/04. London: The Federal Trust <http://www.fedtrust.co.uk/uploads/constitution/16-04.pdf>.
- Shapiro, Martin (1986), *Courts: a Comparative and Political Analysis*. (Chicago: University of Chicago Press).
- Shaw, Jo et al. (2003), *The Convention on the Future of Europe*. (London: The Federal Trust).
- Swenden, Wilfried (2004), Is the European Union in Need of a Competence Catalogue?, *Journal of Common Market Studies*, 42(2), pp.371–92.
- Tarlton, Charles (1965), Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation, *Journal of Politics*, 27(4), pp.861–74.
- Vergés Bausili, Anna (2002), Rethinking the Methods of Dividing and Exercising Powers in the EU: Reforming Subsidiarity and National Parliaments Jeon Monnet Working Paper 9/02, accessed at <http://www.jeonmonnetprogram.org/papers/02/020901.html>
- Weiler, Joseph (1999), *The Constitution of Europe* (Cambridge: Cambridge University Press).
- Zweifel, Thomas (2002), Who Is Without Sin Cast the First Stone: The EU's Democratic Deficit in Comparison, *Journal of European Public Policy*, 9(5), pp.812–40.