

Ideology and the Politics of Constitution Making: The Institutional Organization of the European Convention

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Abstract:

This study investigates the politics of constitution making through an analysis of the institutional organization of the European Union (EU) constitutional convention. Constitutional conventions resemble parliamentary bodies in terms of their institutional arrangements, and need to be studied with the same sensitivity that has been given to the study of legislatures. This study focuses on the role of committees in the EU Convention and their impact on the drafting process. Using new data on delegate positions in the Convention, I test two competing committee composition hypotheses, the outlier and representative committee hypothesis, with a Monte Carlo simulation technique. The four main results of this study are (1) that the political leadership of the European convention controlled to a large extent its institutional organization, (2) that committees were influential in the drafting process, (3) that there is stronger evidence for committee outliers than for representative committees, and (4) that the outlying committees were slanted to the left.

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1. Introduction

Drafting a constitution is a complex, often controversial, and highly consequential political process. Charged with drafting a constitution, constitutional conventions follow a set of rules to reach agreement over controversial issues. Such bodies resemble parliaments in terms of their institutional arrangements. This study investigates the institutional organization of the European constitutional convention and focuses on the role and composition of committees. Voters in France and the Netherlands rejected the Constitution, even though it was drafted in a supposedly highly transparent and representative manner. This study investigates the institutional organization of the European Convention and its representativeness as a constitution-making body.

The article is structured as follows. First, I define the term constitutional convention and show that the literature on constitution making has insufficiently addressed the institutional structure of such conventions. Second, I discuss the importance of committees in the EU convention and analyze the committee assignment process, the rules of procedure, and the substantial role of committees in the drafting process. I demonstrate that the rules in the Convention provided ambiguous behavioural incentives to delegates. On the one hand, delegates could self-select onto committees, creating the potential for outlying committees. On the other hand, the Presidency of the Convention tried to control the process by balancing representation according to the component groups of the Convention, suggesting that committees would be representative of the Convention. Finally, I test these composition hypotheses in a Monte Carlo simulation using new position estimates for delegates in the EU Convention.

The main results of this study are (1) that the political leadership of the European convention controlled the institutional organization to a large extent, (2) that committees

were influential in the drafting process, and (3) that there is strong evidence for committee outliers than for representative committees. Outlying committees were slanted more to the left than to the right.

2. Constitution Making in the European Union

It is widely acknowledged that institutions and constitutional rules have a significant impact on the functioning of a political system (Lijphart 1999; Tsebelis 2002). But political institutions are themselves the product of politics. One widely-used drafting process is the constitutional convention, defined as a *temporary, non-legislative body convened for the purpose of drafting or revising a constitution* (Fafard and Reid, 1991).¹ Recent estimates suggest that a participatory drafting process is quite common around the world. Of the nearly 200 new constitutions drafted between 1975 and 2002 in countries at risk of conflict, more than 60 percent were negotiated in an inclusive body, such as a constituent assembly, a convention, or a legislature (Widner 2005, p.8). The participatory nature and parliamentary-style organization characterize constitutional conventions. They can involve

¹ I use the term constitutional convention, constituent assembly and constitutional conference interchangeably. The definition used here excludes special legislative committees or constitutional commissions which constitute subsets of existing legislatures. Surprisingly, there are to date no systematic comparative studies that study constitution making in constitutional conventions. Historical studies provide detailed accounts of the proceedings of particular conventions and constitution making processes (Fafard and Reid 1991; Goldwin and Kaufman 1988; McWhinney 1981) Conflict resolution studies emphasize the significance of a participatory constitution making process after war. These studies emphasize that political institutions are a key element for successful reconstruction (Cowen and Coyne 2005; for Iraq see: Kurrild-Klitgaard 2004), and that a more participatory constitution making process can reduce post-ratification levels of violence in developing countries (Widner 2005). A closely related literature focuses on the question of what constitutional arrangements are best for any given country (Lijphart 1999, 2004; Reynolds 2002). Underscoring the normative consequences of constitutions, these studies often put forward concrete suggestions how constitutions can be engineered to bring about a “strengthened democracy” (Reynolds 2002, 2). The theoretically most rigorous studies of constitution making processes come from the constitutional political economy literature, which focuses on the process of constitutional bargaining under procedural constraints (e.g. Douglas and Maser 1987; Elster 1993; Elster 1995; Riker 1986; Voigt 1999). The prevalent view is that democracy can be considered a two-stage process: “in the first stage the rules of the political game to be played in stage two are drawn up; in stage two the game is played” (Mueller 2005, 57). The most researched convention is the US Constitutional Convention, for which voting data are available (Dougherty and Heckelman 2006; Jillson 1981, 1988; Londregan 1999; McGuire 2003).

many groups of society, often including minorities, their members are elected or appointed, and they dissolve after their task of drafting a constitution is finished.

Convened in 2002, the European Convention was the first constitutional convention of the European Union. Its task was to revise the existing constitutional framework of the EU, which was created by a set of international treaties between member state governments. Constitutional amendments in the European Union have so far been exclusively made through *Intergovernmental Conferences* (IGCs), in which the heads of state or government decide unanimously, and behind closed doors, on constitutional change (Garrett 1992; Hug and König 2002; Moravcsik 1998; Moravcsik and Nicolaïdis 1999; Slapin 2006, forthcoming).² Faced with the prospect of enlargement of the European Union at the end of the 1990s, member state governments acknowledged that decision making needed to become more efficient and transparent. But the subsequent constitutional reform in 2000 through an IGC led to the opposite result. In search for compromise, the governments agreed to change the EU's legislative institutions in a way that made decision making more difficult (Tsebelis 2002; Tsebelis and Yataganas 2002). This set the stage for the European Convention as a more transparent and participatory way to revise the EU's constitutional provisions. Whereas IGCs more closely resemble an international bargaining situation in which sovereign governments negotiate under the unanimity rule, the constitutional convention was established in order to include more political actors of the European Union in the constitution making process. In 2001, EU member states agreed in a declaration to establish the European Convention. Its task was defined in terms of “challenges” the EU supposedly was facing:

² Important constitutional amendments through IGCs include changes to Council voting rules in order to create the single market in the European Union (through the Single European Act in 1987), creation of the monetary union (through the Treaty of Maastricht in 1993), and the establishing of a bicameral parliament in the European Union, at least in some policy areas (Maastricht 1993, Amsterdam 1997, and Nice 2000).

The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organize politics and the European political area in an enlarged Union and how to develop the Union into a stabilizing factor and a model in the new, multipolar world (European Council 2001).

The European Convention was thus created because the existing constitutional provisions were perceived as an unworkable basis for the future of the EU. The primary mandate of the Convention was to consider “key issues arising for the Union's future development and try to identify the various possible responses” (European Council 2001). Member state governments wanted the Convention to prepare a draft or potentially several constitutional drafts, which would then be decided by a subsequent IGC, a procedure that can be conceived as a principal-agent process (König 2006).

3. The Institutional Organization of the EU Convention

The following sections discuss the composition of the European Convention, the constitutional drafting process, the committee system, and the power of these committees.

Basic Composition

How was this new Convention organized? When EU member state governments decided to install the convention, they also decided on its basic composition. The convention included a Presidency (including a chairman and two vice-chairmen), representatives from the parliaments (two per member state), representatives from the governments themselves (one per member state), sixteen representatives from the European Parliament, and two representatives from the European Commission. In addition, given that enlargement of the

EU was imminent, all thirteen EU candidate countries were represented as well with two members each from their respective national parliament and one from each government. The convention mandate furthermore provided for the same number of alternate members who would replace members at meetings they could not attend, thus doubling the number of delegates. Finally, thirteen official observers to the Convention were invited to represent the advisory bodies of the European Union.⁵ In total, the Convention comprised 220 delegates.

Presidency of the Convention. In setting up the Convention, EU governments agreed to appoint a high-profile leadership, rather than have the Convention select its own chairperson. They agreed to appoint former French President Valéry Giscard d'Estaing, with the large states imposing their will despite objections from smaller countries (Magnette and Nicolaïdis 2004). The European Council nominated two former Prime Ministers as Vice-Chairmen, Giuliano Amato (Italy) and Jean-Luc Dehaene (Belgium). Together, these three politicians formed the Presidency of the Convention whose task it was to “pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate” (European Council 2001).

Steering committee of the Convention (Praesidium). Member states also installed a steering committee of the Convention, charged with providing an initial working basis. This so-called “Praesidium” was composed of the Presidency and ten other members drawn from the Convention (the representatives of those countries holding the Council Presidency, two national parliament representatives, two European Parliament representatives, two Commission representatives, one candidate country representative). The Presidency, alone and together with the Praesidium, were the principal agenda-setters in the Convention.

⁵ The advisory bodies represented were the Committee of Regions, the Economic and Social Committee,

The Constitutional Drafting Process

The constitutional drafting process in the European Convention can be divided into five phases, shown in Figure 1. In the first phase, the steering committee (Praesidium) created several committees (called working groups and discussion circles) which were supposed to assist in the drafting process. In the second phase, each committee submitted a report to the Praesidium. Subsequently, in the third phase, the Praesidium drafted the constitutional proposals and presented them to the Convention. In the fourth phase, delegates in the Convention were allowed to submit amendments to the constitutional proposals of the Praesidium. This sparked the production of more than 6,000 amendment documents. However, in line with the rules of procedure of the Convention, they were never voted on. Instead, the Praesidium conceived them as suggestions by the Convention delegates.

INSERT FIGURE 1 HERE

In the fifth phase, on the basis of the proposed amendments, the Praesidium presented its revised constitutional proposals. This resulted in the final “draft constitution”, which was then presented to the heads of government at the following *Intergovernmental Conference*. The drafting process demonstrates the importance of the Praesidium as the steering committee of the Convention, and previous studies have emphasized its various institutional and positional means of agenda-setting (Crum, 2004; Tsebelis, 2005; Tsebelis and Proksch, 2007). Analyzing the final three phases in the Convention, Tsebelis finds extensive procedural control exercised by the Praesidium under the chairmanship of Giscard d'Estaing (Tsebelis 2005). The rules of procedure, primarily written by the

Praesidium, did not allow any votes to be taken in the Convention. This enabled the Presidency to summarize debates, thus strengthening its role in the drafting process.⁶ But how did the Praesidium solve the complex task of constitutional drafting and come up with its proposals?

This poses a puzzle for the institutional organization of the Convention. On the one hand, there was a powerful steering committee, the Praesidium, with significant agenda-setting powers. On the other hand, the Praesidium also installed a number of committees to prepare the draft. Others have speculated on the fact that ideological outliers might have played a substantial role in the Convention (Benoit et al. 2005, p. 307; Brown, 2003, p. 3). The co-existence of a strong agenda setter and an elaborate committee system focuses the question about the institutional organization on the role of committees in drafting the constitution.

The Committee System

The rules of procedure of the European Convention provided the possibility to set up committees, called working groups and discussion circles. Committees could be created at the request of the steering committee or of a significant number of Convention members, but the specific task of the committee was determined by the Convention leadership alone.⁷ Table 1 lists the fourteen committees of the European Convention. The first group of committees includes those dealing with specific policy areas (economic, foreign, defence, security and justice, and social policies). The second group includes nine committees which

⁶ König and Slapin (2006) estimate that the actual decision rule in the Convention was in fact a *qualified consensus*, something less than unanimity (as it is used for IGCs) but more than simple majority. They conclude that this allowed delegates to make major institutional changes not possible at previous treaty negotiations.

⁷ Article 15, Rules of Procedure of the European Convention, European Convention Document CONV 09/02, available at <http://register.consilium.eu.int/pdf/en/02/cv00/00009en2.pdf>

addressed institutional issues. Remarkably, none of these committees dealt with the EU's major legislative and executive institutions (voting rule in the Council of Ministers, size and composition of the European Commission). Even though the Praesidium had initially considered a working group on institutional questions (Praesidium 2002c), it later specifically prevented the creation of such a working group in order to better “exercise its role in structuring the debate” (Praesidium 2002d). Thus, the mandates of the working groups covered institutional provisions which did not include the composition of the Commission, the Council voting rule, or the Presidency of the Council, but instead dealt with the simplification of legal instruments, the specific budgetary procedure, and the Court of Justice.

The average committee had 36 members and met 7 times. In terms of size, the committees fall into three categories. The smallest committees were the so-called discussion circles. These committees had the shortest duration and dealt with very narrow questions. They were installed by the Praesidium toward the end of the Convention, just before it was about to submit its constitutional proposals. The medium-sized committees were the six working groups that were set-up first by the Praesidium. The largest committees were the policy committees of the Convention. By far the largest committee was the working group on Social Europe, representing one third of the convention. It was the only working group that was installed following the demand of a “significant number” of Convention delegates.

INSERT TABLE 1 HERE

After the committees had been set-up, the Praesidium determined their mandates. In order to define the jurisdictions, the steering committee came up with several questions to

be addressed by each committee. In all instances, the Praesidium asked the committees to come up with several feasible alternatives, and sometimes also to identify the constitutional status quo. For example, the *Working Group on National Parliaments* was asked to assess the role of the national parliaments in the present architecture of the European Union and the national arrangements that function best. Then, the committee should propose new mechanisms and procedures at national or European level. In sum, the committees in the European Convention were created by the Praesidium in order to prepare the drafting of constitutional proposals by revealing issue alternatives.

Committee Assignment

Committee assignment was a two step process. First, the Praesidium asked delegates to self-select themselves onto committees. Second, the Praesidium took a final decision on each committee's composition. In practice, the delegates were put into the different groups they asked for and the Praesidium made minor modifications. Because data on delegates' committee membership requests were not archived, it is impossible to retrospectively determine which requests were fulfilled and which ones were not. However, there is indirect evidence that suggests that the committee composition largely corresponded to a self-selection process. The Praesidium decided that if any member of the Convention expressed dissatisfaction with the assignments, flexibility could be shown by the chairpersons on a bilateral basis and the composition be adjusted (Praesidium of the European Convention 2002c).⁸

⁸ A staff member of the Convention confirmed that the Praesidium decided to increase the size of committees according to the number of requests, personal communication of the author with a member from the *European Convention Secretariat*, 7 February 2006.

It was a declared goal of the Praesidium to ensure a balanced representation in the committees, in particular with regard to the different component groups and nationalities (Praesidium of the European Convention 2002b). Table 1 also lists the committee assignments according to the component groups of the convention. Several results stand out. First, in almost all instances the component groups were represented with at least one member on each committee (excluding the observers in the convention). Second, a comparison between the average committee assignment and the actual seat share of the component groups shows that candidate countries were underrepresented and member states and supranational institutions were overrepresented. The European Commission was the only component group with only one representative in each committee. The Presidency of the Convention (Amato, Dehaene) participated in five out of the fourteen committees.

The distribution of committee assignments in Table 1 does not yield conclusive evidence as to whether committees were outliers or not. Take the example of the *Working Group on National Parliaments*. The delegates from the national parliaments had their largest relative representation in this committee, controlling almost 75% of the committee seats. On the one hand, this might be evidence for the committee outlier hypothesis, assuming that national parliamentarians are homogeneous preference outliers. For example, the delegates could all demand more involvement of national parliaments in EU decision making processes. On the other hand, their large representation could as well be evidence for a representative hypothesis, because these delegates understand the issues better and have the most information available about the status quo and feasible alternatives. In this context, committee assignment captures the notion of intensity rather than location of preferences (Krehbiel 1990, 1991). In sum, the raw composition data suggests that the official goal of the steering committee to reach a balanced representation between the

component groups was indeed achieved, but it does not give any indication as to whether committees were outliers or not.

Rules of Procedure of the Committees

While the component groups were represented in the committees, the Praesidium ensured from the very beginning that it remained under control of the constitutional drafting process (Tsebelis 2005). This included also the rules of procedure for the committees. The Praesidium agreed that the mandate of the working groups should focus on a limited number of questions which could not be examined in depth in the plenary. Furthermore, the Praesidium decided that each working group would be chaired by a Praesidium member, the official reason being that the “consistency of the work” could thus be ensured (Praesidium of the European Convention 2002a). Through the committee chairmen, the Praesidium was able monitor the proceedings and the work of the committees. A group of twelve Convention delegates from Austria, Sweden, and Finland (the 1995 enlargement states) challenged this unilateral definition of the procedures. In a letter addressed to the President, the group acknowledged the importance of the committees and demanded that the designation of chairpersons of the committees should be settled by the committees themselves, and not by the Praesidium. Defending the selection of chairpersons, President Giscard d'Estaing responded that the Praesidium would bear in mind the concerns of the group for other committees to be set-up.⁹ However, as demonstrated in Table 1, the steering committee decided not to take into account these considerations. Instead, all chairmanships of the committees were held by the Praesidium.

⁹ Exchange of letters, European Convention Document CONV 55/02, available from <http://register.consilium.eu.int/pdf/en/02/cv00/00055en2.pdf>

In line with the Praesidium's role as agenda-setter, the committees were explicitly told not to establish draft texts. Instead, they would prepare reports to the Convention “containing the main elements of the analysis carried out and the options identified to respond to the questions submitted to them” (Praesidium of the European Convention 2002c). The committees' formal role was thus largely informational to reduce uncertainty by providing information about issue alternatives. The next section evaluates the results of the work in committees and determines the impact of committees on the constitutional drafting process.

Committee Influence

All committees sent final reports to the Praesidium, which then prepared the formal constitutional proposals to the Convention. To understand the role of committees, it is essential to determine the significance of these reports in terms of their impact on the drafting process. I choose the following approach to measure the level of influence of committees in the constitutional drafting process. With regard to each issue under discussion, a committee could essentially propose a single proposal (recommendation) or several alternatives (options). The latter was the official task of the committees. Using the final committee reports, I counted the number of issues for which a committee proposed recommendations and the number of issues for which it proposed options. The findings are reported in Table 2. Contrary to the mandate, the committees overwhelmingly proposed recommendations, and not options. On average, each committee report included about seventeen concrete proposals for the draft EU constitution. The number of recommendations range from six for the *Discussion Circle on Own Resources* to thirty-three for the *Working Group on Freedom, Security and Justice*. In contrast, the committee

reports barely included options. Five committees did not propose any options at all, and of the ones that did most included options for only one issue. Only the Working Group on Economic Governance, one of the most active ones in terms of number of meetings, proposed more options than recommendations, suggesting that divisions within this committee were too great to overcome.

These numbers suggest that committees were able to find agreement on most issues, thus being actively engaged in influencing the draft constitution. To answer the question about their influence, I examine (a) how often the Convention leadership proposed committee recommendations, and (b) how often the leadership proposed *one* of the suggested alternatives. The success rates indicate that most committees were influential institutions (third and sixth column in Table 2). On average, three out of four committee recommendations were proposed by the Praesidium. If committees suggested several alternatives for an issue, it was guaranteed that one of them was proposed by the Praesidium. These findings shed new light on the drafting process in the European Convention. They suggest that the steering committee's proposals came to a large extent from the committee reports, thus underscoring the importance of the institutional organization for the overall outcome.

INSERT TABLE 2 HERE

4. Measuring Representativeness in the EU Convention

The analysis of the committee system of the European Convention suggests that delegates had two types of incentives. They themselves could self-select onto committees, but the Convention leadership wanted to ensure a supposedly balanced representation.

Representative Hypothesis

Another way of stating that committees were representative of the Convention is to say that the assignment process was random. Therefore, the null hypothesis is that there is nothing systematic in the organization of constitutional committees and that they are therefore nothing more than random outcomes. The Praesidium adjusted the committee size according to demand and made modifications to the overall composition to assure a “balanced representation”. Furthermore, all committees included delegates from each component group of the European Convention. Committees did not have gatekeeping power because the Praesidium could choose to propose committee proposals to the Convention or ignore them. In short, this view suggests that committees were in fact ideologically representative of the Convention.¹⁰

Outlying/non-representative hypothesis

Certain aspects of the institutional organization challenge the representative hypothesis. Committee assignments in the Convention were governed by self-selection, a process that features prominently in legislatures and is related to re-election motives (Shepsle 1978). In the Convention, the motive for self-selection onto committees was the prospect for

¹⁰ Legislative scholars have addressed the question why committees exist and whether they are representative extensively for the US Congress. Both theories share the assumption that legislative decision-making in committees will eventually be one-dimensional, thus facilitating the analysis by allowing the application of the median voter theorem (Black 1958). According to the informational efficiency theory, legislators have one-dimensional preferences over the outcomes of legislation, x , defined as the sum of a policy, p , and an exogenous shock, ω (Gilligan and Krehbiel 1987, 1989; Krehbiel 1991; Krishna and Morgan 2001). Members of the floor are uncertain about the policy consequences of the shock. But this information can be provided by a specialized committee. When the committee reports a bill, the floor receives a signal and uses this information to amend the bill so that the final outcome is as close as possible to its most preferred point. Gilligan and Krehbiel show that the range in which the committee credibly reveals ω can become smaller as the difference between the median floor member and the median committee member becomes smaller. Therefore, one empirical implication of this model is that the difference between the committee median and the floor median should be small, and committees should be representative of the floor.

influence on the constitutional draft through work in committees. According to this perspective, committees are not representative because only ideologically biased delegates will be motivated to join committees. This hypothesis is different from the standard Congressional literature on committees. According to this literature, legislative committees outliers exist with respect to their jurisdiction. Because legislators are interested in re-election, the exclusive committee jurisdictions combined with gate-keeping powers ensure that logrolls can be enforced.¹¹ Here, I argue that committees might be unrepresentative on the primary dimension of conflict in the Convention, because of the incentives provided to delegates to self-select onto committees.

Monte Carlo Simulation

Following Groseclose's study on committee composition in the U.S. Congress (Groseclose 1994), I test these hypotheses using Monte Carlo simulations, a technique that has been applied to the US and EU legislatures (Espino and Franz 2004; McElroy 2006; Peterson and Wrighton 1998). Groseclose's method is a departure from earlier tests of committee composition and has the advantage of making few assumptions about the distribution of the data.

INSERT FIGURE 2 HERE

A common technique used to test committee composition hypotheses is the difference of means tests, which assumes that (1) the preferences of committees and floor

¹¹ According to the *distributive benefits theory*, committees should not be representative of the floor (Shepsle and Weingast 1987; Weingast and Marshall 1988). Committees exist in order to enforce logroll agreements between special interests in the legislature. In this model, each dimension of an n -dimensional policy space represents a policy area. Because each outlying group does not have a majority within its respective area, there is an incentive for logrolling because together the outliers do control a majority. Two empirical implications of this model are that specialized committees have gatekeeping and agenda-setting power and that members are allowed to self-select onto the committees of their choice (Shepsle 1978), causing committees to be preference outliers.

members follow a normal distribution and (2) that the mean, not the median, score is the correct test statistic. The advantage of the Monte Carlo technique is that it makes no assumption about the distribution of preferences by using the actual distribution of ideological scores. First, for each committee of size n , I generate 20,000 hypothetical committees of the same size. This is done by randomly selecting n committee members (without replacing) from the Convention population.¹² Using ideological estimates for each delegate, I then record the median score for each simulated committee, thus producing 20,000 median voter scores. These median scores constitute an approximate distribution for the median of a committee, and statistical tests can be conducted on the basis of this distribution.¹³

The *outlying hypothesis* states that the actual committee median is a homogeneous preference outlier. There are, however, two possible definitions of what an outlying committee means. An outlying committee can be defined as outlying in a certain direction (directional outlier hypothesis) and as outlying without any further assumption about the direction (non-directional outlier hypothesis). Figure 2 demonstrates the difference. I calculate the p -value for the directional definition as the proportion of simulated committee medians that are at least as outlying as the actual committee (shaded area in the left graph in Figure 2). Define F as the Monte Carlo approximation of the distribution of the committee medians. Let m_C be the observed committee median and m_F be the floor median. Then the p -value is:

¹² An alternative approach would be to sample with replacement, assuming that the observed Convention composition is just one of many hypothetical compositions.

¹³ In contrast to the Monte Carlo approach, in which the null hypothesis is that committees are random outcomes, another testing approach assumes that committee selection is not random and that the only stochastic component of the test are measurement errors of members' preferences (Londregan and Snyder 1994).

$$p_{d.outlier} = \begin{cases} F(m_C) & \text{if } m_{Committee} < m_{Floor} \\ 1 - F(m_C) & \text{if } m_{Committee} \geq m_{Floor} \end{cases}$$

The non-directional version of the outlying committee hypothesis suggests that a committee median might as well have occurred in the opposite direction of the ideological space and that the p -value will be greater. Let m_S be the median of the Monte Carlo distribution, which is equal to m_F if the committee and floor have an odd number of members. Then the p -value is calculated as follows.

$$p_{nd.outlier} = \begin{cases} F(m_C) + (1 - F(m_S + |m_S - m_C|)) & \text{if } m_{Committee} < m_{Floor} \\ 1 - F(m_C) + F(m_S - |m_S - m_C|) & \text{if } m_{Committee} \geq m_{Floor} \end{cases}$$

This algorithm takes into account that the sampling distribution of committee medians may not be symmetric, simply doubling the p -value would therefore be inappropriate. If any of these p -values are less than 5%, the null hypothesis of a random outcome is rejected.

From the p -values for the outlying committee hypothesis, it is straightforward to calculate the p -value for the *representative committee hypothesis*. A committee is defined as representative if its median is close to a random outcome, the latter meaning the median of the sampling distribution. P -values are simply the proportion of simulated committee medians that are *closer* to m_S than m_C . Because the non-directional outlier p -value is the proportion of simulated committees that are *at least as* outlying as the committee median, one simply needs to subtract this value from 1: $p_{represent} = 1 - p_{nd.outlier}$.

5. The Data

Testing the hypotheses requires the estimation of the most salient *individual* delegate positions in the European Convention. But a major problem for this kind of estimation is

the fact that no votes were taken in the Convention.¹⁴ The only revealed preferences of the delegates can be found in speeches and in amendments that could be proposed at the end with regard to the Praesidium's proposals (see second to last phase in Figure 1). The solution to the position estimation problem proposed by this study is the use of amendment endorsements. After the Praesidium had presented its proposals, delegates were able to put forward drafting changes for each individual constitutional article. Such amendments could be proposed by any delegate (including alternate members) or by a group of delegates, but were not voted on. Instead, the Praesidium presented a revised constitutional draft based on the proposed amendments. The proposed amendments were retrieved from the Convention website which includes an archive of all Convention documents.¹⁵

In order to estimate delegate positions, I treat the endorsements of amendments by the delegates as *quasi*-votes. This approach is based on the assumption of sincere voting. First, I assume that all delegates who support an amendment would also vote for it. Second, I assume that delegates who do not endorse an amendment either oppose it or are indifferent between the amendment and the proposal. This assumption is not unrealistic, because the costs for supporting an amendment were low, so that it is fair to assume that those who wanted to express a position could do so.¹⁶ There were no rules on the format of the amendment. Most amendments concerned specific articles and are therefore short in length, and delegates could sign up to amendments that others had written. I therefore count an abstention as a vote against a proposed amendment. This makes sense because the Praesidium could infer the level of support for an amendment only from the list of

¹⁴ See Tsebelis (2005) for how the *Praesidium* gained agenda-setting power by insisting on this rule.

¹⁵ The amendments can be found at the following address: <http://european-convention.eu.int/amendemTrait.asp?lang=EN>.

¹⁶ However, there is evidence that even during the few months when delegates could propose amendments, the Praesidium tried to limit the overall number of amendments (Tsebelis and Proksch 2007).

delegates who endorsed it. The estimation includes those delegates that were members of the Convention during the amendment process (February until June 2003), but excludes delegates that had left the Convention prior to this period. A small number of delegates were replaced *during* the amendment process. In these cases, I estimate a common position for each replaced/replacing delegate pair.

In total, I analyze 3,101 amendments proposed for the preamble, part I and II of the constitution, which constitute about half of all proposed amendments. These parts contain the most relevant constitutional provisions and are the ones covered by the committees. The coding approach was as follows. An issue was included in the dataset if it fulfilled two criteria: (1) it was a substantive amendment, and (2) it was supported by at least two delegates. The first criterion excludes linguistic, stylistic, and grammatical amendments. The second criterion ensures that an amendment received a minimum level of support in the Convention. For example, sixteen delegates proposed to include the term “Christianity” into the preamble. These delegates were then coded as 1, and all others as 0. This procedure takes into account that identical amendments were proposed in different documents or several times. A pure extraction of delegate names from the documents would therefore yield biased results, because the same amendment in two documents would be coded as two different ones, not as the same one.

The resulting data matrix includes amendment endorsements on 491 issues for 232 delegates, a total of 113,912 actor positions.¹⁷ The primary delegate level positions are then retrieved using the W-NOMINATE scaling procedure (Poole and Rosenthal 1985). This procedure performs parametric unfolding of binary choice data. Given the matrix of binary choices by delegates (endorsement, no endorsement) over the issues, W-NOMINATE

¹⁷ The number of delegates is slightly larger than the official number, because of the delegate replacements that took place during the amendment process.

produces a configuration of delegates and outcome points for the Yes and No alternatives for each *quasi*-roll call using a probabilistic model of choice. I estimate both two-dimensional and one-dimensional W-NOMINATE coordinates. Positions for delegates who left the Convention before the amendment process are imputed with the positions of their replacements. With a few additional assumptions, the scaling procedure also allows for the estimation of the agenda-setter's (Praesidium) proposal. Suppose that the members of the Praesidium must state a position with regard to the proposed amendments. If the steering committee acts as a unitary actor, it should always reject amendments from the floor. In practice, some members actively endorsed amendments. For these members, amendment support is coded in the same way as for the delegates, as “1”, and “0” otherwise. Those members that never endorsed any amendment (e.g. President Giscard d'Estaing) are coded as “0” on each issue. This procedure of estimating delegate positions has the advantage of using revealed positions and estimating positions for all delegates.¹⁸

There are two alternative approaches to estimating positions in the European Convention. The first one is a computer-based content analysis using speeches and amendments (Benoit et al. 2005), whereas the second approach is based on a survey of the delegates themselves (König et al. 2006). Benoit and his co-authors pool the texts available from the Convention archive for each national party and then estimate party positions using external reference documents. They find that party positions estimated by their method correlate well with expert survey estimates of national party positions. A drawback of this methodology is the requirement that the documents being analyzed must all be in the same language. They solve this problem by using only English language texts, but lose a

¹⁸ In both estimations (one and two-dimensional), the cutoff criterion for quasi roll calls in terms of the minimum proportion on the minority side for the amendment to be included was set to 0.005. The cutoff criterion for delegates in terms of the minimum number of amendments endorsed to be included was set to 0.

significant amount of data. In contrast, I include all language versions of the amendments in my analysis. Second, they consider the national party as the natural unit for analysis and pool all documents of the respective national party delegates. However, there are no *a priori* reasons why national parties should be key actors in the Convention. For instance, one could as well make the argument that the unit of analysis should be European parties, member states versus candidate countries, large state versus small state, etc. The third problem is that they do not include documents authored by more than one delegate, causing them to lose more cases. Thus, while their analysis does provide estimates for national party positions, their method does not yield individual estimates for each delegate and is thus inadequate for the research problem of this study.

The other approach estimates positions from a survey with a standardized questionnaire (König et al. 2006; used by König and Slapin 2006, Jensen et al. 2007). König and his co-authors determined the controversial topics from the initial mandate of the Convention and then sent out a questionnaire to all Convention delegates. This yields an impressive amount of actor positions. Because of the response problems associated with surveys, they limit their final data set to 90 delegate positions. They exclude alternate members and reduce the data to one governmental delegate per country, two parliamentary representatives per country and one delegate per position from the European Parliament and Commission. While this approach yields individual Convention delegate estimates, the reduction also assumes that alternates and members have the same position as do government representatives from multiple parties. In contrast, the approach in this study allows for the possibility that the positions vary, which is important because alternate members participated in the committees just like full members did and no votes in the

plenary were ever taken. Thus, a dataset with individual positions for *all* delegates is the most adequate to address the research problem of committee representativeness.

6. Delegate Positions in the European Convention

The two-dimensional W-NOMINATE scores are shown in Figure 3a-c, with delegates being identified by their respective component group and by European political party affiliation (if available). In contrast to the view taken by the Praesidium, the delegates of each component groups did not form coherent coalitions (left figure). For example, delegates representing member state governments did not form a coherent block against their national parliaments. Yet, almost all delegates from the European Parliament are on one side of the second dimension, while delegates from national parliaments and governments are on the other side. The rest of the component groups are equally dispersed. Only some delegates from candidate country governments form a coalitional unit on the first dimension. Thus, looking at the component groups alone does not give a satisfactory answer to the question of position taking in the European Convention. The second figure shows the same positions, but highlighted according to the European party affiliation of delegates.¹⁹ This analysis shows a sharp divide between Socialists (S) and Conservatives (P) on the first dimension. This suggests that many disagreements over left-right policy might have also driven disagreement about institutions and constitutional provisions. This result is in line with previous empirical analyses of the Convention. Benoit et al. (2005)

¹⁹ European party affiliation is determined by membership of the delegate's national party in the European Parliament groups. Delegates which are not members of the EP groups (from candidate countries) are not classified.

find a statistically significant relationship between national party positions in the Convention and general Left-Right expert scores.²⁰

INSERT FIGURE 3 HERE

I complement the *ex post* inspection and interpretation of the estimated dimensions with a more systematic regression analysis. Similar to Benoit et al. (2005) and Jensen et al. (2007), I test several hypotheses of delegate position taking in the EU Convention. First, I test whether there was any significant difference between the institutional affiliation of delegates (governments, national parties, supranational delegates). Second, I include independent estimates of national party positions from Benoit and Laver (2006) on three dimensions: a general ideological Left-Right dimension, a EU specific dimension (for member states), and positions on EU accession (for candidate countries).²¹ Table 3 presents the results of several OLS regressions of the first and second W-NOMINATE dimension on the institutional dummies and the national party positions. Separate regressions are run for member states and candidate countries. In addition, I choose two units of analysis. The first set of regressions treats the delegate as the unit of analysis in order to distinguish between institutional affiliation. The second set of regressions pools delegates according to national party affiliation by taking the mean of the W-NOMINATE positions for each national party.

²⁰ They also compare the national party positions in the Convention to expert estimates on substantive policy areas, and find slightly lower prediction error for policy areas than for Left-Right scores.

²¹ The wording of the questions in the Benoit and Laver (2006) expert survey was as follows. *LEFT-RIGHT*: Please locate each party on a general left-right dimension, taking all aspects of party policy into account. Left (1), Right (20). *EU: ACCOUNTABILITY* (EU-15 except France and Ireland): Promotes the direct accountability of the EU to citizens via institutions such as the European Parliament (1), Promotes the indirect accountability of the EU to citizens via their own national governments (20). *EU: JOINING*: (candidate states and potential EU entrants): Opposes joining the European Union (1), Favors joining the European Union (20).

The results confirm the previous interpretation of the dimensions. National party positions on the left-right dimension predict the first dimension for both member state and candidate country delegates. Institutional affiliation and EU policy positions do not explain this dimension. The coefficient for left-right party positions is statistically significant in both the delegate-level and national party-level regressions. The second dimension, in contrast, is explained by institutional affiliation and party positions on the EU, and not by left-right party positions.²² The government and national parliament dummy variables are statistically significant for both member states and candidate countries. There is, however, a difference between member states and candidate countries. Member state delegate positions are also explained by their national party position on the European Union. In contrast, there is no significant effect of the position on joining the EU in the candidate countries.

INSERT TABLE 3 HERE

In sum, the regression analysis lends even more support to the view that the first dimension corresponds to an ideological Left-Right dimension and the second dimension to the issue of supranationalism, dividing delegates from supranational institutions and those from national ones as well as those who want more direct EU accountability and those who want more national accountability.

The extracted W-NOMINATE positions furthermore confirms previous assumptions that proposals revealed by President Giscard d'Estaing and the Praesidium were located centrally in the issue space (Tsebelis 2005). The right plot in Figure 3

²² Left-Right is statistically significant only in the delegate level regression for member states. The effect disappears if one uses the correct, pooled analysis (as national party positions vary only by party and not by delegate).

demonstrates that Giscard revealed himself in fact as the median of the Convention as a whole and as the median of the Praesidium. With one exception, most Praesidium members endorsed the official proposals and did not propose many amendments, thus placing them centrally in the space.²³

7. Results: The Non-Representativeness of the Convention

The results of the committee compositions tests are reported in Table 4. It lists the calculated p -values for the fourteen committees calculated by the Monte Carlo simulation technique on the basis of one-dimensional W-NOMINATE scores. Sampled committees are drawn at random from the possible set of delegates, without any further constraint on the committee composition. The possible set of delegates are those who were members of the Convention by the time the respective committee was set-up. The table reports the p -values for the directional and non-directional outlier hypothesis as well as for the representative committee hypothesis.

The calculations for the directional outlier hypothesis show that the null hypothesis, that there is nothing systematic about committees, can be rejected for two committees (subsidiarity and external action). There are four additional committees that have p -values close to 5% (9, 11, DC 1 and DC 3). Although the null hypothesis cannot be rejected at the 5% level for these committees, the p -values under 10% suggest that they are tending toward statistical significance. This means that about half of the committees were in fact preference outliers. Because the analysis is not based on committee specific preference estimates, a possible critique might be that what matters less is the ideological direction of the

²³ Note that the fact that Giscard is located centrally is not an artifact of the estimation. It means that his proposals were in fact amended in roughly equal terms from the left and the right, as well as from supranational institutions and member states.

committee, but instead the relative distance to the floor median. Therefore, the p -values potentially overestimate the fact that a committee is outlying because they do not take into account the probability of observing the same committee on the other side of the ideological spectrum. In the non-directional outlier test these probabilities are added. The random selection hypothesis can still be rejected for the committee on subsidiarity, but no longer for the committee on external action. However, there are still four committees with p -values close to 5%, suggesting that there are several committees with significant ideological differences compared to the median of the Convention as a whole. However, this does not imply that the remaining committees are in fact representative. The p -values for the representative committee hypothesis are not significant except for one case: the committee on national parliaments. This committee can be considered representative of the parent chamber, an important finding given that the issues concerned greater involvement of those parliaments in the EU legislative decision making process. In sum, the analysis suggests more evidence for outlying committees than for representative committees on the first W-NOMINATE dimension.

INSERT TABLE 4 HERE

As a robustness check, I determine whether the results are sensitive to the sampling strategy. The previous analysis of the committee system suggested that the Praesidium tried to achieve balanced representation of the component groups (Table 1). Therefore, all simulated committees should include at least one delegate from each component group, thus corresponding to the rule set-up by the steering committee. Simulating with constraints is not unproblematic, as this causes the simulated committees to be non-random samples. In

the completely-at-random sampling technique, between 16% and 78% of the simulated committees were correct simulations. In the constrained simulation, this is set to 100% for each committee. The results confirm the previous results and are therefore not reported separately. They lend somewhat stronger support for the committee outlier hypothesis. There are three committees that can be considered directional outliers (having p -values smaller than 5%), one committee a non-directional outlier, and none a truly representative one.

However, the results must be interpreted carefully. When the null hypothesis of random selection is true, then there is a 5% chance of rejecting it in each of the 14 cases. This causes the rejection of the null hypothesis to occur an expected 0.7 times ($= 14 \times .05$). Although the expected value is smaller than the two committees (directional) or the one committee (non-directional) found, the fact that it is only slightly smaller suggests that the evidence might still be consistent with a hypothesis that all committee are selected randomly. However, instead of adopting 5% as the significance level, one could set this level to 10% instead. Six committees are outliers according to this slightly weaker criterion (or five non-directional outliers), while the expected rejection by chance is 1.4 ($= 14 \times .1$). In this case, the evidence provides stronger support for the outlier hypothesis.

Finally, the committee composition tests were also performed for the second W-NOMINATE dimension which captures supranationalism (results not reported in table). Only three committees are statistically significant outliers on the second dimension (at 5% level): the working group on simplification, Social Europe, and the Court of Justice. For all three committees, the outlying direction is toward more supranationalism.

The estimation results allow for a distinction between committees leaning to the left and to the right given that the first dimension is best predicted by left-right national party

positions. Table 4 lists whether the committee median is to the left or to the right of the Convention median. Out of the six committees that are statistically significant outliers in the directional test, five have median delegate positions to the left and only one has a median delegate position the right. A previous analysis of the *Working Group on Social Europe* has suggested it was “significantly slanted to the left” (Brown 2003, p.3). The empirical analysis of the representativeness of working groups in the Convention has corroborated this. In addition, the results suggest that this working group had a more supranational preference, as did the group on simplification and on the Court of Justice.

8. Discussion: The Convention, the Constitution and Ratification

In the midst of creating the European Convention, EU governments emphasized that the Convention should be more transparent and open than previous IGCs. Thus, the rationale of the entire constitution making process was to install a body that would attempt to represent more closely the different political components of the EU. While it was not a goal of this study to determine whether delegates actually represented these groups accurately, the results do suggest that the Convention was organized in a way that was unrepresentative of the parent chamber and biased to the left. Out of six outlying drafting committees, five were significantly to the left of the Convention median. In contrast, the Presidency of the Convention revealed itself as a representative body, with Giscard d’Estaing taking a median position both in the Praesidium and in the Convention, confirming assumptions made in previous studies (Tsebelis, 2005; Tsebelis and Proksch, 2007).

What are the implications of this configuration for the European constitution-making process and its obstacles? It has been argued that Giscard’s central position together with strong agenda-setting instruments gave him the opportunity to modify

Convention proposals to a position closer to his (ibid.). Out of all committees in the Convention, the *Working Group on Social Europe* had the lowest acceptance rate of its proposals, with only every third proposal getting endorsed by Giscard and fellow Praesidium members. At the same time, the lack of attention to social issues in the constitution was the most prominent reason for its rejection in France. Survey results report that French “no voters” had strong concerns about social issues. Of the top five reasons why the French voted “no”, four were related to socio-economic issues.²⁴ These included concerns about current and future unemployment in France, the fact that the constitution appears too liberal in economic terms, and that it did not contain enough “Social Europe”.

Given the facts that (1) the Convention committee on social issues had a bias to the left and towards more supranationalism, (2) the Presidency of the Convention was centrally located with strong agenda-setting powers, and (3) French voters rejected the constitution mainly for social reasons, the question of Giscard’s role in the Convention gains entirely new significance. Until the very end of the Convention, members of the “Social Europe” working group tried to make sure that their proposals, endorsed by majority in the working group, would find a way into the draft constitution. The working group expressed its concern vis-à-vis Giscard in a letter stating “that the large consensus from this working group, that was confirmed during the plenary debate, has not been sufficiently taken into account in the draft articles of the Constitution.”²⁵ Many social policy issues (e.g. specific objectives, values, new ways of coordinating member state policies through the open method of coordination, extension of QMV) did not make it into the final constitution.

²⁴ Flash Eurobarometer 171: "The European Constitution: Post-referendum survey in France", available at http://ec.europa.eu/public_opinion/flash/fl171_fr.pdf. The other cited reason to vote "no" was dissatisfaction with the French political establishment.

²⁵ European Convention document CONV 780/03, June 2003, available at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00780en03.pdf>

Giscard and the Convention might have achieved one of the most significant political successes in EU history by drafting the Constitution. The document simplifies the existing Treaties, introduces major institutional change, and many would agree that it would make the EU a more governable body. The institutional organization of the Convention, however, might be partially to blame for the failure of the constitution. Even though it was more open and broad than previous *Intergovernmental Conferences*, it promoted delegates to self-select onto committees according to their ideological position causing preference outliers. While this process produced concrete proposals, they were not taken into account for issues related to “Social Europe”. Voters in other countries, in particular the UK, might not wish for a constitution with additional social elements, but the French appeared to do so.

9. Conclusion

This study focused on the institutional organization of the European Convention and its impact on the constitutional drafting process. It constituted a departure from earlier studies of constitutional assemblies, which largely ignored the importance of the procedures and rules and their effect on outcomes. The analysis concentrated on the particular role of committees and leads to the following conclusions about the politics of EU constitution making.

First, the constitutional drafting process was under strong control of a steering committee. This institutional feature distinguishes the European constitutional convention from a legislative setting. In legislatures, majoritarian politics determines control of the floor leadership. In the EU Convention, an exogenously chosen steering committee had strong agenda-setting power and procedural control. This steering committee was able to

create committees and shape their initial mandates. Second, the analysis of the committee system showed that working groups and discussion circles were important social choice institutions in the European Convention. They participated actively in the constitutional drafting process. Not only did committees deal with significant issues, but they proposed concrete recommendations to the leadership of the convention, which accepted them overwhelmingly. Third, the committee assignment itself was largely driven by self-selection of the delegates, suggesting that committees might have been preference outliers. However, the leadership attempted to adjust the committee size to achieve a balanced representation, lending support to the representative committee hypothesis. Delegate positions were estimated from amendment endorsements in the convention in order to compare committee and floor preferences. The Monte Carlo simulation approach provided more evidence for outlying committees than for representative ones. Almost half of the committees can be considered left-leaning outliers, and of those three were also more supranational than the Convention floor.

Bibliography

- Battaglini, Marco. 2002. "Multiple Referrals and Multidimensional Cheap Talk", *Econometrica* 70 (4): 1379-1401.
- Benoit, Kenneth, Michael Laver, Christine Arnold, Paul Pennings and Madeleine Hosli. 2005. "Measuring National Delegate Positions at the Convention on the Future of Europe Using Computerized Word Scoring", *European Union Politics* . 6: 291-313.
- Benoit, Kenneth and Michael Laver. 2006. *Party Policy in Modern Democracies*. London: Routledge.
- Black, Duncan. 1958. *The Theory of Committees and Elections*. Cambridge: Cambridge University Press.
- Brown, Tony. 2003. "Economic and Social Governance at the Convention on the Future of Europe", The Federal Trust Online Paper 22/03, http://www.fedtrust.co.uk/uploads/constitution/22_03.pdf
- Cowen, Tyler and Christopher K. Coyne. 2005. "Postwar Reconstruction: Some Insights from Public Choice and Institutional Economics", *Constitutional Political Economy* 16: 31-48.
- Crum, Ben. 2004. "Politics and Power in the European Convention", *Politics* 24 (1): 1-11.
- Dougherty, Keith L. and Jac C. Heckelman. 2006. "A Pivotal Voter from a Pivotal State: Roger Sherman at the Constitutional Convention", *American Political Science Review* 100 (2).
- Douglas, Heckathorn and Steven Maser. 1987. "Bargaining and Constitutional Contracts", *American Journal of Political Science* 31 (1): 142-168.
- Elster, Jon. 1993. "Constitution Making in Eastern Europe: Rebuilding the Boat in the Open Sea", *Public Administration* 71 (1/2): 169-217.
- Elster, Jon. 1995. "Forces and Mechanisms in the Constitution Making Process", *Duke Law Journal* 45 (2): 364-396.
- Espino, Rodolfo and Michael M. Franz. 2004. "Retesting Committee Composition Hypotheses for the U.S. Congress", *Political Analysis* 12: 196-198.
- European Council. 2001. "The Future of the European Union - Laeken Declaration", *European Council of Laeken*. Available from http://europa.eu.int/constitution/futurum/documents/offtext/doc151201_en.htm.
- Fafard, Patrick and Darrel R. Reid. 1991. "Constituent Assemblies: A Comparative Survey", *Institute of Intergovernmental Relations Research Paper 30*, Kingston, Ontario.

- Garrett, Geoffrey. 1992. "International Cooperation and Institutional Choice: The European Community's Internal Market", *International Organization* 46 (2): 533-60.
- Gilligan, Thomas and Keith Krehbiel. 1987. "Collective Decision-Making and Standing Committees: An Informational Rationale for Restrictive Amendment Procedures", *Journal of Law, Economics, and Organization* 3: 287-335.
- Gilligan, Thomas and Keith Krehbiel. 1989. "Asymmetric Information and Legislative Rules with a Heterogeneous Committee", *American Journal of Political Science* 34: 531-564.
- Goldwin, Robert A. and Art Kaufman. 1988. *Constitution makers on constitution making: the experience of eight nations*. Washington, D.C.: American Enterprise Institute for Public Policy Research.
- Groseclose, Tim. 1994. "Testing Committee Composition Hypotheses for the U.S. Congress", *Journal of Politics* 56 (2): 440-458.
- Groseclose, Tim and David C. King. 2001. "Committee Theories Reconsidered." In *Congress Reconsidered*, ed. L. C. Dodd and B. I. Oppenheimer. Washington, DC: CQ Press, 191-214.
- Hug, Simon and Thomas König. 2002. "In View of Ratification. Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference", *International Organization* 56 (2): 447-476.
- Jensen, Christian, Jonathan B. Slapin and Thomas König. 2007. "Who Calls for a Common EU Foreign Policy? Partisan Constraints on CFSP Reform", *European Union Politics* 8(3).
- Jillson, Calvin. 1981. "Constitution Making: Alignment and Realignment in the Federal Convention of 1787", *American Political Science Review* 75: 598-612.
- Jillson, Calvin. 1988. *Constitution Making: Conflict and Consensus in the Federal Convention of 1787*. New York: Agathon Press.
- König, Thomas. 2006. "The Dynamics of the Two-Level Process of Constitution Building. Setting the Agenda by Agenda Setting." In *The Making of a European Constitution. Dynamics and Limits of the Convention Experience*, ed. S. Puntischer Riekmann and W. Wessels. Wiesbaden: VS Verlag für Sozialwissenschaften, 156-175.
- König, Thomas, Andreas Warntjen and Simone Burkhart. 2006. "The European Convention: Consensus without Unity?" In *Policy-making Processes and the European Constitution: A Comparative Study of Member States and Accession Countries*, ed. T. König and S. Hug. London: Routledge, 40-56.
- König, Thomas, and Jonathan B. Slapin. 2006. "From Unanimity to Consensus: An Analysis of the Negotiations at the EU's Constitutional Convention", *World Politics* 58(3): 413-445.

- Krehbiel, Keith. 1990. "Are Congressional Committees Composed of Preference Outliers?" *American Political Science Review* 84 (1): 149-163.
- Krehbiel, Keith. 1991. *Information and Legislative Organization*. Ann Arbor: University of Michigan Press.
- Krishna, Vijay and John Morgan. 2001. "Asymmetric Information and Legislative Rules: Some Amendments", *American Political Science Review*. 95 (2): 435–52.
- Kurrild-Klitgaard, Peter. 2004. "Blood, Baath and beyond: The Constitutional Dilemma of Iraq", *Public Choice* 119: 13-30.
- Lijphart, Arend. 1999. *Patterns of democracy: government forms and performance in thirty-six countries*. New Haven: Yale University Press.
- Lijphart, Arend. 2004. "Constitutional Design for Divided Societies", *Journal of Democracy* 15 (2): 96-109.
- Londregan, John. 1999. "Deliberation and Voting at the Federal Convention of 1787", *Unpublished Manuscript*.
- Londregan, John and James Snyder. 1994. "Comparing Committee and Floor Preferences", *Legislative Studies Quarterly* 19: 233-266.
- Magnette, Paul and Kalypso Nicolaïdis. 2004. "The European Convention: Bargaining in the Shadow of Rhetoric", *West European Politics* 27 (3): 381-404.
- McElroy, Gail. 2006. "Committee Representation in the European Parliament", *European Union Politics* 7 (1): 5-29.
- McGuire, Robert. 2003. *To Form a More Perfect Union: A New Economic Interpretation of the United States Constitution*. Oxford: Oxford University Press.
- McWhinney, Edward. 1981. *Constitution Making: Principles, Process, Practice*. Toronto: University of Toronto Press.
- Moravcsik, Andrew. 1998. *The choice for Europe: social purpose and state power from Messina to Maastricht, Cornell studies in political economy*. Ithaca, N.Y.: Cornell University Press.
- Moravcsik, Andrew and Kalypso Nicolaïdis. 1999. "Explaining the Treaty of Amsterdam: Interests, Influence, Institutions", *Journal of common market studies* 37 (1): 59-85.
- Mueller, Dennis C. 2005. "Constitutional Political Economy in the European Union", *Public Choice* 124: 57-73.
- Peterson, Geoffrey D. and J. Mark Wrighton. 1998. "The Continuing Puzzle of Committee Outliers: A Methodological Reassessment." In *Congress and the Presidency*, ed. S. Hammond and M. Kumar. Washington D.C.: American University, 67-78.

- Poole, Keith T. and Howard Rosenthal. 1985. "A Spatial Model For Legislative Roll Call Analysis", *American Journal of Political Science*: 357-384.
- Praesidium of the European Convention. 2002a. "Summary conclusions of the 6th meeting on 15 April 2002", *European Convention Archive*. Available from <http://european-convention.eu.int/Docs/praesidium/2002/020415.S.pdf>.
- Praesidium of the European Convention. 2002b. "Summary conclusions of the 8th meeting on 8 May 2002", *European Convention Archive*. Available from <http://european-convention.eu.int/Docs/praesidium/2002/020508.S.pdf>.
- Praesidium of the European Convention. 2002c. "Summary conclusions of the 10th meeting on 5 June 2002", *European Convention Archive*. Available from <http://european-convention.eu.int/Docs/praesidium/2002/020605.S.pdf>.
- Praesidium of the European Convention. 2002d. "Summary conclusions of the 20th meeting on 28 October 2002", *European Convention Archive*. Available from <http://european-convention.eu.int/Docs/praesidium/2002/021028.S.pdf>.
- Reynolds, Andrew. 2002. *The architecture of democracy: constitutional design, conflict management, and democracy*, *Oxford studies in democratization*. Oxford, UK ; New York: Oxford University Press.
- Riker, William H. 1986. *The art of political manipulation*. New Haven: Yale University Press.
- Shepsle, Kenneth A. 1978. *The Giant Jigsaw Puzzle: Democratic Committee Assignments in the modern House*. Chicago: University of Chicago Press.
- Shepsle, Kenneth A. and Barry R. Weingast. 1987. "The Institutional Foundations of Committee Power", *American Political Science Review* 81: 85-104.
- Slapin, Jonathan. 2006. "Who is Powerful? Examining Preferences and Testing Sources of Bargaining Strength at European Intergovernmental Conferences", *European Union Politics* 7 (1): 51-76.
- Slapin, Jonathan. Forthcoming. "Bargaining Power at Europe's Intergovernmental Conferences: Testing Institutional and Intergovernmental Theories", *International Organization*.
- Tsebelis, George. 2002. *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press and Russell Sage Foundation.
- Tsebelis, George. 2005. "Agenda Setting in the EU Constitution: From the Giscard Plan to the Final Document", *Paper presented at the Domestic Structures and European Integration Conference, Brussels*.
- Tsebelis, George, and Sven Oliver Proksch. 2007. "The Art of Political Manipulation in the European Convention", *Journal of Common Market Studies* 45(1): 157-186.

- Tsebelis, George and Xenophon Yataganas. 2002. "Veto Players and Decision-Making in the EU after Nice: Policy Stability and Bureaucratic/Judicial Discretion", *Journal of Common Market Studies*. 40 (2): 283-307.
- Voigt, Sven. 1999. *Explaining Constitutional Change: A Positive Economics Approach*. Cheltenham: Edward Elgar.
- Weingast, Barry R. and William J. Marshall. 1988. "The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets", *The Journal of Political Economy* 96 (1): 132-163.
- Widner, Jennifer. 2005. "Constitution Writing and Conflict Resolution", *United Nations University UNU-WIDER Research Paper No. 2005/51*.

Table 1. Committee Composition in the European Convention

Committee	Issue Area	Size	Meetings	Presidency	Commission	EP	MS Government	MS National Parliament	CC Government	CC National Parliament	Observers
WG 1	Subsidiarity	35	7	0 (0%)	1 (2.9%)	5 (14.3%)	4 (11.4%)	10 (28.6%)	2 (5.7%)	9 (25.7%)	4 (11.4%)
WG 2	Charter of Fundamental Rights	33	7	0 (0%)	1 (3.0%)	3 (9.1%)	4 (12.1%)	9 (27.3%)	3 (9.1%)	11 (33.3%)	2 (6.1%)
WG 3	Legal Personality	30	7	1 (3.3%)	1 (3.3%)	6 (20.0%)	6 (20.0%)	5 (16.7%)	6 (20.0%)	4 (13.3%)	1 (3.3%)
WG 4	National Parliaments	35	9	0 (0%)	1 (2.9%)	5 (14.3%)	1 (2.9%)	13 (37.1%)	1 (2.9%)	13 (37.1%)	1 (2.9%)
WG 5	Complementary Competences	33	6	0 (0%)	1 (3.0%)	5 (15.2%)	5 (15.2%)	10 (30.3%)	4 (12.1%)	8 (24.2%)	0 (0%)
WG 6	Economic Governance	36	10	0 (0%)	1 (2.8%)	7 (19.4%)	8 (22.2%)	9 (25.0%)	6 (16.7%)	2 (5.6%)	3 (8.3%)
WG 7	External Action	50	10	1 (2.0%)	1 (2.0%)	7 (14.0%)	13 (26.0%)	10 (20.0%)	8 (16.0%)	8 (16.0%)	2 (4.0%)
WG 8	Defense	40	9	1 (2.5%)	1 (2.5%)	4 (10.0%)	6 (15.0%)	14 (35.0%)	3 (7.5%)	11 (27.5%)	0 (0%)
WG 9	Simplification	39	7	1 (2.6%)	1 (2.6%)	14 (35.9%)	1 (2.6%)	9 (23.1%)	3 (7.7%)	5 (12.8%)	5 (12.8%)
WG 10	Freedom, Security and Justice	41	8	0 (0%)	1 (2.4%)	6 (14.6%)	6 (14.6%)	13 (31.7%)	5 (12.2%)	9 (22.0%)	1 (2.4%)
WG 11	Social Europe	71	5	0 (0%)	1 (1.4%)	16 (22.5%)	9 (12.7%)	22 (31.0%)	3 (4.2%)	14 (19.7%)	6 (8.5%)
DC 1	Court of Justice	20	4	0 (0%)	1 (5.0%)	5 (25.0%)	5 (25.0%)	7 (35.0%)	0 (0%)	2 (10.0%)	0 (0%)
DC 2	Budgetary Procedure	19	3	0 (0%)	1 (5.3%)	6 (31.6%)	5 (26.3%)	5 (26.3%)	2 (10.5%)	0 (0%)	0 (0%)
DC 3	Own Resources	21	4	1 (4.8%)	1 (4.8%)	4 (19.0%)	7 (33.3%)	6 (28.6%)	2 (9.5%)	0 (0%)	0 (0%)
Mean		36	7								
Mean Committee Seat Share				1.1%	3.1%	18.9%	17.1%	28.3%	9.6%	17.7%	4.3%
Mean Convention Seat Share				1.4%	1.8%	14.4%	13.5%	27.0%	11.7%	24.3%	5.9%

Note: WG=Working Group, DC=Discussion Circle, Presidency=Presidency of the Convention, EP=European Parliament, MS=Member States, CC=Candidate Countries.

Table 2. Success Rates of Committee Proposals

Committee	Committee Recommendations ¹			Options proposed by Committee ²		
	Proposed by Committee	Proposed by <i>Praesidium</i>	Success Rate	Number of issues	Proposed by <i>Praesidium</i>	Success Rate
WG 1	14	12	.86	0	0	-
WG 2	10	10	1	2	2	1
WG 3	8	6	.75	0	0	-
WG 4	14	8	.57	0	0	-
WG 5	24	15	.63	0	0	-
WG 6	7	4	.57	8	8	1
WG 7	29	24	.83	0	0	-
WG 8	15	12	.80	1	1	1
WG 9	28	24	.86	2	2	1
WG 10	33	32	.97	1	1	1
WG 11	21	7	.33	1	1	1
DC 1	12	10	.83	4	4	1
DC 2	22	20	.91	3	3	1
DC 3	6	6	1	1	1	1
Mean	17.4	13.6	.78	1.6	1.6	1

(1) *Committee recommendations* are proposals included in the committee report. The success rate is the number of recommendations proposed by the *Praesidium* divided by the number of recommendations.

(2) *Options proposed by committee* are issues for which the committees proposed several alternatives. The success rate reflects how often the *Praesidium* proposed one of the committee alternatives.

Table 3. Predicting Convention W-NOMINATE scores (OLS regressions)

<i>Dimension</i>	<i>1st Dimension</i>				<i>2nd Dimension</i>			
<i>Unit of analysis</i>	<i>Delegate</i>		<i>National party</i>		<i>Delegate</i>		<i>National party</i>	
<i>Model</i>	<i>Member states</i>	<i>Candidate countries</i>	<i>Member states</i>	<i>Candidate countries</i>	<i>Member states</i>	<i>Candidate countries</i>	<i>Member states</i>	<i>Candidate countries</i>
Institutional Affiliation								
Government (dummy)	-0.191 (.145)	-0.052 (.151)			-0.482 (.104)***	-0.308 (.097)**		
National Parliament (dummy)	-0.000 (.110)				-0.316 (.079)***			
Ideology								
Left-Right	.077 (.016)***	.040 (.014)***	.057 (.017)***	.043 (.017)**	.026 (.011)**	-0.008 (.009)	.014 (.012)	.001 (.011)
EU accountability	-0.026 (0.187)		-0.008 (.021)		-0.072 (.013)***		-0.062 (.015)***	
EU accession		.005 (.017)		-0.004 (.024)		.012 (.011)		-0.000 (.016)
Constant	-0.809 (.172)***	-0.658 (.294)**	-0.837 (.181)***	-0.502 (.413)	.772 (.123)***	-0.168 (.188)	.528 (.133)***	-0.058 (.273)
Observations	100	61	52	42	100	61	52	42
Adjusted R²	.22	.10	.23	.10	.35	.11	.27	-.05

Note: Significance levels: **p ≤ .05, ***p ≤ .001. Ideology measures are expert survey scores from Benoit and Laver (2006). The set of observations for member states include government representatives, national parliamentarians and supranational delegates (baseline category). The set of observations for candidate countries includes government representatives and national parliamentarians (baseline category). Delegates/national parties for which the Benoit/Laver expert survey does not indicate a position are not included in the analysis.

Table 4. Committee Composition Hypotheses: Monte Carlo Simulation results (Single W-NOMINATE dimension¹)

	<i>Committee</i>	<i>Size</i>	<i>Direction of comm. median</i>	Directional Outliers		Non-directional Outliers		Representative committee		<i>Correct simulations</i>³
				<i>p-value_{d.outlier}</i>		<i>p-value_{nd.outlier}</i>		<i>p-value_{represent}</i>		
				<i>no constraint</i>	<i>constraint²</i>	<i>no constraint</i>	<i>constraint²</i>	<i>no constraint</i>	<i>constraint²</i>	
1	Subsidiarity	35	Left	0.0491	0.0403	0.9509	0.9597	0.9509	0.9597	0.4449
2	Charter	33	Right	0.3767	0.3302	0.1803	0.2601	0.1803	0.2601	0.4204
3	Legal Personality	30	Left	0.1526	0.1352	0.8445	0.8610	0.8445	0.8610	0.3722
4	National Parliaments	35	Right	0.4894	0.4417	0.0238	0.0952	0.0238	0.0952	0.4482
5	Complementary Competence	33	Right	0.3622	0.3235	0.2022	0.3879	0.2022	0.3879	0.4215
6	Economic Governance	36	Left	0.2312	0.2405	0.7574	0.5869	0.7574	0.5869	0.4669
7	External Action	50	Right	0.0083	0.0065	0.7237	0.8056	0.7237	0.8056	0.6273
8	Defense	40	Left	0.1999	0.2079	0.7957	0.7841	0.7957	0.7841	0.5159
9	Simplification	39	Left	0.0640	0.0534	0.9360	0.9465	0.9360	0.9465	0.5067
10	Security and Justice	41	Left	0.2581	0.2722	0.7369	0.5861	0.7369	0.5861	0.5351
11	Social Europe	71	Left	0.0613	0.0572	0.9387	0.9428	0.9387	0.9428	0.7865
12	DC Court of Justice	20	Left	0.0807	0.0548	0.9157	0.9427	0.9157	0.9427	0.1888
13	DC Budgetary Procedure	19	Left	0.0714	0.0487	0.9252	0.9480	0.9252	0.9480	0.1671
14	DC Own Resources	21	Right	0.2446	0.1827	0.3615	0.6639	0.3615	0.6639	0.2108

¹ Results based on single W-NOMINATE dimension. Results do not change when using the first dimension from a two-dimensional extraction.² Sampling with constraints means each of the 20,000 simulated committees must include at least one representative from the component groups.³ Correct simulations is the proportion of the 20,000 simulated committees (no constraint) which meet the constraint.

Figure 1. Constitutional Drafting Process in the European Convention

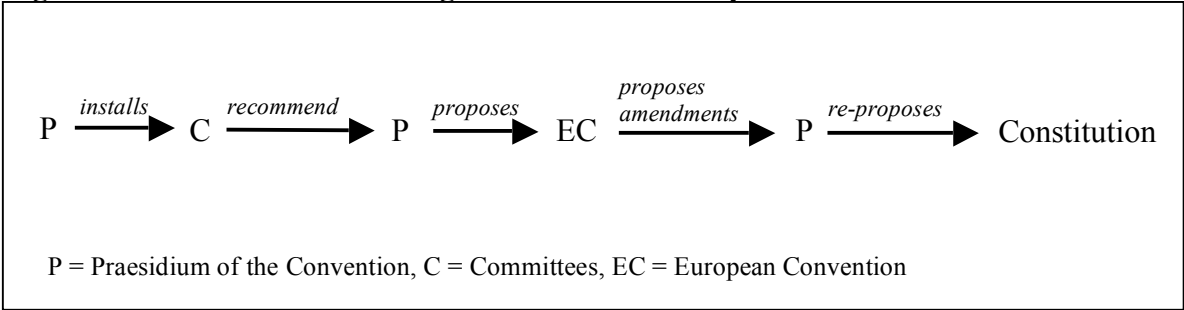


Figure 2. Committee Composition Hypotheses

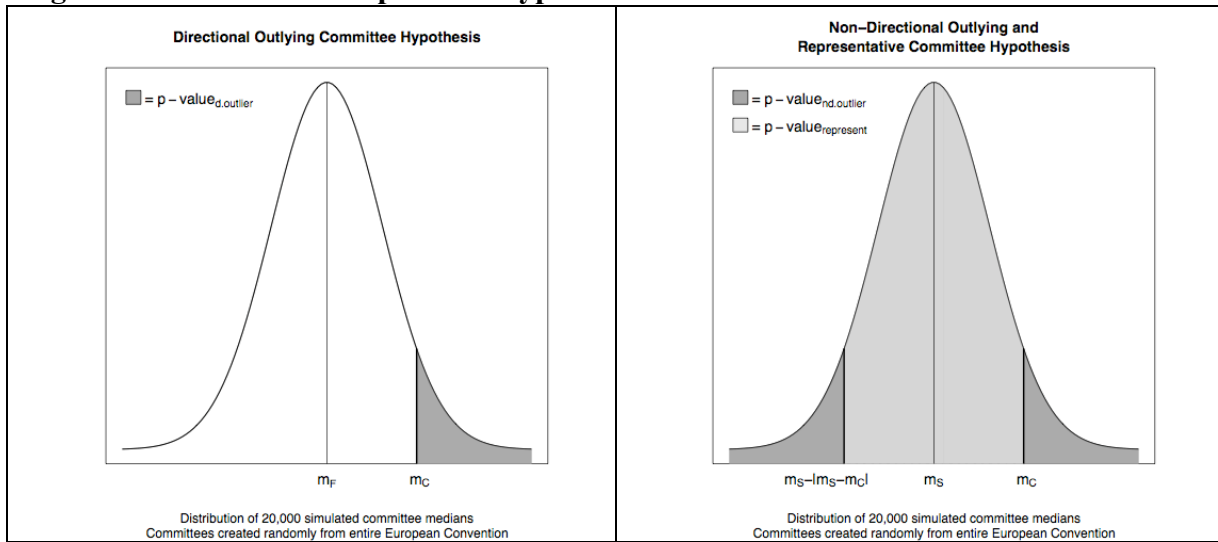
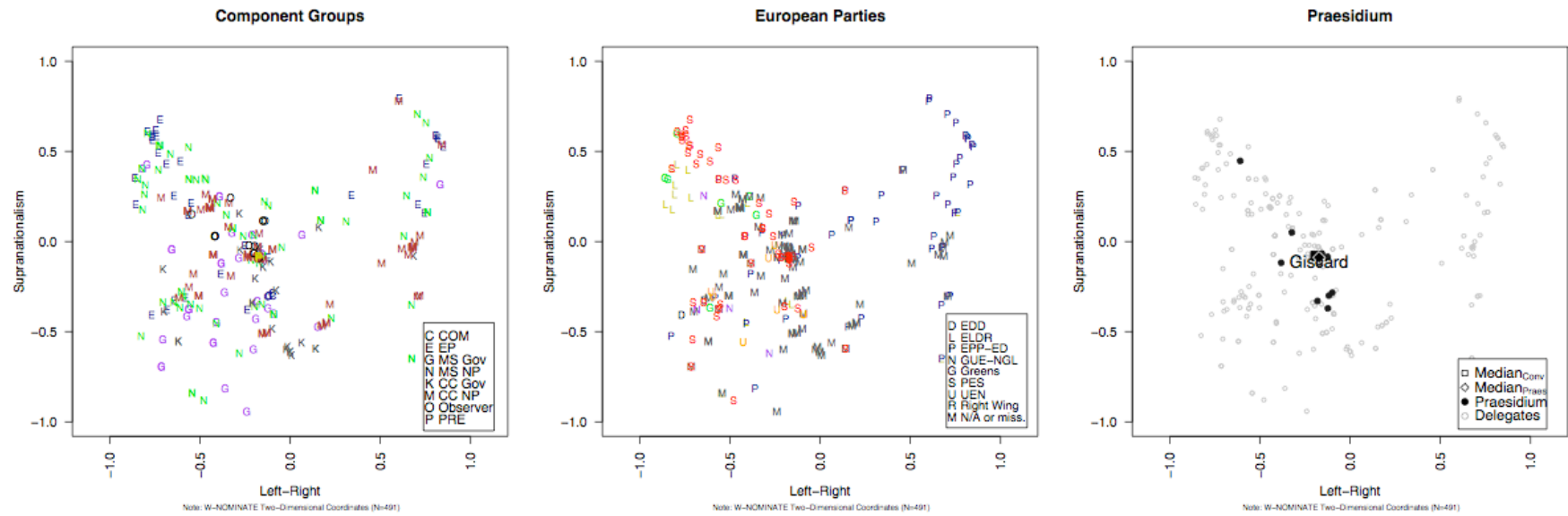


Figure 3. Delegate Positions in the European Convention



APPENDIX. Data Coding Procedure: From amendments to W-NOMINATE scores

The estimation of ideological scores for each Convention delegate through W-NOMINATE using endorsements for amendments involved several steps described below.

I. The primary data: Proposed amendment documents

The analysis is based on all 3,101 amendment documents proposed by delegates in the European Convention for the following sections of the Constitution: Preamble, Part I (Definition and Objectives of the Union, Fundamental rights and citizenship of the Union, Union competences and actions, Institutions, Exercise of Union competence, Democratic Life of the Union, Union Finances, Union and its Immediate Environment, Union Membership), Part II (Charter of Fundamental Rights), Protocol on Principles of subsidiarity and proportionality, Protocol on Role of national parliaments. The amendment documents are available at the online archive of the European Convention (<http://european-convention.eu.int/amendemTrait.asp?lang=EN>).

II. Identifying issues in the amendments

All 3,101 amendments were hand-coded using the following approach: an issue was defined as a *substantive amendment proposed by at least two Convention delegates*. This definition captures identical amendments that were proposed in several documents. In other words, if the same amendment was proposed several times, it was only included once in the dataset and all names of the delegates endorsing the issue were recorded. Note that one particular amendment document could include one or several issues. In the latter case, the issues were coded separately. In total, 491 issues were identified in the 3,101 proposed amendment documents and included in the dataset.

III. Exclusion of amendments

A substantive issue was defined as non-stylistic, non-linguistic, and non-grammatical. The three latter types of amendments were thus not coded. Often, such amendments were proposed by only one delegate (thus excluding the amendment under the first criterion that at least two need to propose it). In the remaining instances, it was almost always clear that the amendments did not reflect any substantive position on an issue, but were intended by the authors to improve the overall drafting quality of the constitutional text. For the remaining amendments, a certain subjective evaluation had to be made about which ones are substantive and which ones are not. For instance, the amendment to replace the term “constitution” with the term “simplifying treaty” was considered to be linguistic, and not substantive (for this particular amendment, see <http://european-convention.eu.int/Docs/Treaty/pdf/10100/Part1KirkhopeEN.pdf>). While there may be substantive reasons behind the amendment (e.g. the author does not like transfer of more sovereignty to the EU, etc.), the working assumption was that the substantive aspect would be picked up by other amendments (e.g. this particular author proposed to delete the articles on the post of European foreign minister).

IV. Dealing with different languages

Most amendments were proposed in English, French and German and could be coded readily. In rare instances, an amendment was proposed in other languages (there was no official translation service for amendments), such as Spanish, Italian, Portuguese, Dutch, Greek, Danish, Finnish. In these cases, amendments were translated using an online

translation service (<http://babelfish.altavista.com/>). Because the amendments were short, their content could be retrieved and coded accordingly.

V. Issue endorsements

- a. Once the issues were identified, they were coded into a matrix with 491 issue rows. Each row contained a list of delegate names endorsing the issue. A PERL program identified the delegate names via pattern matching. This way the issue-delegate data matrix included the names of the delegates who were members of the Convention at any given time in the columns (rows=491 issues, columns=269 delegate names). Each issue-delegate cell was coded as “1” if the delegate endorsed the issue, and “0” otherwise.
- b. The coding took into account of exits and entries of delegates in the Convention. In total, 37 delegates had left the European Convention prior to the amendment process (before 02/2003) and were replaced by somebody else. The appendix to the Draft Constitution specifies when a delegate left the Convention (<http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>). The names of these delegates were deleted from the data matrix. Leaving them in the dataset would bias the estimation results (they would be falsely coded as *not* endorsing any issue, even though they were not members of the Convention anymore, and therefore could not express their preferences). The list of these delegates include: Akyol, Barrau, Bastarreche, Birzniece, Cullen, Dalinkevicius, de Castro, de Vallera, Eser, Gaber, Glotz, Hallengren, Hamzik, Idrac, Inkens, Ioakimidis, Jinga, Kavan, Keltosova, Kocaoglou, MacSharry, Maior, Martonyi, Medalinkas, Moscovici, Nahtigal, Pavilionis, Pleuger, Sebej, Sprindzuks, Tekin, van Baalen, van Mierlo, Vimont, Yilmaz A, Yilmaz M, Zaplana.
- c. In addition, 9 delegates were replaced *during* the amendment process (after 02/2003). The entries for each delegate and his/her replacement were combined and added into a single 'delegate pair' column. This procedure is necessary, because the amendments as posted on the European Convention website do not include dates. It is therefore impossible to estimate separate positions. The delegate pairs are: Kurzmann-Mainoni, Senff-Gerhards, Soederman-Diamandouros, Yakis-Guel, Haenni-Toenisson, Kreitzberg-Lang, Taerno-Reinsalu, Korhonen-Takkula, Vanhanen-Vilen.
- d. The final step involved formatting the data matrix for W-NOMINATE.

VI. W-NOMINATE estimation

Two versions of W-NOMINATE were run on the 491 issues (program code available at <http://voteview.com/w-nominate.htm>). The first version extracted two dimensions, the second version extracted one dimension.