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## THE DEMOCRATIC DEFICIT AND THE EUROPEAN UNION'S CONSTITUTIONAL SETTLEMENT

**Jacob Ziemann**

Like many regional or global schemes of governance, the European Union has been criticized as lacking legitimacy because it appears less deliberative, democratic, and participatory than national governments (Nagel, 2005, Rabkin, 2005, Dahl, 2006). This broad criticism applied to the EU is often characterized as a “democratic deficit”. The possible existence of a democratic deficit in the EU has been a growing concern of politicians, academics, and citizens since the process of European integration began. For example, remedying the democratic deficit is regularly cited as one of the main reasons for creating and ratifying the Constitutional Treaty. It is not surprising then that before and after the recent defeats of the European constitutional project, with referendum ‘no’ votes in France and Holland, debate on the democratic deficit has been lively. This paper attempts to make sense of the debate about the existence of the democratic deficit in the EU and to detail some of the policy proposals for constitutional reform that are a product of the debate. I will show that the democratic deficit debate has generated compelling proposals about the direction that future constitutional developments in the EU should take.

Since this paper amounts to a survey of the current state of the democratic deficit debate every effort will be made to select the most compelling recent arguments in the debate. Drawing on the literature generated in this debate, the first section of this paper articulates a central case for the existence of a democratic deficit in the EU. I will refer to this argument as the democratic deficit thesis. The next section examines the arguments of the opponents of the democratic deficit thesis. The third section attempts to identify the remaining real points of contention between the two sides of this debate. The final section of the paper surveys some of the sets of policy proposals for reforming the European Union that are a product of the ongoing democratic deficit debate.

### THE DEMOCRATIC DEFICIT THESIS

A single definition for the democratic deficit doesn't exist. The definition varies

immensely depending on the nationalities and intellectual positions of the commentators writing on European constitutional reform. The first systematic attempt to develop a 'standard case' of the democratic deficit came from Joseph Weiler and his coauthors (Weiler et. al., 1995). This 'standard case' was meant to be a set consisting of broadly used arguments by politicians, academics, and citizens. However, in recent debate this 'standard case' has been upgraded with the case outlined below consisting of five arguments for the existence of the democratic deficit, based on an analysis first compiled by Andreas Follesdal and Simon Hix (2006, 534).

First, the creation of the EU by the Maastricht Treaty and earlier agreements advancing European integration have resulted in a general increase in executive power and a general decrease in national governments' control over the lawmaking process (Andersen & Burns, 1996). We will call this argument the 'strong national executives' argument. The European Union's institutional design is such that policy-making at the EU level is dominated by executive actors. Executive actors take the form of national ministers in the European Council and national government appointees in the Commission. This contrasts with the structure of European national governments, where the government is usually accountable to voters through the actions of a parliament. The parliament holds the executive accountable by criticizing the behavior of the ministers that make up the government and can, in extreme situations, remove the government from power. Having policy-making in EU dominated by executive actors is not in itself a fault but it is problematic when the actions of the executive actors cannot be controlled by national parliaments. Executive actors at the EU level are simply more isolated from national parliamentary scrutiny and control than government ministers at the national level. Because of the way policy making in the EU is structured it is easier for executive actors to ignore the wishes of their national parliaments which has led to an increase in executive power at the expense of national parliaments.

This first problem, in theory, should be partially remedied by the existence of the European Parliament. Yet, the second argument advances that the European Parliament is too weak to rein in executive actors in the EU. We will refer to this argument as the 'weak European Parliament' argument. After Maastricht it became clear that national parliaments were losing power relative to executive institutions. In response some scholars like Lodge argued that the power of the European Parliament must increase relative to the Council and the Commission (1994). While it is true that the European Parliament has become progressively more powerful through successive reforms it is still possible to claim that it is weak compared to the executive actors in the Council. For example, the governments in the Council still get to set the legislative agenda by appointing the Commission. Also, while the European Parliament can veto the national governments' choice for Commission president and commissioners we can't really argue that the European Parliament elects these officials. When it comes to spending, the European Parliament can only amend lines that the governments in the Council have labeled 'non-compulsory' spending. Finally, even the procedure of co-decision, which officially provides equal power of legislation between the Council and the Parliament, does not actually allow the Parliament that much real power in legislating. This is the case because the majority of legislation is still passed under the consultation procedure which does not allow the Parliament full veto power (Follesdal & Hix, 2006, 535). Despite years of reforms to strengthen the European Parliament, arguably the most participatory institution in the EU and the only directly elected body, it is still

simply too weak relative to the Commission and Council.

The third argument in the democratic deficit thesis we will call the ‘accountability’ argument since it deals with the lack of democratic accountability found in the European Union. Setting aside the elections for the European Parliament, there are no direct European elections. Citizens in the EU instead elect their national governments who then sit in the Council and nominate commissioners. Yet, even the election of the European Parliament does not produce democratic accountability because these elections are not about the direction of the EU policy agenda or the politicians and parties operating at the European level (Hix, 1999, 103). European Parliament elections are mostly about domestic issues not about EU policy’s direction. National elections are also only fought on domestic issues not European issues. Since there is not a European element in national and European Parliament elections citizens are unable to effectively influence the policy agenda of the EU by expressing their preferences. The nature of current elections in the European Parliament and the second-order accountability of the Commission and Council both lead to a situation where the officials operating in EU institutions are only marginally accountable to citizens.

The fourth argument we will call the ‘distance’ argument and it revolves around EU institutions being too distant or removed from voting citizens. We have already discussed that electoral control over the Council and the Commission is too far removed but there is a more basic sense in which the EU is distant from its citizens. The institutions of the EU are very different from national democratic institutions, and therefore, citizens have difficulty understanding the EU. Since they have difficulty understanding the EU they are unable to examine the EU and decide whether it is democratic or not. There are a number of examples of how EU institutions are radically different from domestic institutions, and therefore, more difficult to understand. Take the Council, which conducts legislative business in secret but executive business in the public sphere. The Commission is not elected but appointed through a complex procedure. The policy creation process in the Council, the Commission, and the Parliament is also fundamentally technocratic rather than political (Wallace & Smith, 1995, 138). From the perspective of an EU citizen, the European Union’s institutions are highly foreign and complex which creates a situation where participation, deliberation, and expression of preferences by a citizen are challenging.

The final argument, which we will call the ‘drift’ argument, posits that the EU adopts policies which drift away from citizens’ real policy preferences. It also argues that the EU ends up adopting policies that are not supported by a majority of voters or even a majority of member states. This happens because of the four arguments listed above but it also occurs because governments are able to pass policies at the European level that they could not find domestic support for. This critique is most notably developed by social democratic theorists, like Scharpf, who argue that the policy outcomes of the EU decision making process are usually right of domestic policy status quos (1999). He supports this argument by claiming that at the domestic level governments are constrained by courts, parliaments, and interest groups but at the European level many of these constraints are absent, poorly organized, or less powerful (1999). The final part of the ‘drift argument’ argues that EU policy tends to be more skewed towards the interests of the owners of capital since businesses find it easier to coordinate their lobbying efforts at the European level since their interests are more concentrated. This compares to trade unions and consumer groups which have more diffuse interests that are more difficult to organize at the European level for effective lobbying. It is worth noting that the ‘drift argument’ is the only component of the democratic deficit thesis



which is supported by pointing to evidence of flawed policy outcomes instead of a flawed policy creation process.

### RESPONSE TO THE DEMOCRATIC DEFICIT THESIS

There are a wide variety of responses to the democratic deficit thesis arguments presented above. Giandomenico Majone was the first scholar to systematically attack certain arguments of the democratic deficit thesis and claim that the EU was not in a state of democratic deficit but is only perceived by its citizens as democratically illegitimate because it lacks credibility (1999). Recently, Andrew Moravcsik has attacked the democratic deficit thesis from a different starting point than Majone. I believe Majone's and Moravcsik's responses taken together constitute the most persuasive argument against the democratic deficit thesis.

Majone views the EU as primarily a 'regulatory state' (1996). A 'regulatory state' attempts to address market failure and does so by creating policies which produce outcomes that are Pareto efficient. This contrasts with national governments in the members states which also deal with policies that are distributive or redistributive in outcome. Majone believes that the member states have intentionally delegated their regulatory power to the European level by creating the EU (1993). Some examples of this delegation can be seen in the creation of the common market, the making of monetary policy by the ECB, and the standardization of health and safety rules. Majone believes that these regulatory policies were intentionally isolated from domestic majoritarian government because the best policy outcomes are achieved on these issues when policy making is isolated from popular pressure (1994). Through his perception of the EU as a 'regulatory state' Majone weakens the 'strong national executive' argument of the democratic deficit thesis.

With this view of the EU in mind Majone can also dismiss the 'distance' and 'accountability' arguments of the democratic deficit thesis. If EU policy making was made more accountable to citizens or decreased its complexity then policy outcomes would cease to be Pareto efficient. This is the case because allowing more participation and accountability would allow the political majority to select policy outcomes that may run counter to the political minority or the long term interests of the majority (Majone, 1994). So in Majone's view the 'distance' and 'accountability' arguments are actually assets for the EU since the EU is able to generate outcomes which national majoritarian parliaments cannot achieve subject to greater participation and accountability from citizens.

Taking this line of reasoning one step further Majone dispatches the 'weak European Parliament' argument by claiming that an EU dominated by the European Parliament or a directly elected Commission would end up politicizing regulatory policy-making (1998). Politicization would lead to policy outcomes which were redistributive and not just Pareto efficient (1998). If policy-making at the EU became politicized the EU would become even more illegitimate since its main reason for existing, to isolate regulatory decisions from public pressure to achieve Pareto efficient policy outcomes, would cease to exist. So the weakness of the European Parliament decried by the 'weak European Parliament' argument also turns out to be an asset for the EU if we believe that the EU is predominately a 'regulatory state'.

While Majone's reasoning does appear to defeat the democratic deficit thesis it is dependent on the normative and empirical claim that the EU is predominately a 'regulatory state'. If we believe that the EU does and should play a role in creating policies that lead to

redistributive policy outcomes then Majone's argument weakens considerably. Yet, it is also worth noting that Majone, even in the absence of a democratic deficit, supports reforms to make the EU more credible with the public like increases in policy making transparency and improving the quality of EU legislation (2005). However, it is still difficult to ignore the fact that Majone's attack on the democratic deficit thesis relies on a rather constrained perception of the European Union's purpose and legitimate policy portfolio. We will next examine Moravcsik's argument against the democratic deficit thesis which does not necessarily need the 'regulatory state' foundation.

Moravcsik's critique of the democratic deficit thesis is the most extensive critique existing in the literature and touches on all five of the democratic deficit arguments. In a series of papers Moravcsik (2002b, 2004, 2005b, 2006a, & 2006b) seems to provide satisfactory answers to most of the democratic deficit arguments.

In response to the 'distance' argument, Moravcsik argues that the EU policy making process is far more transparent than the policy making process in the domestic governments of member states (2004, 17-18). According to Moravcsik, the EU has gone out of its way to make it easier for citizens to access documents or information related to EU policy making so they are not so confused as to be unable to form preferences on EU policy (2004, 18). He argues it is now much easier to get information on the policy making process at the EU level compared to the domestic level. He also claims a number of safeguards exist to scrutinize the policy making process, even if it is technocratic, like the European Court of Justice, the European Parliament, national parliaments, and national courts (2004, 19-20). Moravcsik thinks the sum of the aforementioned reasons makes a strong case for the EU to be viewed as an institution which is transparent and close to the citizens.

When Moravcsik turns his attention to the 'drift' argument, raised by social democrat scholars, he finds no evidence that the EU lacks democratic legitimacy because "its policies are biased against particular interests that are consensually recognized as legitimate" (2004, 21). Moravcsik claims that there is little to no evidence that regulatory protection or social policies in Europe are being eroded as a result of an alleged neo-liberal bias in the European Union's policy making (2004, 22). Furthermore, Moravcsik points to the empirical claim that the level of social welfare provision in Europe has remained relatively stable throughout the process of European integration (2004, 22). He also sees the 'drift' argument as null since the factors that drive increases in social spending are domestically specific and not occurring at the EU level in a uniform manner (2004, 23). He finally concludes that the European Union's policies adequately reflect "patterns of consensus and contestation" within the bodies of citizens in the EU member states (2004, 24).

Aside from examining the outcomes of EU policy to attack the 'drift' argument Moravcsik also points to the institutionalized process constraints in the EU that prevent drift. The elaborate checks and balances built into the structure of the EU ensure that an overwhelming consensus is required for any policy to be passed (2005b, 4 & 2002b, 6). Take for example, the requirement of unanimity for reform of treaties followed by either majority in the Commission plus a qualified majority in the European Parliament or unanimity in the Council. Add on top of those checks judicial review by the European Court of Justice and national courts and it begins to look very difficult for passed legislation to drift away from the majority viewpoints. So Moravcsik doesn't believe that any single group of private interests can dominate the policy making process (2004, 19). This is also the case because minority viewpoints are consciously solicited by the Commission which

actively seeks to listen to groups with diffuse interests. Groups with diffuse interests also have access to policy makers in the Council and the European Parliament.

The 'strong national executives' argument is also dispatched by Moravcsik through an argument that national executives are still the most directly accountable politicians in the member states (2002b, 8). He argues that the "democratically elected governments of the Member States, which dominate the still largely territorial and intergovernmental structure of EU" are an important channel for creating democratic accountability at the EU level (2002b, 8). Basically, he is arguing that the EU does strengthen the national executives that play dominant roles in EU institutions, but the 'executive argument' of the democratic deficit thesis is not problematic because these national executives are still democratically controlled by their domestic voters and parliaments.

In response to the 'weak European Parliament', Moravcsik agrees that this was a problem in the past but claims it no longer is. The EU, according to Moravcsik, has already properly addressed potential imbalances of power among its institutions by significantly increasing the powers of the European Parliament (2005b, 5). For example, the EP now officially has veto-power over the selection of the Commission and is exercising this power more frequently. Reforming the co-decision procedure in the Amsterdam Treaty now means that legislation cannot be passed under co-decision unless a majority is found in the Council and the Parliament. However, Moravcsik doesn't appear to fully defeat the 'parliament argument' since the consultation procedure can still be used to pass legislation, effectively bypassing the co-decision procedure which would involve the Parliament.

In response to the lack of EU elections, what we referred to earlier as the 'accountability' argument, Moravcsik advances his strongest case against the democratic deficit thesis. Moravcsik rejects the premise that more opportunities for direct participation in public deliberation will automatically lead to increased popular support for EU institutions (2005b, 5 & 2006, 222). He doesn't believe that more opportunities to participate will cause citizens to participate more (2006, 223). He also doesn't think such participation will bring about more informed deliberation about the direction of the EU policy agenda by the voters (2006, 228). Finally, he doesn't think that more informed deliberation on the part of citizens necessarily improves the political legitimacy of the EU or the trust that citizens have in the EU as an institution (2006, 233). To prove this final point Moravcsik looks at polling data about institutional trust to argue that publics in advanced democracies generally like and trust insulated institutions like armies, police forces, constitutional courts, and independent central banks more than legislatures (2006, 32 & 2004, 24-25). Once again it is shown that the 'accountability' argument may actually be an asset since its operation in the EU insulates policy portfolios that citizens feel are best insulated from popular pressure.

Moravcsik also mounts a second strand of attack on the 'accountability' argument by claiming that EU legislative policy portfolios are concentrated in issues of low salience to European voters (2004, 25). Therefore, any efforts to expand the forums for participation, like more EU offices selected by elections, is unlikely to overcome apathy (2004, 25). Moravcsik lists the five most salient issues, according to polls, in most EU members as health care provision, education, law and order, pension and social security policy, and taxation (2005b, 5). According to Moravcsik, none of these issues is a competency for the EU (2005b, 6). He concludes that it is possible that voters just choose to remain rationally ignorant about the EU agenda because the issues it touches are not important to them (2006a, 230). For

this same reason Moravcsik argues that European Parliament elections do not work and will not be contests about the EU agenda anytime soon (2002b, 11). European Parliament elections become about domestic politics because only domestic issues are salient enough to mobilize popular support during an election. So ultimately, more political contestation through elections will not make the EU more democratic, according to Moravcsik, because “lack of salience, not lack of opportunity, may be the critical constraint on European political participation (2004, 24)”.

#### **POINTS OF CONTENTION IN THE DEMOCRATIC DEFICIT DEBATE**

By the process of laying out the fullest response to the democratic deficit thesis in the previous section we have already covered most of the main points of contention. However, three major points of contention still seem to separate the two sides of this debate. First, we must question Majone’s main contention that the EU is a ‘regulatory state’ (1999). Majone’s theoretical assumption that purely Pareto efficient policies with no redistributive effects may on normative grounds be isolated from democratic accountability is correct. However, as Hix and Follesdal point out, the problem comes at the empirical level since the “empirical reality of decisions is a continuum between policies that are predominately efficient and policies that are predominately redistributive, with many mixes (2006, 542)”. On one side of the continuum we have judicial decision and technical decisions about products which are at the efficient extreme. On the redistributive extreme we have EU expenditure policies. In between these two extremes the bulk of EU policy making occurs, like the construction and regulation of the market, competition policies, and interest rate policies. Furthermore, Hix and Follesdal emphasize, that at the individual level the winners and losers from redistributive policies are much more apparent (2006, 543). For example, farmers, depressed regions, and researchers are net winners because they receive large amounts of the EU budget as a percentage of their income. Taxpayers at the individual level who pay into the EU budget receive widely varying amounts of net-benefit or net-loss from EU expenditures policies. Majone may wish that all EU regulation was only purely Pareto efficient. Yet, many EU regulatory policies have identifiable winners and losers (Jorges, 1999). So Majone appears to not be able to give a compelling reason why policies which are redistributive should be isolated from democratic contestation so he can not diminish the demands of the democratic deficit thesis for more responsive and accountable EU officials.

The next two major points of contention are raised by Moravcsik (2006). The first point of contention is detailed by Follesdal and Hix when they claim the “match between preferences and policies should not only occur as a matter of fact, but there should be mechanisms that reliably ensure that this power will indeed be so used (2006, 545)”. Moravcsik uses empirical evidence to respond to the ‘drift’ and ‘accountability’ argument to show that present policy outcomes created by EU institutions are acceptable to citizens. Based on this empirical evidence we can grant Moravcsik success in defeating the ‘drift’ argument that policy outcomes drift away from the preferences of the majority of voters in the EU. However, defense of institutions as democratically accountable must also show, according to Hix and Follesdal, that the institutions “can reliably be expected to secure more acceptable outcomes in the future than the alternatives considered” (2006, 545). For example, the institutions must be sufficiently responsive to the best interests of the voters. Moravcsik with his empirical evidence focusing on the acceptability of policy outcomes does not offer a response to the argument that the policy making process is unaccountable

to voters preferences, and therefore, cannot defeat the 'accountability' argument. However, Moravcsik can still argue that procedural constraints like oversized majorities and indirect control of EU officials by national parliaments may make it more likely that policy outcomes acceptable to the majority of citizens will still be reached. Essentially, this second point of contention shows that it is still highly contested whether or not the 'accountability' argument can be dismissed with only empirical evidence of outcome acceptability without showing that the policy creation mechanism will tend to secure the most acceptable outcomes to a majority of voters.

The final remaining major point of contention centers on how voter preferences are determined. Follesdal and Hix argue that the key difference between democratic and non-democratic institutions "is that citizens form their views about which policy option they prefer through a process of deliberation and party contestation that are essential elements of all democracies (2006, 545)". So if we follow Moravcsik's and Majone's concept of isolating certain arenas of policy making from public participation or deliberation we don't allow preferences to properly form among voters. This may explain why EU citizens see issues that the EU addresses as possessing low salience. The 'distance' and 'accountability' arguments prevent EU citizens from deliberating and participating in the policy making process so their preferences come out unformed or malformed. Basically, there is a serious disagreement in the democratic deficit debate about whether preferences and the salience of policy issues are formed endogenously to the policy making process or are fixed exogenously. This leads to a contentious disagreement between the two sides of the debate over whether the 'distance' and 'accountability' arguments are actually problematic for the EU.

Given the three major points of contention outlined above, the democratic deficit debate essentially appears to distill down to the democratic deficit thesis proponents arguing for a change in the EU to bring about a constrained form of democratic rule with more popular participation and deliberation. In contrast their opponents, like Majone and Moravcsik, support some weak form of technocratic rule with far less participation needed from the public.

#### **PROPOSALS FOR CONSTITUTIONAL REFORM**

Out of this rich debate on the democratic deficit thesis many proposals for constitutional reform to fix aspects of the EU that appear democratically illegitimate have been suggested. This final section presents four sets of proposals although dozens more have arisen from the democratic deficit debate.

First, there has arisen out of the democratic deficit debate a group of proposals to address the 'accountability' and 'distance' arguments of the democratic deficit thesis. This group of proposals attempts to provide the EU with issues to tackle which are more salient with voters. For example, Phillippe Schmitter advocates making the EU more redistributive by giving it more power in pensions and social security, giving it the power to be more supportive of immigrants and aliens, and allowing it to rebalance national welfare systems away from the elderly (2000). Citizens would then be forced to reorient their attention in the direction of the EU agenda because the policy outcomes of the EU would be making them winners or losers. This would lead citizens to demand more elections of EU officials and actually make such elections about the direction of EU policy instead of second order national contests. According to Schmitter, expanding the powers of EU would in effect



increase deliberation, improve preference formation, and increase participation by voters in the EU since the EU would be dealing with high salience issues (2000).

Moravcsik believes that following Schmitter's suggestion of making the EU more redistributive, and therefore, more salient in an attempt to increase deliberation, participation, and preference formation is a terrible idea (Moravcsik, 2004, 26). Moravcsik believes Schmitter presents a coherent scheme of reform directed at those that are most dissatisfied with the EU, namely the poor, less well educated, female, and public sector employees (2004, 26). However, such a program of reform would not work because it would result in "a higher level of political conflict, domestic and interstate, than Europe has seen in several generations and perhaps the collapse of the organization" as the losers end their willingness to participate in the process of European integration as a result of the reforms (2004, 26).

However, fixing the 'accountability' and 'distance' arguments by increasing participation brought on by increasing the number of high salience issues the EU addresses is not a program of reform without merit. For example, during Germany's EU presidency Chancellor Merkel has shown a willingness to mobilize public concern over climate change to try and re-launch the draft constitutional treaty (Williamson & Parker, 2007). Germany decided not to cut down the treaty but improve it. The topic of climate protection has been chosen as an obvious candidate for addition to the treaty because it is an issue of high voter salience (Williamson & Parker, 2007). These actions by Germany can be seen as an attempt to demonstrate the relevance of the European Union's policy making to the voters in hopes that they will participate in passing a revised draft constitutional treaty. So taking certain issues of high salience with voters and giving the EU the power to legislate on them may actually increase political participation by voters and partially fix the 'accountability' and 'distance' arguments.

The second group of proposals for constitutional reform is found in the draft constitution. As stated earlier, the European constitutional project was in part undertaken as a way to respond to the arguments made against the legitimacy of the EU in the democratic deficit thesis. There are a number of items contained in the draft constitution that attempt to address the democratic deficit thesis. For example, it extends the power of co-decision to almost all policy areas. This addresses the 'strong national executives' and 'weak European Parliament' arguments since the powers of the European Parliament dramatically improves as it becomes a truly equal partner in legislation with the Council during all policy making at the EU level. The draft treaty also requires the Council to meet in public when legislating, and therefore, addresses the 'distance argument' by making policy making less opaque and foreign to citizens. The draft treaty further address the 'weak European Parliament' argument by mandating that national parliaments receive info about new EU policy proposals with enough time to mandate ministers on how to vote in the Council. Perhaps, the most groundbreaking clause of the draft treaty is it gives national parliaments the ability to send back legislation to the Commission which the national parliaments believe is outside the scope of the European Union's policy portfolio as defined by previous treaties. This goes a long way towards remedying the 'strong national executives' and 'weak European Parliament' arguments. Finally, the draft contains a clause which requires the Commission to consider any proposal for legislation which has the support of 1 million EU citizens. This reform starts to dispatch the 'drift' and 'distance' arguments. However, with the Dutch and French 'no' votes to the draft constitution there has been a debate about whether the



constitutional draft was too bold in its reforms or not revolutionary enough. The German government, the current holders of the EU presidency in the Council, has made it known that it will not remove clauses from the draft constitution but attempt to add bolder reforms as it attempts to re-launch the draft constitution (Williamson & Parker, 2007).

The final two sets of proposals for constitutional reform are diametrically opposed when it comes to the future direction of reform to the EU. The third set of proposals sees the failure of the draft constitution as a sign that the current constitutional arrangements are sufficient and the EU is for the most part already democratically legitimate. The fourth set of proposals supports the current EU presidency's position by arguing that bolder reforms are needed for the constitution beyond those contained in the draft constitution if the democratic deficit is going to be remedied.

The third set of proposals favor drastically cutting down the draft constitution if it is going to be relaunched or allowing the draft to die. Moravcsik has been a strong advocate of maintaining the current constitutional status quo (2006, 238). Keep in mind that he argues that even if elements of the democratic deficit exist they are not problematic. He argues that holding the EU up to a standard of direct majoritarian democracy is counterproductive and impractical (2006, 238). This is the case because no modern democracy meets this standard and no modern democracy aspires to do so. According to this viewpoint, many elements of the EU that are attacked in the democratic deficit thesis are actually assets to the EU given the low salience of the issues the EU legislates on and the intentional isolation of certain portfolios in the EU from politicization. According to Moravcsik, those supporting a final constitutional settlement for Europe or the draft constitution, erroneously believe that public participation and deliberation are ends in themselves and are the sole source of legitimacy (2006, 238). He argues that the view that the EU suffers from a democratic deficit compared to its member states comes from the fact that the EU deals with issues that are also commonly delegated and insulated in the member states' domestic political scenes (2006, 239). Those advocating the third set of proposals for constitutional reform essentially defend the status quo. They see the failure of the draft constitution as a demonstration of Europe's success and stability. To summarize, according to Moravcsik, they see in the failure of draft constitution "the stability of both the substantive and institutional dimensions of the current constitutional settlement" (2006, 236).

The fourth and final set of proposals attempt more dramatic reform of the constitution in an effort to increase political contestation in all the institutions of the EU. For example, proponents of this path, like Follesdal and Hix, advocate more political contestation as essential for preference formation among voters and for the exercise of accountability over officials at the EU level by voters in the EU (2006, 548-50). To bring about an increase in political contestation they propose increasing the power of the European Parliament to allow the political parties that are forming in the Parliament to politicize the policy making process further. They also propose more transparency in the Council in the form of allowing the media to report who proposed which policies, who proposed amendments, and who was on each side when the final vote was taken. This increased transparency would allow the public to hold governments responsible for their votes in the Council.

Advocates of the fourth set of proposals, like Hix and Follesdal, argue that the Commission's role in setting the policy agenda needs to be open to contestation and criticism (2006, 554). Furthermore, this viewpoint advances that an institutional mechanism

needs to be found for generating more debate and contestation about politics in the EU, not just debate about the EU as an institution. Hix and Follesdal propose opening up the presidency of the commission to political contestation as the simplest method of achieving this desired institutional mechanism. Hix proposes a direct election of the Commission president by the citizens or the national parliaments (2002). A less ambitious route would be to make the national executives in the Council allow a more open battle for president of the commission without further constitutional reform. It is thought by proponents of the fourth set of proposals that increased political contestation for the President of the Commission would create more debate about the best policy agenda for the EU among the citizens and officials in the EU. This reform, according to advocates of more radical reforms than those proposed in the draft constitution, would take an enormous step towards destroying the democratic deficit in the EU. However, bolder reform of the European Union's constitution makes sense if and only if we really believe that the elements of the EU which are described as undemocratic are actually problematic.

### **CONCLUSION**

I am most persuaded by the set of proposals which attempt more dramatic reform of the constitution in an effort to increase political contestation. While I think there are strong counterarguments against the 'weak European Parliament Argument' and the 'strong national executive' elements of the democratic deficit, the 'distance' and 'accountability' arguments have, in my opinion, not been adequately countered. For this reason I tend to favor the proposals for constitutional reforms that present mechanisms for increasing political contestation. I think only more contestation in the European Union's policy making and leadership contests will make the public truly begin to deliberate, participate, and hold EU policy makers accountable. I don't agree with Moravcsik when he claims that preferences can be formed exogenous to the policy making process. In my mind issues will only become more salient to voters if they form preferences on the issues and preferences can only be formed through participation. There are mechanisms which will encourage the formation of preference and make EU policy portfolios more salient. These mechanisms should be implemented. It is my opinion that without the benefits which flow from further political contestation the EU will maintain the status quo of technocratic rule and continue to have a severe democratic deficit.

The contributions of the scholars discussed in this paper to formalizing and enriching the debate about the democratic deficit thesis have certainly led to many new proposals for reforming the constitution of the European Union. We started by defining the democratic deficit thesis and then examined some responses to the thesis. Next, we tried to flesh out the major remaining points of contention that exist in the democratic deficit debate. Finally, we examined four sets of proposals for further constitutional reform that have come out of the democratic deficit debate. A consensus on the future of constitutional reform in the EU or the existence of the democratic deficit has not been reached and probably will never be achieved. However, it is clear that the direction of future constitutional reforms in the EU will be heavily influenced by developments in the debate surrounding the existence of a democratic deficit in the EU.

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