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When the people come in: Constitution-
making and the belated politicisation of
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*When the people come in:
Constitution-making and the belated politicisation of the European Union*

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Abstract

The EU has over decades gradually developed a material constitutional arrangement, with very limited public input. Since 2001, the Laeken constitutional process which produced the *Treaty establishing a Constitution for Europe* has become greatly politicized. This automatically directs our attention to the public sphere as a core requirement of any modern constitutional system. More specifically, this paper will analyse the structural determinants of mediation and public communication between European constitution-makers and their diversified constituencies. The aim is to relate the negative referendum results or what we refer to as ratification failure to the European public sphere deficit. Three possible explanations for ratification failure will be discerned and discussed: The first posits that constitution-making, in order to be successful, *must rely on* pre-existing resources of common trust, solidarity and understanding, which are constitutive of a shared public sphere. The second explanation takes as its point of departure that a process of constitution-making has a catalytic function that in turn *can constitute* a shared public sphere. The third explanation attributes ratification failure to the manner in which *mediatisation* affects public communication in the EU. As will be argued, the contingent character of mediatisation contains particular risks for the European constitutional endeavour which merits further research attention.

Keywords: media, referendum, constitution building, democratization, deliberative democracy, discourse

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1 Introduction

When the heads of state and government in October 2004 gathered for a lavish ceremony in the Renaissance splendour of the Campidoglio hall in Rome to put their signature on the Treaty establishing a Constitution for Europe, often touted as the first Constitution for a united Europe, this was widely cast as a major milestone in European history. The aristocratic setting was chosen in an effort to create a symbolic repetition of the founding act of the European Communities. The ceremony was meant to re-affirm the principles of European integration – a process that could now with this act also draw on the powerful vocabulary of constitutionalism as the key to Europeans' normative-identitarian self-understanding.

The October 2004 gathering, however, is different from its forebear. Now, such an epochal achievement can no longer be concluded merely through the signatures of Europe's 'enlightened' rulers. Today, the constitution-signers also have to confront the people's choice. In October 2004 they seemed well on track: all major political parties supported their project; and major NGOs and representatives from civil society expressed their overall satisfaction by acknowledging that the Constitutional Treaty would improve the social and political rights of European citizens and enhance civic participation in EU-decision-making.¹ Last, but not least, the confidence in the success of the constitutional adventure was backed by Eurobarometer opinion polls indicating that a substantial majority of the populations in all the Member States (with the exception of the UK) were in favour of the Constitutional Treaty.²

Nevertheless, subsequent popular responses brought to light what is now referred to as a deep gulf between citizens and elites. The French and Dutch citizens some seven months later in their respective national referenda rejected the Constitutional Treaty by wide margins, and impressed upon the leaders that the ECT (European Constitutional Treaty) should effectively be consigned to the proverbial dustbin of history.

Why was the Constitutional Treaty rejected? In some quarters, it was taken for granted that people should approve of a constitutional text whose presumed effect would be to expand their rights and enable them to participate more effectively in the decision-making processes at the supra-national level. These participants and analysts were perplexed when they found that large portions of the peoples of Europe – maybe even a majority – did not take up the offer or simply did not care. One important take to improve our understanding of the reasons behind people's reactions is to look at the structural determinants of mediation and public communication between European constitution-makers and their diversified constituencies.

In this paper we relate the failure of European constitution-making to the 'European public sphere deficit'. Two possible explanations can be discerned from the state of the art of European public sphere research: The first posits that constitution-making, in order to be successful, must rely on pre-existing resources of common trust, solidarity and understanding, which are *constitutive* of a shared public sphere. The Union, predictably, does not have such; hence it lacks the trust and solidarity that a

¹ See the end-of-term report card issued by the Civil Society Contact Group after the closing of the Convention (<http://www.act4europe.org/code/en/civi.asp?Page=4&menuPage=4>).

² See EUROBAROMETER Special 214 'The Future Constitutional Treaty', March 2005.

constitutional arrangement requires. The second explanation takes as its point of departure that a process of constitution-making which unfolds through public reasoning and debates can have a catalytic function that in turn can *constitute* a shared public sphere, which makes it possible for people across Europe to accept the Constitutional Treaty. From this perspective, the ECT was rejected because the process was *not* sufficiently catalytic.

Both explanations are normative in the sense that they attribute failure to lack of success of public communication in relation to a certain standard of common understanding, public engagement and agreement, as well as in relation to certain procedural requirements. Ratification failure would thus provide further evidence of the non-existence or mal-functioning of the type of encompassing public sphere that the launching of a project of constitution making is seen to require. In the absence of such an intermediary sphere, European elites would not be able to transmit the constitutional message, i.e. the qualities and merits that a European constitution entails to the people. While well-established national public spheres dispose of rescue mechanisms and channels of transmission that help avoid such failures of public communication, the EU would be trapped in its own communicative insufficiencies – defects that cannot be easily overcome by the good-will of the participants – perhaps even in the somewhat unlikely event that such is in ample supply.

In the following pages we develop these two state of the art explanations in further detail and briefly assess their adequacy. As explanations of ratification failure we argue that the first is misleading and the second needs supplementing. In response to this, we propose a third possible explanation which is based on a configuration of public sphere that speaks to the distinctive character of the EU. It attributes ratification failure to the manner in which mediatisation affects public communication in the EU. The contingent character of mediatisation carries with it three risks for EU constitution making: the European constitutional message could be misunderstood; it might not reach its addressees; and it could be openly rejected by the electorate. In relation to this third explanation our main purpose is to provide suggestions for how the research on the public sphere dimension of the European constitutional endeavour could most usefully be framed so as to account for recent events.

2 A Union without a Public?

The first explanation for ratification failure stems from the widely-cited notion that the European Union has no public sphere. Habermas's prescient warning on the eve of the French and Dutch referenda appears to be borne out to the effect that: 'there is still no European public space, no transnational bundling of themes, no common discussion, each one of the votes takes place within the bounds of the individual country's public sphere.' (Habermas in *Nouvel Observateur* on 7 May, 2005).³

The absence of a common European public sphere is usually seen as a systemic constraint, closely attributed to the character of the Union *qua polity*. As such, the

³ The reference to 'still no' is important here, as Habermas certainly does not rule out the possibility of a future European public sphere.

lack of a European public sphere will likely preclude *all* further attempts at developing a European constitution. Dieter Grimm has noted that the 'Prospects for Europeanisation of the communications system are absolutely non-existent. A Europeanised communications system ought not to be confused with increased reporting on European topics in the national media. These are directed at a national public and remain attached to national viewpoints and communication habits. Accordingly, they cannot create any European public or establish any European discourse.'(Grimm 2004, 78-79)

Note that this claim rests on a particular understanding of public sphere, that is, as a pre-political discursive community. For such a discursive community to exist, certain communicative presuppositions have to be in place. In the clearest form, such presuppositions also come with an explicit set of cultural supports. They are derived from a pre-political sense of community, where the community is embedded in a common language. The present European Union of course falls well short of this. It is probably the most linguistically diverse polity in the world and does not even have one agreed-upon working language (although English does appear to be gaining ascendancy).

Other analysts who attribute ratification failure to the absence of a public sphere do not share Grimm's pessimistic outlook as to the lack of future prospects for a European public sphere. At stake is the role of cultural viz. legal-institutional factors in creating the communal supports for a public sphere. Institutionalists argue that cultural diversity – even in linguistic terms – need not preclude the emergence of a public sphere. What they highlight is not diversity as such, but the Union's undemocratic character in legal-institutional terms. The Union is often portrayed as a technocratic system of governance, which fosters juridification largely bereft of democratic control and oversight. These problems are amplified by the very scale and heterogeneity of the EU multilevel system, which also helps to sustain cultural pluralism and institutional heterogeneity. The ensuing Byzantine structure is seen to place strong *de facto* constraints on citizens' participation and involvement. This helps spur opposition, frustration and disenchantment, which are vented at any possible occasion, and notably during national popular referenda. The Union's structure, this argument runs, sustains a strong national imprint on the debate also on issues and questions that concern the European level.

Within this line of explanation, albeit analysts work from different underlying conceptions of the character of the public sphere, such a difference may not matter much, as they do agree that the Union's underdeveloped democratic character will serve as an effective brake on any viable public sphere development. This explanation is problematic in the sense that it implicitly denies the important *European* dimension to the ratification debate and more importantly how this dimension helped prompt rejection of the Constitutional Treaty.⁴

⁴ Consider the French case where the 'No' was principally motivated by alternative conceptions of the European public good and the shortcomings of European constitution-making identified in the debate.

3 A depoliticised Union with weak catalytic functions?

The second explanation relates ratification failure to the *process* of constitution making. It states that European constitution-making failed because it was not sufficiently developed to launch public disputes and debates that are needed to promote citizens' involvement and understanding. In short, the pattern of deliberation that the process spurred did not have the presumed public sphere generating catalytic effects that analysts have attributed to democratic constitution-making.⁵ In contrast to the first explanation, which conceives of the public sphere as rooted in a pre-political community of citizens who are bound to each other by primordial ties of trust and solidarity; the notion of public sphere that the constitution-as-catalyst is based on is that of a political community of active citizens who challenge the legitimacy of existing institutions and styles of policy-making. The key to understanding the catalytic function of the public sphere is thus *politicisation* in the sense of mobilising citizens' support or resistance. Habermas notes that 'this convergence [of Europeans] in turn depends on the catalytic effect of a constitution. This would have to begin with a referendum, arousing a Europe-wide debate – the making of such a constitution representing in itself a unique opportunity of transnational communication, with the potential for a self-fulfilling prophecy.' (Habermas 2001, 16-17)

In these terms, the European public sphere deficit has been linked to the under-politicisation of the EU with the expectation that public mobilisation would follow once extensive opportunities for voice of affected citizens had been created. The predicted end of the permissive consensus after the Maastricht Treaty could be assumed to have helped bring about a situation wherein public silence would be slowly replaced by voice through the official and unofficial channels of the EU.

The EU's post-Maastricht development has had democratic effects: this includes an EU-based institutional arrangement with certain representative qualities; a *material* constitution with basic rights protection; transparency provisions and popular consultative mechanisms; and a kind of an intermediary structure of civil and political organizations at the EU level. The Union has also experimented with new modes of participative and consultative governance where citizens and their representatives have been included. Together these arrangements have increasingly come to bind further steps of integration to the direct or indirect approval of the public.

Nevertheless, some fifteen years after the proclaimed 'end of the permissive consensus' Peter Mair (2005) still speaks of the 'remarkable under-politicization' of the EU, which is surprising in light of the high potential for conflict over its reach, its form and its finalité. Low turnouts in European Parliamentary elections illustrate that there is limited public enthusiasm and probably even a declining interest among European citizens to make use of the European channels for voicing their concerns. Patterns of public opinion and will formation are still very narrow, national media formats treat European issues and debates with marginal and shifting attention, and only a limited number of debates take place in fora that are able to reach ordinary citizens.

⁵ That such a catalytic function for the emergence of a European public sphere would come to bear in the context of European constitution-making was most prominently predicted by Jürgen Habermas (2001) in his debate with Dieter Grimm (1995).

But given the strengthened commitment to democracy and the fact that the Laeken constitution making process was far more open and accessible to the public than any previous constitution making event in the EU (Fossum and Menendez 2005), are then the *recent* constitutional referenda the beginning of the long expected politicisation of the EU with political parties, general publics and electorates finally turning their attention to Europe? The largely unforeseen protests against the EU and the constitutional output in the Netherlands and France are certainly examples of politicisation, albeit a belated one, as they were expressed after the constitutional proposal had been forged, that is, at a point in time wherein voice was disconnected from the substantive contents of the decision. But can this be properly considered as *catalytic*?

There was no common European referendum to set off the catalytic spark, which Habermas' notion presupposes. But there were 10 national referenda planned. We could modify Habermas' position so as to allow for the catalytic thrust either to emanate from the combined thrust of the referenda or from the process preceding this. The point is that when part of a properly set up deliberative constitutional process referenda are far more than simple 'approval-machines'. The process can be catalytic when referenda follow *after* a comprehensive process which has helped to establish a common focus and a common attention to constitutional debates, that is where the same issues are debated and the same normative arguments are put forward and negotiated throughout the polity. This assumption derives from the rationalising potential of a well-functioning public sphere that mediates vertically and horizontally across different levels and arenas, and promotes a common understanding among European constitution-makers, the national political arenas and the general publics. Such a public sphere must provide opportunities for the proponents and opponents of a European constitution to unfold their arguments that have been previously tested out in policy debates and are now proposed to the general public. It further presupposes a media system as the carrier of rational discourse and a general audience that develops critical capacities to make their choice on the basis of their best knowledge and information. This conception of catalytic constitution includes structural-institutional components, so that the catalytic impetus is seen as related to the character of the *overall process*, that is, as involving both strong and general publics rather than simply the activation of general publics at the referendum stage.

3.1 Why was the process not catalytic?

The Laeken process of constitution making was such structured as to lend little systemic impetus to polity-wide politicization. Instead, the process was highly fragmented – with quite diversified national ratification procedures – which encouraged a greatly fragmented process of voice. The wide range of different ratification procedures ended up paying tribute to the fragmented nature of a Union still made up of largely national public spheres. The ideal that there should be a common focus and a shared relevance to the process was undercut by the reality of uneven attention in fragmented constitutional debates in the Member States which varied widely in intensity and content. Within this context referendum became a singular and quite unique opportunity structure which helped spark a lively debate in France and the Netherlands in April and May 2005. But this was not automatically carried on to other countries (there was far less debate in the Spanish referendum in February

2005) Many of the countries had decided to ratify the constitution by parliamentary vote, which resulted in extraordinary approval rates (between 90 and 99%). Here all-partisan consensuses in the respective countries⁶ emerged, but without larger publics taking much notice. German newspapers, for instance, debated the possible choices of the French people quite intensely, but few debates were launched on what choices the representatives of the German people should make. When it came to the vote in the German Bundestag, the *Süddeutsche Zeitung* was claiming with some plausibility that even many MPs had limited knowledge of what exactly they voted for.

Long-term catalytic learning processes are dependent on the consistency, the overall resonance and the persistence of the ongoing debates. For the constitutional dimension to systematically figure here the process also has to be framed in explicit constitutional terms. At Laeken, the catalytic spark was held back by the basic ambiguities that inhere in EU-constitution-making itself. The title of the final product *Treaty establishing a Constitution for Europe* is quite telling. Taken literally, the title suggests that the evocative power of the term constitution cannot be properly unleashed unless and when the present treaty is converted into a constitution. The ECT was framed as a constitution by the Convention and the IGC, although it was also frequently noted that this was a distinctive type of constitution, a constitutional treaty. The Laeken process, albeit not at the outset set out to be an explicit constitution making process, ended up in dressing up present-day EU in constitutional cloth and garb. Beyond this the process was framed and organised basically the same way as previous Intergovernmental Conferences (IGCs), with the exception of one innovation: the Convention. The Convention was initially intended as a preparatory body for the Intergovernmental Conference, and where the latter would take the decisions that had to be ratified by each member state.

The Convention, *once established*, portrayed itself as a constitution-making body.⁷ This attempt at a more open and deliberative approach to constitution-making took place in the absence of an initial constitutional signal. The 'shadow of the IGC' (Magnette 2004; Magnette and Nicolaïdis 2004, 382) was hanging over the whole process; it constrained the process of deliberation and prevented a proper mediation between strong 'deliberative' publics and general (or 'weak') publics⁸ *at the European level*. Assessments of the entire Laeken process have found that the degree of interconnection of strong and general publics was low, while inclusivity and transparency were insufficient to characterise the process as a properly constitutional one, from a deliberative democratic perspective (Fossum and Menéndez 2005; Shaw 2003; Closa 2004). Part of the reason for ratification failure is found in the ambiguous signal and the fragmented character of the process that preceded the referenda.

⁶ For details on the national ratification procedures see the excellent documentation provided by Carlos Closa and collaborators and made accessible through the University of Zaragoza (<http://www.unizar.es/euroconstitucion/Home.htm>)

⁷ This was clearly expressed by its President. See V. Giscard d'Estaing, 'Introductory speech to the Convention on the Future of Europe', SN 1565/02, available at <http://european-convention.eu.int/docs/speeches/1.pdf>.

⁸ See Eriksen and Fossum 2002 for this model of mediation from strong to general publics.

The ratification debates testify to the irregular and episodic character of citizens' voice.⁹ In the absence of a prior process of mobilisation, politicisation through referenda is restricted to a short moment in time. Only a couple of weeks prior to the referenda the European constitution had no particular meaning to the overwhelming majority of voters. The negative referenda in France and in the Netherlands are better seen as the endpoints of short electoral campaigns, than as staging events for further politicization.

Within a fragmented process, the reality of mass media communication in highly commercialised national public spheres makes referenda into launching pads for de-contextualised public debates that are partly outside of the control of constitution-makers and which may torpedo the whole process of constitution-making. To the logics of arguing and bargaining that dominated the drafting phase referendum adds a different logic of symbolic politics and populism. Ratification then becomes a matter of presenting a *text* for approval in a new *context*. The *text* that is the outcome of arguing and bargaining has to pass the test of the public in the new *context* of broadened debate. This results unavoidably in a process of *re-contextualisation*, in which the original input changes.

Such de-contextualising of debates is nourished by the belated ratification-driven politicization of the EU with a trans-national dynamic. The negative voice of the people could also draw on a certain common trans-national focus on issues other than those in the constitutional text. De Vreese predicted as early as 2004 that the Dutch people's vote would be deeply affected by anti-immigration sentiments, pessimistic economic outlooks and the flagging popularity of national governments, making no the most likely outcome of the referendum. The turn from permissive consensus to resistance has apparently affected broad strata of the European societies. This movement is not simply nationalist, but can be grouped along ideological cleavages with a new 'left' fighting the perceived undesired effects of globalisation – of which the EU is seen to be integral, and a new 'right' using the European setting as a vehicle for promoting a neo-liberal agenda. What is seemingly a national cleavage – such as the notorious confrontation between continental Europe and the UK – can easily be turned into an ideological cleavage entrenched on the one hand in concerns with economic protection and social welfare and on the other in market liberalisation and individual responsibility. This can feed resistance against further integration but also resistance against present-day EU which is seen as inadequately supranational.

Similar ideological cleavages can be found in foreign and security policy with the emphasis on 'normative power Europe' (Manners 2002)¹⁰ dividing actors on their relationship to the USA. These broad ideological debates on the shape of the EU polity are also found in those countries where no referenda took place. The politicisation of Europe can thus be partly explained as a collective European experience, where ratification provided an opening for citizens' engagement, not simply in the acceptance or rejection of the constitutional text but as a part of ongoing struggles over the restructuring of European welfare states; the balancing of supranational vs.

⁹ Mair (2005) might therefore be premature in announcing that the EU is now 'ripe for politicization' and in expecting that policy entrepreneurs would soon seize the opportunity to mobilise on EU-issues.

¹⁰ For a discussion of the merits of this notion see Sjørnsen (2006).

national democracy; the entrenchment of human rights in a state-dominated system; security; global justice and solidarity; international crime and terrorism; and global environmental degradation.

Referenda that are not properly connected to an explicit constitutional signal and a process of constitutional decision-making wherein the people have been explicitly acknowledged as vital proprietors; and where national referenda take place at distinct instances in time over a lengthy period of time, can best be seen as a collection of garbage can processes where voting takes place under conditions of ambiguity and as a result of the partially random coupling of independent streams of politics that are only loosely coupled to the constitutional text (Cohen et al. 1972; Kingdon 1984). Different actors use the referenda as 'windows of opportunity' to come forward with very different problems and their perceived solutions. In such a situation of deep ambiguity, the Constitution is a means to different ends and can signify quite different things: within the conservative camp: a bulwark against Anglo-Saxon market ideology (Jacques Chirac) or quite opposite a tool against the French trust in the state (Nicolas Sarkozy); within the socialist camp: a weapon against the existing liberal market jungle (François Hollande); or the first step into the jungle (Laurent Fabius).

In a democratic setting, it is difficult for other actors to control access and to close down this 'window' for the 'de-contextualised' participants. This leads to an inevitable crowding of the open democratic arena: rational debate risks being turned into noise. Ratification can thus be marked by a deep rupture in constitution-making, where the results of the previous phases have only very limited bearing on the actual outcome. Independent of the quality and contents of the constitutional text, it is now the context that determines the fate of constitution-making. The re-contextualisation of the constitutional text in different national settings increases the garbage can effects with incalculable and often purely casual effects. It is then no wonder that ratification seems to resemble more of a lottery than a rational process.

4 Ratification failure as failure of communication?

The third explanation takes as its point of departure that there is a pattern of European communication, albeit one with several distinctive features of direct relevance to explain ratification failure. This pattern does not qualify as a European public sphere in the conventional sense. It is more distinctively mediatised than is the case with national publics. It is a relatively thin veneer on top of a system of largely segmented national publics, and where the respective contributors are not well joined together (institutionally or conversationally) or synchronised. The effect is to highlight the vertical top-down thrust of communication over that of the horizontal one, so that media and institutions talk *to* people more than talk *with* them, and where the mechanisms for ensuring that people talk with each other across boundaries are still weak. Such a public sphere is marked by a great element of *contingency*, with a greater propensity for re-contextualisation of debates as well as for communication failure.

When entering public debates about the European constitution, political actors and institutions confront this contingency of the 'European public sphere'. This includes, above all, the (sometimes painful) experience that mediatised debates obey different

rules than deliberation and the search for compelling arguments in small communicative circles. Mediatized debate has the propensity to make context more important than constitutional text. In this sense, opening public debates entails re-contextualising the text that has been finalized by the IGC.

European political actors with limited experience in dealing with the media often assume that media should work as the mirror of the EU political system so as to amplify its normative debates and to assure that compelling arguments are visible to everyone. When finding discrepancies they respond with disdain. Consider the following statement by the French Commissioner Jacques Barrot in *Le Monde*, 29 May 2005: 'Nous sommes devant une campagne de désinformation où le mensonge l'emporte parfois, tout simplement parce qu'il est de bon ton de dire non. C'est snob de dire non.'

European constitution-makers tend to see the media as an instrument of popular enlightenment or even as an amplifier of government information strategies.¹¹ What from the self-referential perspective of the political system is blamed as disinformation and lie is actually also part of the condition for media freedom and autonomy. Media do not work as a mirror of the political system but apply their own rules in selecting and framing political news. The affirmative input of the political system is turned into critique, the 'facts' are de- or reconstructed, the functional perspective is linked to different world-views and life-world expectations, and the legal-normative context is broken up by expressive and identitarian mechanisms.

Such a mediatized public sphere may therefore do less to close the gap between citizens and elites than is commonly assumed; hence help explain ratification failure. Mediatization can sustain a democratic conundrum wherein the public mistrusts their elected or self-appointed political representatives and political elites lack trust in the public's ability to comprehend. Such a tension can be expected in the EU which has limited scope for access and participation, and where the multifaceted European public has limited capacity and ability to attend to and understand each other. In a polity that is marked by deep heterogeneity and poly-contextuality, constitutional debates are almost inevitably context bound and pluri-contextual. The expected de-contextualisation of normative debates turns the empowerment of the people through referenda into a risky undertaking. Europe faces the problem of pluri-decontextualisation: one text but quite different contexts. What is needed but is in inadequate supply in the EU is a double translation mechanism from text to context and from context to context: vertical mediation between policy arenas and media arenas, and horizontal mediation between different media and other conversational arenas.

When taking proper account of the contingent character of the mediatized public sphere, in particular within such complex and composite settings as the EU, we recognize that the very launching of public communication is imbued with risks: The senders of political messages in the EU cannot rely on a kind of routine public understanding. There is a high likelihood that someone out there will *not* catch the right understanding or may not be willing to pay attention. Accordingly, we can

¹¹ This might reflect a less cynical approach to public communication. One could argue that such decontextualisations are more pronounced in the national media spheres, but here national politicians are increasingly trained to become professional media handlers.

understand failure of public communication as an observatory relationship wherein efforts between speakers and their addressees to reach an understanding through communication visibly fail. This rupture then shapes subsequent steps of communication. Implicit in this definition is the notion that failed communication results in follow-up communication and not in the cessation of it (otherwise we wouldn't be able to realise that communication has failed). Failed communication does therefore not, as is generally assumed, indicate the lack of a public sphere, but points to different, contingent and unpredictable ways of connecting communicative events. In this sense, failures of communication can be seen as the basis for reflection, which does not restore understanding as it was originally meant but instead allows for a second order observation of communication. Such a conception of the public sphere can explain how failures are detected and what comes after failure.

In the following we will spell out three dimensions of failure of communication and try to demonstrate how these may help explain ratification failure. These are: a) misunderstanding, b) missing the addressee, and c) rejection.¹²

A classification of possible failures of communication

1) The risk of missing understanding

The emphatic notion of understanding is based on the tenet that arguments become shared and consensual. Understanding is reached through a collective engagement in discourse which consists in the exchange of arguments and their justifications and in their selection and aggregation until an agreement has been reached among the participants (Habermas 1992, 349ff.). In empirical terms, this implies that communicative processes in the public sphere must be based on reason-giving and inter-discursivity. The first states that speakers actually give justifications for their statements, and the second implies that they also make reference to and exchange these arguments among each other. In the European public sphere literature, the discursive model has been defended by Peters et al. (2005) who demonstrate that a discursive interchange is taking place between national media spheres. 'An emerging European public sphere is integrated horizontally to the degree that communication exchanges cross national borders, to the degree that there is a real exchange of opinions and ideas originating in different places, in short: that public discourse flows across a European (or other transnational) space of public communication' (142).

Peters et al. (2005) and Wimmel (2005) propose to measure the inter-discursivity of a European public sphere by the scope and range of communicative statements that transcend national borders. In this view, a deliberative and democratic public is one where the constitutional debate is formed by statements from speakers in different national contexts, who mutually refer to each other. Such effects are of course most likely to occur through direct interventions of prominent constitution-makers (such as the Convention's President Giscard d'Estaing) in the media spheres of different member states. During the Laeken process there were several efforts at PR-

¹² We draw these arguments on failures of communication from Urs Stäheli (2000, 109ff.) and from Niklas Luhmann (1984, 217ff.). The latter speaks of the improbability of successful communication in light of the obstacles to raise somebody's attention, to transcend context-bound meaning and to get an affirmative response.

management bent on promoting and intensifying public communication with European citizens.

We have however seen from the second explanation that the process of European constitution-making offered little assurance of improved understanding among Europeans in the sense of a 'real exchange of opinions and ideas' through discursive interactions across different public and media spheres. The given structure of national media spheres suggests that the density of transnational discursive interchange will remain rather low, even within a constitution making process. Further, cases of intensification of discursive interchanges through statements by prominent constitution makers remain exceptions. Our main critique of the position adopted by Peters and Wimmel is however that it applies a rather narrow conception of the ideal model of a discursive community (in the early Habermasian sense) to the media, without properly taking into consideration that media communication works on a different level and according to different rules than do discursive communities constituted by direct discursive interchange.¹³ This does not rule out that discursive statements can be taken up by media and become intensified in the constitutional debate. But what is necessary to keep in mind is the *contingency* involved here: such statements are a secondary construction of media discourse. They are selected, framed or re-contextualized by journalists who do not necessarily apply the same criteria for relevance as the constitution-makers.

This does not exclude media agenda and media frame convergence between national public spheres. But note that such processes do not only take place through direct discursive exchange but also by other mechanisms such as diffusion, frame alignment and trans-national resonance that provide for horizontal and vertical processes of intermediation within the multi-level polity of the EU (Snow/Benford 1998; Trenz 2005a). Media communication functions here not simply through interaction structures constituted by communicating actors, but also by the structure of issues and rhetorical elements which create resonance in distant arenas, without speakers necessarily referring to each other. The contents and the framing of news coverage in relation to EU's constitutionalisation process are increasingly determined by European patterns and commonly defined agendas. While networking presupposes the existence of direct relational links between national media arenas and their products, the mechanism of indirect diffusion can be explained by imitation and reproduction of information and knowledge diffused by the mass media (della Porta/Kriesi 1999, 6).

This has given rise to a reformulation of the condition of inter-discursivity, which is measured in the reciprocity of issues and which might (but does not need to) result in communicative interchange (Eder/Kantner 2002; Trenz 2005, 176ff.). Such a notion

¹³ Empirical surveys have pointed out that even within the existing national media spheres, the normative requirements of the discursive model of the public sphere are generally not met. Drawing from a longitudinal analysis of the debate on abortion in German print media between 1970 and 1990, Gerhards (1997, 31) concludes that justification and reason giving between different speakers is rather the exception than the rule. In an encompassing research overview van den Daele and Neidhardt (1996, 38) summarize that public debates are usually characterised by incommensurable expectations, diverging rationalities and conflicting evaluations. Instead of discursive constellations, media discourse is determined by monologic situations in which some powerful actors (in the EU usually the national governments) prevail.

is helpful in identifying the dimensions of a public sphere that conditioned ratification failure. To properly understand the impact of this altered condition of inter-discursivity within a mediatised EU public sphere, it is necessary to recur to a less emphatic notion of understanding, where public communication is successful if communicative statements or issues become transparent (which means generally visible and thus observable to some outside third with the potential to attend what has been said).¹⁴ This can be extended to a base-line or bare minimum notion of public sphere which measures the success of communication not in the inter-subjective congruence of meaning of what has been said and what is understood. This model does not consider the intention of the speaker to *make a point* or the competence of the receiver to *get the point*. It is not the substance of the message that counts but only the act of sending and receiving a message. Political communication can still be based on the commonly held assumption that understanding is bound to the conformity of meaning. But the model looks at this only as one possible template through which communicating actors or institutions observe the success and failure of their communication and implicitly can re-construct it as misunderstanding. Further, the model helps us envision scenarios wherein the rationality and truth-orientation of public communication does not figure prominently.

What does it mean under the minimum assumptions embedded in the model to say that public communication in relation to EU-constitution-making has *failed* to generate understanding? The diagnosis of misunderstanding requires the observation of an ongoing effort of communication. There must always be some form of understanding (a message that has been received) in order to be able to speak of misunderstanding (Luhmann 1984, 217). From this weak notion of understanding follows that misunderstandings can only be re-constructed through second order observation of a communicative event that has previously taken place. The sender of a piece of information (in our case the European constitution-makers) realises that undesired effects, wrongful interpretations or unknown thirds distort his or her original message. As will be argued, this second order observation opens up the space for reflection in the aftermath of (unsuccessful) constitution-making.

Ratification failure is further linked to the transformation of the European media landscape in the direction of *infotainment*, which is mainly provided by private television and the tabloids (whereas the input of European news delivered by European institutional actors is still mainly framed for quality newspapers). Such trends may produce a systematic bias towards producing misunderstandings, once European politics enters the national power play. The staging of the partisan struggle in the media is not only marked by explicit lies but also by a particularly acute but frequent case of misunderstanding or to scenarios wherein some actors do not at all bother with the truth-value of their assertions and claims. In a mediatised society which does not only live off information but also off entertainment such decontextualised contributions tend to be awarded with attention by the media and always finds a

¹⁴ From a Luhmannian perspective, understanding simply implies the reception of a message through which communication opens up to follow up on communication (Anschlussfähigkeit=connectivity of communication). Understanding the communicative message means to draw a distinction between a piece of information and its act of transmission (Mitteilung), not to grasp the ultimate meaning of that message (Luhmann 1984, 203ff.).

public made up of citizens which have 'but a casual interest in facts and but a poor appetite for theory.' (Lippmann 1927, 25)

In the EU, the ratification debates in the Member States have brought forward innumerable contributions in which particular speakers or journalists exhibit considerable indifference to the truth-value of their claims. The 'bullshit strategy' (Frankfurt 2005) became a much safer route to media attention than the sticking to the rules of rational discourse. Consider for instance the 2004 Daily Mail headline to the effect that the ECT will lead to the end of a thousand years of British history and the end of Britain as a sovereign nation. This is hardly unique to the EU but the interesting question is a) whether there is systematically more misinformation in relation to the EU than for instance to a nation-state, and b) whether there is some form of implicit 'licence to bullshit' that is applied to certain polities and forms of polity.

Our research hypothesis is that the mediatisation of European integration in the ratification process has brought to bear such systematic patterns of decontextualised communication on the EU. It remains to be tested out to what extent these effects of the mediatisation of European integration have affected and will continue to affect the erosion of the EU's legitimacy (Meyer 2005). In the present stage, the EU is set apart by the unequal effects of mediatisation with a huge variation in the quantity and quality of Europeanised news coverage across countries and across different media types.

Mediatisation can reduce public discourse to a *struggle for attention* with frequent recourse to 'illicit' measures. This might explain the success of marginal groups in the French and Dutch constitutional referenda to carry on their struggle for recognition primarily as a struggle for attention through expressive means and symbolic actions. In contrast to the 'rational commitment' of European actors and institutions, the highly mediatised national power play is deeply affected by such 'decontextualised' logics of political debate, which all too often finds easy access into the media.

2) *The risk of missing the addressees*

The transformation of political communication into public communication is not only a normative requirement of democracy but becomes an integral part of the staging of politics in modern mediatised societies. The internet has increased the amount of public communication and has accelerated the speed of its distribution. In the EU, we find public communication in the form of written documents, which are generally translated into all the EU's official languages. Similarly, the Convention process produced written statements from Members and outside participants that were made available online in the EU's three main working languages. The internet has also allowed for the visualisation of European politics and new mixed formats such as Europe by Satellite have been created where citizens can watch EU-reality television with a broad offer ranging from live transmissions of European Parliamentary plenaries or committee meetings, Commission's press conferences, selected Council meetings, and the plenary meetings of the European Convention.

What these forms of European public communication have in common is that the probability of general public attendance is low. The principal visibility and accessibility of public communication is thus only a weak guarantee for its public resonance. Yet, even according to the minimum model of the public sphere outlined above, under-

standing presupposes attention. How can a communicative event attract the attention of potential addressees which are not directly involved in the communication and which, as in the case of the EU, are distant and fragmented? There are two improbabilities linked to the spread of public communication in the EU: one is the problem of spatial and temporal diffusion, the other is the discrepancy between the amount of system-generated communicative offers and an apparently limited demand on the side of the public.

The distributional problem: Communication which takes place at one place has to draw the attention of people at other places where people have principally different things to do (Luhmann 1984, 218). Public communication is confronted with a problem of spatial and temporal diffusion. Beyond the scope of immediate interaction it is very unlikely that communication draws any attention, and it is only by recurring to specific news values that attention can be increased.

The effects of news values on the amplification of European public communication are ambivalent. On the one hand, news values are universalised; they determine the approximation of the news agenda across countries and cultures. On the other hand, European news does generally not correspond to the generalised news values that determine the selection of media agendas. The unitary effects of news values consists thus rather in the *non*-selection of European news. These problems are amplified by the difficulties of temporal diffusion: issue attention cycles are generally short, as too many issues compete for attention in the media. This restricts the potential for the unfolding of long term debates or even of learning processes linked to the common experience of discursive interchange. Research on the unfolding of debates in the EU has shown that there are common peaks in the attention cycle of European issues and that the same issues are discussed at the same time but such debates are very short lived (Trenz 2005a). These findings are not unique to the EU. We also see national public debates unfold within ever shorter issue cycles and with high risks for various public attention distractions.¹⁵

The attention gap: Ratification failure also ties in with the presumption that there is a general demand on the side of the public to increase the communicative efforts of European institutions. How do we know that an increase in European news coverage in any media product might not be perceived as an annoyance? This problem is not only linked to the EU. It rather points to a general discrepancy in modern mediatised societies: The turn of political communication into public political communication is restricted by the attentive capacities of the public.¹⁶ Even the case of absolute publicity would not bring about much change in the amount of attention that 'ordinary people' are willing or capable to devote to politics. 'The facts far exceed our curiosity' (Lippmann 1927, 43). While public communication is a good that can be multiplied through new technologies of diffusion etc., there is a cognitive barrier to the increase in public attention that can be activated by a public made up of humans (and not data

¹⁵ See Kepplinger (1998) for Germany and Mc Nair (2000) for the UK.

¹⁶ Mc Nair (2000, 4) reports that the overloading of the audience with too much political coverage in the 1997 election campaign in Britain resulted in the lower than usual ratings achieved by television news programmes.

processing machines). This results in a discrepancy between ever growing amounts of publications and relatively stable resources of attention (many would even claim that the attention of the publics, i.e. their willingness to pay attention to politics is decreasing). Media do therefore increasingly compete for the scarce attention of the public faced with the general surplus of political communication.¹⁷ The European Union is seriously affected by this communication-attention gap. In the strong competition for attention for politics, European issues may lose out to domestic and international issues and concerns.

Whereas the previously discussed forms of misunderstanding still constitute communicative acts, the absence of public attention indicates a situation of non-communication: the observation has not taken place, a message is sent, but is not received. Much of European public communication proceeds in the form of un-received messages. The efforts to go public remain un-responded to. This points to a general dilemma of constitution-making, which addresses the public as a social constituency, i.e. a totality but which cannot guarantee the full attention of the public and only gets disparate responses. The nation state was based on the assumption of a high congruence between the addressed publics and the attentive publics. In the EU, the gap between those who are addressed as a social constituency and those who pay attention or respond has widened.

Within a mediatized public, that is a public created mainly through mediatized communication, mass apathy and 'majority silence' might be – as suggested by Baudrillard (1983) – a rational response of the people who resist elite efforts to include them into their integration project. The European elites' attempt to make the silent majority politically active by injecting them with information of a 'rational' 'serious' type risks to fail simply because of the public's indifference. Their preference for spectacle over substance, for symbols over facts and for entertainment over information could be a way of subverting the political system which they have no interest in legitimating (ibid., see also McNair 2000, 11).

3) The risk of rejection and non-recognition

Even if communication is understood by its addressees, it is not automatically accepted. 'Every utterance stimulates resistance' (Luhmann 1984, 218). In order to be successful, 'Ego needs to pick up the selective content of a communication (the information) as a premise of its own subsequent acting' (ibid.). Success of communication is thus ultimately measured in the degree of motivation to become engaged in follow-up communication in the public sphere, i.e. in the motivation to pick up an issue and to open a debate. Enhanced understanding through public reasoning might even increase the probability of rejection and delivers all kinds of 'good' reasons that were not on the table beforehand.

¹⁷ This is a reversal of the conditions of the eighteenth and nineteenth century public sphere described by Habermas (1963) where public attention was highest with regard to a scarce offer of public communication available through the limited news sources of that time. The public is made curious by the scarcity of information available from its rulers but it is soon annoyed once confronted with an information overflow of the many things the competent citizen has to know and even more things he does not want to know.

The reasons for public rejection of the Constitutional Treaty can be manifold: some oppose the idea of democracy beyond the nation-state, while others do not believe in the democratic merits of the Treaty. For whatever reason the voter decides to reject, such a decision will always be based on the reception of the constitutional message (i.e. on understanding). After understanding, the receiver of the information has entered a communicative commitment in which his/her choices are restricted by the communication that has taken place beforehand. His/her possible reaction is bound by the expectations that have been raised in communication and to which the follow-up speaker has in some way to refer. It is therefore important to understand the restrictive force of public communication in limiting the space of possible communication to the issues that are actually at stake (ibid., 204).

Constitutional referenda regulate communication through yes or no options. This stands in some contrast to the modus of epistemic choice that marked the rounds of constitutional deliberation preceding ratification. Such previous rounds can be characterised by expanding the modus from 'either/or' to 'as well as' (Beck 1993, 9). Process deliberation recognises the ambivalence of the *yes* and the *no*, whereas ratification requires a clear choice. In Laeken, the process was de-linked so that the difference in the modus of epistemic and democratic choice that any process brings up was greatly amplified, with the referenda becoming garbage can situations.

The lack of proper connection between deliberative process and democratic choice helped create irritation that became apparent in the ratification process. From the pro-European elite perspective of those who share the deliberative consensus, the rejection of the constitutional message is often attributed to the insufficient knowledge or the immaturity of the voter. The post-referenda attitude of some of the promoters of the constitution resembles that of teachers who treat the voters like young pupils or who self-critically admit that they have not been successful in passing on their lessons. The voters' rejection thus leads to a change in pedagogical styles to improve communication with stakeholders and targeted audiences (Plan D for Democracy, Dialogue and Debate).

This pedagogical attitude towards the electorate was also assumed by the enlightened journalists of the quality newspapers.¹⁸ The media basically reproduced the deliberative consensus of constitution-makers and recommended the approval of the Constitutional Treaty as the only 'rational choice' for the voters. The confusion stems from the fact that the process was de-linked so that the referenda as choice situations were overloaded: the rather short periods of ratification debate had to carry both the explorative *and* the decision-framing dimensions of deliberation – within mediated settings wherein infotainment and propaganda flourished. The problem here is that in the absence of a previous process wherein 'symbolic cleansing', issue offloading, and epistemic exploration take place and are harmonised referenda as decision moment are overloaded and privy to all kinds of other dynamics.

¹⁸ See Trenz (2006) for the reconstruction of pro-European attitudes in quality newspapers in the early phase of the constitutional debate.

5 What comes after failure? From failed communication to reflection

The simple lesson to be drawn from the history of ratification failure is that the expansion of public and media communication about the EU as a project of democracy does not necessarily enhance a common understanding and agreement on a set of specific institutional choices for the process of democratisation. The effects of mediatisation and processes of democratisation run parallel but without necessarily converging into a common European will. To capture this we have broadened our conception of what European public sphere might entail, so as to be able to capture not simply the public sphere as the necessary infrastructure of a European democracy, but also as the realm of commercialisation, entertainment, lie or 'bullshitting'.

After the negative referenda in France and in the Netherlands, these effects of the mediatisation of the EU and their impact on the project of EU-constitutionalisation and democratisation have become apparent. The diagnosis of ratification failure as failure of communication and the following 'crisis' of the EU-integration process ask for rectifying measures. After failure, three possibilities emerge: a) disregard of failure by those who have launched the constitutional project (business as usual), b) resignation by the constitution-makers and subsequent cease of communication, or c) reflection that leads to efforts to increase the chances of understanding, public engagement and agreement about the EU constitutional project.

a) Ignoring communication failure is an option, as long as those to which failure is attributed (the addressees who have misunderstood or who did not listen) keep silent and do not intervene. In the EU, such a strategy did exist in the first three decades of integration, but since the EU committed itself to democratic principles (applied unto itself), it is heavily reliant on the impression of successful communication with the public in order to derive its basic legitimacy. The negative ratification referenda in France and the Netherlands have required an immediate response. Ignoring this vote, e.g. by repeating the referenda – an option that was tried out in Denmark in 1992 and in Ireland in 2001 – was at first excluded but has later been re-introduced into official talk about how to rescue the Constitution. Such perspectives on the part of institutional actors actually calculate with the contingency of the public sphere. They are based on rather cynical perspectives to the effect that publics forget or change preferences, that attention cycles shift to new topics and that the public does not learn.

b) Cease of communication is improbable in a media environment which lives off the continuous production of communicative events. Resignation is not a viable option, limited as it is to single actors or to limited periods of time. In a democratic world, institutional actors cannot resort to silence once a critical voice has been expressed and specific counter-publics have become mobilised. In modern mediatised societies, the choice of silence is only open to the public but institutional actors in need of legitimacy cannot resort to this with impunity. In the complex constellation of multi-level network governance, cease of communication would be equivalent to cease of integration and a renounce of governmental capacities as these latter are increas-

ingly relying on a well-functioning system of communication between and among institutions, different stakeholders and the relevant publics (Kohler-Koch 2000). With the unresolved EU-legitimacy problem on the table, the debate about the democratic shape of the European political order can be expected to develop with cyclical ups and downs but with a steady intensification and amplification in the long run.

c) Reflection is a form of second order observation of previous or ongoing communicative events which are judged on the basis of their desired or undesired effects on the issues at stake. As such, reflection is linked to the self observation of the participants and their communicative performance in the public sphere. Observing the success of previous communication as a shared experience is an important device for collective identity construction. The experience of successful settlements of conflicts and problem-solving becomes part of the collective memory of a communicative community (Eder 2004). The question is whether such reflexive mechanisms are relying on successful communication or can be also triggered off from the diagnosis of communication failures.

The evident research object for investigating reflexive mechanisms in relation to failed communication is the EU's proclaimed reflection period which echoes the embarrassment that institutional actors experience in the aftermath of the negative referenda. Plan D for democracy, dialogue and debate is understood as a listening exercise so that the European Union can act on the concerns expressed by its citizens. For that purpose, 'national debates should be structured to ensure the feedbacks can have a direct impact on the policy agenda of the European Union.'¹⁹ As a specific kind of second order observation this shall include a reflection on the conditions for understanding and misunderstanding in this particular case but also in a more general context.

What remains to be tested in empirical research is how far ratification failure has triggered off second order observations of public communication as misunderstanding. What is of interest here is the causal attribution of communication failures either to the incapacity or the unwillingness of the addressee or to the incomplete or inadequate form of the message that was sent to the public. The diagnosis of communication failures becomes the object of reflection of the DG Press and Communication, analysing the European public sphere deficit and ways to overcome it (see the Commission's Plan D for Democracy, Dialogue and Debate). The measuring of understanding and misunderstanding of the public by European institutional actors can be seen as a form of attributing the responsibilities for communication failure. Public opinion polls are one such tool of measurement. For that purpose, Eurobarometer has accompanied the EU-constitution-making process from its very beginning in order to monitor public attitudes and expectations about the drafting of the European constitution. As argued by Meyer (2005), politicisation in the ratification period is a prime case for demonstrating the effects of *mediatisation* on unprepared institutions. Following our line of argumentation, much of these unex-

¹⁹ See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the regions: The Commission's contribution to the period of reflection and beyond: Plan-D for democracy, Dialogue and Debate. Brussels, 13.10.2005. COM(2005)494 final.

pected effects of mediatisation can be reconstructed as misunderstandings that result from the de-contextualisation of constitutional debates through the media. The critique of being treated unfairly by the media is itself based on such a misunderstanding, insofar as European political actors and institutions disregard that media give preference to particular news formats and apply criteria of relevance, which diverge from the process of policy (or constitution-) making.

Misunderstandings can be conceived of as constitutive for a long term process of reflexive integration. Note that in a world of perfect understanding, reflection of any kind would be excluded. A theory of reflexive integration usually starts from the assumption that long term deliberative processes are linked to collective learning processes through which communication failures can be principally corrected (Eriksen 2005, 18). Reflexive integration proceeds then as a correction of communication failures and as selection of the better arguments.

Reflection is hence commonly conceived of as a rescue mechanism of understanding, a corrective measure to communication failures and as a mechanism of collective identity formation. Our reconstruction of communication failures points to a difference between a deliberative mode of exchanging arguments and a reflexive mode of observing the exchange of arguments. What counts then is not only whether an exchange of arguments will detect the substance or the cause of the failure of constitution-making but also the observation (and subsequent communication) of communication failures, the inclusion of new voices and the search for new publics and for new ways of expressing the EU's democratic vocation. From the 'reflexive position' of second-order observation, the search for the 'rightness' of arguments ends up in the implicit self-observation of the participants.

This has roots in an alternative perception of the public sphere as the arena of societal self-description (Luhmann 1996; Hellmann 1997). From this we can note that the public sphere is not simply a mechanism for influencing the state or for controlling state policies; it is also shaping the social imagination of a political society, the kind of reflexivity that does not only inform the state but also the self of the public as a political entity. It assumes the role of an 'arena of cultural creativity and reproduction in which society is imagined and thereby made real and shaped by the ways in which it is understood' (Calhoun 2003, 249). 'To see the public sphere entirely as a realm of rational-critical discourse is to lose sight of the importance of forming culture in public life, and of the production and reworking of a common social imaginary' (Calhoun 2003, 257).

A theory of the public sphere as a programme of societal self-description opens the way to make sense of failure of communication and misunderstanding. It helps to specify the conditions under which failed communication becomes constitutive for the public sphere and its reflexive potential. To what extent constitutional debates have triggered off such processes of 'reflexive integration' beyond the evidence of failed constitution-making remains open to empirical analysis. The 2006 'Year of citizens' dialogue' will certainly not bring about the long aspired breakthrough and promote a shared sphere of public opinion and will formation – not least because the targeted

publics are again the citizens of the Member States, i.e. the national publics.²⁰ In the absence of an explicitly declared will on the part of the system to channel arguments into binding actions, which includes structuring the process in such a manner as to enable citizens to properly *imagine themselves as Europeans*, citizens may be appeased by symbolic politics or may react with disdain or not feel affected at all. Reflection will then, at best, amount to 'reflection about its difficult implementation'.²¹ The alleged European public sphere will then resort to mere reflection on its own structural deficits and normative shortcomings. Such a form of institutional self-reflexivity about the difficulties of citizens' dialogue might trigger off institutional learning processes, but it is still largely (and involuntarily) excluding European citizens.

²⁰ The Commission speaks of the organisation of 'broad ranging national debates on the future of Europe' through the involvement of national, regional and local Parliaments and through the national media.

²¹ In the words of Jean-Claude Juncker: „Wir haben im Juni 2005 eine Denkpause in Sachen Verfassungsvertrag eingelegt. Es darf nicht nur eine Pause sein, es muss auch Denken geben.“

List of References

- Baudrillard, Jean. 1983. *In the Shadow of the Silent Majorities*. New York: Semiotext.
- Beck, Ulrich. 1993. *Die Erfindung des Politischen*. Frankfurt a.M.: Suhrkamp.
- van den Daele, Wolfgang, and Friedhelm Neidhardt. 1996. 'Regierung durch Diskussion' – Versuche, mit Argumenten Politik zu machen. In *Kommunikation und Entscheidung. Politische Funktionen öffentlicher Meinungsbildung und diskursiver Verfahren*, edited by W. van den Daele and F. Neidhardt. Berlin: Sigma.
- Calhoun, Craig. 2003. The Democratic Integration of Europe: Interests, Identity, and the Public Sphere. In *Europe Without Borders: Re-mapping Territory, Citizenship and Identity in a Transnational Age*, edited by M. Berezin and M. Schain. Baltimore, MI: John Hopkins University Press.
- Closa, Carlos. 2004. The Convention method and the transformation of EU constitutional politics. In *Developing a Constitution for Europe*, edited by E.O. Eriksen, J.E. Fossum, and A.J. Menéndez. London: Routledge.
- De Vreese, Claes H. 2004. Why European Citizens will reject the EU-Constitution. *Center for European Studies Working Paper No. 116*. New York: Harvard University.
- Eder, Klaus. 2004. Europäische Öffentlichkeit und multiple Identitäten. Das Ende des Volksbegriffs? In: *Europäische Öffentlichkeit*, edited by C. Franzius, & U.K. Preuß. Baden-Baden: Nomos.
- Eder, Klaus, and Cathleen Kantner. 2002. Interdiskursivität in der europäischen Öffentlichkeit. *Berliner Debatte Initial* 13 (5/6): 78-88.
- Eriksen, Erik Oddvar, and John Erik Fossum. 2002. Democracy through strong publics in the EU? *Journal of Common Market Studies* 40 (3): 401-423.
- Eriksen, Erik Oddvar, ed. 2005. *Making the European Polity - Reflexive integration in Europe*. London: Routledge.
- Fossum, John Erik, and Agustín José Menéndez. 2005. The Constitution's Gift? A Deliberative Democratic Analysis of Constitution Making in the European Union. *European Law Journal* 11 (4): 382-412.
- Frankfurt, Harry G. 2005. *On Bullshit*. Princeton: Princeton University Press
- Gerhards, Jürgen. 1997. Diskursive versus Liberale Öffentlichkeit. Eine empirische Auseinandersetzung mit Jürgen Habermas. *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 49 (1): 1-34.
- Gerhards, Jürgen, Friedhelm Neidhardt, and Dieter Rucht. 1998. *Zwischen Palaver und Diskurs. Strukturen öffentlicher Meinungsbildung am Beispiel der deutschen Diskussion zur Abtreibung*. Opladen: Westdeutscher Verlag.
- Grimm, Dieter. 1995. Does Europe Need a Constitution? *European Law Journal* 1: 282-302.
- Grimm, Dieter. 2004. Treaty or constitution? The legal basis of the European Union after Maastricht. In *Developing a Constitution for Europe*, edited by E.O. Eriksen, J.E. Fossum, and A.J. Menéndez. London: Routledge.
- Habermas, Jürgen. 1990 [1963]. *Strukturwandel der Öffentlichkeit*. Frankfurt a.M.: Suhrkamp.
- Habermas, Jürgen. 1992a. *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Frankfurt a.M.: Suhrkamp.

- Habermas, Jürgen. 2001. Why Europe needs a Constitution. *New Left Review* 11 (Sept./Oct.): 5-26.
- Hellmann, Kai-Uwe. 1997. Integration durch Öffentlichkeit. Zur Selbstbeobachtung der modernen Gesellschaft. *Berliner Journal für Soziologie* 7: 37-59.
- Kepplinger, Hans M. 1998. *Die Demontage der Politik in der Informationsgesellschaft*. Freiburg/München: Alber.
- Kohler-Koch, Beate. 2000. Framing: the Bottleneck of Constructing Legitimate Institutions. *Journal of European Public Policy* 7 (4): 513-531.
- Kohler-Koch, Beate. 2005. The Organisation of Interests and Democracy in the European Union. Paper prepared for presentation at the 3rd ECPR Conference, Budapest, 8-10 September 2005.
- Lippmann, Walter. 1927. *The Phantom Public*. New-York: Macmillan.
- Luhmann, Niklas. 1984. *Soziale Systeme*. Frankfurt a.M.: Suhrkamp.
- Luhmann, Niklas. 1996. *Die Realität der Massenmedien*. Opladen. Westdeutscher Verlag.
- Magnette, Paul. 2004. Deliberation or Bargaining? Coping with Constitutional Conflicts in the Convention on the Future of Europe. In *Developing a Constitution for Europe*, edited by E.O. Eriksen, J.E. Fossum, and A.J. Menéndez. London: Routledge.
- Magnette, Paul, and Kalypso Nicolaïdis. 2004. The European Convention: Bargaining in the Shadow of Rhetoric. *West European Politics* 27 (3): 381-404.
- Mair, Peter. 2005. Popular Democracy and the European Union Polity. *European Governance Papers (EUROGOV)* No. C-05-03, <http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-03.pdf>.
- Manners, Ian. 2002. Normative Power Europe – A Contradiction in Terms? *Journal of Common Market Studies* 40 (2): 235-258.
- McNair, Brian. 2000. *Journalism and Democracy: An Evaluation of the Political Public Sphere*. London: Routledge.
- Meyer, Christoph O. 2002. *Europäische Öffentlichkeit als Kontrollsphäre: Die Europäische Kommission, die Medien und politische Verantwortung*. Berlin: Vistas.
- Meyer, Christoph O. 2005. Asymmetric and Asynchronous Mediatisation: How Public Sphere Research Helps to Understand the Erosion of the EU's Consensus Culture. Paper presented at the workshop A European Public Sphere: How much of it do we have and how much do we need? State of the art workshop, 9-10. December, Amsterdam.
- Peters, Bernhard, Stefanie Sifft, Andreas Wimmel, Michael Brüggemann, Michael, and Katharina Kleinen v. Königslöw. 2005. National and Transnational Public Spheres: The Case of the EU. In *Transformations of the State?*, edited by S. Leibfried, and M. Zürn. Cambridge: Cambridge University Press.
- Shaw, Jo. 2003. Process, Responsibility and Inclusion in EU Constitutionalism. *European Law Journal* 9 (1): 45-68.
- Sjursen, Helene. 2006. What kind of Power? *Journal of European Public Policy* (Special Issue) 13 (2): 169-181.
- Snow, David A. and Robert D. Benford. 1999. Alternative Types of Cross-National Diffusion in the Social Movement Arena. In: *Social Movements in a Globalizing World*, edited by D. della Porta, H. Kriesi, and D. Rucht. New York: St. Martin's Press.
- Stäheli, Urs. 2000. *Sinnzusammenbrüche*. Osnabrück: Veldenbrück.

- Trenz, Hans-Jörg. 2002. *Zur Konstitution politischer Öffentlichkeit in Europa. Zivilgesellschaftliche Subpolitik oder schaupolitische Inszenierung?*. Baden-Baden: Nomos.
- Trenz, Hans-Jörg. 2005. *Europa in den Medien. Das europäische Integrationsprojekt im Spiegel nationaler Öffentlichkeit*. Frankfurt a.M./New York: Campus.
- Trenz, Hans-Jörg. 2005b. Europäische Öffentlichkeit als Selbstbeschreibungshorizont der europäischen Gesellschaft. In: *Europäische Gesellschaft*, edited by H.P. Müller et al. Wiesbaden: Leske+Budrich.
- Trenz, Hans-Jörg. 2005c. Banaler Europäismus. Eine latente Kategorie der Europäisierung politischer Kommunikation. In: *Europäische Öffentlichkeit und medialer Wandel: Eine transdisziplinäre Perspektive*, edited by W. Langenbucher, and M. Latzer. Wiesbaden: Verlag für Sozialwissenschaften.
- Trenz, Hans-Jörg. 2006. 'Quo vadis Europe?' Quality Newspapers Struggling for European Unity. In *One EU - Many Publics*, edited by J. E. Fossum and P. Schlesinger. London: Routledge.
- Wimmel, Andreas. 2004. Transnationale Diskurse. Zur Analyse politischer Kommunikation in der europäischen Medienöffentlichkeit. *Zeitschrift für Internationale Beziehungen* 11 (1): 7-25.