

# **The Politics of Constitution Making: The Institutional Organization of the European Convention**

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Abstract:

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

## **1. Introduction**

This study investigates the institutional organization of the European constitutional convention. My argument is that constitutional conventions resemble parliamentary bodies in terms of their institutional arrangements. It thus makes sense to study the constitution making process with the same sensitivity that has been given to the study of legislatures. My study focuses on the role and composition of committees in the European Convention. Why should constitutional conventions prepare constitutional drafts with the support of committees? Analogous to the Congressional committee literature, these committees might serve informational (Gilligan and Krehbiel, 1987, 1989; Krehbiel, 1991) or distributive purposes (Shepsle and Weingast, 1987; Weingast and Marshall, 1988). According to the latter theory, committees should be more extreme than the plenary. In contrast, the informational committee hypothesis suggests that committees should be representative of the floor.

The paper is structured as follows. First, I define the term constitutional convention and show that the literature on constitution making insufficiently addresses the institutional structure of such conventions. Second, I discuss the importance of committees using two main approaches from the congressional committee literature. Third, I introduce my case study of the European constitutional convention and analyze the committee assignment process, the rules of procedure, and the role of committees in the drafting process. Fourth, I discuss the problems associated with position estimation and introduce a new data set on delegate positions in the European convention. Positions are estimated with W-NOMINATE using data on revealed positions of the convention delegates. I employ a Monte Carlo simulation technique to test the outlier and representative committee hypothesis. The three main results of this study are (1) that the political leadership of the

European convention controlled to a large extent the institutional organization, (2) that committees were influential in the drafting process, and (3) that there is stronger evidence for committee outliers than for representative committees.

## **2. Constitution Making through Conventions**

Drafting a constitution is a complex, often controversial, and highly consequential political process. It is complex because a society needs to agree to the basic rules that structure the political arena of a country. It is controversial, because the constitutional choice of rules determines which groups and actors will have a say in the political process. The result of a constitutional process is consequential because constitutional rules often have higher amendment requirements than legislative rules and thus are more difficult to change once in force. One prominent method of drafting a constitution is to set up a constitutional convention. For the purpose of this study, constitutional conventions are defined as *temporary, non-legislative bodies convened for the purpose of drafting or revising a constitution*.<sup>1</sup> What is common to these bodies is their participatory nature and their parliamentary-style organization. Conventions can involve many groups of society, often including minorities, their members are elected or appointed, and they are dissolved after their task of drafting a constitution is finished. Convened in 2002, the European Convention was the first constitutional convention of the European Union. Its task was to revise the existing constitutional framework of the EU, which is created by a set of international treaties between member state governments. A new constitution had become necessary because member state governments had realized that the operation of the existing

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<sup>1</sup> For a similar definition see Fafard and Reid (1991). I use the term constitutional convention, constituent assembly and constitutional conference interchangeably. The definition used here excludes special legislative committees or constitutional commissions which constitute subsets of existing legislatures.

constitutional framework was about to deteriorate significantly (Magnette and Nicolaïdis, 2004; Tsebelis and Yatahanas, 2002).

### ***The Literature on Constitution Making***

It is widely acknowledged that institutions and constitutional rules have a significant impact on the functioning of a political system (Lijphart, 1999; Tsebelis, 2002). But political institutions are themselves the product of politics. Surprisingly, there are to date no systematic comparative studies that study constitution making in constitutional conventions. At the same time, there is an enormous literature on constitution making in general. The literature related to constitutional conventions can be classified into four categories: historical studies, conflict resolution studies, constitutional design studies, and studies in comparative political economy.

Historical studies provide detailed accounts of the proceedings of particular conventions and constitution making processes (Fafard and Reid, 1991; Goldwin and Kaufman, 1988). Although these studies underscore the significance of conventions (according to one scholar, they represent “the culmination of the constitutional thinking of the Age of Enlightenment” (McWhinney, 1981: 33)), they remain primarily descriptive accounts of specific constitutional events. As a sub-literature in international relations, conflict resolution studies emphasize the significance of a participatory constitution making process after war. These studies demonstrate that political institutions are a key element for successful reconstruction (Cowen and Coyne, 2005; for Iraq see: Kurrild-Klitgaard, 2004), and that a more participatory constitution making process can reduce post-ratification levels of violence in developing countries (Widner, 2005). A closely related literature focuses on the question of what constitutional arrangements are best for any given country (Lijphart,

1999, 2004; Reynolds, 2002). Underscoring the normative consequences of constitutions, these studies often put forward concrete suggestions how constitutions can be engineered to bring about a “strengthened democracy” (Reynolds, 2002: 2). The theoretically most rigorous studies of constitution making processes come from the constitutional political economy literature, which focuses on the process of constitutional bargaining under procedural constraints (e.g. Douglas and Maser, 1987; Elster, 1993; Elster, 1995; Riker, 1986; Voigt, 1999). The prevalent view is that democracy can be considered a two-stage process: “in the first stage the rules of the political game to be played in stage two are drawn up; in stage two the game is played” (Mueller, 2005: 57). Elster proposes questions such as how constitutional conventions are called into being, how they regulate their own procedures, and how different groups shape the final document (Elster, 1993: 178). The most researched convention is the US Constitutional Convention, for which voting data is available (Dougherty and Heckelman, 2006; Jillson, 1981, 1988; Londregan, 1999; McGuire, 2003). However, none of these studies addresses the broader issue of institutional organization within constitutional conventions and how it relates to the politics of constitution making. This study attempts to contribute to the constitution making literature with an institutional analysis of the European constitutional convention. The basic premise of my argument is that the institutional organization of constitutional conventions resembles that of parliaments and that the drafting process is influenced by agenda-setting and committee work.

### *Constitutional Conventions versus Legislatures*

Constitutional choice has long-term consequences. The drafting of a constitution involves uncertainty about these consequences, but also about the feasible alternatives and the

preferences of the constitution makers. This uncertainty poses a serious challenge for the constitutional drafting process given the additional constraint of a limited time frame to draft the constitution. Constitutional conventions resort to a committee system to achieve their ends (Fafard and Reid, 1991: 30-31). In this respect, they resemble legislatures with committee systems, except that the task of the convention is to draft a constitution, while the task of a legislature is to pass a bill. Legislative scholars have addressed the question why committees exist extensively for the US Congress. Two views dominate the literature, the informational efficiency theory and the distributive benefits theory. Both theories share the assumption that legislative decision-making in committees will eventually be one-dimensional, thus facilitating the analysis by allowing the application of the median voter theorem (Black, 1958).<sup>2</sup>

According to the *informational efficiency theory*, legislators have one-dimensional preferences over the outcomes of legislation,  $x$ , defined as the sum of a policy,  $p$ , and an exogenous shock,  $\omega$  (Gilligan and Krehbiel, 1987, 1989; Krehbiel, 1991; Krishna and Morgan, 2001). Members of the floor are uncertain about the policy consequences of the shock. But this information can be provided by a specialized committee. When the committee reports a bill, the floor receives a signal and uses this information to amend the bill so that the final outcome is as close as possible to its most preferred point. Gilligan and Krehbiel show that the range in which the committee credibly reveals  $\omega$  can become smaller as the difference between the median floor member and the median committee member becomes smaller. Therefore, one empirical implication of this model is that the

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<sup>2</sup> For a detailed review of the Congressional committee literature, see Groseclose and King (2001). Distributive theory assumes that each jurisdiction is essentially one policy dimension. For an extension of an informational model to a multidimensional space, see Battaglini (2002).

difference between the committee median and the floor median should be small, and committees should be representative of the floor.

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

In sum, these two approaches to legislative organization make competing predictions about the role and composition of committees. In a constitution making context, the role of committees, why they exist and to what extent they shape the constitutional draft have so far remained unaddressed. The following section analyzes the institutional organization of the first constitutional convention of the European Union, the “European Convention on the Future of Europe”. The section focuses on the rules of the drafting process, agenda-setting, and the role of committees. I will show that the institutional organization of the European Convention justifies an empirical test of the preference outlier and the representative committee hypothesis.

### **3. The Constitutional Convention of the European Union**

Constitutional amendments in the European Union have so far been exclusively made through *Intergovernmental Conferences* (IGCs), in which the heads of government decide

unanimously, and behind closed doors, on constitutional change (Garrett, 1992; Hug and König, 2002; Moravcsik, 1998; Moravcsik and Nicolaïdis, 1999; Slapin, 2006).<sup>3</sup> Faced with the prospect of enlargement of the European Union at the end of the 1990s, member state governments acknowledged that decision making needed to become more efficient and transparent. But the subsequent constitutional reform in 2000 through an IGC led to the opposite result. In search for compromise, the governments agreed to change the EU's legislative institutions in a way that made decision making more difficult (Tsebelis, 2002; Tsebelis and Yataganas, 2002). This set the stage for the European Convention as a more transparent and participatory way to revise the EU's constitutional provisions. Whereas IGCs more closely resemble an international bargaining situation in which sovereign governments negotiate under the unanimity rule, the constitutional convention was established in order to include more political actors of the European Union in the constitution making process. In 2001, the EU member states agreed in a declaration to establish the European Convention. Its task was defined in terms of “challenges” the EU supposedly was facing:

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

The European Convention was thus created because the existing constitutional provisions were perceived as an unworkable basis for the future of the EU. The primary mandate of the Convention was to consider “key issues arising for the Union's future

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<sup>3</sup> Important constitutional amendments through IGCs include changes to Council voting rules in order to create the single market in the European Union (through the Single European Act in 1987), creation of the monetary union (through the Treaty of Maastricht in 1993), and the establishing of a bicameral parliament in the European Union (Maastricht 1993, Amsterdam 1997, and Nice 2000).

development and try to identify the various possible responses” (European Council, 2001). Member state governments wanted the Convention to prepare a draft or potentially several constitutional drafts, which would then be decided by a subsequent IGC. The following sections discuss the composition of the European Convention, the constitutional drafting process, the committee system, and the power of these committees.

### ***Basic Composition***

How was this new Convention organized? When EU member state governments decided to install the convention, they also decided on its basic composition. The convention included a Presidency (including a chairman and two vice-chairmen), representatives from the parliaments (two per member state), representatives from the governments themselves (one per member state), sixteen representatives from the European Parliament, and two representatives from the European Commission. In addition, given that enlargement of the EU was imminent, all thirteen EU candidate countries were represented as well with two members each from their respective national parliament and one from each government. The convention mandate furthermore provided for the same number of alternate members who would replace members at meetings they could not attend, thus doubling the number of delegates. Finally, thirteen official observers to the Convention were invited to represent the advisory bodies of the European Union. In total, the Convention comprised 220 delegates.

*Presidency of the Convention.* In setting up the Convention, EU governments agreed to appoint a high-profile leadership, rather than have the Convention select its own chairperson. They agreed to appoint former French President Valéry Giscard d'Estaing, with the large states imposing their will despite objections from smaller countries

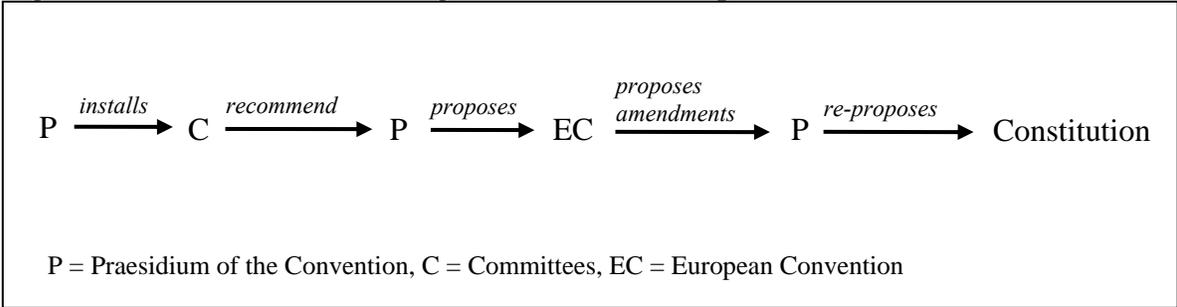
(Magnette and Nicolaïdis, 2004). The European Council nominated two former Prime Ministers as Vice-Chairmen, Giuliano Amato (Italy) and Jean-Luc Dehaene (Belgium). Together, these three politicians formed the Presidency of the Convention whose task it was to “pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate” (European Council 2001).

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

### ***The Constitutional Drafting Process***

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

**Figure 1. Constitutional Drafting Process in the *European Convention***



In the fifth phase, on the basis of the proposed amendments, the Praesidium presented its revised constitutional proposals. This resulted in the final “draft constitution”, which was then presented to the heads of government at the following *Intergovernmental Conference*. The drafting process demonstrates the importance of the Praesidium as the steering committee of the Convention, and previous studies have emphasized its strong agenda-setting role (Crum, 2004; Tsebelis, 2005; Tsebelis and Proksch, 2006). Analyzing the final three phases in the Convention, Tsebelis finds extensive procedural control exercised by the Praesidium under the chairmanship of Giscard d'Estaing (Tsebelis, 2005). The rules of procedure, primarily written by the Praesidium, did not allow any votes to be taken in the Convention. This enabled the Presidency to summarize debates, thus strengthening its role in the drafting process. It is, however, an unanswered empirical question as to how the steering committee solved the complex task of constitutional drafting and came up with its proposals. This poses a puzzle for the institutional organization of the Convention. One the one hand, there was a powerful steering committee with significant agenda-setting powers, on the other hand, the Praesidium also installed a number of committees. This co-existence of a strong agenda setter and an elaborate committee system focuses the question about the institutional organization on the role of committees in drafting the constitution.

### *The Committee System*

The rules of procedure of the European Convention provided the possibility to set up committees. Committees could be created at the request of the steering committee or of a significant number of Convention members, but the mandate was determined by the Convention leadership alone.<sup>4</sup> Table 1 lists the fourteen committees of the European Convention. The first group of committees includes those dealing with specific policy areas (economic, foreign, defense, security and justice, and social policies). The second group includes nine committees which addressed institutional issues. However, none of these latter committees actually dealt with the EU's major legislative and executive institutions (voting rule in the Council of Ministers, size and composition of the European Commission). Instead, their mandates covered institutional provisions such as the simplification of legal instruments, the specific budgetary procedure, and the Court of Justice.

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

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<sup>4</sup> Article 15, Rules of Procedure of the European Convention, European Convention Document CONV 09/02, available at <http://register.consilium.eu.int/pdf/en/02/cv00/00009en2.pdf>

**Table 1. Committees in the European Convention**

<b>Committee</b>	<b>Issue Area</b>	<b>Committee Chairman</b>	<b>Size</b>	<b>Meetings</b>
Working Group 1	Subsidiarity	Mendez de Vigo (Praesidium)	35	7
Working Group 2	Charter of Fundamental Rights	Vitorino (Praesidium)	33	7
Working Group 3	Legal Personality	Amato (Praesidium)	30	7
Working Group 4	National Parliaments	Stuart (Praesidium)	35	9
Working Group 5	Complementary Competences	Christophersen (Praesidium)	33	6
Working Group 6	Economic Governance	Hänsch (Praesidium)	36	10
Working Group 7	External Action	Dehaene (Praesidium)	50	10
Working Group 8	Defense	Barnier (Praesidium)	40	9
Working Group 9	Simplification	Amato (Praesidium)	39	7
Working Group 10	Freedom, Security and Justice	Bruton (Praesidium)	41	8
Working Group 11	Social Europe	Katiforis (Praesidium)	71	5
Discussion Circle 1	Court of Justice	Vitorino (Praesidium)	20	4
Discussion Circle 2	Budgetary Procedure	Christophersen (Praesidium)	19	3
Discussion Circle 3	Own Resources	Mendez de Vigo (Praesidium)	21	4
<b>Average</b>			<b>36</b>	<b>7</b>

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

### *Committee Assignment*

Committee assignment was a two step process. First, the Praesidium asked delegates to self-select themselves onto committees. Second, the Praesidium took a final decision on each committee's composition. In practice, the delegates were put into the different groups they asked for and the Praesidium made minor modifications. Because data on delegates' committee membership requests were not archived, it is impossible to retrospectively determine which requests were fulfilled and which ones were not. However, there is indirect evidence that suggests that the committee composition largely corresponded to a self-selection process. The Praesidium decided that if any member of the Convention expressed dissatisfaction with the assignments, flexibility could be shown by the chairpersons on a bilateral basis and the composition be adjusted (Praesidium of the European Convention, 2002c). A staff member of the Convention confirmed that the Praesidium decided to increase the size of committees according to the number of requests.<sup>5</sup>

It was a declared goal of the Praesidium to ensure a balanced representation in the committees, in particular with regard to the different component groups and nationalities (Praesidium of the European Convention, 2002b). Table 2 lists the committee assignments according to the component groups of the convention. Several results stand out. First, in almost all instances the component groups were represented with at least one member on each committee (excluding the observers in the convention). Second, a comparison between the average committee assignment and the actual seat share of the component groups shows that candidate countries were underrepresented and member states and supranational institutions were overrepresented. The European Commission was the only component

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<sup>5</sup> Personal communication of the author with a member from the *European Convention* Secretariat, 7 February 2006.

group with only one representative in each committee. The Presidency of the Convention (Amato, Dehaene) participated in five out of the fourteen committees.

The distribution of committee assignments in Table 2 does not yield conclusive evidence as to whether committees were outliers or not. Take the example of the Working Group on National Parliaments. The delegates from the national parliaments had their largest relative representation in this committee, controlling almost 75% of the committee seats. On the one hand, this might be evidence for the committee outlier hypothesis, assuming that national parliamentarians are homogeneous preference outliers. For example, the delegates could all demand more involvement of national parliaments in EU decision making processes. On the other hand, their large representation could as well be evidence for the information hypothesis, because these delegates understand the issues better and have the most information available about the status quo and feasible alternatives. In this context, committee assignment captures the notion of intensity rather than location of preferences (Krehbiel, 1990, 1991). In sum, the raw composition data suggests that the official goal of the steering committee to reach a balanced representation between the component groups was indeed achieved, but it does not give any indication as to whether committees were outliers or not.

**Table 2. Committee Composition according to Component Groups**

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

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

### *Rules of Procedure of the Committees*

While the component groups were represented in the committees, the Praesidium ensured from the very beginning that it remained under control of the constitutional drafting process (Tsebelis, 2005). This included also the rules of procedure for the committees. The Praesidium agreed that the mandate of the working groups should focus on a limited number of questions which could not be examined in depth in the plenary. Furthermore, the Praesidium decided that each working group would be chaired by one of its own members, the official reason being that the “consistency of the work” could thus be ensured (Praesidium of the European Convention, 2002a). Through the committee chairmen, the Praesidium was able to monitor the proceedings and the work of the committees. A group of twelve Convention delegates from Austria, Sweden, and Finland (the 1995 enlargement states) challenged this unilateral definition of the procedures. In a letter addressed to the President, the group acknowledged the importance of the committees and demanded that the designation of chairpersons of the committees should be settled by the committees themselves, and not by the Praesidium. Defending the selection of chairpersons, President Giscard d'Estaing responded that the Praesidium would bear in mind the concerns of the group for other committees to be set-up.<sup>6</sup> However, as demonstrated in Table 1, the steering committee decided not to take into account these considerations. Instead, all chairmanships of the committees were held by the Praesidium.

In line with the Praesidium's role as agenda-setter, the committees were explicitly denied the right to establish draft texts. Instead, they would prepare reports to the Convention “containing the main elements of the analysis carried out and the options identified to respond to the questions submitted to them” (Praesidium of the European

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<sup>6</sup> Exchange of letters, European Convention Document CONV 55/02, available from <http://register.consilium.eu.int/pdf/en/02/cv00/00055en2.pdf>

Convention, 2002c). The committees' formal role was thus to reduce uncertainty by providing information about issue alternatives. The next section evaluates the results of the work in committees and determines the impact of committees on the constitutional drafting process.

### *Committee Influence*

All committees sent final reports to the Praesidium, which then prepared the formal constitutional proposals to the Convention. To understand the role of committees, it is essential to determine the significance of these reports in terms of their impact on the agenda-setting process. I choose the following approach to measure the level of influence of committees in the constitutional drafting process. With regard to each issue under discussion, a committee could essentially propose a single proposal (recommendation) or several alternatives (options). The latter was the official task of the committees. Using the final committee reports, I counted the number of issues for which a committee proposed recommendations and the number of issues for which it proposed options. The findings are reported in Table 3. Contrary to the mandate, the committees overwhelmingly proposed recommendations, and not options. On average, each committee report included about seventeen concrete proposals for the draft EU constitution. The number of recommendations range from six for the Discussion Circle on Own Resources to thirty-three for the Working Group on Freedom, Security and Justice. In contrast, the committee reports barely included options. Five committees did not propose any options at all, and of the ones that did most included options for only one issue.

These numbers suggest that committees were able to find agreement on most issues, thus being actively engaged in influencing the draft constitution. To answer the question

about the influence of committees, I examine (a) how often the Convention leadership proposed committee recommendations, and (b) how often the leadership proposed *one* of the suggested alternatives. The success rates indicate that most committees were influential institutions (third and sixth column in Table 3). On average, three out of four committee recommendations were proposed by the steering committee to the Convention. If committees suggested several alternatives for an issue, it was guaranteed that one of them was proposed by the Praesidium. These findings shed new light on the drafting process in the European Convention. They suggest that the steering committee's proposals came to a large extent from the committee reports, thus underscoring the importance of the institutional organization for the overall outcome.

**Table 3. Success Rates of Committee Proposals**

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

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

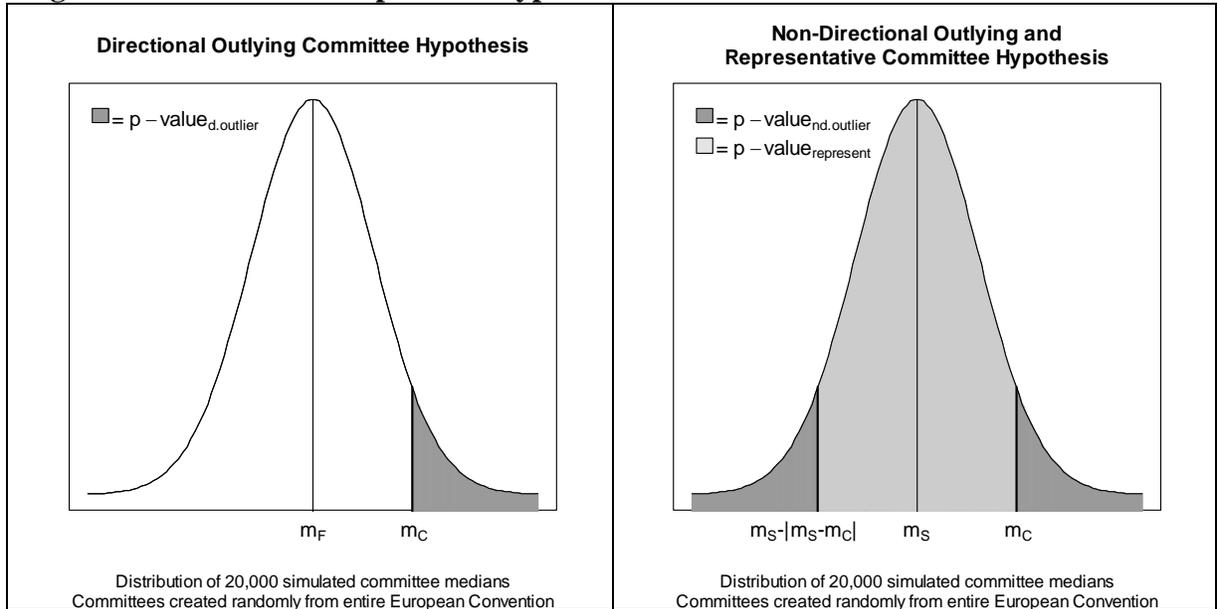
(2) *Options proposed by committee* are issues for which the committees proposed several alternatives. The success rate reflects how often the Praesidium proposed one of the committee alternatives.

### *Committee Composition Hypotheses*

The analysis of the committee system of the European Convention suggests that both the committee outlier and the representative committee hypothesis are plausible explanations for its institutional organization. On the one hand, committee assignments in the Convention were governed by self-selection. In contrast to legislatures in which self-selection is driven by reelection motives (Shepsle, 1978), the motive for self-selection in the Convention was the prospect of influence on the constitutional draft through work in committees. According to this perspective, homogeneous preference outliers in the respective issue areas of the committees are those that seek committee assignments. The null hypothesis is that there is nothing systematic in the organization of constitutional committees and that they are therefore nothing more than random outcomes. On the other hand, the steering committee adjusted the committee size according to demand and made modifications to the overall composition to assure a “balanced representation”. All committees included delegates from each component group of the European Convention. Furthermore, committees did not have gatekeeping power, because the steering committee could propose anything in its formal constitutional proposals. This view suggests that committees were in fact representative of the Convention.

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

**Figure 2. Committee Composition Hypotheses**



For example, a common technique used to test committee composition hypothesis is the difference of means tests, which assumes that the preferences of committees and floor members follow a normal distribution and that the mean, not the median, score is the correct test statistic. The advantage of the Monte Carlo technique is that it makes no assumption about the distribution of preferences by using the actual distribution of ideological scores. First, for each committee of size  $n$ , I generate 20,000 hypothetical committees of the same size. This is done by randomly selecting  $n$  committee members (without replacing) from the Convention population.<sup>7</sup> Using ideological estimates for each delegate, I then record the median score for each simulated committee, thus producing 20,000 median voter scores. These median scores constitute an approximate distribution for the median of a committee, and statistical tests can be conducted on the basis of this distribution.<sup>8</sup>

<sup>7</sup> An alternative approach would be to sample with replacement, assuming that the observed Convention composition is just one of many hypothetical compositions.

<sup>8</sup> In contrast to the Monte Carlo approach, in which the null hypothesis is that committees are random outcomes, another testing approach assumes that committee selection is not random and that the only

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

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

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

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

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

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stochastic component of the test are measurement errors of members' preferences (Londregan and Snyder, 1994).

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

#### 4. The Data

Testing the hypotheses requires the estimation of *individual* delegate positions in the European Convention. But a major problem for this kind of estimation is the fact that no votes were taken in the Convention.<sup>9</sup> The only revealed preferences of the delegates can be found in speeches and in amendments that could be proposed at the end with regard to the Praesidium's proposals (see second to last phase in Figure 1). The solution to the position estimation problem proposed by this study is the use of amendment endorsements. After the Praesidium had presented its proposals, delegates were able to put forward drafting changes for each individual constitutional article. Such amendments could be proposed by any delegate (including alternate members) or by a group of delegates, but were not voted on. Instead, the Praesidium presented a revised constitutional draft based on the proposed amendments.

In order to estimate delegate positions, I treat the endorsements of amendments by the delegates as *quasi*-votes. This approach is based on the assumption of sincere voting. First, I assume that all delegates who support an amendment would also vote for it. Second,

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<sup>9</sup> See Tsebelis (2005) for how the *Praesidium* gained agenda-setting power by insisting on this rule.

I assume that delegates who do not endorse an amendment either oppose it or are indifferent between the amendment and the proposal. This assumption is not unrealistic, because the costs for supporting an amendment were low, so that it is fair to assume that those who wanted to express a position could do so.<sup>10</sup> There were no rules on the format of the amendment. Most amendments concerned specific articles and are therefore short in length, and delegates could sign up to amendments that others had written. I therefore count an abstention as a vote against a proposed amendment. This makes sense because the steering committee (Praesidium) could infer the level of support for an amendment only from the list of delegates who endorsed it. The estimation includes those delegates that were members of the Convention during the amendment process (February until June 2003), but excludes delegates that had left the Convention prior to this period. A small number of delegates were replaced *during* the amendment process. In these cases, I estimate a common position for each replaced/replacing delegate pair.

In total, I analyze 3,101 amendments proposed for the preamble, part I and II of the constitution, which constitute about half of all proposed amendments. These parts contain the most relevant constitutional provisions and are the ones covered by the committees. The coding approach was as follows. I included an issue in the dataset if it fulfilled two criteria: (1) it was a substantive amendment, and (2) it was supported by at least two delegates. The first criterion excludes linguistic, stylistic, and grammatical amendments. The second criterion ensures that an amendment received a minimum level of support in the Convention. The detailed coding procedure is laid out in the Appendix. For example, sixteen delegates proposed to include the term “Christianity” into the preamble. These delegates were then coded as 1, and all others as 0. This procedure takes into account that

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<sup>10</sup> However, there is evidence that even during the few months when delegates could propose amendments, the Praesidium tried to limit the overall number of amendments (Tsebelis and Proksch, 2006).

identical amendments were proposed in different documents or several times. A pure extraction of delegate names from the documents would therefore yield biased results, because the same amendment in two documents would be coded as two different ones, not as the same one.

The resulting data matrix includes amendment endorsements on 491 issues for 232 delegates, a total of 113,912 actor positions.<sup>11</sup> Positions are then retrieved using the W-NOMINATE scaling procedure (Poole and Rosenthal, 1985). This procedure performs parametric unfolding of binary choice data. Given the matrix of binary choices by delegates (endorsement, no endorsement) over the issues, W-NOMINATE produces a configuration of delegates and outcome points for the Yes and No alternatives for each *quasi*-roll call using a probabilistic model of choice. I estimate both two-dimensional and one-dimensional W-NOMINATE coordinates, with the latter being used for the hypothesis tests.

Positions for the delegates that left the Convention before the amendment process are imputed with the positions of their replacements. With a few additional assumptions, the scaling procedure also allows for the estimation of the agenda-setter's proposal. Suppose that the members of the Praesidium must state a position with regard to the proposed amendments. If the steering committee acts as a unitary actor, it should always reject amendments from the floor. In practice, some members actively endorsed amendments. For these members, amendment support is coded as 1, and 0 otherwise. Those members that never endorsed any amendment (e.g. President Giscard d'Estaing) are coded

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<sup>11</sup> The number of delegates is slightly larger than the official number, because of the delegate replacements that took place during the amendment process.

as 0 on each issue. This procedure of estimating delegate positions has the advantage of using revealed positions and estimating positions for all delegates.<sup>12</sup>

There are two alternative approaches to estimating positions in the European Convention. The first approach is a computer-based content analysis using speeches and amendments (Benoit et al., 2005), whereas the second approach is based on a survey of the delegates themselves (König et al., 2006). Benoit and his co-authors pool the texts available from the Convention archive for each national party and then estimate party positions using external reference documents. However, while they conclude that party positions estimated by their method correlate well with expert survey estimates, their approach poses serious problems for the estimation of preferences in the European Convention. First, a drawback of the methodology is the requirement that the documents being analyzed must all be in the same language. They solve this problem by using only English language texts, thus losing a significant amount of data. In contrast, I include all language versions of the amendments in my analysis. Second, they consider the national party as the natural unit for analysis and pool all documents of the respective national party delegates. However, there are no *a priori* reasons why national parties should be key actors in the Convention. For instance, one could as well make the argument that the unit of analysis should be European parties, member states versus candidate countries, large state versus small state, etc. The third problem is that they do not include documents authored by more than one delegate, causing them to lose more cases. Thus, while their analysis does provide estimates for national party positions (with some drawbacks), their method does not yield individual estimates for each delegate and is thus inadequate for the research problem of this study.

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<sup>12</sup> In both estimations (one and two-dimensional), the cutoff criterion for quasi roll calls in terms of the minimum proportion on the minority side for the amendment to be included was set to 0.005. The cutoff criterion for delegates in terms of the minimum number of amendments endorsed to be included was set to 0.

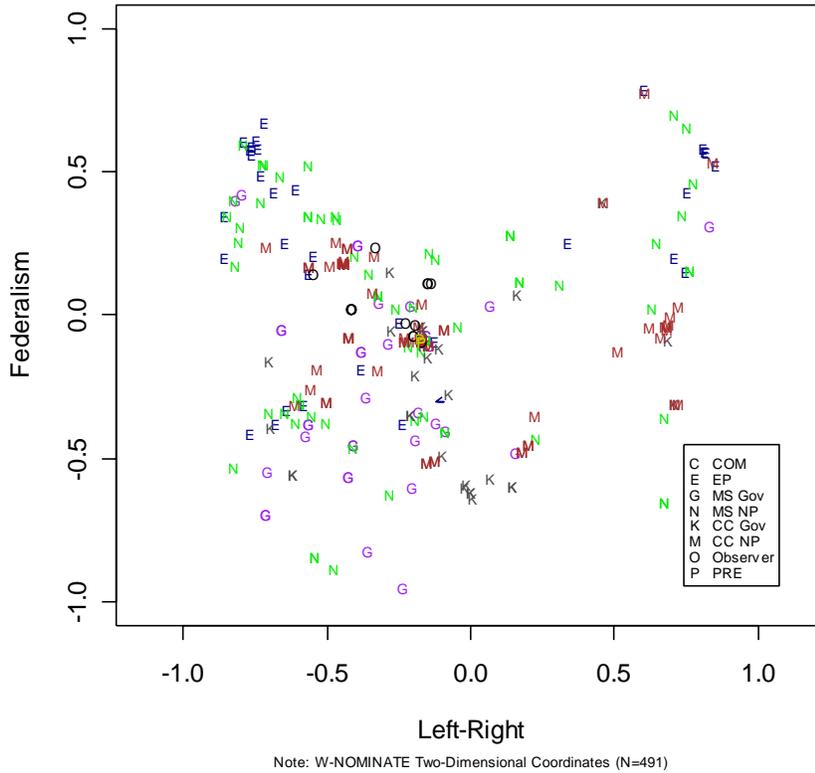
The other approach estimates positions from a survey with a standardized questionnaire (König et al., 2006). König and his co-authors determined the controversial topics from the initial mandate of the Convention and then sent out a questionnaire to all Convention delegates. This yields an impressive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

## **5. Delegate Positions in the European Convention**

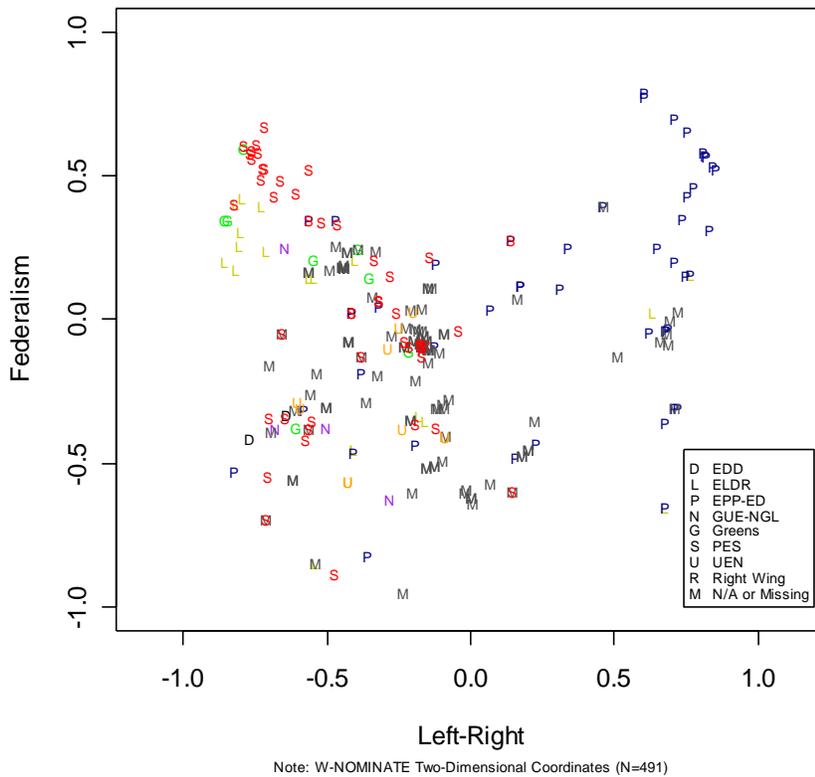
The two-dimensional W-NOMINATE scores are shown in Figures 3a through 3c, with delegates being identified by their respective component group and by European political party. In contrast to the view taken by the steering committee, the delegates of each component groups did not form coherent coalitions (Figure 3a). For example, delegates representing member state governments did not form a coherent block against their national parliaments. Yet, almost all delegates from the European Parliament are on one side of the second dimension, while delegates from national parliaments and governments are on the other side. The rest of the component groups are equally dispersed. Only some delegates

from candidate country governments form a coalitional unit on the first dimension. Thus, looking at the component groups alone does not give a satisfactory answer to the question of position taking in the European Convention. Figure 3b shows the same positions, but highlighted according to the European party to which delegates belong. This analysis shows a sharp divide between Socialists (S) and Conservatives (P) on the first dimension. Together, the figures suggest that the first dimension corresponds more to an ideological Left-Right dimension and the second dimension to the issue of federalism, dividing the delegates from supranational institutions and those from national ones. This suggests that many disagreements over policy drive also disagreement about institutions and constitutional provisions. Finally, Figure 3c shows the location of the members of the steering committee (*Praesidium*). The estimation confirms a previous analysis that suggest that the proposals revealed by President Giscard d'Estaing and the steering committee were located centrally in the issue space (Tsebelis, 2005). While it is not evidence that the Presidency is really in the center of the bargaining space, it suggests that its proposals are. With one exception, most steering committee members endorsed the official proposals and did not propose many amendments, thus placing them centrally in the space.

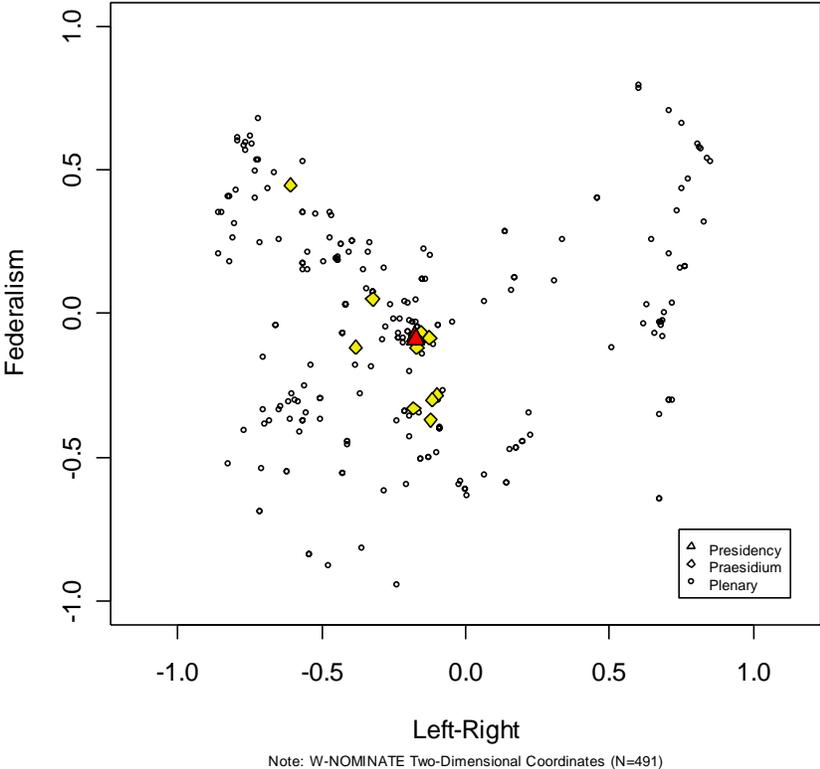
**Figure 3a. Delegate Positions in the European Convention: Component Groups**



**Figure 3b. Delegate Positions in the European Convention: Component Groups**



**Figure 3c. Steering Committee Positions in the European Convention (*Praesidium*)**



**6. Results**

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

The calculations for the directional outlier hypothesis show that the null hypothesis, that there is nothing systematic about committees, can be rejected for two committees

(subsidiarity and external action). There are four additional committees that have  $p$ -values slightly larger than 5% (9, 11, DC 1 and DC 3). Although the null hypothesis cannot be rejected at the 5% level for these committees, the  $p$ -values under 10% suggest that they are tending toward statistical significance. This means that for the directional outlier hypothesis about half of the committees were in fact preference outliers. Because the analysis is not based on committee specific preference estimates, a possible critique might be that what matters less is the ideological direction of the committee, but instead the relative distance to the floor median. Therefore, the  $p$ -values potentially overestimate the fact that a committee is outlying because they do not take into account the probability of observing the same committee on the other side of the ideological spectrum. In the non-directional outlier test these probabilities are added. The random selection hypothesis can still be rejected for the committee on subsidiarity, but no longer for the committee on external action. However, there are still four committee with  $p$ -values close to 5%, suggesting that there are several committees with significant ideological differences compared to the median of the Convention as a whole. However, this does not imply that the remaining committees are in fact representative. The  $p$ -values for the representative committee hypothesis are not significant at all, except for one case: the committee on national parliaments. This committee can be considered representative of the parent chamber, an important finding given that the issues concerned greater involvement of those parliaments in the EU legislative decision making process. In sum, the analysis suggests more evidence for outlying committees than for representative committees.

The second run of simulations sets a constraint on the sampling. The previous analysis of the committee system suggested that the Praesidium tried to achieve some balance in the representation of the component groups (Table 2). In this set-up, all

simulated committees now include at least one delegate from each component group, thus corresponding to the rule set-up by the steering committee. Simulating with constraints is not unproblematic, because this causes the simulated committees to be non-random samples. In the completely-at-random sampling technique, between 16% and 78% of the simulated committees were correct simulations (last column in Table 4). In the constrained simulation, this is set to 100% for each committee. The results lend even stronger support for the committee outlier hypothesis and less support to the representative committee hypothesis. There are three committees that can be considered directional outliers (having  $p$ -values smaller than 5%), one committee a non-directional outlier, and none a truly representative one.

However, the results must be interpreted carefully. When the null hypothesis of random selection is true, then there is a 5% chance of rejecting it in each of the 14 cases. This causes the rejection of the null hypothesis to occur an expected 0.7 times ( $= 14 \times .05$ ). Although the expected value is smaller than the two committees (directional, no constraint) or the one committee (non-directional, no constraint) found, the fact that it is only slightly smaller suggests that the evidence might still be consistent with a hypothesis that all committee are selected randomly. However, instead of adopting 5% as the significance level, one could set this level to 10% instead. Six committees are outliers according to this slightly weaker criterion (or five non-directional outliers), while the expected rejection by chance is 1.4 ( $= 14 \times .1$ ). In this case, the evidence provides stronger support for the outlier hypothesis.

**Table 4. Committee Composition Hypotheses: Monte Carlo Simulation results**

<i>Committee</i>	<i>Size</i>	<b>Directional Outliers</b>		<b>Non-directional Outliers</b>		<b>Representative committee</b>		<b><i>Correct simulations</i><sup>2</sup></b>
		<i>p-value</i> <sub>d.outlier</sub>		<i>p-value</i> <sub>nd.outlier</sub>		<i>p-value</i> <sub>represent</sub>		
		<i>no constraint</i>	<i>constraint</i> <sup>1</sup>	<i>no constraint</i>	<i>constraint</i> <sup>1</sup>	<i>no constraint</i>	<i>constraint</i> <sup>1</sup>	
1 Subsidiarity	35	0.0491	0.0403	0.0492	0.0403	0.9509	0.9597	0.4449
2 Charter	33	0.3767	0.3302	0.8198	0.7400	0.1803	0.2601	0.4204
3 Legal Personality	30	0.1526	0.1352	0.1556	0.1390	0.8445	0.8610	0.3722
4 National Parliaments	35	0.4894	0.4417	0.9762	0.9048	0.0238	0.0952	0.4482
5 Complementary Competence	33	0.3622	0.3235	0.7978	0.6122	0.2022	0.3879	0.4215
6 Economic Governance	36	0.2312	0.2405	0.2426	0.4132	0.7574	0.5869	0.4669
7 External Action	50	0.0083	0.0065	0.2764	0.1945	0.7237	0.8056	0.6273
8 Defense	40	0.1999	0.2079	0.2044	0.2159	0.7957	0.7841	0.5159
9 Simplification	39	0.0640	0.0534	0.0641	0.0535	0.9360	0.9465	0.5067
10 Security and Justice	41	0.2581	0.2722	0.2632	0.4140	0.7369	0.5861	0.5351
11 Social Europe	71	0.0613	0.0572	0.0613	0.0572	0.9387	0.9428	0.7865
DC1 DC Court of Justice	20	0.0807	0.0548	0.0844	0.0574	0.9157	0.9427	0.1888
DC2 DC Budgetary Procedure	19	0.0714	0.0487	0.0749	0.0520	0.9252	0.9480	0.1671
DC3 DC Own Resources	21	0.2446	0.1827	0.6385	0.3361	0.3615	0.6639	0.2108

<sup>1</sup> Sampling with constraints means each of the 20,000 simulated committees must include at least one representative from the component groups.

<sup>2</sup> Correct simulations is the proportion of the 20,000 simulated committees (no constraint) which meet the constraint.

## **7. Conclusion**

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

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

Second, the analysis of the committee system showed that working groups and discussion circles were important social choice institutions in the European Convention. They participated actively in the constitutional drafting process. Not only did committees deal with significant issues, but they proposed concrete recommendations to the leadership of the convention, which accepted them overwhelmingly.

Third, the committee assignment itself was largely driven by self-selection of the delegates, suggesting that committees might have been preference outliers. On the other hand, the leadership attempted to adjust the committee size to achieve a balanced representation, lending support to the representative committee hypothesis. I used amendment endorsements to estimate delegate positions in the convention in order to compare committee and floor preferences. The Monte Carlo simulation approach provided

more evidence for outlying committees than for representative ones. Almost half of the committees can be considered outliers. This finding has important implications. The rationale of the entire constitution making process was to install a transparent European Convention that would, for the first time in EU history, attempt to represent the different political components of the EU (governments, parliaments, supranational institutions, societal groups, candidate countries). While it was not goal of this study to determine whether the delegates actually represented these groups accurately, the results do suggest that the Convention was organized in a way that was not representative of the parent chamber.

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

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

### I. The primary data: Proposed amendment documents

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

### II. Identifying issues in the amendments

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

### III. Exclusion of amendments

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

### IV. Dealing with different languages

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

Greek, Danish, Finnish. In these cases, amendments were translated using an online translation service (<http://babelfish.altavista.com/>). Because the amendments were short, their content could be retrieved and coded accordingly.

#### V. Issue endorsements

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

#### VI. W-NOMINATE estimation

I ran two versions of W-NOMINATE on the 491 issues (program code available at <http://voteview.com/w-nominate.htm>). The first version extracted two dimensions, the second version extracted one dimension. Only the one-dimensional scores were used for the Monte Carlo simulations in this study.

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