

The EU's new economic governance lacks democratic legitimacy. The rise and fall of the EU Constitutional Treaty can teach policy-makers how to solve this problem.

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With the development of new EU economic governance in the form of the Fiscal Compact, calls for the reform of the EU's political structures are now resurgent. [Ben Crum](#) argues that the rise and fall of the EU Constitutional Treaty can teach policy-makers which measures need to be undertaken and that a systematic vision on how European integration can complement national governing capacities rather than erode them is needed.



The Eurozone crisis has a deep impact on the way the European Union (EU) operates and the powers it can claim towards its Member States. Thus, it is only proper that calls are emerging for a more thorough reconsideration of the EU's political structure. It is particularly encouraging to see such a call coming from Germany's foreign minister Guido Westerwelle in his recent [EUROPP-post](#), considering how much his government has put its mark on the way European economic governance is being transformed. The logical venue for such a debate would be a new Convention, which have been – since the [Treaty of Lisbon](#) – foreseen as part of the ordinary procedure for the revision of the EU treaties. Thus, while many EU politicians may have been keen to forget about the European Convention and the EU Constitutional Treaty that it produced, it may soon make its way on the EU's agenda again. In that case, we need to consider what went well and what went wrong last time.

In my recently published monograph [Learning from the EU Constitutional Treaty](#) I have provided a comprehensive examination of the rise and fall of the EU Constitutional Treaty and its quasi-resurrection as the Treaty of Lisbon. This examination is undertaken against the background of two premises. One is that the constitutional structure of a permanent supranational political system like the European Union needs to be able to carry broad public consent among its constituent peoples. The second holds that such constitutional support can only be mobilized by building upon national political structures rather than by seeking to replace them by some overarching supranational structure.

On this basis a balance sheet of the Constitutional Treaty process can be drawn up. The most notable achievement of the process was the unprecedented level of international deliberation achieved in the [European Convention](#). Admittedly, the Convention was not an ideal, pure and power-free, speech situation. The ability of its members to change their mind was limited by their constituencies. Also some voices weighed in more than others. Still, these constraints did not prevent the Convention members from entering into substantial debates in which their positions were allowed to evolve and change. Thus, issues that had been completely deadlocked in previous intergovernmental treaty negotiations came to be approached in a new light and often invited original and creative solutions. These insights eventually came to be integrated into the EU Constitutional Treaty that, regardless of how one might judge its substance, involved by far the most transparent and systematic presentation of the Union ever.

Obviously, however, the Constitutional Treaty process also came with considerable liabilities. Looking back at it, the main deficiency of the process was that the level of mutual engagement secured at the international level came at the cost of the linkage of the political representatives with their constituencies. Convention members in particular became so involved in the process that when facing the public, rather than collecting critical feedback on the Convention's work, their tendency was to promote the logic of the draft Constitutional Treaty. Also among the national governments in the Intergovernmental Conference that sealed the Constitutional Treaty the desire to get to a common result quickly prevailed over the need to have the agreement tested against objections from their national constituencies.

This left the Constitutional Treaty vulnerable to objections from all kinds of interests that had not been

sufficiently accommodated in the process. Looking back, the main short-coming of the Constitutional Treaty was that it failed to develop a systematic vision on how European integration is to complement national governing capacities rather than to erode them. Clear illustrations of this are the rather meager responses that the treaty provided to questions like the delineation of the Union's competences and the protection of national social policy arrangements from the encroachment of the single market. These were grounds on which people could reject the Constitutional Treaty, as they did in France and the Netherlands.

If the recent transformation of EU economic governance calls for a new Convention, its set-up requires careful attention. In particular one should look for ways to increase the linkage of the process towards the consent of the peoples of Europe. One measure that would certainly help in this respect would be for governments to commit to a ratification referendum early on in the Convention process. Another measure to consider is to have the national (government) representatives on the Convention directly elected by the people, preferably in a way that ensures that they speak for more than half of the electorate (like the model of the [French presidential elections](#)). Governments would retain their veto over the treaty in the Intergovernmental Conference, while the voters would be pre-committed by having had their own representative in the Convention when it would eventually come to a ratification referendum.

Obviously, such measures put further strain on the deliberative capacities of the Convention. Ultimately, however, they are the only way to ensure that the far-ranging measures that are currently taken to coordinate Europe's economies rest on a democratic foundation that matches the one we cherish in our nation-states.

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