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Are Discretionary Referendums on EU Integration becoming 'Politically Obligatory'? The Cases of France and the United Kingdom

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Abstract

Recent studies have suggested that governments may call referendums on matters of EU integration because contextual circumstances make direct votes 'politically obligatory' as ruling politicians increasingly believe them to be the 'appropriate' decision-making mechanism. This study contests this claim based on the observation of two countries, France and the UK. The constitutions of both countries enshrine different, long-standing and equally legitimate interpretations of the concepts of sovereignty and political representation. Legislators draw on these conflicting interpretations to argue for either direct public ballots or parliamentary vote, and they deploy their arguments strategically to build a rhetorical case for the decision-making mechanism that suits their party's interests. Contrary to the 'politically obligatory referendum' hypothesis, governments have greater freedom to choose whether and when to use referendums strategically to achieve their domestic and European policy objectives.

Keywords: EU Treaty, Parliamentary debates, Popular sovereignty, Referendum, Representation, Text Analysis

1. Introduction

European governments have increasingly used referendums to decide matters associated with the European Union (EU) since the first held in France in 1972, even though all EU states have representative democratic institutions and referendums entail considerable risk of defeat (Hobolt 2006; Taggart 2006; De Vreese 2006). When it came to ratifying the EU Constitutional Treaty agreed in 2004, an unprecedented number of governments (11 out of 25) committed to holding referendums, although only Denmark and Ireland have a constitutional obligation to do so.

This surge in non-obligatory referendum pledges inspired some scholars to suggest that referendums are becoming 'politically obligatory' despite being formally discretionary (Morel 2007: 1042). Politicians may increasingly believe that referendums are the 'appropriate mechanism' for deciding important questions of European integration (Closa 2007: 1327). This normative belief is shaped by the institutional context in which they act, which includes their identities and role as political leaders. The essential feature of this argument is that politicians choose referendums not for instrumental reasons, such as fear of electoral backlash, but because of a normative belief that direct decisions are right under the circumstances. Arguing that the contextual pressures are persistent, the account implies that referendums on matters of EU integration will be more frequently used, even when not in a government's self-interest.

However, the subsequent refusal of EU governments to hold referendums on the Lisbon Treaty in 2007-2008 – after abandoning the unsuccessful EU Constitutional Treaty – belies these claims.¹ Governments adroitly avoided holding referendums on the Lisbon Treaty despite more precedents and the persistence of pro-referendum pressure groups and justifying discourse. This example supports recent studies that explain government or party stances on referendums in terms of actors' strategic interests (Tridimas 2007; Finke and König 2009; Dür and Mateo 2011; Oppermann 2013a,b).

This article contests the assertion that referendums are increasingly 'politically obligatory' and that politicians view referendums as the only 'appropriate' mechanism for deciding matters of EU integration. It does so based on the observation of political thought in France and the UK and the discourse of contemporary parliamentarians. In particular, it argues that these countries each have different long-standing and equally legitimate conceptions of sovereignty and political representation, which justify public choice by either

¹ A referendum took place only in Ireland, where it is constitutionally required.

popular or parliamentary vote, and legislators deploy them to justify the decision-making mechanism in their party's interests. The conclusion of this analysis is that governments in France and the UK retain discretion over whether and when to call referendums strategically to achieve their domestic and European political objectives.

The next section provides an overview of the literature on why referendums are held with an emphasis on studies claiming referendums are increasingly 'politically obligatory'. Section 3 describes the alternative conceptions of sovereignty and representation in French and UK political thought and explains their persistence in terms of the dialectic nature of political culture. After the research method is explained in Section 4, empirical evidence of parliamentarians drawing on these conflicting conceptions to argue strategically for or against referendums based on party interest is presented in Section 5. Section 6 concludes with suggestions for further research in light of the results of the Brexit referendum.

2. Explaining discretionary referendums in Europe

The initial approach to explaining why governments or parties support or oppose non-required referendums was to develop inductive typologies of functions that referendums fulfil based on close observation of cases (Bjørklund 1982; Morel 1993, 2001; Jahn and Storsved 1995; Sussman 2006; Qvortrup 2006, 2013). A later approach uses formal models to predict when decision-makers opt for popular or parliamentary vote, exploring the strategic interaction of actors, such as government, opposition parties, parliament and electorate, under various assumptions about their preferences and institutional constraints (Hug and König 2002; Hug and Schultz 2007; Tridimas 2007; Finke and König 2009). More recently, as the observable instances of referendum pledges have increased over time, studies have sought to adjudicate amongst competing explanations across cases and time (Mateo-Gonzalez 2006; Dür and Mateo 2011; Oppermann 2013a,b).

Most accounts concur that position on referendums is explained by actors' self-interest. Actors use referendums strategically to achieve *political advantage* or *policy objectives*. Belief in the normative value of direct democracy plays a secondary or negligible role.

In terms of achieving political advantage, the theoretical case is that governing or opposition parties support referendums to strengthen their relative position in the political system – a vote-seeking intent. To this end, referendums may have a *plebiscitary* function, used by the head of state or government to enhance its legitimacy or power relative to same-party rivals or opposition parties when reasonably certain of the outcome (Smith 1976; Butler

and Ranney 1978; King 1991; Morel 1993; Bogdanor 1994). Or a referendum pledge can be a *tactical* move even if the outcome is uncertain. A government may wish to remove a contentious, party-crosscutting issue from the political agenda thereby diffusing or concealing tensions within the ruling party or coalition (Bjørklund 1982; Setälä 1999; Morel 1993; Aylott 2002) or to avoid electoral punishment if parliament passed laws the public strongly opposes or if the public strongly demands a referendum (Dür and Mateo 2011). Opposition parties may tactically call for referendums to increase electoral support (Bjørklund 1982; Morel 1993; Sussman 2006) or, if a small party, draw attention to itself (Budge 2001).

In terms of policy objectives, governments are posited to support referendums to achieve their ideal policy position or, on the EU level, a negotiated policy – a policy-seeking intent. They may use referendums (i) to pass policies when lacking a parliamentary majority (Morel 1993) or opposed by institutional veto players – a *legislative* motive, (ii) to *legitimate* policy choices that opponents regularly contest (Bjørklund 1982; King 1991; Morel 1993) or, in relation to EU treaties, (iii) to gain *bargaining* leverage in Intergovernmental Council negotiations (Hug and Schultz 2007), and (iv) to signal commitment to European integration and promote treaty ratification in other member states – an *internationalist* motive (Oppermann 2013a). The policy-motivated position of opposition parties on referendums is influenced by *ideological* position on integration, with pro-integration parties tending to oppose referendums (Crum 2007; Dür and Mateo 2011). Empirical analysis lends most support to tactical, legislative, internationalist or, in the case of opposition parties, ideological explanations, whilst the use of referendums for plebiscitary, bargaining and legitimating purposes is much rarer than the theoretical case suggests.

Recent contributions have challenged the conclusion that referendum choice follows solely an *instrumental logic*. Closa (2007) observes that EU referendum pledges in countries where European integration is uncontested are inadequately explained by its use to achieve electoral advantage or policy goals and invokes institutional theory to build an alternative account. Institutionalism contends that actions may be driven by rules of appropriateness arising from the context and fulfilling the obligations of a role (March and Olsen 1984). Accordingly, actors may support referendums out of belief the mechanism is reasonable and legitimate in the circumstances; that is, they follow a *logic of appropriateness*. The essential feature of this argument is that support for referendums is explained not by fear of electoral backlash (in which case opting for a referendum would be a tactical move), but by a normative sense of what is appropriate given the context.

A strikingly similar account by Morel (2007) refers to the same institutional theory and logic of appropriateness arising from contextual conditions. The conditions may be summarised as: (i) the treaty is symbolically or constitutionally significant, (ii) there are precedents of prior referendums, (iii) pressure groups and the public strongly favour a referendum, (iv) opposition parties and some governing party members pressure the government to hold a referendum (2007: 1056). The 'inescapable pressure' is due to the contextually induced logic of appropriateness, where 'governments react, almost instinctively, to a normative pressure for holding a referendum' (*Ibid.*). Morel claims that 'politically obligatory referendums are...increasing in democracies and very likely to continue to do so' (2007: 1061).

Indeed, some empirical evidence does accord with the 'politically obligatory referendum' hypothesis. Finke and König (2009) find that support for referendums is positively associated with the extent to which voters consider referendums the appropriate ratification instrument. However, increasing evidence suggests that the strictures of political obligation are not as strong as claimed. Contrary to Finke and König, Dür and Mateo (2011) find that public support for referendums and number of prior referendums have no effect on party position. Lundberg and Miller (2014) find that even under 'politically obligatory' conditions, governments avoided referendums. Evidence shows also that governments can neutralise the contextual conditions defined as giving rise to a political obligation (Oppermann 2013b). Oppermann also observes how changes in domestic contexts between the deliberation of the Constitutional Treaty (2004-2005) and the Lisbon Treaty (2008-2009) reduced the salience of referendums as the appropriate ratification mechanism. That the context could change so rapidly suggests to us that the institutional forces upon which the 'politically obligatory referendum' hypothesis rests are not as persistent or enduring as institutional theory leads us to expect. If context does induce decision-makers to act according to a logic of appropriateness, then the way countries ratified the Lisbon Treaty – by parliament except where a referendum is constitutionally required (Ireland) – should set a new precedent making referendums less obligatory (Oppermann 2013b). Therefore, the evidence suggests that the conditions defined as inducing a political obligation are not as deterministic of politicians' responses as the hypothesis claims.

3. Political culture: a dialectic

3.1 Political culture and essentially contested concepts

Political culture influences social norms, but defining what constitutes political culture is difficult. One approach, as argued by Beer (1965: 11), is to endorse Trilling's view that 'a culture is nothing if not a dialectic'. As Beer points out, Trilling uses the term dialectic not in a Hegelian sense, but to assert that 'a culture is not a flow, nor even a confluence; the form of its existence is struggle or at least debate' (Beer 1965). This view can be applied to the political aspect of culture. To echo Trilling, it is often through the constant testing of 'yes and no' in a country's political culture from which political life and the major tensions therein derive (Beer 1965: 11). It follows that in any country, we would not expect concurrence on one type of behaviour or argument as dictated by a single reigning theory of democracy or sovereignty. On the contrary, a lack of integration is the defining characteristic of political culture itself.

To explain how political conflicts arise, Gallie introduced the notion of an essentially contested concept: 'concepts whose nature it is to be open to endless dispute' (1956: 169). Consider, Gallie urges, the concept of democracy. Democracy signifies an intrinsically complex achievement referring to three distinct elements: power of the people to choose and remove governments; equality of opportunity to attain positions of political leadership; and citizens' active participation in political life at all levels (Gallie 1956: 170). Contestants weight these elements differently. Exacerbating the potential for discord is the fact that the meanings of an essentially contested concept are periodically revised according to changing social context (Gallie 1956: 172).

Consider the ambiguity of the concept of popular sovereignty in political culture. Is it purely a nominal concept that vanishes once representatives have been elected? Does it contain the moral obligation for delegates to see the people as the ultimate source of political authority? Does it need to be substantiated or operationalised via mechanisms of direct consultation? Or is political representation the best way to give the people 'a voice' in the democratic polity? The histories of France and Britain show that such questions have produced diametrically opposed answers within each polity time and again. These answers have resulted in diverging and sometimes contradictory views on political representation, participation and, by extension, the use of the referendum.

3.2 Conceptions of sovereignty and the referendum in France

In France, positions on referendums have been shaped by three contrasting and long-standing views, namely the Rousseauian and Sieyessan views on the exercise of sovereignty and the Directorial view on the referendum.

3.2.1 *Rousseauian and Sieyessan views*

A tension at the heart of the French Constitution arises out of the contradiction between Rousseau's notion of popular sovereignty and the need for political representation inspired by the views of E.J. Sieyès. With the formulation in 1791 of the first Constitution after the 1789 Revolution, this contradiction was embedded early in the political culture of modern France. The Constitution paid homage to Rousseau's democratic conception, confirming that 'the law is the expression of the General Will. All citizens have the right to take part in its formation either directly or by their representatives' (Ch. III, Art. 2). Yet it also enshrined Sieyès' notion of representation: 'The nation, which is the source of all powers, can exercise them only by delegation. The French Constitution is [thus] representative...' (Ch. III, Art. 2).

Along with incorporating the Declaration of Rights, which reflects Rousseau's ideals, the 1791 Constitution entrenched the understanding that political representation was necessary, legitimate and rightful. Hence, in accordance with both these notions, provisions for popular decision-making and a representative system were made, which resulted in a dual conception of sovereignty that has persisted.

Although the referendum fell into long-term disrepute for reasons described below, this duality is enshrined in the current 1958 Constitution even more clearly. Article 3 reads: 'National sovereignty belongs to the people, who shall exercise it through their representatives and by means of referendum'. Thus, the 1958 Constitution does not clarify whether and in what instances direct consultation or parliamentary vote has priority.

3.2.2 *Directorial view*

Other conventions harking back to the post-revolutionary era include the 'Directorial' view on the referendum, emerging from the *Directoire* created in 1795 (Duverger 1962: 160). The Directory was an executive body comprised of five directors. Despite being chosen from members of the legislature, the directors could resort to referendums when in their view the ambitions of the legislature needed to be curbed.

While the referendum under the Directory helped legitimise the fledgling post-revolutionary government, it fell into disgrace soon afterwards as Napoleon Bonaparte reduced it to a means of acquiring popular support for his dictatorship.² Some years later, in 1851 during the Second Republic, Napoleon's nephew, Louis Napoleon, staged a *coup d'état*, using the referendum *post hoc* to install himself as dictator. In 1852, he used it again to establish the Second Empire, crowning himself Napoleon III.

In the period of rebuilding after World War II, General de Gaulle attempted to lead France away from the *regime d'assemblée*, which had become paralysed, and implemented 'Directorial' politics once again to invigorate the country. Based on a strong executive, separation of powers and direct relationships between head of state and people, de Gaulle's vision demanded the reintroduction of the referendum. The Directorial view reflected in de Gaulle's reforms continues to inform practice today. Indeed, the 1958 Constitution makes provisions for the executive alone to call a referendum without Parliament's approval.

In sum, the three alternative views of sovereignty and the referendum in French political culture are:

- (1) *Rousseauian*: sovereignty belongs to the people
- (2) *Sieyessan*: sovereignty belongs to the people though they exercise it through their representatives and
- (3) *Directorial*: the power to call a national referendum on issues of 'high politics'³ is vested in the head of state.

These understandings are codified but not clarified in the current Constitution. Partisans may draw upon these interpretations, each validated on various readings, to substantiate their arguments in 'endless disputes' about how to make a public choice.

3.3 Conceptions of representation and the transfer of sovereignty in the UK

3.3.1 *Burkean view*

The notion that state sovereignty derives from the people is at odds with the UK constitutional principle of parliamentary sovereignty. Parliamentary sovereignty is exercised as a transfer of authority not from the people, but from the Crown. Nevertheless, although Parliament wields the highest authority and power in the state on behalf of the monarch, the Crown remains the institution to which all Britons are subject (Balsom 1996: 209). In this light, direct democracy is at odds with representative democracy as practiced in the UK,

² Napoleon used the referendum in 1800 to establish himself as first consul, in 1802 to make himself consul for life and in 1804 to invest himself with the title of Emperor.

³ Matters vital to the survival of the state: for example, societal order, political power, foreign policy and security concerns.

namely constitutional monarchy. This tradition of representative democracy invests UK politicians with the duty to represent the best interests of the state (i.e., the Crown) not to act as popular delegates, a distinction touched upon by Edmund Burke in 1774:

[H]is unbiassed [sic] opinion, his mature judgment, his enlightened conscience; he ought not to sacrifice to you, to any man, or to any set of men living.... Your representative owes you not his industry alone but his judgement; and he betrays, instead of serving you if he sacrifices it to your opinion (cited in Balsom 1996: 213).

3.3.2 *Lockean view*

British classical liberal constitutionalists did not, however, regard Parliament to be all-powerful. In defending representative government, philosophers such as John Locke argued that whilst power was given to Parliament, this transfer was a *concessio imperii*: a temporary and limited delegation of power. For Locke, representative democracy implies that people have not absolutely abdicated their rights, but simply transferred the execution of their rights to another body:

If a Controversie [sic] arise betwixt a Prince and some of the People, in a matter where the Law is silent, or doubtful, and the thing be of great Consequence, I think the proper Umpire in such case should be the Body of the People. (Second Treatise, Art.242).

Locke's argument found particular resonance in 19th-century jurist debates, which continue to inform current views on the referendum in the UK. For instance, A.V. Dicey argued that the referendum provides a constitutional check to prevent fundamental legislation being passed against the will of the people. The referendum was:

[t]he best, if not the only possible, check upon ill-considered alterations in the fundamental institutions of the country... [the] only check on the predominance of party which is at the same time democratic and conservative (Dicey 1890: 505).

In sum, the dialectic in the UK is characterised by Burke *versus* Locke. Burke's views on representation and Locke's on the transfer of sovereignty continue to resonate in arguments about referendums. As in France, the ambiguity of these essential contested concepts is reflected in the Constitution and fuels the invigorating disputes that are constitutive of political culture.

Constitutional ambiguity has its uses (see Foley 1989). By leaving room for interpretation, ambiguity makes possible cooperation between actors whose interests are opposed, helps avoid deadlock on divisive issues and offers a way forward where contingent

resolutions can be made and re-made. Ambiguity ensures no single settlement, with its assignment of power and prerogatives, can be imposed.

4. Empirical analysis

4.1 Research design

Our research objective is to probe the plausibility of the 'politically obligatory referendum' hypothesis, namely, that certain contextual conditions increases the likelihood that governments choose referendums instead of parliamentary votes to decide matters of European integration. To analyse the hypothesis, we use a case-study method, specifically the within-case congruence method (George and Bennett 2005: 181-204). This method is suited for small-*n* studies where the logic of causal inference is unsuitable since the investigated phenomenon has complex, multiple determinants and finding cases similar in every respect but one, in order to fulfil the assumption of unit homogeneity, is extremely difficult. The congruence method assesses whether the predicted outcome in a case, in view of the values of the case's independent variables, is congruent with the actual outcome. With this method and few cases, our study can aim only to assess the plausibility of the hypothesis, a task nevertheless useful to determine whether the theory merits further refinement and more rigorous empirical tests (Eckstein 1975).

The cases are instances of parliamentary debates in both upper and lower chambers on the appropriate mechanism for ratifying important EU treaties at two points in time in both France and the UK. Each debate is a unit of observation. Conclusions are reached by comparing the two observations in each case, not by comparing the two cases. We observe the debates on a number of variables.

Firstly, we observe whether the context of the debate fulfils the conditions claimed to make referendums politically obligatory, X_1 , our key explanatory variable. Secondly, we observe the position of political parties on using a referendum to decide the treaty/amendment under consideration, X_2 . This variable operationalises party-political strategic interest, which is the alternative explanation of government choice of discretionary referendums and is the explanation supported by most contributions to the literature. Thirdly, we observe the relative frequency of the types of justifications MPs use to argue for or against referendums in the debate, which we treat here as the dependent variable, Y .

These variables are related as follows: if the hypothesis were valid, we would expect to observe an increase in the relative frequency of pro-referendum justifications in the second

debates compared to the first debates regardless of party position on the referendum. That is, MPs of all parties would advance more pro-referendum justifications relative to justifications favouring parliamentary vote. They would do so because of an increased normative conviction that referendums are appropriate given the context, that is, subjective cognitive belief is the causal mechanism.

We may conclude that if the observable outcome in the two cases is not consistent with the hypothesis – that is, if pro-referendum justifications do not increase relatively or their frequency varies consistently with party position on the referendum – then the hypothesis has not survived the plausibility probe.

We do not suggest that the relationship between frequency of justification types, Y , and government choice of referendum, the ultimate phenomena the hypothesis seeks to explain, is causal. That is to say, Y is not an intervening variable in a causal sequence between politically obligatory conditions, X_1 , and government choice of referendum. Rather, in this model, the justifications are either a coterminous reflection of the politically obligatory contextual conditions within which MPs act or a rationalisation of party position on the referendum, and thus of party-political interests.

4.2. Cases and selection

The occasions for the debates within both cases were a constitutional amendment to make referendums mandatory for all future EU accessions (France), the Lisbon Treaty (France), the Maastricht Treaty (UK) and the EU Constitutional Treaty (UK).

We selected France and the UK because, though representative democracies, these countries have different predominant democratic traditions, the effect of which, if any, on MP justifications may be compared. France has a political tradition strongly influenced by the doctrine of popular sovereignty, which holds amongst other things that policy should be determined by the wishes of the people. In the UK, the principle of parliamentary sovereignty, where the 'Crown in Parliament' is supreme over all other bodies and persons and may make, change or repeal any written law, is strongly established, which lends uncertainty to the place of referendums in the Constitution. France may therefore be considered a 'most likely' case, whilst the UK is a 'least likely' case for observing the hypothesised outcome.

We selected the debates to ensure within-case variation in terms of whether the context fulfils the politically obligatory conditions, which from Morel (2007) we may summarise as:

- (1) The treaty is symbolically or constitutionally significant,
- (2) There are precedents of prior referendums,
- (3) Pressure groups and the public strongly favour a referendum and
- (4) Opposition parties and some governing party members pressure the government to hold a referendum.

We also selected the debates for the practical reason that the referendum question was paramount in the debates and discussed at length. The context of each debate is as discussed in the following section.

4.2.1 Constitutional amendment making referendums mandatory on any future EU Accession (France-2005)

Having signed the EU Constitutional Treaty in October 2004, the UMP (Union for a Popular Movement) government was concerned that popular opposition to Turkey's accession to the EU would diminish support for the Treaty, which was to be decided by referendum. To remove the salience of this contentious issue in the referendum campaign, then-President Chirac (UMP) proposed, amongst other measures, an amendment to the French Constitution making referendums mandatory for each future EU accession. The Socialist Party (PS) opposed it. Following the debate, the amendment to Article 88.5 of the Constitution was passed by Congress in 2005 just before the referendum on the EU Constitutional Treaty.

4.2.2 Ratification of the Lisbon Treaty (France-2008)

The EU Constitution was rejected by French and Dutch voters in referendums in May and June 2005, respectively, and the Lisbon Treaty was quickly drafted to provide a political remedy for integrationists to motivate the reform of EU institutions. The Lisbon Treaty's ratification process arguably took place under conditions claimed to make referendums politically obligatory.

(1) Significance: The newly elected President Sarkozy (UMP) touted the Treaty as a simplified version of the Constitutional Treaty with insignificant implications for the French Constitution, thus meriting a parliamentary vote. But this claim was widely viewed, both in France and elsewhere, as inaccurate.

(2) Precedents: By 2008, France had established precedents of deferring decisions on significant EU treaties to the people: Enlargement to Admit the UK, Denmark and Ireland (1972), the Maastricht Treaty (1992) and the Constitutional Treaty (2005).

(3) Popular pressure: Opinion polls showed a large majority of citizens preferred a referendum on the Treaty.⁴ Numerous pro-referendum demonstrations were organised and the NGO National Committee for a Referendum posted a petition on its website, 'We Want a Referendum', which garnered approximately 120,000 signatures.

(4) Political pressure: The President faced considerable pressure from both the opposition and members of his party to hold a referendum. Hundred and nine centre-left and leftist legislators signed the above-mentioned petition and threatened to oppose the Treaty's ratification if not submitted to popular vote.

Despite these factors, Sarkozy did not relent, and in February 2008 the Lisbon Treaty was ratified by Parliament alone.

4.2.3 Ratification of the Maastricht Treaty (UK-1993)

Politically obligatory conditions could be considered to have obtained in the UK when the Maastricht Treaty was signed. The Treaty was symbolically and constitutionally significant, as it deepened integration by establishing the EU and introduced new areas of cooperation. Opposition to the Treaty, and Euroscepticism in general, crossed the boundaries of the major parties, and opinion polls suggested significant public support for a referendum (Baker *et al.* 1994; Gifford 2006).

However, little precedent of national referendums existed in 1992. Previously, only one national referendum had ever been held: in 1975 on remaining a member of the European Common Market. Indeed, it was during the extremely contentious deliberation on the Maastricht Treaty that the forces advocating referendums on EU matters first substantially mobilised (see Gifford 2006).

Despite opposition to the Treaty, Parliament passed the bill permitting its ratification in July 1993.

4.2.4 Ratification of the EU Constitutional Treaty (UK-2004)

The UK context more convincingly met the politically obligatory conditions a decade later when the EU Constitutional Treaty was signed. Indeed, Morel argues as such: 'To be sure the British and the Dutch referendums can be interpreted in this way [as politically obligatory referendums] even if Tony Blair could afford at the end to cancel the referendum, as a result of the French and Dutch rejections of the treaty' (2007:1061).

⁴ CSA poll for *Le Parisien* (29 October 2007); Open Europe *Poll on the Future of Europe: Main Findings Report*, p.4 (23 March 2007), <http://archive.openeurope.org.uk/Content/documents/Pdfs/mainfindings.pdf> [accessed on 8 May 2017].

(1) Significance: The Treaty was a new constitutional settlement within the EU, expanding qualified majority voting to policy areas previously decided by unanimity and giving legal force to the Charter of Fundamental Rights. Though not a great leap in integration beyond the existing treaties, it was drafted in grandiose terms, raising its symbolic importance.

(2) Precedents: Although only one UK-wide referendum had been held before 2004, the instances of popular consultation were increasing in the UK's constituent countries – Northern Ireland in 1973, Scotland and Wales both in 1979 and 1997 – and regionally – in London in 1998. A regional referendum was planned also in 2004 in the north-east of England. Many of these referendums took place under the Labour government that took office in 1997, increasing normative pressure for a referendum on the EU Constitution.

(3) Popular pressure: A number of petitions demanding a referendum on the Treaty were launched on the government's website. An initiative of a group named 'Defenders of the Realm' collected over one million written signatures. Other groups, such as Referendum 04, Vote 2004 and Patriotic Poll, organised similar appeals. According to Qvortup (2006), 90% of UK voters supported a referendum.

(4) Political pressure: Opposition parties as well as Labour backbenchers called for a referendum. Sixty Labour MPs were known to support a referendum (Qvortrup 2006). MPs of both parties tabled two bills and one motion providing for a referendum in Parliament. Even Blair's senior advisor on Europe was reported to say that not holding a referendum was "untenable".⁵

The Labour government, which had opposed a referendum during Treaty negotiations, eventually conceded in April 2004 and announced that ratification would only follow a 'yes' vote in a referendum. The abandonment of the Treaty following its rejection by French and Dutch voters meant the UK referendum never took place.

4.3. Measurement

The values of X_1 , politically obligatory conditions, are established by the date of the debate: we argue that the context of the earlier debates did not fulfil the conditions, whilst that of the later debates did.

The values of X_2 , party position on the referendum, are taken from media accounts and are given in Table 1. A full explanation of these values is beyond this study's scope. However, the values of X_2 are clearly related to party governing status. The party forming the

⁵ *EUObserver* (16 October 2003), <http://euobs.com/?aid=13078&rk=1> [accessed on 8 May 2017]

government that negotiated (a lengthy process) and signed the treaty (indicating acceptance of an obligation not to oppose it) supported the ratification mechanism most likely to secure its desired outcome. This mechanism was parliamentary vote for all but one observation: the mandatory referendums amendment. In this instance, the governing party's position was, unusually, pro-referendum, since referendums on this issue advanced the party's interest of achieving the ratification of the pending Constitutional Treaty. As for opposition parties, they opposed the governing party's position, as theory predicts, in all but one instance: Labour Party's position on the Maastricht Treaty.

Table 1: Party position on the use of a referendum to ratify EU treaties in France and the UK

Party	Treaty	
FRANCE	<i>Mandatory Referendum Amendment (2005)</i>	<i>Lisbon Treaty (2008)</i>
UMP	For	Against
PS	Against	For
UK	<i>Maastricht Treaty (1993)</i>	<i>EU Constitutional Treaty (2004)</i>
CON	Against	For
LAB	Against	Against

Note: Bold face type indicates the governing party at the time of the debate.

The values of Y , the relative frequency of justification type, were established via text analysis.⁶ We first identified 500 'relevant speech acts' in the debates. Relevant speech acts are arguments about referendums referring to constitutional interpretations within an MP's statement.⁷ The recording criterion was the presence of the stem 'referend+'. An MP statement to the chamber is of variable length and may contain multiple or no relevant speech acts. The number of MP statements and relevant speech acts per case are given in Table 2 and the debate details are supplied in Table 3.

Table 2: Number of MP statements and relevant speech acts per debate

Debate	MP Statements	Relevant Speech Acts
Constitutional amendment making referendums mandatory on any future EU accession (FR)	1,678	171
Lisbon Treaty (FR)	856	156
Maastricht Treaty (UK)	193	102
EU Constitutional Treaty (UK)	140	71
Total	2,867	500

⁶ We used QDA Miner, a textual data analysis software that facilitates thematic coding of texts and the statistical analysis of relationships among themes and between themes and variables.

⁷ The results of this study are drawn from a larger analysis of a wider set of rhetorical strategies used by MPs to argue for or against referendums, including political, practical and moral arguments.

Table 3: Debate transcripts

Debate	Date & Session	Place	Reference
Ratification of the Lisbon Treaty <i>France</i>	2 nd & 3 rd sessions: 15 Jan 2008 1 st session: 16 Jan 2008	National Assembly	Modification du titre XV de la Constitution. <i>Journal Officiel de la République Française</i> . 98e séance de la session ordinaire 2007-2008 (pp.188-200). 100e séance de la session ordinaire 2007-2008 (pp.263-266).
Ratification of the Lisbon Treaty <i>France</i>	1 st session: 29 Jan 2008	Senate	Modification du titre XV de la Constitution. <i>Journal Officiel de la République Française</i> . 57e séance de la session ordinaire 2007-2008 (pp.591-612; 612-651).
Ratification of the EU Constitutional Treaty: Introduction of the Mandatory Referendum <i>France</i>	2 nd & 3 rd sessions: 25 Jan 2005 2 nd session: 1 Feb 2005	National Assembly	Modification du titre XV de la Constitution. <i>Journal Officiel de la République Française</i> . 123e séance de la session ordinaire 2004-2005 (pp.300-325). 130e séance de la session ordinaire 2004-2005 (pp.513-517).
Ratification of the EU Constitutional Treaty: Introduction of the Mandatory Referendum <i>France</i>	1 st , 2 nd & 3 rd sessions: 15 Feb 2005 1 st & 2 nd sessions: 16 Feb 2005	Senate	Modification du titre XV de la Constitution. <i>Journal Officiel de la République Française</i> . 57e séance de la session ordinaire 2004-2005. 58e séance de la session ordinaire 2004-2005 ⁸ .
Ratification of the EU Constitutional Treaty <i>UK</i>	23 Apr 2004	House of Commons	Constitution for the European Union (Referendum) Bill. [HC Deb vol 420 cc565-608]
Ratification of the EU Constitutional Treaty <i>UK</i>	10 Sep 2004	House of Lords	Constitution for Europe (Referendum) Bill. [HL Deb vol 664 cc815-856]
Ratification of the Maastricht Treaty <i>UK</i>	21 Feb 1992	House of Commons	Referendum Bill [HC Deb vol 204 cc581-650]
Ratification of the Maastricht Treaty <i>UK</i>	14 Jul 1993	House of Lords	European Communities Amendment Bill [HL Deb vol 548 cc239-334]

We then classified the relevant speech acts according to justification type: in the French case, *Rousseauian*, *Sieyessan*, *Directorial* and *Doctrinal* views; in the UK case, *Lockean* and *Burkean* views. As discussed in Section 3, Rousseauian and Lockean are pro-referendum; Sieyessan and Burkean are pro-parliamentary vote. Directorial is also pro-parliament here because, although this view holds that referendums are the president's prerogative, referendums were not in the president's interest in both instances. The Doctrinal view is pro-referendum based on a particular reading of Article 3 of the 1958 Constitution

⁸ PDF versions and page numbers are not available for these two sessions, but the full debates can be accessed on the Senate website via these links [accessed on 8 May 2017]: <http://www.senat.fr/seances/s200502/s20050215/s20050215005.html> and <http://www.senat.fr/seances/s200502/s20050216/st20050216000.html>

rather than on an ideological standpoint. Justification type definitions and examples are provided in Table 4. We summarised instances of justification types in terms of their relative frequency per debate, Y .

Table 4: Constitutionally founded justifications for and against referendums

Justification	Definition	Example
<i>For the referendum</i>		
Rousseauian <i>France</i>	National sovereignty belongs to the people.	<i>National sovereignty belongs to the people, who thereby exercise it by means of the referendum!</i>
Doctrinal <i>France</i>	It is inconceivable, despite the silence of the 1958 Constitution on the issue, to ask representatives to ratify a treaty in parliament that was previously rejected by a referendum.	<i>The Constitution was drafted without explicit consideration of such an eventuality because the fundamental principle on which it is based assumes that the will of the people, once expressed by referendum, ought to be respected!</i>
Lockean <i>UK</i>	Parliament cannot transfer the power of making laws to any other hands, as its power has been delegated by the people.	<i>Locke made it clear, and it has been accepted by both Houses since he wrote it, that we in Parliament cannot transfer the power of making laws of this land to any other land without consulting the people by referendum.</i>
<i>Against the referendum</i>		
Sieyessan <i>France</i>	National sovereignty does belong to the people, but they exercise it through their representatives.	<i>We are in a legitimate position to make any decision, in line with Article 3 of the 1958 Constitution: 'National Sovereignty belongs to the people, who shall exercise it through its representatives... and by means of the referendum'.</i>
Directorial <i>France</i>	Power is traditionally vested in the head of state to choose whether or not to call a national referendum on issues of 'high politics'.	<i>The Head of State can legitimately decide whether to resort to the referendum or not in order to ratify the Lisbon Treaty.</i>
Burkean <i>UK</i>	Referendums go against the tradition of parliamentary sovereignty and parliamentarians are responsible for making decisions.	<i>The holding of a referendum will represent an abdication by Members of Parliament of the responsibilities they are elected to perform.</i>

We also classified each relevant speech act according to *Debate* and the speaker's *Political Party*. Debate serves as a proxy for X_1 in the figures below. We record MP's party for ease of presentation. To recognise the effect of party position, X_2 , on justification type relative frequencies, Y , in the figures below, it is important to recall the parties' positions and

governing statuses in each debate (see Table 1). In both cases, we analyse only the arguments of MPs of the two main large parties.

Table 5: Strategy for coding relevant speech acts

Country	Debate	Political Party	Justification
France	Mandatory Referendum Amendment Lisbon Treaty	Union for a Popular Movement (UMP) Socialist Party (PS)	<i>For Referendum</i> Rousseauian Doctrinal
			<i>Against Referendum</i> Sieyessan Directorial
UK	Maastricht Treaty Constitutional Treaty	Conservative Party (CON) Labour Party (LAB)	<i>For Referendum</i> Lockean
			<i>Against Referendum</i> Burkean

5. Strategic argumentation and discretionary referendums versus logic of appropriateness and political obligation

Figure 1: Relative frequency of MP arguments by justification, party and debate in France

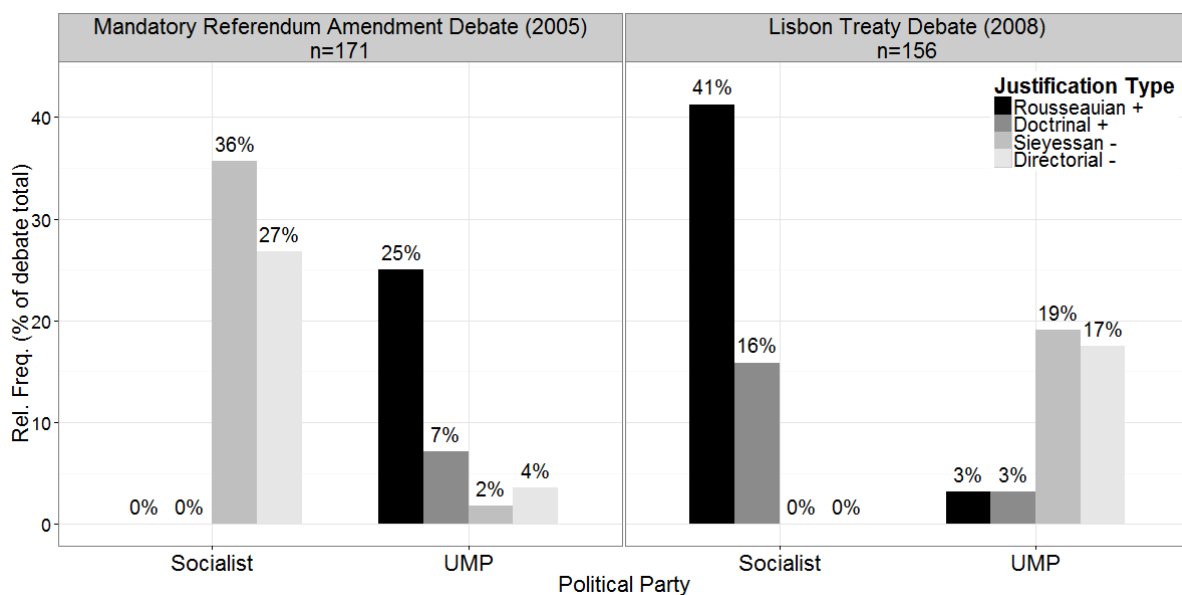


Figure 1 depicts the relative distribution of MP arguments by justification type and party in both French debates. On the Mandatory Referendum Amendment, MPs of the opposition PS expressed exclusively Sieyessan and Directorial anti-referendum views and representatives of the governing UMP embraced mainly Rousseauian and Doctrinal pro-referendum perspectives, reflecting their parties' respective positions. For example, Socialist MP Jacques Floch criticised the constitutional amendment on Sieyessan grounds: 'each new accession should be subject to a real debate in Parliament. It is there that it should be decided

whether the French People should be consulted'. Along with many PS colleagues, Christian Cointat opposed it based on the Directorial perspective: the reform 'removes from the President the choice concerning the process of ratification, between the parliamentary procedure and the referendum'.

In contrast, a high-profile UMP deputy, Pierre Lequiller, welcomed mandatory referendums based on the Rousseauian view: they would enable the people 'to arbitrate for themselves between the accession of Turkey to the EU or not...which could not be more democratic'. For Minister Dominique Perben, 'the fact that the French people wish to have their say on a potential accession is sufficient grounds for holding a referendum'. UMP MPs often backed up Rousseauian justifications with Doctrinal arguments.

During the Lisbon Treaty debate three years later, when politically obligatory conditions prevailed but party position was reversed, representatives of the still-governing UMP mainly used anti-referendum Sieyessan or Directorial views, reversing their earlier stances. Minister Rachida Dati argued that decisions made by representatives of the people have 'the same legitimacy as the people pronouncing themselves by means of the referendum', while Deputy Gabrielle Louis-Carabin declared: 'to those of you who keep complaining about the choice of ratifying the treaty through Parliament, I remind you that we, as deputies elected by the people, represent French citizens of each and every constituency'. The same UMP deputy who had three years earlier adopted Rousseauian justifications, Pierre Lequiller, this time defended Sarkozy's choice of parliamentary ratification on Directorial grounds: 'to refuse the choice made by the President of the Republic, who has been democratically elected, is to refuse the choice that the French people have expressed when electing him'.

Opposition Socialist MPs, in contrast, exclusively deployed pro-referendum Rousseauian and Doctrinal justifications in a complete reversal of their earlier positions. Deputy Alain Vidalies, for instance, argued that 'the legitimacy of Parliament derives from the sovereignty of the people' and 'it would have been unthinkable for any of the [framers of the Constitution] to bypass or dismiss the outcome of a popular vote [the 'no' to the EU Constitution] by recourse to a parliamentary vote'. Sarkozy's choice was a 'denial' of fundamental democratic principles and 'denigrates' the will of the people, according to PS deputies and senators.

The results reveal that UMP representatives deployed a few pro-referendum justifications in the later debate, contrary to their party's position, which might be seen as evidence in support of the politically obligatory referendums hypothesis. However, a similar

proportion of UMP arguments diverged from party position in the earlier debate, and UMP MPs' wider range of justifications could be due to the confidence of governing party MPs to express sincere versus strategic views, since the government had the power to determine the ratification mechanism. The same rhetorical freedom was not displayed by Socialist MPs, who appear to use the debate solely to oppose the government's position, even if it meant completely contradicting their previously expressed views.

Figure 2: Relative frequency of MP arguments by justification, party and debate in the UK

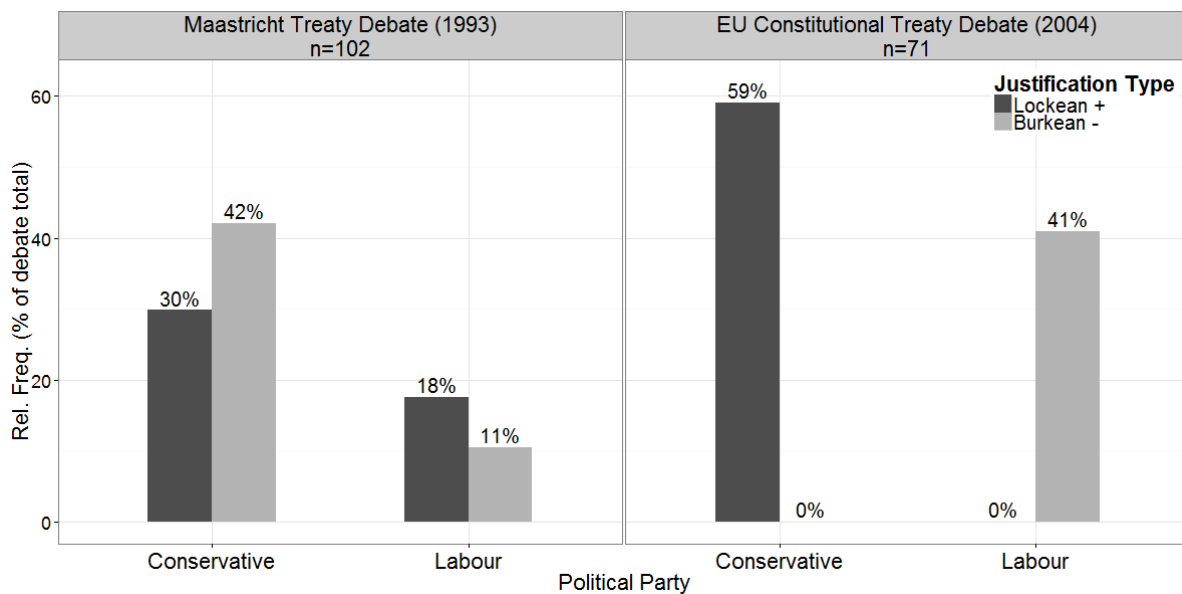


Figure 2 depicts the relative distribution of MP arguments by justification type and party in both UK debates. In the debate on whether to ratify the Maastricht Treaty by referendum, which both the governing Conservative Party and the opposition Labour Party opposed, MPs' justifications were mixed. A majority of Conservative MPs did invoke the Burkean view in line with their party's anti-referendum position, such as Anthony Nelson, who argued that decision-making responsibility is 'vested in public representatives'. And the balance of Labour arguments invoked Lockean logic, opposing the government, although this view contradicted their party's position. As Labour MP Peter Shore put it: 'no one should have the right to pass laws that are binding on the British people unless they can be dismissed by the British people'; or, in the words of Viscount Tonypany, a Labour peer in the House of Lords: 'Locke made it clear, and it has been accepted by both Houses since he wrote it, that we in Parliament cannot transfer the power of making laws of this land to any other land'. Strongly aligned with this view was the claim of Labour MP's that a treaty such as Maastricht would 'irreversibly' alter governance and the British people had a right to be consulted on it.

Approximately a decade later, when MPs debated the mechanism for ratifying the EU Constitutional Treaty under politically obligatory conditions, the relative distribution of arguments was much different. MPs proffered only justifications that supported their party's position at the time of the debate. Now in opposition, Conservatives pushed for a referendum by propounding only Lockean views with no vestige of their earlier defence of representative democracy. Many conceived the ratification issue as a question of sovereignty. In their view, although Parliament exercises sovereignty, it cannot give sovereignty away without the consent of the people. For Angela Browning, MPs 'serve the people' and have 'a responsibility to provide their constituents with necessary opportunities to directly participate on important issues'. Many also justified a referendum on the grounds that only the people should decide on a treaty that implied such significant changes to the UK Constitution.

In contrast, MPs of the governing Labour Party exclusively opposed referendums using Burkean interpretations, abandoning their earlier subscription to Locke's concept of popular sovereignty. For Stuart Bell, for instance, the mandate conferred by an election entitles MPs to make decisions on behalf of their constituents. This is a duty rather than a right, emerging from a division of labour between those who govern and the governed. In addition, Labour MPs argued that the constitutional implications of the Treaty were not so great, and since prior EU treaties had been ratified by Parliament, a referendum was unnecessary now.

The results lend little support to the politically obligatory referendums hypothesis with regard to Labour MPs: in the Maastricht debate when in opposition, a majority argued for referendums against their party's official position, whilst in the Constitutional Treaty debate when their party formed the government and politically obligatory conditions prevailed, none did. As for Conservative MPs, the motive for espousing all Lockean arguments in the second debate is unclear: it could be, for example, solely a tactical move to oppose the government, an increase in Eurosceptical views in the party or an indication of increased acceptance of the appropriateness of referendums in UK politics. Further research would be required to adjudicate amongst the potential explanations.

In both country cases a marked increase in pro-referendum justifications espoused by MPs of both parties regardless of party position on the referendum – which would be an indicator of an encroaching cognitive belief in the appropriateness of referendums given the context – is not evident, even in the 'most likely' case of France. There is no detectible congruence between the outcome predicted by the hypothesis and the actual outcome. Instead, the results indicate that MPs' justifications largely and increasingly align with party

position on the referendum, an indicator of party interest. The findings of this study thus render the politically obligatory referendums hypothesis less plausible.

6. Conclusion

Contrary to the claim that governments are increasingly holding referendums on matters of EU integration because contextual conditions induce politicians to believe that referendums are the 'appropriate' decision-making mechanism, making them 'politically obligatory', this study concludes that governments retain discretion over choice of mechanism despite these conditions. In France and the UK, the choice of popular or parliamentary vote is enabled by divergent, long-standing and equally legitimate conceptions of sovereignty and political representation enshrined in the national constitutions. Even when pressure groups, political elites, party activists and popular opinion strongly demand a referendum and there are precedents of referendums, French and UK legislators draw selectively on these divergent conceptions to justify either popular or parliamentary vote, arguing strategically for the mechanism that suits their party's interests even if this means advocating contradictory positions from time to time. This conclusion supports existing explanations of discretionary referendums: they are instruments to advance party interests.

The 2015 UK parliamentary debate on whether to hold a referendum on the UK's membership of the EU (now, the 'Brexit' vote) provides another opportunity to examine the type of justifications MPs used to argue for or against referendums under 'politically obligatory conditions'. The Conservative-led government's decision to favour a referendum despite supporting continued UK membership of the EU is conventionally characterised as a calculated risk to diffuse an issue that causes internal party divisions: a tactical risk that the government lost. But what was the nature of MPs arguments? Did they continue to invoke Burkean and Lockean logic? Is there an increasing consensus on the appropriateness of referendums in UK politics? Further debates in Parliament on the suitability of referendums may be expected, as the question of whether the negotiated terms of Brexit should be put to the people or Parliament to decide, or neither, will be hotly contested during the exit process.

The literature explaining why governments pledge discretionary referendums despite the risk of defeat is largely informed by examples of popular votes that were strategically and skilfully called to serve the governing party's interests and largely fulfilled that function. The recent experiences of referendums resulting unexpectedly in outcomes contrary to governments' interests and having major implications for international treaties, governance arrangements and international relationships – such as the Dutch and French 'no' to the EU

Constitution and most especially the Brexit vote – will have had a chastening effect on politicians as well as the public. These experiences may have changed the social context in many countries and prompted a revision of the meaning of the essentially contested concepts of sovereignty and political representation or the weight placed on their different elements, which Gallie explained happens periodically. The questions put to citizens in these referendums are surely far more complex than the issues considered by advocates of direct democracy in Rousseau and Locke's time. Have these experiences raised the salience of Sieyès and Burke's arguments about the value and necessity of delegating authority to political representatives in large polities? Certainly the 'endless disputes' over these essentially contested concepts – the constant testing of 'yes and no' – continue to define the political cultures of France and the UK and no doubt other polities too.

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