



The United Kingdom and the Future of Europe: Winning the Battle, Losing the War

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Although it is tempting to interpret the conduct of the UK government at the Convention on the Future of Europe (and the IGC that followed) as a continuation of the negative policy adopted by previous UK administrations in EU treaty negotiations, such a construal would be mistaken. UK preference formation was, in fact, more complex. Interpretations that highlight UK exceptionalism, the domestic pressures on government, and the role of Eurosceptic backbenchers are similarly problematic. The UK's experience at the Convention underlines, rather, the importance of institutional constraints at both the EU and national level. Moreover, despite London's success in achieving what is widely regarded as a very 'British constitution', the manner of its triumph and the failure to carry public opinion at home threatens to jeopardize not only the ratification of the draft constitutional treaty, but also the realization of the Blair government's broader European objectives.

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Introduction

Although doubtless to be remembered for its dogged persistence (and success) in securing its many 'red lines'¹ it would be a mistake to interpret the UK's contribution to the Convention on the Future of Europe and the subsequent IGC as continuation of the defensiveness shown by previous administrations or evidence of an enduring 'awkwardness'.² That there were certain continuities would be difficult to deny, but the idea that there are 'clear structural realities' or culturally entrenched attitudes that programme the behaviour of UK governments in EU negotiations fails to recognize the specificities that have characterized the UK's approach to each episode of treaty reform over the past two decades. Similarly, the account offered by liberal intergovernmentalism is of little help in explaining the dynamics of UK preference formation or interstate bargaining with respect to the Convention (Moravcsik, 1993; 1998, Dimitrakopoulos and Kassim, this issue). Key assumptions of that model — that preference formation is driven by issue-specific interdependence, that governments negotiate within the constraints imposed by domestic ratifiability,



and that the state as a rational actor — appear to have limited explanatory purchase.

This article examines the UK's participation in the Convention and the 2003–2004 IGC. It looks at the definition of UK preferences and strategy in advance of the Convention, at their evolution through the various phases of negotiation, and at the processes, by means of which they were formulated. Comparison is drawn with previous rounds of negotiations. It puts forward three arguments: first, that, as other commentators have noted (Menon, 2004a, b), UK engagement in the Convention was marked by two distinct phases — an initially pro-active phase, roughly until autumn 2002, where it struck a positive tone and succeeded in promoting its priorities, which gave way to a more negative and critical approach. Second, that, although state–civil society relations are an important factor, preference formation at least in the UK case is best explained with reference to institutional and organizational factors at both the domestic and the EU level. Third, that the UK was remarkably successful in securing its ambitions, but that its defensive rhetoric of the latter stages produced — in the context of Tony Blair's long-term European policy aims — a 'pyrrhic victory' (Menon, 2004a, b, 4).

The discussion below is organized into four sections. The first briefly outlines four approaches to explaining UK preferences and preference formation — the awkwardness thesis, LI, historical institutionalism and the new institutionalism — and argues that the latter has greatest explanatory value. UK preferences and strategies are examined in the second section. The third discusses the process of preference formation in the UK and offers an evaluation of theoretical perspectives in the light of the findings of the case study. The concluding section reflects on the implications of the UK's strategy at the Convention for its European policy in the longer term.

Theorizing UK Preferences and Preference Formation

Four theoretical perspectives are particularly relevant in relation to UK preferences and the process of preference formation.

The 'awkwardness thesis'

According to the 'awkwardness thesis', the UK's difficult relationship with the European Communities is to be explained in terms of its unique history, geography, culture, and even social institutions.³ Appeal is made to various factors to account for the UK's caution with respect to the European project, but, whatever its source, antipathy towards any form of cooperation that may threaten its sovereignty is culturally entrenched, it is argued not only among the wider public, but also within the UK's political elite. This hostility accounts



for the UK's reluctance at each round of treaty negotiation to support to an extension of EU competencies or a strengthening of supranational institutions.

Although this perspective identifies factors that are present in British politics and society, it does not provide a satisfactory explanation for the development or content of UK preferences. First, it fails to account for variation in the UK's European policy, which has been no means constant since the mid-20th century. While there have been periods of undoubted scepticism, the UK has had at least two prime ministers, who were instinctive Europeans (Sir Edward Heath and Tony Blair), while others, including Margaret Thatcher, saw that very significant benefits could be achieved through the Community.⁴ Nor has public opinion been consistently or predominantly negative, or press coverage invariably hostile.⁵ Second, as Mark Aspinwall (2000) has argued, the UK's peripherality or isolation is not unique, nor is its former world power status. UK preferences have not been invariant, and London's approach to IGCs, as well as its willingness to engage positively with its partners, has differed from administration to administration.

Historical institutionalism

A second perspective, developed by Aspinwall, is more specific about the sources of UK preferences. He rejects several other approaches (liberal intergovernmentalism, functional and historical approaches) in favour of an argument that focuses on distinctive features of Britain's constitutional mechanisms of powersharing; namely, the fusion of the executive and the legislature, which, he contends, in combination with the two-party system, the adversarial nature of party competition, and the tradition of single party government produces a very particular dynamic. 'The argument', he contends, 'in a nutshell is that the electoral system in the UK empowers Eurosceptic backbench MPs, a feature which is rarely if ever present in other member states' (2000, 416). As a consequence, UK governments tend to be unduly influenced by extremists within the ranks of the majority and are compelled to compromise on important issues, such as EU treaty reform, in order to remain in power. Aspinwall points to Labour governments of the 1970s and Conservative governments in the 1990s to support his argument.

Although the focus on institutions provides a more specific account of the pressures and influences that may shape government policy, and, by focusing on institutions as an intervening variable, opens up the possibility of cross-national comparison, the historical institutionalist approach is not ultimately convincing. First, although the model of executive — legislature relations — non-party, inter-party or cross-party (Andeweg, 2003, 52) — is clearly an important variable in the formation of national preferences with respect to European negotiations, it is not necessarily the only relevant feature of the



domestic political opportunity structure or of domestic institutional arrangements that influences the shaping of UK preferences. The size of the parliamentary majority may be at least as important, while the personal standing of the prime minister and the relationship between Number 10 and the Foreign Office may also be relevant. Second, although the approach fits well with the circumstances of the early 1990s, where the Major government, with its slim majority, faced a small, but determined, group of Eurosceptics (Baker *et al.*, 1994), it seems less convincing when applied to the 1980s, when Thatcher's ascendancy was unquestioned or the Blair administrations of 1997 or 2001.⁶ Third, even in the 1990s, backbench dissent was not the only constraint on the Major government's European policy. The PM confronted opposition within the cabinet from important figures, including Michael Howard, who played a key role in shaping government policy at Maastricht (Forster, 1998).

Liberal intergovernmentalism

As noted in the editors introduction, the LI framework provides the most elaborate and sophisticated account of preference formation (and inter-state bargaining) in the literature.⁷

LI contends that integration consists in periodic bargains between states and that the main task facing scholars is to explain these bargains. Proceeding on the assumption that states are rational, purposive and unitary actors, it argues that treaty reform is best understood as a sequence of three processes: national preference formation, inter-state bargaining, and credible commitments. As each is best explained by a different theory, LI proposes a tripartite framework. First, national preferences emerge as the result of pressure exerted on government by domestic constituencies that mobilize according to the impact of the international economy on their interests. As these vary from sector-to-sector, national preferences reflect 'issue-specific interdependence'. Material interests are primary. 'Other oft-cited factors — European ideology, supranational entrepreneurship, technocratic considerations, or the random flux and non-rational processes of 'garbage can' decision making — play secondary roles' (Moravscik and Nicolaïdes, 1999, 59). Second, states negotiate treaty reform on the basis of these domestically-determined preferences with little room for slack: governments are held tightly to account by societal interests. The outcome of this inter-state bargaining is conditioned by asymmetric interdependence. Third, the institutions that are created (or reformed) at the EU level as a result of the bargains struck by governments are choices to pool and delegate sovereignty that can be explained in terms of the need for credible commitments.

According to LI, the primary actors in preference formation are societal actors, who not only determine the content of national preferences, but are able



to constrain government action. There is generally little scope for governments to make concessions (Moravcsik, 1993, 501), though they enjoy more ‘slack’ in negotiations concerning institutional matters than in issues relating to commerce, and governmental approval of any agreement is subject to considerations of domestic political ratifiability.

As an account of preference formation, LI is of limited value in examining the formation of UK preferences with regard to treaty reform. First, it says little about how the interests of domestic groups are transmitted to government and converted into national preferences. The suggestion that elections are the main means of aggregation (Moravcsik, 1993, 483) is problematic, because despite the best efforts of (usually) opposition parties,⁸ ‘Europe’ has rarely been a salient issue at general elections over the past 20 years, and certainly never a decisive one’. The idea that governments conduct EU negotiations under the shadow of the vote is not implausible, but neither is it empirically substantiated.

More problematic is the contention that societal actors play a primary role in the formation of preferences. There is little evidence to suggest that domestic interests are informed about, still less interested in, EU negotiations, or that the UK government takes its cue from, or is significantly constrained by the demands of, societal groups. In fact, accounts of previous rounds of negotiations suggest considerably autonomy from domestic constituencies on the part of the prime minister, assisted by the Foreign and Commonwealth Office (FCO), in the origination of preferences. The constraints that operate on government prior to or during EU negotiations have in the past issued from within the cabinet or inside the governing party (Blair, 1998; Forster, 1998) rather than from societal groups, suggesting that the elements of the domestic political opportunity structure — the size of the parliamentary majority, the distribution of power within the party and the principle of collective cabinet responsibility — are more important than pressure emanating from societal interests.

A further difficulty relates to LI’s insistence on a sharp separation between preference formation and inter-state bargaining, and on its conception of the latter as conditioned by ‘actor power’ alone (Beach, 2002). With respect to the former, as a number of authors have noted with respect to previous rounds of treaty reform (see, e.g., Forster, 1998, 1999), the UK position has shifted as new issues come onto the table, negotiations have taken unexpected turns, and compromises have been made. The UK has had to temper its demands, to respond to an agenda that was not of its choosing, and to abide by norms of collective decision making. As Forster observes in the case of Maastricht, member states at IGCs are compelled to engage in log-rolling, ‘bargaining exchanges designed to gain agreement on a package of proposals ... with a common position upgraded through log-rolling’ (1998, 362) — a process that necessarily involves compromise and *quid pro quos*. (Boer, 2002, cited in



Laursen, 2002, 646) notes similarly that national positions shifted significantly, often dramatically, in the final session of the 1996 IGC, which she describes as “garbage can’ decisionmaking.”⁹ The view that preferences are exogenous, formed separately, independently and prior to each round of intergovernmental negotiation, and that they remain unmodified during the cut and thrust of bargaining, is hard to sustain. Preferences are in practice at least, therefore, partly reactive.

Three other questions arise with respect to the LI approach. The first is the extent to which domestic ratifiability weighs on government during negotiations. It may in fact be the case that governments negotiate first, then attempt to sell the agreement domestically later. Indeed, in the British case, the decision to hold a referendum on the outcome of the Convention was taken after the negotiations had come to an end. The second is whether, when negotiations are centered on institutional questions as they have been since 1996, the primacy that LI attaches to economic motives still applies. Certainly, the UK’s aversion to the ‘f-word (‘federal’) seems hard to account for in these terms. Finally, the conception of states as rational actors is not the only available model. As Alison (1969) contends in his classic article, there are at least two alternative conceptions. One sees the state as an organization, where tasks are distributed among a set of administrative units and where interaction between those units is governed by a standard operating procedure; the other as a bureaucracy, where the division of powers and responsibilities between government departments gives rise to bureaucratic politics: different administrative units take different perspectives on the same issue — ‘where you stand depends on where you sit’. Each conceptual model prioritizes a particular set of interactions, behaviours and actors. The key point is to establish which model delivers the most convincing explanation. Support for either the organizational process or the bureaucratic politics approach in regard to preference formation would come from an ability to highlight the importance of variables that are invisible from the rational actor perspective.

The new institutionalism

The new institutionalism — less a coherent theory, than an argument that organization makes a difference (March and Olsen, 1984, 747) — offers perhaps the most promising way of approaching the dynamics of UK preference formation, highlighting important factors at both EU and domestic levels that influence the process. The new institutionalism suggests that preferences are shaped partly by EU institutions (Closa, 2003, 2004). Rather than regarding IGCs as free-floating, ahistorical events — as LI tends to — new institutionalism proposes that state preferences are developed in relation to a specific historical context and at a particular stage of integration



— institutional characteristics that generate a logic of appropriateness. From this perspective, UK preferences are shaped by the terms of EU debates, the past development of the Union's history (Krasner, 1984), and the questions of moment. Domestic institutions also have an impact. Not only is there a logic of appropriateness — in the case of the UK, this is reflected in a pragmatic, non-federal, non-ideological support for European integration — but the distribution of power and responsibility within the domestic polity, notably within the executive and between the executive and the legislature, as well as formal rules and informal conventions operative within the administration, are also important. In the UK system, power is concentrated in the hands of the prime minister, but the principle of collegiality imposes an important constraint and variables such as the size of the parliamentary majority are also relevant.

The focus on institutional variables, it is argued here, makes the new institutionalism the more useful approach in understanding the constraints preference formation in the UK. Not only does it highlight with greater precision where national preferences originate, but it also identifies other influences on the shaping of those preferences and the most important constraints in the preference formation process. The focus on variables, such as the context of EU negotiations, the cabinet system party system and internal party dynamics, also makes transhistorical (as well as cross-national) comparison possible.

The UK and the Negotiation of the Constitutional Treaty¹⁰

Although there were echoes of past negotiations — for example, in the reluctance with which the UK accepted first the call for a Convention on the Future of Europe, its tenacious defence of its 'red lines', and the claim at the conclusion of negotiations that a good deal had been achieved for Britain¹¹ — it would be a mistake to conclude that the preferences and strategy followed by Blair were no different from those pursued by Thatcher and Major. Not only was the UK's approach to the Convention markedly more positive than to the 1985 or the 1991 IGCs, but the UK advanced a more pro-integrationist agenda than in previous rounds of treaty reform. This was partly pragmatic. London recognized that the existing institutional structure was unlikely to be able to operate effectively after enlargement to 25 members and beyond. It was also strategic. On the domestic front, Blair's domestic objective of winning a referendum on taking the UK into the Euro could only be achieved if the Convention were a success. In addition, the nature of the Convention as a negotiating forum — open and deliberative — required a different approach from that which characterized IGCs — closed and diplomatic in the traditional style. Finally, the domestic constraints that had limited John Major's room of



manoeuvre were largely absent in the case of Blair. Commanding a large parliamentary majority, there were also no figures within the cabinet as hostile to 'Europe' as several of John Major's Eurosceptic colleagues.

UK preference formation in relation to the Convention is best considered in four periods: from Laeken to the Convention; from February 2002 until the autumn of 2002; autumn 2002 until the close of the Convention in July 2003; from the Convention to the IGC and beyond.

From Laeken to the Convention

Given its ultimate success in achieving what the French Constitutional expert, Robert Badinter, has termed 'a British Constitution', it is somewhat ironic that the UK had not been an enthusiast for either a convention on Europe's future or an EU constitution, ideas that had been floated in the run-up to the Laeken European Council in December 2001. A convention was regarded as undesirable, because, as Menon (2004a, b) notes, London's experience of the Convention that had drafted the Charter of Fundamental Rights had been far from positive, and the UK feared that the ease with which agreement had been achieved would lead to pressure for the full implementation of the Charter — a prospect that it viewed with horror — and because there was suspicion of a process that governments could not control. Its reluctance concerning an EU Constitution was due to the threat that such a text would pose to the model of the Union preferred by London,¹² but also to the possibility that it would jeopardize the PM's ambition to join the Euro. An unseemly row between the UK and its EU partners would be likely to damage the PM's case for membership. In practice, however, London found it extremely difficult to resist either proposal. The Nice IGC had attracted near universal criticism, and when it became clear that other member states were supportive of an alternative (and potentially less time-consuming) method of treaty reform, opposition to an exercise that was committed to promoting transparency, inclusiveness and bringing 'Europe' close to the citizen became impossible.

Several developments made the prospect of the Convention less unappealing to the UK. First, the terms in which the Laeken Declaration set up the Convention on the Future of Europe appeared as though they had been drafted specifically to meet British concerns (Menon, 2004a, b, 6–8). The Convention was not obliged to draft a single text, but could instead set out a range of options for the member states to choose between and, in addition, its results would not be binding, but would have to be approved by governments at an IGC, convened once the Convention's deliberations had been concluded. Moreover, 'The language used about European integration addressed British concerns still more clearly. What citizens expect, the declaration asserts 'is more results, better responses to practical issues and not a European superstate



or European institutions inveigling their way into every nook and cranny of life (Menon, 2004a, b, 7) — the final phrase echoing a charge once levelled by a former Conservative Foreign Secretary, Douglas Hurd. Second, the Convention's agenda included issues — EU competencies, the status of the Charter of Fundamental Rights, the simplification of the treaties, and the role of national parliaments — that were themes important to the British government. Third, the appointment to the Praesidium of Labour loyalist, Gisela Stuart, as the representative of national parliaments, and also of Sir John Kerr, former UK Ambassador to the US, UK Permanent Representative and Permanent Under Secretary and Head of the Diplomatic Service at the FCO, as Secretary General, offered assurances that UK concerns would be known within the Convention's controlling body. Moreover, the choice of Valéry Giscard d'Estaing as President of the Convention could be considered advantageous to London. Not only was Giscard's preference for an intergovernmental Union well known, but he was well aware that the success of the Convention would depend on the acceptability of its conclusions to the larger member states and could be expected, to be attentive to London's concerns.¹³

In the wake of Laeken, Number Ten took the decision that the UK would be an active participant in the Convention and that every effort would be made to engage constructively in its deliberations.¹⁴ Such an approach would not only help in preparing the ground for the referendum on the Euro, but was also in keeping with efforts on the part of British ministers since 2000, including the PM,¹⁵ to convey a positive European message. The appointment of the Minister for Europe, Peter Hain, as the British representative signalled the importance that the UK attached to the Convention. Hain, a junior minister, was more senior than his counterparts from other EU member states, and he was known to be close to the PM.

The UK government's vision of the future of the Union had been set out in speeches dating back to even before Nice. The PM's speech to the Polish Stock Exchange in Warsaw was particularly notable (Blair, 2000). Acknowledging that his country's policy in the past had been marked by 'gross misjudgements ... hesitation, alienation, incomprehension' (Blair, 2000), Blair stressed the importance he attached to Britain's role in Europe. He emphasized the rootedness of the Union in the member states, noting that: 'Europe is a Europe of free, independent sovereign nations who choose to pool that sovereignty in pursuit of their own interests and the common good, achieving more together than we can achieve alone'.¹⁶ Welcoming enlargement, he noted that reform of the EU's institutions would be necessary, but that institutional change should be considered primarily a means of securing practical solutions to questions, such as how to complete the single market, achieve economic reform, reform the CAP, develop a more coherent foreign policy, and combat immigration racketeering.



Blair argued specifically that the EU needed more effective institutions: a strengthened European Council with a clear leadership role, a streamlined Council of Ministers and a reformed Presidency, and also a strong, independent Commission. Institutional reform was necessary if the EU was to be capable of effective external action. Two further ideas were important. First, Blair signalled a willingness to accept the principle of enhanced cooperation — a departure from the UK position adopted at Amsterdam and Nice. Second, underscoring the national foundations of the Union, he called for the creation of a second chamber of the European Parliament, to be composed of representatives of national parliaments, to establish systematic review of EU legislation review ‘by democratically elected politicians’.

Many of these themes were repeated by UK spokesman before and during the Convention. For example, in a speech on to the European Policy Centre in Brussels in January 2002, Peter Hain argued (inter alia) for the following principles:¹⁷

- EU institutions should have only those powers that member states agree to confer on them through the Council of ministers
- EU should use its powers only when member states cannot achieve the same objective on their own, and its action should be proportionate
- The EU should prefer instruments that grant flexibility to the member states over more rigid measures — directives over regulations, and soft law, where possible

Hain repeated the PM’s call for the European Council to be strengthened, adding that it should be granted a formal agenda-setting function. He also suggested replacing the rotating presidency with team presidencies or the appointment of different national chairs for each Council. Also on the eve of the Convention, Jack Straw (2002), the Foreign Secretary signalled that the UK would take a relaxed view about a Constitution, while Hain declared that the inclusion of the Charter of Fundamental Rights would not be opposed, provided that it was accompanied by certain safeguards.

Further indication of the UK’s positive intent came in the form of contact with other governments. A joint letter from Blair and Schroder on the need for Council reform was sent to the Spanish Presidency, senior figures from Downing Street were assigned responsibility for keeping counterparts in other member states informed of UK thinking, and Hain held a breakfast meeting with the accession states on the eve of the Convention. Hain underlined that the UK intended to be a constructive negotiating partner: ‘the idea that you could just go into the convention like Margaret Thatcher waving a handbag and splatting everyone is just fantasy’.¹⁸



The UK at the Convention: February – October 2002

Beginning on 28 February, the work of the Convention was organized into three stages: a listening phase (March–July 2002); a discussion phase (August–December 2002); and a drafting phase (January–July 2003). Working groups were created in two waves — in June and July 2002 — charged with examining and proposing recommendations on various topics, which would then be discussed in plenary. In terms of the UK, however, it is useful to think in terms of two periods, before and after autumn 2002.

Peter Hain, and his alternate, Baroness Scotland, a junior minister in the Lord Chancellor's office, worked energetically to persuade conventionnels of the UK's positions on issues of importance to London.¹⁹ Unlike other EU leaders, who seemed to regard it as a talking shop, the UK treated the Convention seriously. Hain, especially was a particularly effective performer — one of the 'movers and shakers' of the Convention — '[impressing] many pro-integrationists when he stated that the Convention's task was 'nothing less than the creation of a new constitutional order for a new Europe'' (Norman, 2003, 49) and demonstrating an open mindedness and a preparedness, '(unusually for a government representative) ... to indicate to the plenary that he might be willing to shift policy' *Ibid.* Hain proved an assiduous lobbyist, a persuasive speaker, and a tireless networker, ceaselessly willing to explain and argue the UK's case.²⁰

Despite their energetic efforts it became clear that the UK representatives faced an uphill struggle. On several issues, the UK found itself in a minority. For example, a majority of representatives favoured incorporation of the Charter of Fundamental Rights in the Constitution, which the UK strongly opposed. On foreign policy, the UK's call for greater effectiveness — a pooling of member state resources, a single face, preferably the High Representative, to represent the Union, chair the General Affairs Council, and sit in the Commission, and the possibility of action on the part of 'coalitions of the willing'²¹ — was supported by other participants, but it found itself almost alone in opposing the introduction of QMV. Similarly, on tax, where it resisted QMV and defence, which it wanted to exclude from enhanced cooperation, the UK found itself on the defensive.

On other issues, the positions articulated by them had greater resonance with other conventionnels. In the spring of 2002, it called for a permanent chair for the European Council, arguing that such a move was necessary to give the EU surer political leadership (Hain, 2002a) an idea that had strong appeal to many. Also, after it became clear that Blair's ambition for a second chamber of national parliamentarians enjoyed little support, the UK (in a joint letter signed by France, Germany, Ireland and Poland, and sent to the Convention in June), proposed a watchdog body designed to improve democratic legitimacy and enforce subsidiarity. A diluted version of this plan, under which national



parliaments were granted the right to review Commission proposals and return them to the EU executive where contravened the principle of subsidiarity, was recommended by two of the Convention working groups (on subsidiarity and on the role of the national parliaments). In addition, returning to a theme of the PM's Warsaw speech, Jack Straw in October, and Hain the following month, called for a strengthening of the Commission, on the grounds that the coming enlargement would require greater EU effectiveness.

The UK at the Convention: October 2002 to July 2003

Although some commentators have argued that a turning point was reached at the end of 2002, the UK has already begun to encounter problems in the last quarter of 2002. First, France and Germany, which had thereto not been fully focused on the Convention, become more extensively involved. The clearest signal was the arrival of their respective foreign ministers, de Villepin and Fischer. Hain recalls that at their first meeting at the Convention 'Fischer greeted him with the words, 'I hear you Brits are running the Convention, that's why I'm here'' (Norman, 2003, 158). Second, Hain was promoted to the post of secretary of state for Wales — a cabinet position, unlike his position as minister of state for Europe — but stayed on as the UK representative. Although Hain argued that his change of job did not affect his role in the Convention, he had to shoulder additional responsibilities and, in the Welsh Office, was removed from the day-to-day flow of information and intelligence that passes through the FCO. Third, despite London confidence that the Praesidium would be solicitous to its concerns, the UK was less than enthusiastic when the first draft text published at the end of October proposed that the Union might be rechristened 'the United States of Europe'. Hain was quick to communicate the UK's opposition.

The revival of the Franco-German alliance on the eve of the 40th anniversary of the Elysée Treaty introduced an alternative source of initiatives. Proposals on defence, and justice and home affairs, in November and economic governance in December — the latter calling for the creation of a Eurozone ECOFIN and for the extension of QMV in key areas of taxation — were particularly problematic for London. Franco-German proposals concerning the reform of EU institutions, delivered on 15 January 2003, though not as federalist as had been feared, were not acceptable to the UK. London had some difficulties with both the main proposals: the creation of a dual EU presidency, consisting of a permanent chair of the European Council and a European Commission President directly elected by MEPs; and an EU Foreign Minister, an elected member of the Council, but also a member of the Commission.

London was prepared to accept a dual Presidency, considering the loss of a strong independent Commission — an idea that the PM had defended as



recently as November 2002 (Blair, 2002) — as more than a fair price to pay for the creation of a permanent chair of the European Council, which thus emerged as the UK's key objective. With respect to the proposal for an EU Foreign Minister, the UK had already expressed its opposition to the idea of 'double hatting', which it saw as potentially opening a back door to communitarianization of the CFSP (Blair, 2002). Hain, in a paper circulated in January, argued that against on merger on the grounds that the same effect could be achieved by strengthening the High Representative and to improving coordination with the Commissioner for External Relations (see also Straw, 2002). This view was further fleshed out in a joint paper with the Spanish Foreign Minister, Ana Palacio, where it was proposed that the strengthened High Representative attend Commission meetings when foreign affairs were under discussion, but that the President of the European Council would retain overall responsibility for representing the Union externally.²²

Despite a conciliatory meeting between Giscard and Blair at the end of January 2003, the UK's defensiveness only continued to intensify, as the Praesidium began to roll out draft treaty articles in February.²³ Specific points of contention, included the role of the Union in coordinating the economic policies of the EU, the reference to the Charter of Fundamental Rights as an integral part of the treaty', and the provisions relating to foreign and defence policy. The UK proposed amendments to no fewer than 15 of the 16 articles. However, its unhappiness with the text was not shared by other member states.

Worse was to come in March, when London objected to plans for the creation of an EU public prosecutor — unacceptable to the UK, even though it actively promoted the communitarianization of other elements of freedom, security and justice, most notably asylum and immigration — and when Hain asked that the proposed treaty article on the primacy of EU law be deleted from the text, he was reminded that this principle had governed the Union for decades. Continuing to contest calls from other member states to EU external action more effective by introducing QMV, the UK also battled (alongside Sweden and Lithuania) against allowing enhanced cooperation in defence²⁴ and continued to warn against the incorporation of the Charter. The following month, in May, in a meeting with Giscard in London, the PM threatened to use the veto at the IGC if the 'word, 'federalism'' was not expunged and if references to QMV in relation to tax and social security were allowed to remain. The revised text showed that the PM's threat had been taken seriously.

Final debates in the Convention at the end of May and in June saw re-drawing and last minute changes to the text, and a proliferation of UK 'red-lines' (Norman, 2003, 269–70; Menon, 2004a, b). It was at this stage that the UK managed to secure a compromise on the Charter that would see it included in the text, but with restrictions to ensure that it would not impact on the UK's



labour and social security laws (and more broadly that many of the institutional issues were resolved).²⁵ One consolation for the UK's partners, however, was that, at the same time as running through the growing list of areas where the UK objected to QMV, Hain made it clear that London would not object were a single text to be presented to Heads of State and Government rather than a range of options. On one crucial last-minute issue, however — the deal-breaking introduction of double majority voting in the Council, which would supplant the agreement reached at Nice — the UK lined up with Spain against the Praesidium and other member states.²⁶

From the Convention to the IGC and beyond

The UK expressed satisfaction with the draft presented to the European Council in Rome in July, arguing that the text was better than could have been hoped for at the beginning of the Convention and necessary for the EU to function following enlargement. Simplification of the treaties, parliamentary oversight of subsidiarity and limitation on the applicability of the Charter of Fundamental rights were all presented as achievements (FCO, 2003). London made clear, however, that it still harboured reservations about the EU foreign minister's membership of the Commission, QMV in relation to social security payments and cross-border tax fraud, the *passerelle* clause, and proposals concerning a mutual defence pact and 'structured cooperation' in defence, which it feared might create a rival to NATO, and made it clear that it saw these as issues that it intended to pursue at the IGC.²⁷

Although not able to secure its 'red lines' prior to or during the Rome European Council, the UK was largely successful in achieving its objectives during negotiations leading up to the European Council in June 2004, where governments reached agreement on the new treaty. In opening the debate on the Treaty in the House of the Commons, Jack Straw (2004) was able to claim that, 'We now have a new Treaty which achieves the objectives which we set out from the very beginning of this process. It gives us an EU which is: more coherent and logical in structure; more effective and efficient; a Union of nations, not a federal superstate; more accountable; more flexible; and where we have the right results on policy areas of particular importance to the UK, including in respect of the Charter of Fundamental Rights and the veto on areas such as foreign policy, defence, tax, social security and criminal law'.

Preference Formation in the UK

The above discussion highlights the importance of the institutional setting and the impact of bargaining on the shaping of national preferences. It shows that the sequence proposed by LI and the strict separation between national



preference formation and inter-state bargaining is hard to sustain. Governments do not necessarily enter EU negotiations with a set of fixed and ordered preferences, but may develop preferences and evolve a ranking in reaction to discussions and debates at the negotiating table. To that extent, the ‘garbage can’ model of decision-making, where preferences are formed in response to choice situations that have not been anticipated, seems to capture the dynamics of EU treaty reform better than LI, if not as elegantly, while also challenging the view, opposed by LI, that preferences are formed independently of, and therefore exogenous to, the negotiating context. Moreover, although it is true that some preferences were formed before the Convention began, it could not be said that they were forged independently of the institutional context of the EU. To that extent they were ‘path dependent’, shaped by EU norms and a specific historical context. The very decision to participate in the Convention on the Future of Europe was not freely chosen by the UK, but arose as a consequence of the constraints imposed by membership of the EU and the preferences of other national governments. In addition, there is strong evidence of ‘learning’ on the part of the UK: first, with respect to experience of ‘creeping competence’ from previous rounds of treaty reform, which strongly influenced its determination to limit the scope of the application of the Charter of Fundamental Rights; and second, the experience of the Convention on the Charter, to which the government did not send a leading politician, and where the UK had found itself isolated and unable to influence discussion. Furthermore, the UK was able to benefit from the structure and composition of the Convention. Giscard’s attentiveness to London’s concerns, as well as his non-federalist orientation but also from the presence of John Kerr and, to a lesser extent, Gisela Stuart within the Praesidium. Although not necessarily extending UK influence, they provided useful insights into the thinking of the Convention’s executive body.

While EU-level institutions had an important impact on UK preferences, features of the domestic polity are crucial to understanding the process of preference formation. LI contends that societal actors are the source of domestic preferences, that the negotiating position adopted by governments is constrained by the requirements of domestic ratifiability, and that the organization of domestic institutions is largely irrelevant to preference formation, but the UK case tends to contradict these claims. The UK’s position with respect to the Convention (prior to, and in the early stages at least) was determined by a small circle at the very centre of government. The PM, assisted by Roger Liddle, the EU expert in the Policy Unit at Number 10 and his then EU adviser, Sir Stephen Wall (also, Head of the European Secretariat within the Cabinet Office), decided the UK’s main objectives — a permanent chair for the European Council, a second chamber of national parliamentarians, a strong Commission — and also that London should adopt



a positive approach to the negotiations from the outset (interview 21 July 2004). Thereafter, responsibility for preparing and coordinating UK participation was assumed by the same trio of actors — the European Secretariat, the FCO and the UK Permanent Representation in Brussels — that manage routine EU policy coordination in the UK (Kassim, 2000).²⁸ During the Convention, the machinery operated in much the same way as it would in the handling of EU business: daily contact was maintained between the central coordinators, with the FCO department, EUDI responsible for internal EU matters, the ‘engine room’ (interview, 7 July 2004); circulars were sent around Whitehall, keeping departments informed of developments, asking them to approve negotiating positions where necessary, and meetings convened where more discussion was needed on individual issues; and weekly meetings involving the Permanent Representative and chaired by the Head of the Secretariat took place every Friday, where the Convention featured as a regular agenda item. In addition, there were weekly meetings between Peter Hain and Sir Stephen Wall, monthly meetings with the PM and less frequent meetings with Jack Straw and other ministers (interview, 21 July 2004). The PM’s special adviser, Roger Liddle, played an active role behind the scenes, liaising with other prime ministerial offices, as well as attending plenaries (as an observer). At the Convention, Peter Hain was supported and usually accompanied by an official from the UK Permanent Representation. Hain’s position was somewhat unusual. Although, on the one hand, he enjoyed considerable autonomy, on the other, he needed to judge carefully what positions would be acceptable to the PM (interviews 29 July 2003, 2 December 2003, 5 May 2004).

Second, considerations of domestic ratifiability did not significantly affect the original formulation of UK preferences or the bargaining position adopted by the government. UK preferences in the early stages at least were shaped by the PM, whose main concerns were to ensure that the Union’s institutional architecture would be robust enough to cope with enlargement and to strengthen the Union’s democratic credentials by involving national parliaments in routine decision making at the EU level. These ideas originated within Number 10 in the context of reflections about how the EU could best meet the challenges that lay ahead. They were not generated by concerns about whether the results of the Convention would be acceptable at home. Indeed, the Convention was largely ignored in the UK at least until the spring of 2003, when the media began to publish characteristically hostile and sensationalist articles about the implications of a constitution for Britain.²⁹ The decision to hold a referendum, coming after the Convention had closed, underlines that negotiation and ratification were distinct processes.

Third, the dynamics of UK policy formation with respect to the Convention were very different from previous rounds of reform, highlighting the significance of domestic institutional variables. Underlining the importance



of the party balance, Blair, with a parliamentary majority of 167, could not easily be held hostage by a small number of Eurosceptic backbenchers, nor, did he have continuously to placate Eurosceptic colleagues inside the cabinet. This is not to say that the PM operated an entirely free hand. Indeed, arguably the most important restriction derived from the principle and practice of collegiality, which, requires that lines are cleared with ministers where proposals relate to their areas of responsibility.³⁰ In the closing stages of the negotiation which coincided with a period in which the PM was distracted — and weakened — by the Iraq War, the Chancellor, Gordon Brown, the Home Secretary, David Blunkett, and to a lesser extent, the Foreign Secretary himself, became more assertive in the policy areas with which they were directly concerned, limiting the PM's room for manoeuvre. As one senior official observed (interview, 21 July 2004), collegiality placed very significant constraints on the PM's room for manoeuvre in contrast to the French President, who was able to act virtually unilaterally — an important reminder of the impact of domestic institutions. Although parliament was involved in the process — 24 debates and statements between October 2003 and September 2004 alone (Straw, 2004) — it had little influence over the UK's negotiating position — a situation that may have been different had the government's majority not been so overwhelming.

Conclusion

In terms of its securing its negotiating objectives, the UK was extremely successful in the Convention and in the run up to the June 2004 European Council. As noted above, many commentators declared the result a 'very British Treaty'. However, despite this success, there have been few signs of celebration or enthusiasm on the part of the government. Indeed, Hain and Straw have, at various times, downplayed its significance, declaring that the government would not be aggrieved were it not finally to be adopted.³¹

This reticence seems to have been partly tactical in that, in the face of hostile press coverage from spring 2003, together with sporadic calls largely from the Conservative opposition for a referendum on the treaty, the government seemed to believe that it would be better simply to minimize the significance of the treaty reform process in order to deflect criticism. However, the defensiveness of the UK in the latter stages of the Convention and its rhetoric following its close, served only to strengthen Eurosceptic opposition at home.³² Defence of its 'red lines' and the threat to use its veto were its demands not to be met conveyed the impression that the UK was once again 'at odds with Europe' (Wallace, 1997).³³ Subsequently, the government conceded to opposition and media calls for a referendum — a historic decision, but one



that could also be interpreted as a humiliating u-turn — which, given the failure of the government to convey a more positive message about ‘Europe’, few give it a chance of winning. Moreover, the PM’s ambition to put Britain at the centre of Europe (Blair, 2001), not to mention his desire to take the UK into the Euro, has been put in jeopardy. To that extent, the government may have won the battle with its EU partners, but it may yet lose the war at home over Britain’s future in Europe.

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Notes

- 1 In presenting the government White Paper on the Treaty for a European Constitution to the House of Commons on 9 September 2004, the Foreign Secretary, Jack Straw, commented, ‘we achieved an excellent result’. He noted that 39 of the 80 amendments made to the Convention’s draft text ‘were advocated by the UK — a measure of the impact which we made on the negotiations’.
- 2 The term was coined by Stephen George (see George, 1998), but see also Wallace (1991). For a critical perspective on the ‘awkwardness thesis’, see Aspinwall (2000). For alternative views, see Menon and Wright (1998), and Allen (2003).
- 3 See, for example, Wallace (1991); Denman (1996).
- 4 In this respect, it is worth re-visiting her famous speech in (Thatcher, 1998, <http://www.margaretthatcher.com/speeches/displaydocument.asp?>).
- 5 See Wilkes and Wring (1998) for an excellent survey of change and continuity in attitudes towards European integration expressed in the printed media since 1948.
- 6 This is not to imply that there are no Eurosceptic Labour backbenchers (see Baker and Seawright, 1998).
- 7 Since the LI approach is given full rehearsal in the introduction to this special issue, only a limited reconstruction is provided here.
- 8 The 2001 campaign is a good case in point. The Conservative leader, William Hague, attempted, but failed, to turn the election into a referendum on the Euro.
- 9 The reference is to Cohen *et al.* classic article (1972), challenging the view that preferences are formed prior to ‘choice situations.’
- 10 This section draws heavily on Menon (2004a, b) — the definitive account of the participation of the UK in the Convention.
- 11 Compare this sequence, for example, with Forster’s account of the development of the UK approach to Maastricht: ‘from the rejection of the need for an IGC on political union to the claim that the PM had won game, set and match’ (1998, 362).



- 12 See Blair (2000): 'I suspect that given the sheer diversity and complexity of the EU, its constitution, like the British constitution, will continue to be found in a number of different treaties, laws and precedence. It is perhaps easier for the British than for others to recognize that a constitutional debate must not necessarily end with single legally, binding document called a Constitution for an entity as dynamic as the EU'.
- 13 Giscard began to make bilateral contacts with the Union's leaders early in January 2002 (Norman, 2003, 57).
- 14 Hain recalled how, at the beginning of 2001, the PM had 'quite startled people at an informal Cabinet committee ... by saying that the outcome of the Convention is absolutely fundamental. It will define the relationship between Britain and the rest of Europe, the prospects for the euro, and it would last for generations ... He said that it was more important than Iraq' (*The Times*, 9 September 2003).
- 15 Blair (2000).
- 16 Similarly, he argued that a democratic Europe must recognize that 'the primary sources of democratic accountability in Europe are the directly elected and representative institutions of the nationals of Europe are national parliaments and governments'.
- 17 See also Hain (2001).
- 18 *The Independent*, 31 January 2003, cited in Menon (2004, 8).
- 19 One senior member of the Praesidium spoke of his 'travail phenomenal' (interview).
- 20 He 'would usually fit in seven or eight meetings in the margins of each plenary to 'do business' with other Convention members and Patricia Scotland, the UK alternate, perhaps three or four. They were generally carefully prepared, with speaking notes and specific objectives. In addition, the UK took the working groups seriously, with Hain particularly active in both the external affairs and social policy groups' (Norman, 2003, 198–199). On one of the 'few occasions that Hain did not attend a plenary, Giscard could be heard asking Kerr: 'Où est Hain?'' (Norman, 2003, 268).
- 21 Hain (2002b).
- 22 As Menon observes, 'London was ... signalling, if only implicitly, its willingness to see both the coherence and independence of the Commission undermined if this were necessary in order to limit its remit over foreign policy' (2004, 15).
- 23 *The Guardian* reported Hain's reaction: 'I am wondering whether the people who drew up this document have been going to a different Convention ... The presidium has a lot of explaining to do' (7 February 2003).
- 24 But not against the principle of enhanced cooperation, which it had contested at Nice.
- 25 For example, the EP's role in the appointment of the Commission would be limited to confirmation of the Council's appointed candidate, while a new *passarelle* clause was inserted allowing for the extension of QMV by a unanimous decision of the European Council.
- 26 Considered an act of betrayal by Giscard, who considered that he had been very sensitive to UK anxieties, Hain later acknowledged that the alliance was tactical, entered into in exchange for support for unanimity on tax (Norman, 2003, 281). Hain also discovered, if not was already aware, how out-of-step he was with other conventionnels, when his observation that 'we have a very good basis for negotiation in the Intergovernmental Conference' was met by hisses and boos (Norman, 2003, 289).
- 27 The latter proposals had emerged at a summit between Belgium, France, Germany and Luxembourg — countries opposed to military intervention in Iraq — in April 2003.
- 28 The relationship between Number 10 and the FCO was not always frictionless. In a circular, Roger Liddle, the PM's policy adviser on Europe, excoriated FCO officials for a flood of 'politically ill-advised amendments' (*The Times*, 15 May 2003).
- 29 *The Daily Mail* spoke of 'A blueprint for Tyranny' (8 May 2003) and *The Sun*, after summing up British achievements over the preceding half millennium, screeched: '2003: Blair surrenders



Britain to Europe' (cited in Norman, 2003, 269). Similar headlines appeared in the Sun on 10 September: 'Last Rites: Blundertaker Blair is set to Bury our Nation'.

30 These constraints applied even to Thatcher, who, during the SEA, had to be persuaded by the Foreign Secretary and the Chancellor, that she needed to accept institutional changes (QMV) to get the internal market (interview, 21 July 2004).

31 Hain, for example, described the process as 'a tidying up exercise' (Norman, 2003, 201).

32 It also seemed to suggest that efforts to present the positive case for Europe had failed.

33 See, for example, Hain (2003).

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