The Treaty and the Union: An Assessment of Democratic Theories in a Post Lisbon EU
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Abstract

This paper assesses the democratic value brought to the European Union through the effect of the Lisbon Treaty. In doing so, it especially looks at how tendencies and theories presented in this Treaty can address criticism of a lacking EU democracy. The paper first details the so-called democratic deficit debate, highlighting the five pillars in which the EU is often considered inadequate. Drawing from this debate, the paper goes on to concentrate on different theories of democracy, in order to assess which one can be deemed the best fit for a sui-generis body such as the EU; and also in order to see how such different theories alters the critiques facing the EU. Finally, several Articles from the Treaty itself, focusing on democratic values and the operation of the Union, are assessed using a content analysis and a discourse analysis. The purpose of this is to assess whether a particular democratic theory appears to be favoured in the Treaty. The results from this analysis indicate that the Lisbon Treaty is heavily focused on democratic credentials, and can such be deemed as an EU response to critiques of undemocratic conduct. Furthermore, it favours a democratic theory built on a representative and deliberative model. The final arguments look at whether such a focus can adequately address the democratic dilemma the Union is facing, and how this might happen in practice. The main arguments are illustrated with reference to theories of democracy as well as the content of the Lisbon Treaty.

Key Words: democratic theory * the European Union * the Lisbon Treaty * democratic deficit * public sphere * information * participation * deliberation * representation
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I. Overture – Setting the Pragmatic Stage

One of the most prominent arsenals from which Eurosceptics get their ammunition tends to be the concept of a democratic deficit. Warleigh (2003: 11) states that ‘most observers of the present day European Union agree that the EU suffers from a democratic deficit which it must rectify in order to justify its continued existence and expansion’ – albeit little agreement appears on the course of action the European Union (EU, the Union) should follow to rectify this deficit. Consequently, discussions around European democratic theory and practice are becoming increasingly important, especially for European integration – a project whose success is partly based on its perceived institutional output legitimacy and promise to uphold human rights; which cannot accountably be delivered without legitimacy drawn from democratic theory and practices (Bjurulf & Elgström, 2005). As I will return to, recent statements from the European Commission show that the perceived democratic lack has not passed quietly by the EU Commission and actors (Greenwood, 2007). Instead, the critique has been duly acknowledged, and as the coming pages will argue, also acted upon by the Union officials – in my examination, most importantly through the formulation of the Lisbon Treaty. The European Constitution (Lisbon Treaty, the Treaty, the Constitution) is closely linked to democratic deficit debates and thus an appropriate test area to review democratic reality and reform. The rejection in France and Netherlands, and later also Ireland, of the first constitutional drafts fuelled what the Commission labeled a ‘crisis of democracy’ (Europa – Lisbon Treaty, 2009). Furthermore, the European Constitution is by numerous scholars and practitioners viewed as the best antidote to the democratic deficit, as it will undoubtedly bind the European citizens from all member states to the same rights and obligations, thus creating ‘the just political culture binding us as a state’; taking the first steps towards creating the prerequisite European demos on which to build further democratic procedures (Habermas, 2000; Bailey & De Propis, 2002; Carter & Stokes, 2002)

Accordingly, the research question for this thesis brings together the EU’s response to the democratic deficit, the Lisbon Treaty (European Commission, November 2009) and its democratic preferences. Thus, the question can be formulated accordingly; ‘can any clear preferences of models of democratic theory be detected in the Lisbon Treaty?’ This research question will also aid to assess the impact that such a preference, if existing, may have on addressing the critiques of undemocratic conduct made against the EU. Hence, the thesis does not aim to look at the social conditions of the Union or the Treaty, nor does it aim to look at
any future policy implementations likely to stem from the Treaty; instead, technical questions regarding the legal aspects of the Treaty are in focus.

On that basis, this thesis will present a two-folded case of democratic theory: both through looking at how democratic theory is favoured in practice by the Lisbon Treaty, and also elaborate on the contributions this can make to address the ongoing democratic deficit debate. I will as such firstly expand upon concepts of the democratic deficit as a phenomenon. Secondly, I will turn my attention to democratic theory, as outcomes of the democratic deficit debate are frequently linked to applications of theory (Carter & Stokes, 2002), and the democratic suitability of various theories will be assessed in a Union context. Following on from this, the two previous sections will be tied together in a methodological advance, outlining the rationale for using the Lisbon Treaty as an empirical study on emerging EU democratization. The analysis of this study will then be presented in an attempt to join theoretical concepts and institutional research in a content analysis of selected parts of the Lisbon Treaty, assessing content correlations to specific type(s) of democratic theory in practice. Finally, then, a conclusion will be drawn to answer the research question and disclose what kind of democracy this Constitution is likely to enhance, and whether this will be enough to finally solve the democratic deficit dilemma.
II. The Democratic Deficit Debate – A Rich Literary Tapestry

II (I) Defining Democracy

Eriksen and Fossum argue that ‘only by adhering to democratic procedures can power holders justify their decisions, and the citizens subject them to critical tests; only by employing these procedures can collective goals be achieved legitimately; and only through these procedures can laws be changed and new laws enacted correctly’ (2007: 7). The essence of the democratic deficit is a perception that it is precisely these qualities that the EU fails to meet, thus failing to correctly enact legislation. This statement, and its alleged ill fit with the Union, thus captures the core of the democratic deficit debate, and in doing so justifies the vast literature in this field, accenting the fragility of the European integration project as dependent on its ability to present real democratic credentials (Follesdal & Hix, 2006). In other words, in order to endure as a political body, the EU is in need of a structure providing both input and output legitimacy – as although its results might be desirable, they are not a sufficient base of legitimacy if lacking public debate and participation.

Although this piece does not primarily aim to navigate the extremely complex definitions of democracy, it is nonetheless important to initiate the reader into such theoretical particulars: only through providing a definition of democracy can arguments concerning its health in the European Union be understood. In order to present a platform for the rest of our discourse, we can apply the concept of congruence to democracy; simply put, those on whom the power is exercised should have the opportunity to partake in public debate and decide outcomes of public policy (Bohman, 2007: 218). Despite drawing a great strength in recognizing the issue of public deliberation and participation, as opposed to pure institutional aspects of democracy, there are still several reasons to critique this definition when assailing EU democracy. By using terms such as public debate, Bohman inevitably links his reasoning back to the preconditions for democracy, in this case the public sphere – a perceived democratic pre-condition to which we will return. Furthermore, this definition implies that the democratic deficit can in essence be solved through a state centric model whereby the Commission is appointed by the Parliament as the only publically elected institution. The predicament with this is that such a structure would require a federal like state – the desirability of which is an equally contended issue (Niemann & Schmitter, 2009). Robert Dahl provides a perhaps more convincing understanding of democracy as popular control of
governmental policies and as a system of fundamental rights addressing the vital issue of rights and duties (Dahl, 1999: 20). Dahl’s second statement, highlighting the role of rights, captures one of the greatest controversies in the democratic deficit debate, namely the view of the EU as democratic in the sense of providing fundamental rights to its citizens, perhaps most prominently through the free movement of goods, labour, people and services under the Single European Act (SEA) (Moravcsik & Nicolaidis, 1999), contrasted with the view that rights cannot be exercised unless there is a sphere in which to access them, i.e. the public sphere. I hence find Dahl’s definition to be the most convincing; but a definitional flaw also lies in the fact that the traditional state centric definition of democracy is not necessarily most appropriate for the EU.

II (II) Literature Overview – the Democratic Deficit

Despite the vast democracy literature, the real start of the democratic deficit debate can be traced back only to the early 90s, when the implementation of the SEA made it difficult for the Union to continuously claim democratic legitimacy to be vested in the member states, as they no longer had a final say on aspects of implementation (Schmidt, 2006). Thus, based on integration theory, pinning national vs. supranational, and on concrete operating conditions, the arguments providing the basis of the democratic deficit can be divided into five pillars (Hix, 2005: 177-178).

Weiler et. al argues that EU decisions are increasingly made primarily by executive actors at the supranational level, decreasing levels of national parliamentary control and the democratic input of nation states into the European process; as evident during the Maastricht referendum, implemented in only three nation states (Hix, 2005: 178). This argument is not without objections, especially when put against intergovernmental theories arguing that member states drive integration on their own terms through multi-speed integration and incrementalism (Moravcsik & Schimmelfenning, 2009). Such objections claim that there is little evidence of any major institutional reforms having taken place in the EU over the past decades to give it a more supranational feel. Quite the opposite can be said as national representatives have over the past five years been given greater legislative and co-decisional powers in the European Parliament through White papers on National communication, and can further national agendas through the Council Presidency (Elgström, 2003:11-13). The application of such ‘objections’ can be granted in that the legal sovereignty of the Union is
indeed still vested in national assets, in that national states still hold undisputed authority in regional concerns such as transportation and military. However, in an environment where actions of national leaders are frequently argued to be at odds with public opinion as a result of EU initiatives such as implementation of a single currency, SEA and Council meetings being carried out without public referendums or agendas, it is questionable whether arguments anchoring the European legitimacy in the strength of the nation state can hold (Crawley, 2008). This postulation is seconded by Archer, arguing that ‘the shift in decision making powers from the national to the EU-level, without accompanying strengthening of parliamentary control of executive bodies’ has indeed led to a lack of legitimacy for the European sphere (Archer, 2000: 85). However, despite supporting the foundation of his argument, one must also remain skeptical to the remedy suggested. Archer advocates the provision of national legislatures with greater control over EU institutions – a system that might keep the EU a confederation where citizens interact only with their national governments. Thus, no prerequisites are created, such as a European demos and identity, a topic later explored (Archer, 2000).

Secondly, Weiler et.al point to the relative weakness of the European Parliament (EP) as a source of undemocratic conduct, as it does not have enough power despite being the only EU institution which is directly elected (Hix, 2005: 177). Frequent responses to this argument claim that every treaty change from the Single European Act to the Reform Treaty has strengthened the role of the Parliament in EU decision making, to the extent that the Parliament now enjoys equal power to the Council in deciding on most legislation, both in terms of supervisory, legislative and budgetary policy, and the accession of new members depend on EP’s assent (Bomberg, Peterson & Stubb, 2008: 58-59). However, such positive opinions fail to see the deeper issues embedded in EU decision making. Whilst potentially moving in the right direction, the European Parliament still has to rely on shared competencies where they have little or no inclusion other than delay under consultation procedures. As such, the elected body does not have executive power, and it is not a part of much consultation, which is often part of shaping final outcomes, and are as such by some argued too weak (Follesdal & Hix, 2006).

The third argument of a democratic deficit is the lack of European elections. Moreover, there are no European parties or any form of transnational party federations, and supporters of this often state that introducing political parties at an EU level would only render the EU more
like a nation state, but little else. This stance must be taken issue with. As will later be examined, arguments are ripe that the EU is lacking a public sphere, as there is no common language or culture for citizens to identify with, and thus no demos to start and encourage and create deliberation. Thus, the existence of Europe-wide party movements could be welcome as a tool against democratic deficits, as it is likely to create polarization and debate around EU issues, making citizens more engrossed and thus creating more popular legitimacy for the Union (Eriksen, 2005).

Weilers’ final arguments go hand in hand; namely the conception that the previously debated arguments lead to a process whereby the EU becomes distanced from its citizens, who are thus unable to understand and input the process – creating an information deficit (Hix, 2005: 179). These argument are often perceived as the most important to address in order to get to the core of the democratic deficit – as institutional re-design will account for nothing unless the European citizens are aware of the reforms, and willing and able to grant the Union legitimacy through participation and deliberation. The importance placed on public participation and information over institutional reform is highlighted in the European Commission’s recognition of the need for a stronger public sphere and improved legitimacy – as evident in the following quote from President Prodi and the Vice President of the EU Commission in 2000 from a Commission communication: ‘a contribution to fostering a more participatory democracy both within the EU and beyond is key to its survival……belonging to an association provides an opportunity for citizens to participate actively in new ways to other than or in addition to involvement in political parties….organized civil society represents the views of specific groups of citizens to the European institutions….and contributes to the formation of a European public opinion….promoting European integration’ (Prodi quoted in Greenwood, 2007: 347). More recently, Stephen Quinlan in his debate around the Irish no argues that ‘the political context of the referendum was that of democracy, democracy and democracy, as has been the agenda of any main European player seeking legitimacy since the days of the SEA……’ (Quinlan, 2009: 112). Comparatively seen, these quotes demonstrate the constant pre-occupation of the European actors with democratic issues. Furthermore, the quotes define democratic deficit as consisting of a crisis of legitimacy and a crisis of information and participation, where skepticism to integration is not so much founded on institutional set ups, but on a lack of information, making citizens unsure of the EU goings on (Checkel, 2009). This informational deficit is also likely to lead to low
participation and deliberation, as highlighted in the case of voting statistics – with less than 15% of the entire European population voting in the last Parliamentary election (European Commission, July 2009). It is furthermore believed that the Irish no ran aground on issues relating to Irish domestic politics, with polls reveling that 35% of the population felt ‘uninformed’ about the Treaty content (Curtin & Ryan, 2008) Thus, with no public articulation of positions on several sides of a policy debate, it is of little surprise that a debate over a particular policy does not exist and that issues lack voter salience due to informational shortcomings (Moravcsik & Nicolaidis, 1999).

II (III) Prerequisites for Democracy: the Public Sphere Debate

It is argued that the European public sphere and citizenship is a prerequisite for democracy, and thus legitimacy in order to create information and involvement as mentioned above – providing the link between civil society and the power structure of the state (Ferree Marx & al, 2002). Whilst many scholars argue the distinct lack of such a European public sphere due the non- existence of a lingua franca and a common normative culture between the member state citizens (Bohman, 2007), Risse and Van de Steeg instead see a public sphere as being constructed around similarities in national values, shared rights and duties, and partaking in similar national reporting about the EU, allowing us to access the same information (Risse & Van de Steeg, 2003). Eriksen strengthens this view, by claiming that ‘the public sphere is built on freedom of communication, granted by modern constitutions’ (Eriksen, 2005: 345). This is backed up by research on the presence of a European sphere in written media conducted by Risse and Van de Steeg, concluding that whilst EU issues receive the lowest level of national attention in national newspaper, the issues reported on tend to have the same normative angle in all member states, thus illustrating that a common European framework does exist (Risse & Van de Steeg, 2003). This initial debate has demonstrated that whilst some institutional re-designing, such as creating an EU Parliament that is a true legislator, is necessary in order to render the EU more accessible and legitimate, deeper normative changes are required in order to offset potential back lashes of reduced efficiency as a result of institutional reform, and to encourage people to get involved in EU politics. In order to continue with the task of testing whether such requisites for responding to the democratic deficit are evidently emerging through the Lisbon Treaty, we must first gain an understanding on the various democratic theories attached to the EU. Only once this is done can we seek to evaluate their suitability to the EU and search for their evidence in the Treaty.
III. Democratic Theory – Means of Inclusion

III (I) Theoretic Relevance

Proponents of the democratic deficit as set out above have one common denominator – namely that their argumentation varies depending on what democratic theory they ascribe to. For example, if you favour a model of direct democracy, you are likely to find the EU more undemocratic than a colleague favouring indirect democracy. As such, in order to continue onwards to test whether the Lisbon Treaty goes some way in remedying the democratic deficit of the Union, it is absolutely vital to first outline what kind of democracy we are referring to, in order to see how the Treaty might counteract claims of a lacking deliberation, public sphere and participation. As seen, democracy can foremost be viewed as a legitimating principle, whose effective structure has to take some organizational form (Follesdal & Hix, 2006). Thus, historically democracy has come in many empirical forms of organization, such as direct or participatory democracy, as well as indirect, representative forms of governance such as presidential or parliamentary democracy (Eriksen & Fossum, 2007: 7). This goes some way to emphasize the myriad of existing democratic theories – many which to my knowledge ‘have not been analyzed either with regard to their relative institutional effectiveness or in regard to their compatibility with other institutions’ (Nettesheim, 2005: 372). Some theories covered by this statement include republicanism, pluralism and mixed approaches – all of which have never been markedly present in structural EU discussions, and will thus for clarity of argument be exempt from the following analysis. This selective process aside, we are still left with what I, based on previous literature reviews, argue to be four key concepts of democratic theory referred to in relation to the EU; direct democracy, representative democracy, deliberative democracy and participatory democracy (Eriksen, 2005; Hix, 2005; Dahl, 1999). Not all of these, I will argue, are an option for the EU.

III (II) Democratic Theory Assessed

Whilst liberal or direct democracy is often considered unsurpassed at a national level, the sui generis configuration of the EU is believed to exempt it from such notions. Whilst strengthening the European demos, direct democracy would severely question the legitimacy of the EU on the basis of sovereignty and subsidiarity, as the full democratization of the EU implies a decline in national powers in order to create a system where the EU is the closest agency to the citizens (Moravcsik & Schimmelfenning, 2009). This leads me to evade further
discussions of direct democracy as a good fit for the EU, as its complexity would inexorably prove faulty for a system already under heavy criticism for vast bureaucracy. Additionally, such a model might be too practically impossible to implement on as large of a scale as the EU (Dahl, 1994). Similarly, models of participatory democracy can also be argued as problematic to the EU context (Habermas, 2000). The participatory process emphasizes the broad involvement of constituents in the political system, and can be viewed as problematic in that it stresses direct, and perhaps unfeasible, *participation* in all stages of decision making, as opposed to the citizens critical *contribution* and opinion formation in said process (Auberger & Iszkowski, 2007). Through its vision of direct participation in political processes, participatory democracy is close to indistinguishable to direct democracy. As such, it is subject to similar criticisms of European lack of fit due to its assumed basis in majoritarian politics and a corresponding Westphalia polity demos, setting the nation state to be the democratic model for which to strive (Schlesinger & Kevin, 2000).

Deliberative democracy, on the other hand, arguably has more contemporary clout in the EU as it is not confined to nation state models and presuppositions of sovereignty, demos, territory and identity (Nugent, 2003). As such, deliberative democracy is often held as the democratic chalice of the EU, considering democratic legitimacy to require public justification; arguing that only decisions that have been critically examined by the community through a reason giving practice can claim to be legitimate (Gutman & Thompson, 2004). This gives it the upper hand to participatory democracy, as democratic procedures are perceived not to draw legitimacy from political *participation*, but the general accessibility of the deliberative process itself, creating opportunities for opinion formation as opposed to the more problematic participation itself. The criteria set for pure deliberation; that all affected parties must be able to participate effectively and contribute to the agenda; that weight is given to the merit of argument, not to the relative power of the participants; and that deliberation must be transparent, addressed to the public and open, thus generates ideal conditions for impartiality, rationality and fact, which are all seen to lead to morally correct outcomes (Editorial Comment, 2008)
III (III) Theoretical Preconditions: Deliberation and Representation

One can argue that these theoretical preconditions lends the EU very well to deliberation, as the unclear division between government and opposition means that vast parts of policy making happens in committees, whose minutes are openly accessible and thus creating deliberation mobilizing public pressures (Dryzek, 1999). However, whilst perceiving deliberative democracy as the best fit for the Union, one cannot ignore its lingering critiques, such as its need for a public sphere of contestation and its assumption that deliberation will lead to consensus as opposed to intensified conflict; not to mention its’ unclear outcomes. Whilst not to be ignored, a closer inspection of these critiques shows what I consider to be their inherent weakness. As seen in the previous chapter, despite a range of arguments in both directions, the existence of a public sphere is possible as long as we share some common rights, duties and cultural frameworks – as studies by both Risse and Van de Steeg (2003) and Bohman (2007) shows to be the case. It is in my opinion a mistake to assume that shared cultural and lingual norms are the only stipulation binding a polity. Such an assumption lacks empirical evidence, as this condition is rarely in place even within modern, multicultural nation states rarely accused of weak publics. Thus, an augmented public sphere does exist in enough of a format to breed deliberation; prime examples stemming from the amount of media coverage nationally dedicated to the implications of the Lisbon Treaty, and the debate this led to in various European countries, most markedly Ireland, about EU affairs (Quinlan, 2009). Furthermore, whether this deliberation leads to polarization or consensus is of little importance, considering that the deliberative ambition is to generate discussion and public opinion, regardless of which direction this might sway (Auberger & Iszkowski, 2007). Issues concerning the tangible outcome of all this deliberation can also be addressed, and I believe the answer to lie in the final key model of democracy – representative democracy. Critical assessments of representational democracy argue that it is difficult to pin democratic legitimacy on voting, as it is close to impossible to find a democratic method that allows for the just aggregation of individual preferences into a collective decision, making voting a poor reflection of the real preferences reflecting only the majority winners and not the real collective will (Greenwood, 2007). However, representative democracy still holds one large benefit – namely its ability to wed other models of democratic theory (Auberger & Iszkowski, 2007). Key here is the principle that deliberation must be linked to a supplementary system of representation as the ultimate institutional set up, combining
popular legitimacy and collective identity awarded through deliberation, with democratic representation and adequate governing capacity provided through a representational system (Dryzek, 1999). Similarly, Holzhacker argues that representational forms of democracy must be viewed as supplementary, even inherent to the deliberative process in the EU – but never as a replacement to the deliberative mechanisms themselves (Holzhacker, 2007). Representation can thus be seen as a desirable outcome of deliberation, once public will formation has prevailed. This indicates that most single theories of democracy are inconclusive when viewed in isolation, and must therefore often be seen in congruence with supplementary theories in order to make sense and reflect real conditions, as suggested by Auberger & Iszkowski (2007) and Tsakatika (2007).

Thus, this debate acknowledges the close link between input legitimacy (deliberation) and output legitimacy (representative democracy) and argues that neither can exist in isolation – and that deliberation mends the representative flaws through improving the quality of decision making (Holzhacker, 2007). The choice of combining deliberative democracy with representative outcome legitimacy as a focus for the continuation of this thesis can thus be justified by the fact that its conceptual foundations and normative principles are basically different to additional disputed theories, in that it does not assume the EU to be like a nation state; nor does it ignore or undermine the importance of democratic preconditions such a public sphere. On this basis, I will now proceed with the basic argument that deliberative democracy is the most desirable fit for the Union, and that its implementation could counteract democratic complaints – possibly made apparent through studying the text of the Lisbon Treaty.
IV. Methodology – Thesis and Research Proposals

IV (I) Research Question

The research question for this thesis brings together the EU’s response to the democratic deficit, the Lisbon Treaty (Commission, 2009) and its democratic preferences. Thus, the question can be formulated accordingly; ‘can any clear preferences of models of democratic theory be detected in the Lisbon Treaty?’ This research question will also aid to assess the impact that such a preference, if existing, may have on addressing the critiques of undemocratic conduct made against the EU. Hence, the thesis does not aim to look at the social conditions of the Union or the Treaty, nor does it aim to look at any future policy implementations likely to stem from the Treaty; instead, technical questions regarding the legal aspects of the Treaty are in focus. Debatably, this might be interpreted as a constructional weakness of the paper by those arguing an ‘overload’ of democratic deficit research, and instead favoring a study into concrete policy outputs. However, I find it reasonable to state that the novelty of the Lisbon Treaty contradicts any relevance of such speculations – as any presumptions into future implementation would at this stage lack empirical evidence, and as such be considered pure guess work – providing us with questionable theoretical assumptions at best. Inevitably, this also means that the purpose of this thesis is theory testing, as the attempt is to wed a theoretical model of democracy to the practicalities of the Lisbon Treaty and assess the implications for potential re-evaluation of the democratic deficit. Thus, it is not my research aim to contribute new theory to this plentiful debate, even if an analysis of the Treaty should prove to discredit my hypothesis and instead call for further research into novel democratic premises more suitable to a sui generis institution such as the EU (Eriksen & Mendez, 2005)

Whilst important to recognize the vast amount of writings on the topic of European democracy, the presented research design adds a new dimension to existing investigations; as the aim here is not to measure current European standards of institutional democracy or constitutional ideals against a set theory as traditional research tends to do (Hix, 2005; Eriksen & Fossum, 2002; Schmidt, 2006; Skach, 2005), but rather testing the opposite through reviewing evidence of theoretical approaches promoted from within the system itself thus setting new standards for the democratic deficit debate.
IV (II) Theoretical Selection Rationale

In order to look for empirical distinctions between the theories to allow for statements concerning the path forward for the EU, I deem it essential to look beyond the formal procedural aspects and instead focus on processes within these; i.e. the discursive quality of the communication ‘within institutions and procedures and the mode of interest formulation’ (Auberger & Iszkowski, 2007: 279). As such, empirical research on the deliberative and representative quality of European politics must not concentrate exclusively on formal aspects like voting procedures, as previous chapters have already made the case that institutional reform alone will solve few crisis’s of legitimacy without information and equality (Follesdal & Hix, 2006). The Lisbon Treaty then presents the perfect platform for analysis, looking not only at institutional reform but also at the desirable value platform for the Union. Furthermore, the Treaty presents a novel approach to the topic, simply through being a new and little researched document with a strong operational focus on democracy and inclusion – not only seen in its content but also in its ratification processes, including referendums and deliberation (Editorial Comment, 2009). As such, it is believed that ‘the Lisbon Treaty will influence conclusions of future Union treaties and affect the finality of the integration process’ (Editorial Comment, 2009)

The official version of the Treaty itself is highly complex and exceedingly multifarious for a layman; taking the form of a number of amendments to existing treaties without reproducing the original texts that it has altered. Accordingly, the Treaty contains a myriad of Articles, setting out crucial operational aspects of the Union regarding division of competencies and its external global role, defense policy and military competencies, capital investment and mobility to name a few - all highly remarkable developments for study, albeit irrelevant to an assessment of democratic theory in the Union. Consequently, for clarity of analysis, the investigation uses a purposive sampling, including only those Articles concerning the two key aspects of the EUs perceived lack of democratic legitimacy; the normative powers of the EU, and citizens participatory options. These Articles were contextually reviewed in order to detect their message, viewed both in isolation and later on collectively in order to recognize patterns. The same Articles will be reviewed in the discourse analysis as in the content analysis in order to generate compatible and comparable results. A full list of selected articles can be seen in Appendix 1.
IV (III) Methodological Rationale

In order to facilitate mentioned analysis of the Treaty, an appropriate methodological approach must first be decided upon. To this end, the method of discourse analysis is widely used in political sciences to obtain a detailed understanding of a text in a social setting; in this case the Treaty in a legal text analysis setting. (Alvesson & Sköldberg, 2009). Discourse analysis anticipates a study into how reality is depicted, and whether this reflects a particular value or idea, considering both language and attitudes presented – which fits well with the theory testing ambition of this research project. It is however important to also acknowledge the limitations of this chosen method. As any critical discourse analysis is unavoidably built on the researchers own way of seeing the world it is very difficult, if not impossible, to achieve completely neutral analyses. By analyzing the linguistic and cognitive messages of a text, a researcher will intrinsically apply her own conception of what is right and wrong to the text, and thus taint the analysis with her own pre conceptions (Potter, 2007). Furthermore, it has been argued that the methodological suggestions of how to carry out discourse analysis remain imprecise, without clearly defined guidelines of what to analyze and look for (Bergström & Borèus, 2005). Thus, for the purpose of my discourse analysis, I will be applying a model known as ‘the ideational level’; a model aimed at ‘investigating the meaning and implications of concepts, values, beliefs and meaning based on an interpretation of utterances’ (Alvesson & Sköldberg, 2009: 230) Thus, the analytical focus will be on the message of the text, such as why and whether the message is vague, multi – faceted or built on clear values. I will however not go into depth on how the linguistic sequence is built, as I deem an exclusive focus on language use altogether a narrow approach, as the capacity of language to alone represent reality is in this case very limited considering that the text in focus is a legal text document, realistically containing few written nuances (Potter, 2007).

In order to counteract the research bias that discourse analysis is sometimes associated with, I will also apply a simple method of quantitative research to my analysis; thus applying a triangulation of qualitative and quantitative research functioning as ‘checks and balances’ (Bryman, 2004). The method in question is a content analysis – ‘any technique for marking interferences by objectively and systematically identifying specified characteristics of messages’ (Carney, 1972: 43). Content analysis is thus a quantitative way of answering a research question, comparing the data it extracts against some norm, standard or theory in order to draw its conclusions (Carney, 1972). In this case then, a suitable quantitative
research question might become ‘*how frequently does the Lisbon Treaty present words attached to explain deliberative democracy?*’ A content analysis can be counted in a range of scales and numbers depending on the complexity of the issue at hand; however, as I am interested in doing a text analysis, I believe a frequency count on words attached to democratic theories to be the most appropriate method, as this is a ‘pattern-fitting’ technique comparing a set of complex inter-related words or views to identify a mode of perception or reasoning (Holsti, 1969).

The identified key words for the content analysis, as set out in the graphic representation in Appendix 2, have been arrived at through reviewing the innate distinctiveness of models of democratic theory, defined in Chapter III. These words expressing main characteristics of a democratic model have then been analyzed in comparison to the Treaty content, allowing a frequency count of how often a particular word occurs in the Treaty (Bryman, 2004). However, there is no theoretical standard template to which a given allocation of key words can take place, meaning that the content analysis is likely to suffer from a dose of researcher bias as I have been responsible for attributing key words to key theories. If done by another researcher, this template might have looked different, creating a different outcome. However, this is a methodological drawback of which I am very aware, and as such I have been careful not to let my hypothesis effect the nature of the frequency count and the word/theory ratio; but instead made sure to attribute theoretical concepts and definitions as set out in Chapter III. As illustrated in the graph in Chapter V, some characteristics overlap, meaning that one word or expression as used in the Treaty is not distinct enough to solely represent a single democratic theory, in which case I have ascribed it to two or more of the theoretical categories. Some words are what I have labeled ‘universal democratic theory’, meaning that they are generic enough only to be ascribed to general democratic theory. For the purpose of the content analysis, all relevant Articles have been reviewed collectively, as the focus is on their use of key words as opposed to their contextual discourse (Oppenheim, 1992). The analysis will also look at all the democratic theories reflected upon in Chapter III in order to fairly judge the presence of all models to allow for comparative levels. For a closer overview of the articles analyzed, please see Appendix 1. Furthermore, the key words as mentioned were counted through the use of a computerized text function, allowing the computer to count the repeated key words that I have identified. This allows for enhanced accuracy, as the computer does not overlook words or paragraphs.
As touched upon, both discourse analysis and content analysis have severe drawbacks in that they are likely to insert a certain element of research bias, as the individual interpretation and key word allocation of the researcher will affect the research outcome (Carney, 1972). Nonetheless, a triangulation of methods is perceived to overcome this obstacle, through providing two independent analyses. Taking this into account, along with the lack of other relevant research methods suitable to for a legal text analysis, I deem a content analysis and a discourse analysis the best suited methodological approaches (Flick, 2006).

The issue of source critique is also worth addressing. The benefits of studying the Lisbon Treaty over other policy documents lie in its authenticity: it is a validated source of which we know the background and processes (Borell & Brenner, 1997). Furthermore, the Lisbon Treaty is the most suitable source available in order to answer the research question, as it is written by representatives of the European Commission and concerned with highlighting the actuality of democratic theory and implications. As such, it is likely to have a heavy focus on meeting the democratic deficit debate. The fact that the Treaty approval was dependent both on the internal EU organs as well as representatives from nation states through referendums, also means that the Treaty is not a single source document, as the revised outcome has been subjected to numerous processes of referendums and ratifications. This reflects its strength as an actual source of knowledge about the preferences of the Commission as well as the member states (Editorial Comment, 2009). This furthermore highlights the desirable objectivity of the Treaty. As a source, it was chosen precisely because it is a reflection of the views held by the European Commission and the member states; thus carrying meaning beyond its legal commandments, showing a unified and ultimate way for democracy. Although mainly important to acknowledge in cases of critical discourse analysis, it is nonetheless central to also recognize the short comings of this source. Whilst actually being beneficial to this specific piece of research, the bias with which the Treaty is written means that attention might have to be paid to the lack of counter bias in the document. It is not a debating piece, and as such presents a view of policy and theory that might attempt to paint a positive picture of the operation of the EU. For this reason the Treaty should be viewed with a healthy dose of criticism when assessing the impact it is likely to have on the democratic deficit in actuality. This is an aspect that we might in fact miss altogether by studying the Lisbon Treaty alone – as the Treat tells us little about whether the detected preferences have been translated into action. Furthermore, an analysis of the Treaty is not likely to tell us
anything about the direction in which the detected democratic preferences have moved. As such, a comparison of the Treaty and the other numerous treaties that is seeks to amend would have been beneficial in terms of determining whether democratic preferences seem to have changed or become more salient – although practically too time demanding for our research focus.

IV (IV) Hypothesis

Based on the arguments presented in Chapter III, my hypothesis is that representative democracy, on which the EU is currently built, will continue to be the preferred democratic approach of the Union – albeit with a fortified dimension of deliberative democracy. Whilst appreciating that ‘as the Union is a unique political construction beyond the nation state, it is by no means self – evident that we can simply project on it the democratic institutions we know from the national level’ (Crum, 2005 : 452), I have strong doubts regarding the creation of a brand new democratic model to fit the EU specifically. In practice, most attempts to introduce more democracy into the EU stems from institutions that are characteristics of nation states, hinting at a slight re-tailoring of these processes rather than inventing a new model. Based on this, I believe it is likely that the Union will continue to build on its brand of representative democracy, as hinted at in proposals by the European Convention back in 2004 (Jönsson & Strömvik, 2005). Furthermore, I believe more direct forms of democracy to be an ill fit for the Union, considering its vast divide in competencies and its multi-level governance. However, as seen in Chapter III, in order to meet the democratic deficit critiques head on, representative democracy must be re-thought. First, one must take into account the multi-level nature of the emerging polity, requiring a close and coordinated articulation of the two existing levels; the national and the European (Crum, 2005). Secondly, the political importance of democracy has shifted from the act of implementation to the way of arriving at this execution; the mentioned output vs. input legitimacy. As a consequence, making representative democracy work does not only require some institutional changes, like an increased authority for the EP, but more importantly giving the citizens effective powers to scrutinize the executive and legislative processes – best achieved through deliberation. Thus, in order to answer the call of legitimacy, it is my hypothesis that the Lisbon Treaty will go to demonstrate a preference for representative and deliberative democracy – and show how this challenge is recognized and met.
V. Analysis – Lisbon Treaty: a Beacon of Democracy?

V (I) Background Processes

It is little contested that the EU has been seeking to increase its legitimacy by developing a more robust communicative discourse focused on polity as well as policy (Hagemann, 2008). On policy issues, national leaders have pushed for the EU's democratic future, starting with Joschka Fishers push for a federal Europe in 2000 and continuing with the Constitutional Treaty and most recently the Lisbon Treaty – indicating that this Treaty is worth analyzing not only for its novelty, but as it is likely to contain further democratic preferences going beyond pure representation and addressing such legitimate preconditions (Checkel, 2009). On December 1st 2009, the Treaty of Lisbon entered into force, unifying the EU under one constitution, and as such drawing a line over aspects of long-lasting negotiations over the institutional and normative powers of the EU. The Treaty amends the current EU and EC treaties without replacing them, thus creating a framework encompassing old as well as newly established views for the future of the Union. As such, the aim of the Treaty is to ‘provide the Union with the legal frameworks and tools necessary to meet future challenges and to respond to citizens’ demands’ (Europa - Lisbon Treaty, 2009).

V (II) Content Analysis

V (II.I) Visual Representation

The first step of analysis, as set out, was to conduct an unadorned frequency count, measuring the incidence of key words presented in the relevant Articles and the democratic theory these words indicate a preference for, as seen in Graph V.I in Appendix 2. Evident from this graph is that the Treaty contains mention of all assessed models of democratic theory, based on the key words ascribed to each of the characterizing theories (Carney, 1972): examples being representation, deliberation, voting, values, involvement and participation. In order to continue with our analysis and attempt to detect which theory is most frequently represented in the Treaty based on the key words describing its distinctiveness, it is useful to further process this data into a visual representation of the frequency in which the words occur – and how this ranges the theory which they are seen to represent. This can be seen in Figure V.I
**Figure V.1**

![Pie chart](image)

**V (II.II) Analysis**

Ranking high in the pie chart is what I have labeled the ‘universal democratic theory’, i.e. a standard democratic preference to which I struggle to ascribe more specific theoretical traits. In this category we see a strong focus on generalized normative expressions, such as ‘freedom’, ‘democracy’, ‘equality’ and ‘transparency’ – attributes of all democratic theory, jointly appearing 25 times (Bohman, 2007). This strong value laden emphasis that such expressions convert can be seen to stress a perhaps necessary self-understanding of what is European, considering that these words are almost exclusively mentioned in the same sentence as words such as ‘European’ or ‘identity’, emerging from a European wide debate on the constitutional treaty, serving as a reference point to ‘us’ vs. ‘them’ (Schöpflin, 2008).

Nonetheless, the frequency count in the content analysis also indicates the presence of several words much less generic. If looking at the words attached to the meaning prescribed by direct democracy, mainly ‘involvement of citizens’, ‘openness’, and ‘decisions taken close to the citizens’, many of these can also be used to depict other theories, and there is a frequent overlap with participatory and deliberative democracy. As such this theory is less intrinsic in the Treaty than its counterparts, as there is no mention in the analyzed Articles of expressions that could be more closely tied to this specific theory. An exception is the expression ‘citizen’s access to all institutions’, which is found in the Treaty on two occasions, and can be
viewed as a clear indication of direct democracy. Nonetheless, this frequency count is relatively low, as is the overall count concerning words expressing direct democratic characteristics, amounting to the least frequent of the theories assessed with 9 mentions. As previously discussed, this comes as no great surprise, considering its complexity in a large scale institution such as the EU. Thus, with the exception of the desirable access of citizens to the institutions, the Treaty does not appear to favour direct democracy as a future path. The same can be said for participatory democracy, snatching the penultimate price for least frequently mentioned characteristics with 14 mentions. The exception here is the word ‘participation’, achieving a relatively high frequency count of four. Despite the recurrent mention of this apparent participatory feature, indications are dire to suggest a preference for such a model of democracy – both taking into account the overall low frequency count, but also considering the ambiguity of the word itself. In the context of the Treaty, participation often refers to the involvement of citizens in national European elections and deliberation; thus making the word potentially relevant to representative and deliberative theory as well (European Commission, November 2009).

Out of all the ‘control words’, the second most frequently counted is ‘representative/representation’, returning six times. This expression is reasonably linked to theories of representative democracy; a model thoroughly represented in the content analysis with a high overall frequency count for delegated key words such as ‘voting’ and ‘proportionality’. This then indicates a continued support for the representative model of democracy in the Treaty. However, important to note is also that deliberative democracy, which unlike representative democracy and participatory democracy is not mentioned by name in the Treaty, still appears to be the most frequently mentioned theory based on a high stress of its necessary pre-conditions and attributes in the text. Words such as ‘values’ top the frequency list with seven mentions, signaling the importance that the Treaty seems to ascribe to the creation of a public sphere for further deliberation, built on also mentioned words such as ‘citizenship’ and ‘belonging’ (Skach, 2005).

Thus, the most prominent finding is that the Treaty has a strong focus on generic normative expressions of democracy ill fitted to further theoretical categorization, with an emphasis on values which the Treaty labels as ‘European’, such as freedom, democracy and transparency. Important to note is that the mention and inclusion of such values can however doubtfully be called specifically ‘European’, considering their global prevalence (World Value Survey,
Use of such words nonetheless point to an awareness of what I have in this context labeled ‘universal democratic theory’; demonstrating that the democratization of the EU is indeed high on the Lisbon agenda. Furthermore, deliberation and the pre-requisites for deliberative opportunities, i.e. a public sphere consisting of shared rights and values, appears to be a key priority, underpinning the actuality of arguments by Eriksen and Fossum (2002) stating that deliberation need not be built around a common language and culture; but around shared values, rights and a sense of citizenship and belonging. This creation of a public sphere and deliberation can in the Treaty also be seen as a proxy to the ultimate outcome of a system of representational democracy.

V (III) Discourse Analysis

V.III (I) Introduction

For the purpose of carrying out a discourse analysis with the aim of answering questions regarding the Unions views of democratic theory and its contribution to the silencing of the democratic deficit, I have identified three key aspects of elevated analytical importance when reviewing the articles. The first is a brief overview of its message and content; secondly, an analysis of which theory of democracy this message can be interpreted to aspire to; and finally, what this message might contribute to the democratic deficit debate.

V.III (II) Individual Article Analysis

Whilst the main intention of a discourse analysis is not to reenact the contextual message of each single component, this process nonetheless needs to be carried out in order to draw any viable general conclusions (Potter, 2007). Bearing this in mind, a full discourse analysis has been carried out, considering the three key points as mentioned in the previous paragraph, and the full result of this discourse can be found in Appendix 3. For simplification, and in order to swiftly move on to the more pressing task of considering the full message of these Articles when viewed not in isolation, but as inter-related parts of the same Treaty, a summary of the main findings of this analysis are tabled below.
<table>
<thead>
<tr>
<th>Article Name and Number</th>
<th>Content in Brief</th>
<th>Democratic Theory Present</th>
<th>Implications for Democratic Deficit Debate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble</td>
<td>Establishes the values of the EU; freedom, democracy, equality and rule of law. Focus on creation of a common citizenship, i.e. public sphere.</td>
<td><em>Deliberative democracy</em>, due to emphasis on creation of public sphere as arena of debate based on equal rights and values rather than culture.</td>
<td>Silences critiques of lack of a European public sphere – argues that this can be built on rights and values as opposed to culture and religion. Thus, establishes future possibility for EU wide debates.</td>
</tr>
<tr>
<td>Article 1 - Establishment of the Union</td>
<td>Creation of a ‘new Union’, where decisions are taken closer to the citizens and more openly, in turn unifying the citizens.</td>
<td>Strives for open decision making, transparency and legitimacy, and its closeness to the citizens indicate a desire to involve citizens in the process. However, little clarification is giving regarding the processes of which to achieve this vision, whether through participation or deliberation as they are both equally feasible means of implementation.</td>
<td>May enhance democratic accountability through increased transparency, institutional openness and proximity to citizens - a drawback of this message is however a failure to explain how to facilitate this shift.</td>
</tr>
<tr>
<td>Article 2 - The Union Values</td>
<td>Continued emphasis on the values of the EU; key mention is democracy, freedom, equality and solidarity between citizens.</td>
<td>Again, a distinct focus on rights, values and creating a sense of ‘eupeaness’, i.e. public sphere as an area for debate signals <em>deliberative democracy</em>.</td>
<td>A continued focus on the possibility and desirability of a European sphere in spite of diverse cultures and languages indicates the possibility for deliberation and community needed to overcome the democratic deficit, which the Treaty wishes to build. However, little mention of the actualities of such processes, nor the necessary informational traits to utilize this sphere for debate.</td>
</tr>
<tr>
<td>Article 3a and b - Fundamental Rights Relating to Competencies</td>
<td>Sets out the division of competencies between the Union and the member states, anchoring majority of decision making processes with the member states.</td>
<td>Representative democracy, as the Article sets out division of competencies and rights for nation states and its citizens, represented at EU level through the Parliament.</td>
<td>Addresses fears that the democratic deficit is increasing due to an amplification of decisions being taken at the EU level, far removed from national citizens. Suggests a flaw in Archers’ assumption that democratic deficit problem is best solved through a full transfer of member state competencies to the Union level, creating citizen engagement (Archer, 2000).</td>
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<tr>
<td>Article 8 - Principles of Democratic Equality</td>
<td>States that in all activities, the Union shall observe the principle of equality amongst its citizens, who shall receive equal attention from the institutions.</td>
<td>Whilst normatively appealing, the Article contains little clarification on the meaning of equality, not affirming whether relating to equality in participation, equality in argumentation, or equality in voting. As such, it says little about democratic theoretical preference.</td>
<td>Again, this article stresses aspects of belonging, stating that citizenship of the Union shall be additional to national citizenship and not replace it. In this claim, the Union effectively silences critiques of attempting to overrun national competencies and loyalties.</td>
</tr>
<tr>
<td>Article 8 a - The Principle of Representative Democracy</td>
<td>Directly confirms that the functioning of the Union shall be founded on representative democracy, and that citizens shall be directly represented in the Parliament. Furthermore, the Article states that every citizen of the Union shall have the right to participate in its political life. The political parties of the Union shall be partly responsible for creating political awareness.</td>
<td>The Article promotes representative democracy. Conversely, seen in concurrence with other Treaty articles accenting the desirability of a public sphere and deliberation, this Article can merely be seen to favour representative democracy as the outcome result, gaining input legitimacy from deliberative reforms.</td>
<td>The Article, whilst promoting representative democracy, pays no attention to the perceived informational deficit or the strengthening of existing representative bodies like the Parliament, as such doing little to counteract current critiques of undemocratic conduct. Representational democracy cannot solely be built on deliberative tools, but also on the foundation that citizens can easily access information - something which the Article does not aim to amend. Furthermore, the assumption that parties shall set public awareness is lacking in substance, considering their scarcity in the Union.</td>
</tr>
<tr>
<td>Article 8 b - the Principle of Participatory Democracy</td>
<td>Establishes citizens’ rights to publically exchange views and maintain an open dialogue with the institutions. Brings in the 'Citizens' Initiative', whereby a minimum of one million citizens can take the initiative to invite the Commission to submit an appropriate proposal on matters where citizens favour a legal act.</td>
<td>Advocates public exchange of views and open dialogue with institutions; thus blurred line between deliberative and participatory theory.</td>
<td>Doubts can be raised around the democratic credentials of the 'citizens' initiative', considering the difficulty in mobilizing such a force in the absence of a strong public sphere and a perceived lack of information on EU affairs.</td>
</tr>
<tr>
<td>Article 8 C - the Role of National Parliaments</td>
<td>Declares that the Union has a duty to inform national governments of new legislation, and that the national governments shall have the right to object to new legislation if their subsidiarity has been breached.</td>
<td>Representative Democracy; emphasis on national Parliaments and citizens, and their representation in the Union.</td>
<td>Silences democratic deficit critiques that the EU is a supranational institution, as power evidently is vested in national parliaments. Can also mend national democratic deficits through giving national governments more abilities to scrutinize EU policy, potentially encouraging national citizens to view EU policy on par with national policy, mending the current voting apathy.</td>
</tr>
<tr>
<td>Article 15 - Governance</td>
<td>Concerned with the ‘good’ governance of the Union, and how this will be achieved through ensuring the participation of civil society.</td>
<td>Endorses deliberation as open decisions are likely to create debate.</td>
<td>Favours transparency, stating that the Parliament and Council shall meet in public, providing access for the citizens to the institutions and their documents. Thus, this Article for the first time addresses the informational deficit of the Union, and presents possible solutions.</td>
</tr>
<tr>
<td>Article 48 - Treaty Revision Procedures</td>
<td>Sets out changes in Treaty procedures, establishing that the power of the Parliament is still co-decisional and not the subject of influential strengthening. The Article also promotes majority voting in the Council</td>
<td>Representative Democracy; majority voting.</td>
<td>With a move towards majority voting, opposition could become more readily voiced as governments could formally record their opposition whilst the whole of EU would not be held hostage to a single government’s position. Thus, the in this article established move towards majority voting can signal an improvement in efficiency but also in democratic legitimacy in terms of accountability, as governments are now pressured to record their positions on legislation (Hagemann, 2008)</td>
</tr>
</tbody>
</table>
The analysis of the reviewed individual Treaty articles, as summarized above, provides us with the tools for an intertextual discourse analysis – allowing us to draw conclusions about the general tone and message of the Treaty as a whole. Such an analysis highlights the creation of a European community or a public sphere as a frequently returning point, whether through the promotion of citizen solidarity (Art. 2), shared values (preamble, Art. 1 and 2), an ‘ever-closer Union’ (Art. 1) or participation of civil society (Art. 15). Such mentions of creating a ‘community’ based on European communalities, as opposed to disparities, is mentioned in five of the examined articles; suggesting that an EU wide public sphere seems to be highly desirable to the Union for the purpose of fostering citizen debate and involvement in EU affairs on par with national affairs. The Treaty continuously links this creation back to shared values, religion and history, not language and culture; enhancing arguments by Risse and Van de Steeg that we do not need a common culture and religion to bond as one citizenship – this is based on our common values as Europeans, promoted through similar reporting’s etc (Risse & Van de Steeg, 2003). Thus, the Union attempts to create a citizenship of Europeans and as such argue that the pre-conditions for a public sphere exist, making deliberation possible. Whilst academically supported (Bohman, 2007; Eriksen, 2005; Risse & Van de Steeg, 2003), basing deliberation and a common ‘Europeanness’ around a shared history, values and religion further complicates EU enlargement, as in the case with principally Islamic Turkey; suggesting that such a basis for deliberation might be temporary (Schöpflin, 2008). This also links to the issue of value representation in the Treaty, as this is occurring in Articles 1,2,8, 8a and 8b; presenting a framework for the values around which Europeans can gather. This emphasis on values and rights, binding us to a common citizenship, is also a clear indication of the desirability of deliberation - as this cannot ensue without such a normative ground, unlike representative or participatory democracy, less dependent on a public sphere as they place individual involvement in the driving seat (Schmidt, 2006).

Furthermore, the Treaty illustrates the general traits of democracy, in the content analysis labeled ‘universal democratic theory’, conveying messages of democracy, freedom and equality. Articles 8a and 8b/c do favour specific theories of democracy, albeit even here I deem it reasonable to argue that the theoretical lines are blurred. Both these Articles, although communicating representative and participatory democracy respectively, also assume the importance of an open expression of views and distribution of rights, thus signaling typically
Rebecca Rosenquist - The Treaty and the Union: Democratic Theories in a Post Lisbon EU

deliberative traits (Tsatasika, 2007; Quinlan, 2009). Conversely, seen in concurrence with other Treaty articles accenting the desirability of a public sphere and deliberation, combined with the at times vague distinctions between democratic theories in the Treaty, these Articles can be interpreted to favour representative democracy and participatory democracy merely as the outcome results; gaining input legitimacy from deliberative reforms.

A final trend worth acknowledging is that of subsidiarity; ascribing national powers to the member states. Articles 3, 8c and 15 should reassure Euro skeptics that the supranational character of the Union is not likely to overtake the rights of the member states, bridging the gap between member states citizens and the allegedly distanced EU machinery (Eriksen & Mendez, 2005). These domestic powers might also play another part in mending the democratic deficit on a national level, as parliamentary scrutiny on European measures will be enhanced, bringing national governments and thus citizens closer to the EU centre. This, in turn, might alter the current situation where national parliaments are dominated by national and regional issues to the detriment of international concerns, meaning that national governments will have more input into governments’ position in EU negotiations. Hence, directives are likely to be implemented with more debate and media attention – making national citizens view EU regulations, initiatives and elections as less distant and confusing, and bringing EU policy up on the agenda of national debates (Curtin & Ryan, 2008).

V.III (IV) Content Analysis and Discourse Analysis Interconnected

Evaluating the findings from the dual approach, it is palpable that the Lisbon Treaty is strongly endorsing the continuation of a system of representative democracy as the ultimate legitimate output. However, evidence is also strong that issues of input legitimacy have been acknowledged, and an attempt to strengthen it is evident through continuous declarations of values and rights, unifying the citizens; ultimately allowing deliberation to take place on equal grounds and providing the opportunity for participation (European Commission, November 2009). Both aspects of analysis also help us eliminate EU direct democracy, with the mention of this being infrequent and non-existing respectively. Thus, the differences between the methodological analysis outcomes are few, aside from an apparently disproportionate focus on participatory democracy in the discourse analysis compared to the content analysis, potentially caused by the inclusion of skewed key words in the content
analysis. This close methodological correlation confirms the reliability of this research, validating the findings of the analysis (Flick, 2006).

Furthermore, the continued salience of the nation state is clearly envisaged, potentially calming critiques of a distanced Union, making decisions influencing the nation states citizens whilst in Brussels isolation (Follesdal & Hix, 2006). However, it is likely to assume that this will nonetheless give rise to serious doubts concerning the democratic revamp of the Union. As established, the Treaty presents a focus on certain generic democratic values such as freedom and equality, albeit with little mention of how such values will be enhanced and implemented in order to create this common sphere and deliberation. However, one must acknowledge that the potential is that this issue has been addressed at another stage in the Treaty, out width of the democratically concerning articles analyzed, and as such this critique is multifarious. A perhaps more pressing finding is the distinct lack of informational processes; disregarding the brief mention of citizens’ access to institutions in Article 48 and the mention of open Council deliberation in Articles 8. This suggests that in the eyes of the Union, legitimacy should foremost come from shared values, deliberation and institutional reform; not through widened information channels, assuming that this is already efficiently done through political party debates (Article 8a). This is a somewhat problematic assumption, as information can be viewed as key to the voter apathy currently rendering representative democracy, the continued favoured theory, slightly illegitimate. An example of this can currently be seen in the British national elections, experiencing the highest ever voter turnout after more that usually heated media attention and debates, making information available to the people (Dawson, 2010). Furthermore, deliberative democracy cannot be expected to be built on rights and values alone, but also on a common informational platform portraying these; furthering underpinning the need for enhanced information for voters.

As such, the Treaty is not addressing all aspects of the democratic deficit debate, as set out in Chapter II. This is a further flaw with the citizens’ initiative, assumed to provide the European citizens with a unified voice, as doubts can be raised concerning the possibility for citizens to mobilize around such an initiative without having the necessary information of its existence or operational details. Whilst partly agreeing with sources referring to individual responsibility on the voters part (Moravcsik & Schimmelfenning, 2009), one must still question the relevance of having an initiative only accessible to the public through assessing a 200 page long document. Conversely, whilst categorically leaving several gaps in the
democratic deficit response, and showing no signs of a concrete institutional reform to strengthen the representative Parliament further, the focus on normative deliberation and common values creation suggests an important shift nonetheless – intensifying the legitimate credentials of the Union's input legitimacy. One might also argue that rather than being dependent on information, deliberation is instead the creator of such channels through first mobilizing a common understanding perceptible to information, making the informational deficit a secondary problem – considering Dahl’s argument that rights, duties and information cannot be shared unless there is a sphere in which to access these (Dahl, 1994). Considering that the Union is rarely critiqued for the legitimacy of its output, and the fact that the European Parliament has gained increased legislative competencies, mirroring the classic mechanism and the direct accountability for the European citizen (Holzhacker, 2007), this enhanced input legitimacy might well prove enough to grant the EU fully democratic; rendering informational legitimacy, the Union's final frontier, a secondary concern.
VI. A Conclusive Way Forward

One would struggle to argue that the Treaty does not acknowledge the need for democratic reform, as an analysis clearly demonstrates a heavy focus on what has been labeled ‘universal democratic theory’. Although the direct mention of deliberative democracy is scarce, the most frequent emphasis of the Treaty is placed on creating a necessary self understanding emerging from a European wide debate on the constitutional Treaty; hence recognizing the importance of creating a public sphere where common rights and values can be recognized and debated (Dahl, 1994). This clearly signals that the democratic deficit is internally perceived to lie not in the output democracy, as little institutional change is detected, but instead in the input processes. The analysis thus tells us two things. First of all, it strengthens the initial hypothesis though its exhibition of representational democracy as the privileged outcome democracy, whilst complemented by instruments for EU wide debates counteracting critiques of poor input legitimacy (Crum, 2005). Secondly, whilst this trend is certainly present, it is not as uncontested as first assumed on the researchers part. Words and procedures characteristically attributed to one democratic theory are interchangeably used in the Treaty; indicating that whilst profound investigations and interpretations detect a preference towards representative democracy and deliberation, such messages are neither clear nor explicit, showing a clear theoretical interdependence.

A second question nonetheless remains; can the Lisbon Treaty, with its emphasis on representative and deliberative democracy, be the final nail in the coffin for the democratic deficit debate, in view of the five pillars identified by Hix? (Hix, 2005) The first pillar, regarding the EUs alleged tendency to bypass national decision- making processes, should be silenced in the Treaty’s emphasis on subsidiarity and national involvement, allowing national parliaments the provision of ‘orange cards’ when subsidiarity principles are feared breeched (European Commission, November 2009). This underscores that we are not witnessing a post – national order, but the continuation of a multi- level polity with spread divisions (Nettesheim, 2005). This, in turn, might alter the current situation where national parliaments are dominated by national and regional issues to the detriment of European concerns, meaning that national governments might receive more input into EU negotiations. Hence, EU directives are likely to be implemented with more national debate and media attention – making citizens view EU regulations, initiatives and elections as less distant and confusing, making EU policy interesting to national debates (Curtin & Ryan, 2008).
Secondly, Weiler points to the relative weakness of the European Parliament as a source of critique. Whilst we have already established that recent developments of the Parliament is not enough to silence such critiques, the Treaty does point to the consultative power of the Parliament aptly growing as a result of enhanced deliberation, induced through publically debated decisions giving EU discussions the same priority as national events as a result of national parliaments scrutiny power over EU affairs (Greenwood, 2007). When considering the Treaty as a whole, this critique can thus be counteracted through considering the focus on reflection and a public sphere, rendering the institutional output legitimacy less critical to alter (Nugent, 2003).

The third pillar then, concerns a lack of European specific debates and parties; something which the EU are actively striving for through the creation of a common citizenship and belonging, placing European issues on par with national concerns. Thus, despite earlier assumptions, a Treaty review initially made me question the necessity of parties, as the Treaty favours additional means for preference testing (European Commission, November 2009). Nonetheless, the hastily mentioned role of EU political parties as the explicit creators of public awareness, as stated in Article 8a, actually contradicts this placid observation. The Article dynamically argues that the role of EU wide political parties is to create public awareness; a statement which in order to be anchored in reality indicates a necessitated elevation of party importance. The apparent lack of supplementary channels for EU information, and the fact the political parties are highly unlikely to counteract the informational deficit considering their shortage and uniformity, makes this pillar actual.

The two final and interchangeable critiques, concerning a distanced EU with insufficient information channels, could also be a problem for the EU in terms of its relative unawareness in the Treaty. The Treaty obviously recognizes aspect of the democratic deficit debate and attempts a response heavily based on enhanced citizenship and transparency, but through this process it appears to undermine the need for enhanced information. Whilst mentions of the need for citizens to easier access the institutions occur, there is no further embellishment on how this process might be implemented, nor is the active role of the EU in furthering information stressed. This could potentially undermine the EUs commitment to deliberative democracy as this is also dependent on informed citizens. Furthermore, this also runs the risk of jeopardizing the validity of representative democracy, as informational lack allegedly breeds voter apathy, as seen in the case of the Irish no (Curtin & Ryan, 2008).
arguments stand that this should be the responsibility of each individual (Moravcsik & Schimmelfenning, 2009), it nonetheless undermines policies such as the citizens’ initiative if the uninitiated are unaware of the existence of such an initiative; not precisely easily accessible embedded deep within 200 pages of amendments. However, as previously stated, the current lack of informational aspects might not necessarily diminish the deliberative commitment; but instead strengthen it, as a mobilization around values might increase public pressure for information as this cannot be shared unless there is first a sphere in which to access this information and rights. As such, if deliberation is not endangered, representational democracy also maintains its key legitimate foundation built on debate and input democracy (Gutman & Thompson, 2004).

Thus, whilst enhanced informational channels on the part of the EU are important to implement in order to meet the fourth and fifth pillars of the deficit debate and counteract long term voter apathy, this might still be considered secondary to the creation of an arena in which to induce debates around such information. This, in fact, appears to be the current focus of the Union. From a further normative perspective, the way in which the Constitution was forged might also go some way to enhance its democratic legitimacy. It is argued that, in order to obtain validity, a law must be forged through deliberation, or, as Eriksen and Mendez puts it, ‘by constitutinalising the most basic ethical choices of the society, such choices are protected from change from ordinary legislative processes, which might reflect a purely contingent majoritarian will’ (Eriksen & Mendez, 2005: 383). This highlights the legal actuality of democratization through a Constitution, and certainly that of the Lisbon Treaty, where referendums and ratifications created vast amounts of national debate, directing EU legislation towards more relevant problems, creating citizen confidence, information and ‘constitutional patriotism’ (Habermas, 2000)

As evident in the Treaty, the Union appears to favour a continuation of existing representative democracy; topped off with a healthy dose of deliberation – not a ‘third way’ democracy as suggested by some scholars (Archer, 2000). As such, the Union is a position whereby both input legitimacy and output legitimacy has every potential to be achieved; rendering critiques of an absent direct democracy and participation lacking in substance - considering the fact that the Union has never claimed to favour nor attempt to implement such systems (Moravcsik & Schimmelfenning, 2009). Neither do I believe critiques concerning the Treaty’s lack of implementation plans and institutional reform to tell an
accurate picture of deficient democracy. The novelty of the Treaty, providing us with splendid opportunities for normative research, is simply too up-to-the-minute to yet divulge definite products; making lacking implementation not a valid critique, but merely a rational time constraint. Furthermore, an overall analysis indicates that the perceived institutional weakness of representative institutions, such as the Parliament, can be counteracted through enhanced consultative powers stemming from open public debates in a public sphere, leading to increased interest and information generation. This potentially renders institutional reform democratically necessary. However, considering that this thesis does not deal with direct aspects of institutional reform, it is difficult to make a justified judgment on the Treaty’s overall view on this. The critique nonetheless remains that whilst addressing these vital aspects of the debate, informational steps also need to be taken in order to truly promote and maintain this newfound focus on legitimate deliberation. This advocates the need for future Treaties to complement this process through shifting attention to informational issues, such as the long discussed need for an EU wide news channel, and the need for national news papers to push EU issues up on the national agenda. This suggests that this next phase of the EU democratization process is also dependent on national efforts.

This thesis has not looked at the development of democratic theory compared to previous treaties, nor made any assessments on implementation of the Treaty context, and can as such set the scene for future research. It is my belief that further research should aim to validate the democratic credentials in the Treaty through further examining the policy outcomes that it will in time lead to. My postulation is that the ongoing design of a public sphere and national debates on EU issues will most likely lead to unbolted information flows, as deliberative democracy will set the form in which to process such information, and cannot fully flourish without free flows of information (Gutman & Thompson, 2004) This is however providing that national politicians embrace such initiatives, considering that ‘the unremitting inclination of national politicians to scapegoat the Union for decisions which they themselves have helped to shape only further obscure matters’. (Editorial Comment, 2008)
VII. Bibliography


Rebecca Rosenquist - The Treaty and the Union: Democratic Theories in a Post Lisbon EU


VIII. Appendices
Appendix 1; Articles for analysis

The Articles selected for the purpose of answering questions about the democratic preference of the Union and its supposed input into the democratic deficit debate are those discussing the democratic credentials of the EU and the overall values of the Union (as the democratic message is a key value); the role of citizens in the Union; the division of Union competencies (as this links to the national vs. supranational debate), provisions for democratic equality; provisions of the Union institutions (as these tell us something about the relationship between citizens and institutions, and the foreseen ability for citizens to participate in Union life).

Below is a full list of the Articles analyzed, all provided from the complete Lisbon Treaty, available to download at http://www.lisbontreaty2009.ie/lisbon_treaty.pdf, accessed April 19th and May 5th 2010 (Comission, 2009)

PREAMBLE
“The Union shall draw inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.

Recalling the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe, confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law”

ARTICLE 1a
“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”.

ARTICLE 2
1. “The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties."

ARTICLE 3a

1. “In accordance with Article 3b, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the
ARTICLE 3b
1. “The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.
4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.”.

ARTICLE 8
“In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it”

ARTICLE 8 A
1. “The functioning of the Union shall be founded on representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the
Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union”

ARTICLE 8 B
1. “The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 of the Treaty on the Functioning of the European Union”

ARTICLE 8 C
“National Parliaments contribute actively to the good functioning of the Union:

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;

(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 61 C of the Treaty on the Functioning of the European Union, and
through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 69 G and 69 D of that Treaty;
(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
(e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament’’

ARTICLE 15 from “Treaty on the Functioning of the European Union”

1. “In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.
3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the ordinary legislative procedure. Each institution shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents in accordance with the legislative act referred to in the second subparagraph. The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks. The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph”
ARTICLE 48

1. “The Treaties may be amended in accordance with an ordinary revision procedure. They may also be amended in accordance with simplified revision procedures.

Ordinary revision procedure

2. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may, inter alia, serve either to increase or to reduce the competences conferred on the Union in the Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

3. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 4. The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

4. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties. The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.”
### Appendix 2: Graph V.I

<table>
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<td>8a</td>
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Appendix 3: Discourse Analysis – Individual Articles

The **Preamble** of the Treaty sets out the values of the Treaty as well as the Union, and thus sets the tone for the entire document, as the values mentioned here return throughout the Treaty. The preamble establishes the Unions wish to draw inspiration from the cultural and religious inheritance of Europe as a base to create universal European values such as liberty, democracy and rule of law, leaving European divisions firmly in the past. This truly reinforces the European message of ‘unity in diversity’, acknowledging that the European heritage is fragmented in terms of culture and religion; but nonetheless united in a common strives for human rights, freedom and democracy. As such, this Article is highly emotive in its attempts to create a European communality, and truly enhances argument by Eriksen that we do not need a common culture and religion to bond as a citizenship – this is based on our common values as Europeans (Eriksen, 2005). Here, the Union attempts to create a citizenship of Europeans and as such argue that the pre-conditions for a public sphere exist, making deliberation possible. However, the emotive appears stronger than the rhetoric, as there is no mention of how such a citizenship and rights and values are forged, if not through some common culture and religion.

**Article 1 – Establishment of the Union** emphasizes the creation of what the Treaty terms a ‘new Union’; unifying the people of Europe and taking decisions as closely and openly to the citizens as possible. The emotive focus is similar to that found in the preamble, promoting an ever closer union of people, striving to achieve a sense of ‘togetherness’. Striving for an open decision making process is a sign of desired transparency and legitimacy, and its closeness to the citizens indicates a desire to involve citizens in the process. However, little clarification is given regarding the processes of which to achieve this vision, whether through participation or deliberation, as they are both equally feasible means of implementation. Nonetheless, considering the additional emphasis placed of forging a European community as a means of a public sphere, deliberation is the most likely approach as a public sphere is not equally essential to a system of participatory democracy.

These values are returned to in **Article 2 – the Unions Values**, again stressing freedom, equality, democracy, non-discrimination, pluralism and solidarity between the European people. This continues the focus on a shared solidarity and sense of belonging, and also encourages plurality in opinion formation; all tell tales of the desired functionality of public arena deliberation (Gutman & Thompson, 2004).
Albeit not directly relating to values of democracy, **Article 3 – Fundamental Rights relating to Competencies** is still imperative to review as it sets out the division of competencies between the Union and the member states; a consistent core of the democratic deficit for critiques arguing the supranational nature of the Union. Here, the center is subsidiarity and conferral – clearly setting out the Union’s intention of anchoring decision making powers firmly in the member states, closest to the people affected by the outcomes (Moravcsik & Nicolaidis, 1999). This suggests a flaw in Archers assumption that the democratic deficit is best solved through a full transfer of member state competencies to the Union level, creating citizen engagement (Archer, 2000).

**Article 8 – the Principle of Democratic Equality** states that in all activities, the Union shall observe the principle of equality amongst its citizens, who shall receive equal attention from the institutions. Whilst normatively appealing, the Article contains little clarification on the meaning of equality, not affirming whether relating to equality in participation, equality in argumentation, or equality in voting. As such, it says little about democratic theoretical preference, but the Article again stresses aspects of belonging, stating that citizenship of the Union shall be additional to national citizenship and not replace it. In this claim, the Union effectively silences critiques of attempting to overrun national competencies and loyalties.

As evident in the title, **Article 8a – the Principle of Representative Democracy**, directly confirms that the functioning of the Union shall be founded on representative democracy, and that citizens shall be directly represented in the Parliament. Furthermore, the Article states that every citizen of the Union shall have the right to participate in its political life, albeit with no mention of how the awareness to do so will be attained. Instead, the Article states that the political parties of the Union shall be responsible for creating political awareness and will formation; a claim one might meet with skepticism considering the uniformity of Union parties (Archer, 2000) Thus, the Article promotes representative democracy but paid no attention to the perceived informational deficit or the strengthening of existing representative bodies like the Parliament, as such doing little to counteract current critiques of undemocratic conduct. Conversely, seen in concurrence with other Treaty articles accenting the desirability of a public sphere and deliberation, this Article can merely be seen to favour representative democracy as the outcome result, gaining input legitimacy from deliberative reforms.
Article 8b – the Principle of Participatory Democracy deals with an opposing theory, establishing citizens rights to publically exchange views and maintain an open dialogue with the institutions; making a distinction between deliberation and participation blurred. The Article also brings in the ‘Citizens’ Initiative’, whereby a minimum of one million citizens can take the initiative to invite the Commission to submit an appropriate proposal on matters where citizens favour a legal act. Doubts can however be raised around its actuality, considering the difficulty in mobilizing such a force in the absence of a strong public sphere and a perceived lack of information on EU affairs. This furthermore demonstrates the inability for individuals to contribute directly to EU policy, opposing any forms of direct democracy.

Article 8c – the Role of National Parliaments declares that the Union has a duty to inform national governments of new legislation, and that the national governments shall have the right to object to new legislation if their subsidiarity has been breached. These domestic powers might play a part in mending the democratic deficit on a national level, as parliamentary scrutiny on European measures will be enhanced, bringing national governments and thus citizens closer to the EU centre. This, in turn, might alter the current situation where national parliaments are dominated by national and regional issues to the detriment of international concerns, meaning that national governments will receive more input into governments’ position in EU negotiations. Hence, directives are likely to be implemented with more debate and media attention – making national citizens much view EU regulations, initiatives and elections as less distant and confusing, making EU policy interesting to national debates (Curtin & Ryan, 2008).

Article 15 – Governance, from the “Treaty on the Functioning of the European Union” is concerned with the ‘good’ governance of the Union, and how this will be achieved through ensuring the participation of civil society. In order to do so, transparency is favoured, stating that the Parliament and Council shall meet in public, providing access for the citizens to the institutions and their documents. Thus, this Article for the first time addresses the informational deficit, endorsing deliberation as open decisions are likely to create debate.

The final Article which I have analyzed, Article 48 – Treaty Revision Procedures, sets out changes in Treaty procedures, establishing that the power of the Parliament is still co-decisional and not the subject of influential strengthening; thus not dealing with
representational critiques. Perhaps more importantly, the Article also promotes majority voting in the Council – the current infrequent use of which at first glance might not meet deliberative criteria as it uses bargaining processes over voting. However, when more closely examined, this infrequent use of majority voting can also indicate consensus arrived at through deliberation, as expresses by Eriksen; ‘vetoes are held to be main barriers to supranationalism but represent a restraint on interaction that induces reason-giving: when parties block outcomes, actors have an incentive to continue all others’ (Eriksen, 2005: 267). Thus, the introduction of a simple majority for treaty ratifications and its infrequent use can signal deliberation in force. A current dilemma with the unanimity requirement is that some governments may still wish to oppose a decision but refrain from doing so on issues that are less salient to them in order not to halt negotiations. With a move towards majority voting, these oppositions could become more readily voiced as governments could formally record their opposition whilst the whole of EU would not be held hostage to a single governments position. Thus, the in this article established move towards majority voting can signal an improvement in efficiency but also in democratic legitimacy in terms of accountability, as governments are now pressured to record their positions on legislation (Hagemann, 2008).