

Prospects for Transnational Direct Democracy—Exploring the New European Approach to Citizens’ Power beyond the Nation-State

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1 Introduction

What a change! For centuries Europe was the powerhouse of undemocratic practices and authoritarian rule worldwide. The bigger countries of the continent competed in waging war against one another and trying to colonize as many societies as possible around the globe by force. In just half a century, however, Europe has become an avantgardist in democratization. And as recently as 1989, millions of citizens built new and strong foundations for people power by proclaiming: “We are the people”.

The fall of the Berlin Wall offered and offers Europe an enormous opportunity: for the very first time it seems to be possible for the limitations of the Westphalian state system to be overcome and for a start to be made on the development of democratic structures beyond nation-state borders. While the European integration process in the past (and in many cases still today) can be seen as a major causal factor in stabilizing and sustaining democracy, the integration process also offers a natural and well-established framework for the future development of people power—by adapting modern representative democracy to an increasingly globalized world order.

The ongoing first attempt to replace the existing (international) Treaties of the European Union with a proper (democratic) Constitution must be assessed within this historical and global context. Its very starting point can be dated back to June 2001: within the space of a few days, Europe (and especially its leaders) had to learn that the old way of treaty-making behind closed doors had come to an end. The ones handing out the lesson were the Irish—the only citizens in Europe entitled to vote on the Nice Treaty. On June 6, 2001, they voted “no”. This blocked the Treaty, which was a compromise to allow the EU to adapt institutionally to enlargement. A few days after the Irish referendum, rioters in the Swedish city of Gothenburg transformed the EU summit venue into a stage for violence and police repression.

This propelled the need for reform and convinced the EU heads of state and government to agree—six months later at the summit in Laeken—on a new method for establishing European treaties by setting up a convention “on the future of Europe”. Thanks to its composition—a majority of the 105-member assembly were elected rather than appointed officials—the EU Convention developed a significant democratic dynamism and produced innovative proposals relating to greater transparency and participation, which the EU leaders could not openly oppose.

Instead of the envisaged simple new treaty, the EU heads of state and government signed—on October 29, 2004 in Rome—a “Treaty establishing a Constitution for Europe”. The constitutional notion triggered both a challenging ratification process, with several

popular votes, as well as an agreement on new principles and procedures for overcoming the notorious “secondary democracy” (Schiller, 2005) of the European Union.

In sharp contrast to earlier treaty ratification processes, it was now not just a few countries (such as e.g. Denmark and Ireland) which announced their intention of holding a referendum vote on the Constitutional Treaty (CT). By the beginning of 2005, almost half of the member states—representing a majority of the 450 million EU citizens—had promised to put the CT to a popular vote.¹ However, after the “non” and “nee” majorities in the French and Dutch referendums, all the other popular votes were postponed. In Estonia and Finland, the parliaments still opted to vote for the CT in 2006, bringing the overall number of member states which have now ratified the treaty up to 15 (as of January 1, 2007).

Table 1: Timeline: From Treaty to Constitution (2001-2009)

When?	Where?	What?
June 6, 2001	Ireland	Irish voters say “nay” to the Nice Treaty
June 14/15, 2001	Gothenburg, Sweden	Violent clashes and riots at the EU/US Summit
December 13/14, 2001	Laeken, Belgium	EU heads of state and government agree on convention method for treaty revision
February 28, 2002	Brussels, Belgium	Former French President VgD’E opens the Convention on the Future of Europe
June 13, 2003	Brussels, Belgium	Convention delivers draft “Treaty to establish a European Constitution”
May 1, 2004	Europe	Accession of ten new EU member states after referendum votes in nine of them
October 29, 2004	Rome, Italy	EU heads of state and government sign the EU constitutional treaty (CT) which includes an initiative right for one million citizens from several member states
2005/2006	Europe	15 member states ratify the CT, two do not ratify, eight are still waiting
2007 (first half)	Germany	The German EU-presidency is considering relaunching a revised CT
2008 (second half)	France	During the French EU-presidency the revised CT could be signed
June 14, 2009	Europe	At the same time as the next EP elections the first Europe-wide referendum on the CT could be held.
November 1, 2009	Europe	After ratification in all member states the revised CT could come into force.

¹ Spain (Feb 20, 2005), France (May 29, 2005), Netherlands (June 1, 2005), Luxembourg (July 10, 2005), Denmark, Poland, Ireland, UK, Portugal, Czech Republic.

Less discussed in the public sphere, but no less innovative or important for the new EU approach towards transnational democracy, are the new democratic principles and procedures the CT would introduce. It stipulates, among other things, the equality of representative and participatory democracy (Art. I-45), the right to participate in the democratic life of the Union for all citizens (Art. I-46), and - its most concrete measure - the establishment of the European Citizens' Initiative (Art. I-47). The article reads:

A significant number of citizens, no less than one million, coming from a significant number of Member States, may take the initiative of inviting the Commission, within the framework of its power, to submit an appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which they must come.²

For the very time in history citizens will get the right to be involved in setting the political agenda beyond national borders. This represents an attempt by the EU to overcome the limitations of indirect democracy and to open a perspective of "primary" democracy in Europe (Schiller, 2005). It will introduce a mechanism which focuses on specific policy issues and allows citizens to act as agenda-setters and—in the case of the constitutional referendums—as decision-makers. The historic novelty is that the EU is trying to combine transnational with direct democracy.

This new approach towards transnational democracy raises questions such as:

- does democratic theory offer hints and prospects for the possible success of the proposed transnational design?
- are there any norms which have been developed within national and/or subnational contexts which may be of relevance for the functioning of direct-democratic mechanisms on the transnational level?
- what preliminary lessons can be drawn from the ongoing ratification process on the EU constitutional treaty?

In the next sections we will try to give some answers to these questions and offer facts and materials for evaluating the next steps in researching and assessing the theoretical, normative and practical steps towards transnational democracy in Europe and beyond.

2 Towards a (new) Theory of Transnational Democracy

Only a few years ago, neither direct nor transnational democracy was the subject of comprehensive theoretical and empirical research. Traditionally, both fields had been marginalized by placing them in opposition to (in the case of direct democracy) representative democracy and to (in the case of transnational democracy) theories restricted to nation-states. Tony McGrew (2006) explains that:

² Art. I 47.4.

...until comparatively recently, democratic theorists rarely ventured beyond the state, since prevailing orthodoxy presumed a categorical distinction between the moral realm of the sovereign political community and the amoral realm of the anarchical society; (...) In effect, theorists of modern democracy tended to bracket the anarchical society, whilst theorists of international relations tended to bracket democracy.³

Researching for an early publication on the issue back in the first half of the 1990s (in the catalogue of the University of California at Berkeley), I was unable to find a single reference to “transnational democracy” in the available research literature. However, this has changed considerably over the last ten years, during which time a growing number of scholars have dedicated their time and skills to generating theories of transnational democracy. These scholars include Gross (1996), Dahl (1999), Dryzek (1999), Held (2000), Patomäki (2000), Schiller/Mittendorf (2002), Fossum/Trenz (2006) and McGrew (2006).

The growing literature on democratic theory and practice beyond national borders mirrors a genuine “transnational turn”⁴ and articulates a shift in understanding the democratic project. The situation is paradoxical indeed. On the one hand, more citizens than ever before are today enjoying some basic democratic conditions in their home countries.⁵ On the other hand, the scope of these national democracies becomes ever more restricted as the number of issues dealt with at the inter- and transnational levels steadily increases. The national democracies have often become too small to find proper solutions for the economic, environmental, security and health problems. Many communities with a common destiny no longer coincide with national borders.

Recent economic and technological developments have dynamized the development of globalization, bringing international organizations like the UN, the IMF, the World Bank and the WTO—but also regional supranational bodies such as the European Union, the African Union, ASEAN and NAFTA—into key positions. At the same time, the intensification of global interactions in the economic, political and societal fields profoundly challenges nation-state based democratic institutions. These transnational developments have effectively undermined the steering capacities of national polities.

In many of today’s electoral processes, international aspects and influences are playing a growing role, but popular votes within nation-states (both elections and referendums) are still mainly fought and won on domestic agendas (Trenz/Vetters/Jentges, 2006). While domestic issues still prevailed in e.g. the referendum votes in Spain, France, the Netherlands and Luxembourg, such transnational aspects as cross-border campaigning and financing have become more important. The interconnection of decision-making processes across Europe has a (growing) influence on how an issue is dealt with in one country.

In an attempt to map the existing theories of transnational democracy, one has to differentiate this approach from the still dominant internationalist perspective, under which sovereign states are the principal and moral foundations of world order. In underlining the normative necessity of a transnational approach, however, transnational democracy theoreticians instead share the belief that “under the conditions of contemporary globalization, transnational democracy is a necessary, desirable and politically feasible project: in other

³ McGrew (2006), p.2.

⁴ McGrew (2006), p.3.

⁵ Around 72% of the world population in 133 countries, according to Freedom House.

words, that democracy is to be valued over alternative systems of authoritative rule” (McGrew, 2006, p. 9).

As an illustration of the move from an internationalist towards a transnationalist perspective, the European integration process offers many practical examples. While the initial treaty structure placed the member states in pole-position as the sole “masters of the game”, the recent development towards a constitution structure has dramatically increased the legal and political role of the citizens. Today’s EU and its first and strongly-debated Constitutional Treaty is the expression of this change—from an internationalist to a transnationalist political community.

Within the transnationalist school, however, the literature offers at least four distinctive approaches towards a theory of transnational democracy:

- the **liberal-internationalist** approach focuses on the rule of law beyond national borders and sees the anarchic system of competing states being replaced by structured and formalized ways of cooperation between states. Its “transnationalist” dimension is rather weak, democracy beyond the nation-state being understood as a “voluntary pluralism under conditions of maximum transparency” (Keohane, 1998). Many reform debates within international organizations like the UN, the IMF and the WTO are dominated by the liberal-internationalist approach, which seeks to transfer the foundations of liberal-pluralism within nation-states to the transnational level—including the rule of law, the implementation of civil rights, limited citizen power and decision-making by unanimity;

- in opposition to the liberal-internationalist perspective, a second approach towards transnational democracy has developed: the **radical pluralist democratic** one. It represents “something of a cocktail of elements of post-modernist, Marxist and republican theory” (Hutchings 1999, p. 166f.) and includes a strong emphasis on equality, active citizenship and the promotion of public good. Radical pluralist democrats replace the somewhat procedural and technocratic approach of the liberal-internationalists by a moral agenda of emancipation. Instead of the old liberal elites, new actors such as the environmental or women’s movements are becoming protagonists at the transnational level;

- in an attempt to bring the liberal-internationalist approach to the rule of law beyond nation-states in line with the “bottom-up” radical pluralist democratic perspective, scholars such as David Held (1995) and Tony McGrew (1999) have developed an account described as a **cosmopolitan democratic** approach. Here existing principles of liberal international order are combined with radical views on the need for a “new constitutional settlement in which democratic principles are firmly entrenched” (Held, 1995). The agenda of “cosmopolitan democracy” includes the need for democratization both within existing polities and between them, and envisages the development of “a political order of democratic associations: cities and nations as well as regions and global networks” (Held 1995, p. 234.);

- a fourth perspective on transnational democracy deals mainly with the **deliberative democratic** dimensions. Instead of trying to reform or democratize existing forms of transnational governance, the proponents of this perspective understand transnational democracy as an expression of deliberative processes around the globe, bringing in a strong and decisive role for a transnational civil society: “The essence of democratic legitimacy is to be

found not in voting or representation...but rather in deliberation”, stresses J.S. Dryzek (1999). All those affected by decisions of a public authority, regardless of national borders, must have the right to have a say. They become stakeholders of a certain issue.

As this short overview has shown, the different approaches towards a theory of transnational democracy define themselves in opposition both to the traditional internationalist-realist approach as well as (to some extent) to each other. All four schools promote in a way an idealist vision for global governance: the liberal-internationalists envisage a world order “under the rule of law”, the radical pluralist democrats hope to realize a “progressive global agenda”, the cosmopolitan democrats outline “overlapping and autonomous centers of power” firmly based on democratic principles, while the deliberative democrats believe less in institutions than in the structures of public communication.

Fortunately, the political reality is both much more complex and less comprehensive. While the transnationalists are right to assess the traditional internationalist approach to global politics as outdated and political reality as much more complex and developed than the old realist perspective is able to accept, the development of a system of transnational governance is far from becoming truly global. We can, however, find elements of all four perspectives today, such as the establishment of International Criminal Courts (liberal-internationalist), the consolidation of Social Forums across the globe (radical pluralist democrats), the development of de facto federal regional bodies in different parts of the world (cosmopolitan democracy), and a transnational deliberative sphere as e.g. in the recent case of the Mohammed cartoons in Denmark (deliberative democrats).

Table 2: Models of Transnational Democracy

Type of Model	Approach	Main Actors	Example
Liberal-internationalist	Institutional-technocratic	Official institutions	UN, IMF Reform ICC
Radical-pluralist	Non-institutional activist	New social movements	World Social Forum
Cosmopolitan	Institutional-technocratic	World regions and cross-border co-operations	EU, African Union, Asean, NAFTA
Deliberative	Non-institutional activist	Civil society	Global debate on Mohammed cartoons

While all the above-mentioned theories obviously take in some of the ongoing global dynamics, they fail to offer a comprehensive toolkit for assessing the development of democracy at the transnational level, as they underestimate the growing importance of modern direct democracy within above all the European, but also other regional integration processes.

The mechanism of modern direct democracy seems to be a missing link for understanding and developing a theory of transnational democracy. Modern direct democracy

bridges the gaps between the institutional-technocratic approaches (as in the liberal-internationalist and cosmopolitan perspectives) and the non-institutional activist approaches (radical pluralist and deliberative). A theory of transnational democracy in the making must hence include an account of the functions and effects of initiative and referendum mechanisms, less for normative than for empirical reasons.

The European integration process has become the world's first and major testing ground for the development of a modern democracy beyond national borders. Its new approach offers the evidence that modern democracy has not only taken a "transnational turn", but also a "direct turn"—a development which will be examined more closely in the following section.

3 A Modern Democracy in the Making

Initiatives and Referendums—as a complement to elections—are playing an increasingly important role in involving citizens in the political process. During the last 15 years, almost all the states of Europe have introduced direct-democratic procedures at the local, regional or national level. In Latin America, 13 out of 15 countries have introduced instruments of direct democracy, and across Africa and Asia the tools of citizen-lawmaking have been introduced and are being used in a growing number of countries.

These developments in modern democracy have not gone unnoticed in the academic world. Research and documentation centres on direct democracy have been created at numerous universities, and such international organisations as the Council of Europe and the Stockholm-based International Institute for Democracy and Electoral Assistance (IDEA) have set up initial research networks. The increasing academic attention being given to the theory, procedures and practice of direct democracy is producing important findings both on its achievements and potential—but also on its limitations and problems.

Direct-democratic mechanisms as part of a modern representative democracy are not a new phenomenon, however. The first nationwide referendum took place back in 1793. This happened in France, which at that time had an electorate of just 6 million male and non-military citizens. On a turnout of just 31% of the total electorate, 9 out of 10 voters said "yes" to the so-called Montagnard Constitution. This constitution provided for optional legal referendums to be launched by one-tenth of the eligible citizens, within 40 days after a decision in parliament. However, in spite of the overwhelming "yes" by the citizens in the August 4 vote, the Montagnard referendum was never enforced. War, revolutionary terror and finally Napoleon Bonaparte's dictatorship prevailed during the following decades.

The European initiative and referendum experience differs from the American one in several ways. It is much more diverse, because it covers many different nation-states with different historical backgrounds and institutional set-ups, and it also has a somewhat different historical time frame. While citizen lawmaking has been an important element in politics in the United States for slightly more than a century, the European initiative and referendum experience started only two decades ago. The latter takes in all political levels, large and small countries, and minor and major issues. European referendums, especially outside Switzerland, may also be triggered and controlled by a president, a government or a parliament. Many strong leaders in European history had a preference for this type of "referendum from above"—and some still do (Sauger, 2005).

There have been three big waves of the “democratisation” of political democracy. The first occurred in 18th-century Switzerland, when all of the main features of a modern direct democracy, such as the mandatory constitutional referendum, the optional legislative referendum, and the popular citizens’ initiative were developed, introduced and practised. Another, much more fragile wave, flowed between the two world wars, when many new nation-states were trying to balance the top-down structures of governments with bottom-up-tools such as the popular initiative. This was not an overly successful attempt, as authoritarian leaders soon started to hijack the process, thereby discrediting direct democracy for almost a century. When, in the late 1980s and early 1990s, citizens all over Europe, in particular in the eastern part of the continent, stood up against their rulers and shouted “We are the people”, a third and much stronger wave of direct democracy took hold of Europe. Many countries across Europe and the world gave themselves new constitutions—very often by referendum.

Tab. 3 The Main Instruments of Modern Direct Democracy

Popular Votes/Referendums								
Mandatory		Optional						
		Institutional			Citizens’ Demand			
					New legislation	Old legislation		
Predetermined issues	Predetermined situations	Executive	Legislative majority	Legislative minority	Rejective	Abrogative	Citizens’ initiatives	Agenda initiatives

Historically, the introduction of initiatives and referendums shows three main tendencies:

- a) the introduction of political co-determination for citizens comes in successive stages. First to be established is the right of veto; then comes the statutory constitutional referendum; then follows the legislative referendum; and finally the right of initiative;
- b) citizens’ rights, after being introduced below, move upwards. Rights are first introduced in the member states (cantons), then move up to the federal level;
- c) rights are normally established by a broad coalition of differing interests. When the federal state in Switzerland was established in 1848, only the statutory constitutional referendum was grounded in the constitution. The legislative referendum became law in 1874. Finally, the right of initiative was established in 1891.

While the number of popular (referendum) votes around the world grew slowly during the first three quarters of the 20th century, the use of them increased in tandem with the extension of modern democratic institutions from the mid-1970s. In fact, more than half of all

nationwide referendums since 1793 have been held in the last 25 years. While more than half of these votes took place in Europe, approx. 150 each were held in Latin America, Asia and Africa.

Table 4: Popular (referendum) votes worldwide

Time	Europe	Asia	Americas	Oceania	Africa	Total
1793-1900	58	0	3	0	0	71
1901-1910	14	0	0	4	0	18
1911-1920	21	0	3	5	0	29
1921-1930	36	1	2	6	0	45
1931-1940	40	0	7	6	0	53
1941-1950	36	2	3	11	0	52
1951-1960	38	13	3	5	9	68
1961-1970	44	22	4	7	19	96
1971-1980	116	50	8	14	34	222
1981-1990	129	30	12	7	22	200
1991-2000	245	24	76	15	35	385
2001-2006	109	14	23	15	27	168
Total	874	156	143	95	146	1429

The basic source is Kaufmann/Waters (2004), updated by the author with the help of the following Web resources: www.iri-europe.org, iri-asia-net, c2d.unige.ch, www.idea.int.

In the context of the European integration process, initiatives and referendums have become a key concept of development. According to Dan O'Brien and Daniel Keohane, referendums “inject a dose of human drama into the technocratic machinery and arid theory of EU integration” and “generate understanding and encourage participation by focusing attention on the EU and its workings”. “This should be welcomed”, conclude the two London-based political analysts, as “referendums specifically on the EU are the only way of putting the Union and what it does at political centre-stage” (O'Brian/Keohane 2003).

In fact, no other issue has triggered as many popular votes worldwide as the European integration issue. Between April 1972, the date when the French voted in favour of enlargement, and October 2005, 47 referendums in 25 countries were conducted on either accession (34), new treaties (12) or constitutional matters (1).⁶ A closer look at these refer-

⁶ Bruno Kaufmann, Georg Kreis, Andreas Gross (2005), p. 25 ff. A special referendum took place in Italy on 18 June 1989. Triggered by a popular initiative of 114,000 Italian citizens, a popular vote was held on the “beginning of a EU constitution-making process by the European Parliament”. With a remarkable turnout of more than 80%, almost 90% of the voters supported the proposal, which gave the Italian government a strong mandate to work for a replacement of the treaties by a constitution. See also Roland Erne, Andreas Gross, Heinz Kleger and Bruno Kaufmann (1995).

endums—of which 34 have taken place since 1992 alone—shows that in 34 cases the voters took a pro-integration stance and the average turnout was fairly stable (around 65%). Unlike accession decisions by individual states, treaty referendums had profound impacts on the European Union at large. Most renowned are the French ‘non’ and the Dutch ‘nee’ to the EU constitutional treaty, as well as the earlier rejections in Denmark (the Maastricht Treaty) and Ireland (Nice Treaty).

Tab. 5 Popular (referendum) votes (nationwide) on Europe in Europe

	Country	Final voting day	Issue	Yes-share	Turnout
1	France	23.4.1972	Enlargement	68.28%	60.27%
2	Ireland	10.5.1972	Accession	83.1%	70.88%
3	Norway	26.9.1972	Accession	46.5%	79.2%
4	Denmark	2.10.1972	Accession	63.29%	90.4%
5	Switzerland	3.12.1972	Free Trade Treaty	72.5%	52%
6	Britain	5.6.1975	Conf. of Membership	67.23%	64.03%
7	Greenland	23.2.1982	Conf. of Membership	45.96%	74.91%
8	Denmark	27.2.1986	Common market	56.24%	75.39%
9	Ireland	26.5.1987	Common market	69.92%	44.09%
10	Italy	18.6.1989	Prep. for EU-Const.	88.06%	85.4%
11	Denmark	2.6.1992	Maastricht Treaty	47.93%	83.1%
12	Ireland	18.6.1992	Maastricht Treaty	68.7%	57.31%
13	France	20.9.1992	Maastricht Treaty	51.05%	69.69%
14	Switzerland	6.12.1992	EEA Accession	49.7%	78%
15	Liechtenstein	12.12.1992	EEA Accession	55.81%	87%
16	Denmark	18.5.1993	Maastricht Treaty	56.77%	85.5%
17	Austria	12.6.1994	Accession	66.58%	82.35%
18	Finland	16.10.1994	Accession	56.88%	70.4%
19	Sweden	13.11.1994	Accession	52.74%	83.32%
20	Åland Islands	20.11.1994	Accession	73.64%	49.1%
21	Norway	28.11.1994	Accession	47.8%	89%
22	Liechtenstein	9.4.1995	EEC	55.88%	82.05%
23	Switzerland	8.6.1997	Accession procedures	25.9%	35%

24	Ireland	22.5.1998	Treaty of Amsterdam	61.74%	56.26%
25	Denmark	28.5.1998	Treaty of Amsterdam	55.1%	76.24%
26	Switzerland	21.5.2000	Bilateral Treaties	67.2%	48%
27	Denmark	28.9.2000	Euro membership	46.87%	87.2%
28	Switzerland	4.3.2001	Accession procedures	23.2%	55%
29	Ireland	7.6.2001	Nice Treaty	46.13%	34.79%
30	Ireland	19.10.2002	Nice Treaty	62.89%	48.45%
31	Malta	8.3.2003	Accession	53.6%	91.0%
32	Slovenia	23.3.2003	Accession	89.6%	60.3%
33	Hungary	12.4.2003	Accession	83.8%	45.6%
34	Lithuania	11.5.2003	Accession	91.1%	63.4%
35	Slovakia	17.5.2003	Accession	92.5%	52.2%
36	Poland	8.6.2003	Accession	77.5%	58.9%
37	Czech Republic	14.6.2003	Accession	77.3%	55.2%
38	Estonia	14.9.2003	Accession	66.8%	64%
39	Sweden	14.9.2003	Euro membership	42%	82.6%
40	Latvia	20.9.2003	Accession	67%	72.5%
41	Romania	19.10.2003	Prep. for EU accession	89.6%	55.2%
42	Spain	20.02.2005	Constitutional Treaty	76.73%	42.32%
43	France	29.05.2005	Constitutional Treaty	45.32%	69.34%
44	Netherlands	01.06.2005	Constitutional Treaty	38.4%	62%
45	Switzerland	05.06.2005	Schengen membership	54.6%	56.63%
46	Luxembourg	10.07.2005	Constitutional Treaty	56.52%	90.44%
47	Switzerland	25.09.2005	Free Movement Enl.	56%	54.51%
48	Switzerland	26.11.2006	Cohesion Contribution	ADD	ADD

Extensive studies undertaken by academics such as Simon Hug, Matthias Benz and Alois Stutzer offer interesting analyses. First, European policies are in greater harmony with the wishes of the citizens in countries where referendums on Europe are often held (Ireland and

Denmark) than in countries without such instruments. Second, referendums about Europe contribute over the longer term to increased support for the integration process as such. And third, the referendum option improves the ability of governments to determine the agenda of treaty negotiations. This last point was of greater importance when only a very small number of countries had the option of an EU referendum. As this option was discussed in most, and implemented in many, countries during the latest treaty negotiations, this impact may have diminished.

More problematic aspects of popular votes on EU issues have been linked to the conduct of the referendum process. In several countries, special majority requirements are linked to a referendum vote, such as a 50% turnout quorum (Poland) or a 50% approval quorum (Lithuania). However, such requirements invite boycott strategies and have negative impacts on the democratic process. Additionally, there are obvious problems linked to non-binding votes, when the electorate does not know for sure if parliament and government will honour the outcome of a referendum. Finally, in countries where referendums are a rare phenomenon, political parties tend to perceive referendums as undermining representative democracy and decisions in parliament.⁷

The inclusion of direct-democratic mechanisms into modern representative democracy has almost become a standard—especially in Europe. This mirrors the need for continuous and dynamic democratization as well as an overall approval by large majorities in most countries, as a recent study by Donovan and Karp (2006) has underlined. However, as the normative debate on whether modern direct democracy is desirable and feasible has diminished due to the empirical facts, design and quality aspects have become much more important.

As Schiller (2006) emphasizes, a “proposal to incorporate direct democracy into any political system needs to take into account the polity context, particularly the institutional background, the history and the political culture(s)”. For the envisaged use of direct-democratic procedures at the transnational level in Europe, this careful development of implementation criteria is of high priority, as the process will include an electorate of several hundred million citizens. At the same time, it is advisable to learn from the growing experience with popular initiatives and referendums in Europe on Europe.

4 Lessons from Europe for Europe (and beyond)

The founding fathers of the European Union did not like the idea of including citizens directly in decision-making processes at the transnational political level. This was due less to the experience of the Second World War than to the growing threat of the Cold War, which initially spoiled the ideas for a democratic European federation which were developed in the 1940s. This resulted in the integration process of the 1950s being dominated by economic and bureaucratic considerations: Jean Monnet’s system did not provide for direct civilian participation in decision-making. It was another great Frenchman, President Charles de Gaulle, who first formulated the challenge of a Europe-wide referendum at the beginning of the 1960s.

⁷ For an overview of referendum use in Europe see: Bruno Kaufmann and M. Dane Waters: *Direct Democracy in Europe—a comprehensive reference guide to the initiative and referendum process in Europe*, Carolina Academic Press, North Carolina, USA: 2004.

The proposal for a pan-European referendum resurfaced during the work of the EU Convention in 2002/2003, when a large majority of Convention members signed a resolution proposing a Europe-wide popular vote on the Constitutional Treaty.⁸ Despite this clear signal from the Convention, the EU heads of state and government opted for the old solution of allowing the member states themselves to decide whether and how a popular decision should be held or not. This had two negative consequences:

- in several member states, the citizens only learned after the signing of the CT that they would have a say on the issue;
- the uncoordinated organisation of the ratification process led to mainly national debates on what were mainly European issues.

Another, much better and more democratic method would have been—as Schiller (2006) has outlined—to

- set up a convention with a directly-elected constitutional assembly
- provide for a minimum level of public discussion on the constitutional issues
- agree on the obligation of all member states to provide in their domestic law for a constitutional referendum for ratification.
- set rules for the approval of the constitution.

Such a procedure would have ensured ownership by the citizens throughout the process. In order to assess the usefulness of the referendum tool in the ratification process it is of great importance to consider the context and framework under which such a vote takes place.

All four referendums held in 2005 on the CT were votes triggered by authorities and—with the exception of the French vote—all the votes were non-binding. As Morel (2005) has shown, however, referendums on European issues have in certain cases become de facto mandatory and de facto binding. While in Spain, France (the President) and Luxembourg it was the government which triggered the referendums, in the Netherlands it was the parliament which decided to hold the very first nationwide referendum vote in history—against the wishes of the conservative government. It is no surprise that opposition leader and prospective PM, Wouter Bos, has already announced that he will propose a new Dutch vote on a follow-up CT to be agreed by the EU by 2008.⁹

The double rejection of the CT in France and the Netherlands acted as a catalyst for EU leaders to start looking for the right procedures in the appropriate democratic forms. As a first step, the EU institutions could try to introduce the right of initiative provided for in the CT. It has the power to generate both horizontal and vertical political relationships, which have been neglected so far in Europe. Under Part I, Title VI of the Treaty establishing a Constitution for Europe—“The Democratic Life of the Union”—the principle of an

⁸ The text of the resolution documented in Kaufmann (2006, Handbook): “We propose that the Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliament Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded.”

⁹ EU Observer, July 6, 2006 (www.euobserver.com).

equality between indirect and direct democracy was postulated. A special article (Art. I-107.4) was dedicated to “participatory democracy”. It sets out the terms of reference for a “European citizens’ initiative”.

European laws are to determine the provisions for the procedures and conditions required for such a citizens’ initiative, including the minimum number of EU member states from which such citizens must come. If implemented, this new “initiative right” would be the very first direct-democratic instrument at a transnational level, offering citizens an equivalent to the European Parliament’s and the European Council’s right to request legal action by the Commission. However, the EU Commission will retain its formal monopoly to initiate EU legislation, and the citizens’ initiative right will not—unlike initiative rights in countries such as the Slovak Republic or Slovenia—trigger a referendum process.

Table 6: Initiative rights in the countries of Europe

Countries with initiative rights at all political levels (10)	Countries with initiative rights only at the national level (11)	Countries with initiative rights only at the sub-national level (9)	Countries in which there is legal recognition of the instrument of the agenda initiative (20)
Hungary	Latvia	Belgium	Hungary
Italy	Austria	Czech Republic	Italy
Lithuania	Portugal	Estonia	Slovakia
Slovakia	Albania	Finland	Slovenia
Slovenia	Macedonia	Germany	Finland
Netherlands	Croatia	Sweden	Germany
Poland	Romania	Great Britain	Netherlands
Spain	Moldavia	Norway	Austria
Liechtenstein	Andorra	Bulgaria	Portugal
Switzerland	Serbia		Spain
	San Marino		Switzerland
			Norway
			Albania
			Romania
			Bulgaria
			Moldavia
			Andorra
			Serbia
			Macedonia
			San Marino

Kaufmann (2006, Handbook), p.8: Sources include IDEA database on direct-democratic procedures worldwide.

The European Citizens’ Initiative (ECI) is an “agenda-setting” tool, which could contribute towards making European politics more visible and could allow for transnational public debates. This would contribute to the “Europeanisation” of political democracy and serve as

an additional means of popular control of policies within the EU. Much, though, will depend on the European laws still required “to determine the provision for the procedures”.

Two key questions which were debated during the constitution ratification process are, first, the formal powers a successful ECI will have over the Commission (for example, must the Commission follow the intentions of the ECI?), and secondly, whether the ECI can be used for constitutional amendments as well, opening up the door for further reforms of the EU Treaties “from below”.

The growing experience with popular initiative rights at the local, regional and national levels suggests that the time offered for gathering the required signatures, as well as the methods of signature gathering, are critical to the democratic potential of this political instrument. As the EU Commission has proudly declared the ECI to be a tool to “rapidly diminish the democratic deficit in the EU”, there are high expectations linked to the new instrument—expectations which may not be fulfilled if the implementation laws are not developed in a citizen-friendly manner and with great institutional care.

Politically, the prospects for an early introduction or implementation of the European Citizens’ Initiative are uncertain. From the official side, conflicting signals have been sent out: while the EU Commission appears ambivalent, in the European Parliament strong efforts are being made to include the ECI in the “rescue plan” for the constitution. Finally, no new signals have been given by the heads of state and government on the issue.

Before the referendums in France and the Netherlands, the President of the EU Commission, José Manuel Barroso, stated: “The constitution provides new ways for citizens to actively participate in the decision-making process by being able to propose initiatives if backed up by one million signatures across a significant number of countries. To put it simply: we will have more democracy.”¹⁰ Barroso’s deputy, Communication Commissioner Margot Wallström, has stressed that with the new initiative right, “real progress for direct democracy in Europe” will be made.¹¹ However, in its so-called “Plan D” (D for Democracy, Dialogue and Debate), which was published on October 13, the Commission made no reference at all to the ECI, ostensibly in order to avoid ‘cherry-picking’ from the unratified constitution.¹²

While the EU Commission appears to have ‘cooled off’ in its attitude to the ECI, enthusiasm within the European Parliament has grown. For the Liberal Democrats in the Parliament, the Citizens’ Initiative is one of “three key innovations in the stalled constitutional treaty”, which should be implemented “without delay”.¹³ In more careful language, the two constitutional rapporteurs to the EP, Andrew Duff and Johannes Voggenhuber, argued in their report of mid-October: “A strategy based on the selective implementation of the Constitution risks destroying the consensus between the institutions and among the Member States, thereby aggravating the crisis of confidence; therefore we recommend only certain

¹⁰ José Manuel Barroso, “Prospects and challenges for the European Union”, “Friends of Nieuwspoor” speech, The Hague, 2 March 2005.

¹¹ Speech in Prague on May 9, 2005. Wallström said on Europe Day that: “The constitution gives more direct power to the people... If you manage to collect one million signatures in a significant number of EU countries, you can ask the Commission to propose a new law or policy. In effect, this gives you a right of initiative that had previously been reserved for the Commission alone. That is real progress for direct democracy in Europe.”

¹² COM(2005) 494 final, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS.

¹³ “Liberal Democrats Unveil “3 point” European Union Reform Plan”, June 5, 2005.

selected democratic reforms that could be introduced by revision of the rules of procedure or by inter-institutional agreement—such as transparency of law-making in the Council of Ministers, the introduction of a form of citizens’ initiative...”.¹⁴ At the same time, preparations were underway to propose draft bills for implementation of the ECI in the EU Parliament (Duff/Voggenhuber 2005).

The very idea of an issue-centred, transnational, agenda-setting instrument “from below” has, however, already inspired many actors within European civil society to study the possibility of launching an initiative. Some groups and networks have gone one step further and have in fact already launched a European Citizens’ Initiative. In mid-July 2006 seven such transnational citizens’ initiatives were launched.

Table 7: The first seven European Citizens’ Initiatives

No.	Issue	The main goal	Initiative Committee	Link
1	Oneseat Initiative	To establish Brussels as the only seat for the EP	Mainly MEPs	oneseat.eu
2	Initiative for the Initiative	To establish a citizen-friendly implementation law	More than 100 NGOs, think-tanks and academic institutions	Citizens-initiative.eu
3	Equality for all!	To extend EU citizenship to all EU residents	European Association for the protection of human rights	aedh.net/petition_million/
4	Atomstop	To end the Euratom Treaty	Friends of the Earth, Global 2000	Million-against-nuclear.net
5	European Health Initiative	To allow natural remedies Europe-wide	Dr. Rath Health Foundation	eu-referendum.org
6	Partnership instead of Membership	To prevent Turkey from becoming a full member of the EU	Conservative NGOs	Voiceforeurope.org
7	Rule of Law Initiative	To enforce cooperation on justice within the EU	French politicians	Petition-europe.justice.com

¹⁴ COM(2005) 494 final, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS.

A brief assessment of these first seven ECIs shows that the new instrument is being used by many different groups from different sections of society, including politicians, human rights groups, conservative organizations, economic foundations and broad alliances of non-governmental groups. However, as the concept of the ECI is still rather new, and as the initiative practice and culture in many European countries is as yet weakly developed, a few ECIs are still calling their attempt to gather one million signatures a “petition”. Furthermore, the fact that the implementation law does not yet exist means that all kinds of ways of collecting signatures are being used, including the simple and hardly verifiable registration of names on the Internet. By this means, the “Oneseat”-Initiative collected more than one million signatures within five months in 2006. It is clear that the Internet offers a unique transnational platform for launching and conducting such initiatives. Interestingly, all the initiatives so far launched understand the need to publish their information in as many European languages as possible.

This early but dynamic development of transnational direct-democratic practice offers many practical opportunities, both for academics and political practitioners, to test and assess the first steps towards transnational direct democracy. In the longer perspective, however, it will be essential to carefully establish a democratic infrastructure beyond the raw tool of the initiative. This will include some kind of European electoral management body to assist, test and follow up European Citizens' Initiatives, as well as implementing a comprehensive voter education program across the region.

5 Conclusions

Over the last six years, Europe has made its first steps towards a modern transnational democracy. The integration process offers a prime and unique case study of practical democratization beyond the nation-state—and hence a first view of what will be likely to happen in other contexts as well around the globe.

It will be critical to comprehensively research both the ‘transnational’ and the ‘direct’ turns, as they are increasingly interlinked. Existing theory building offers a rather broad framework of assessment tools for democracy in a transnational context. It includes both institutional-technocratic as well as non-institutional approaches. But existing theories do not at all—or at best only weakly—take into account the growing importance of modern direct-democratic processes. As has been shown, such tools are—under well-designed and citizen-friendly circumstances—delivering exactly what a quasi-transnational polity such as the EU is most lacking today: an intense dialogue between institutions and citizens, a feeling of ownership of EU politics by the voters, and a solid legitimacy for the decisions made at EU level. It is more than worthwhile to take into account all the main aspects and actors identified under the proposed perspectives, as (together) they offer a comprehensive mirror of what is going on. Have said that, aspects and patterns of transnational direct democracy must be embedded in issues such as basic human and civic rights, the rule of law, regional and possibly overlapping transnational entities, manifold levels of autonomy, as well as the structures for and assistance to deliberative processes beyond national borders.

What a theory of modern transnational democracy will not be able to deliver, however, is a blueprint for a radical, partisan or ideological agenda such as is foreseen, for example, by proponents of a radical pluralist approach. The instrumentalization of political institu-

tions is sometimes legitimate and sometimes not. It is naturally permitted and necessary to use the existing tools and instruments of democracy for a certain agenda, e.g. to influence a decision-making process in a specific, special-interest direction. What is, however, not legitimate is to design an institution of political democracy as an instrument for reaching a certain policy goal or position of power. There is, in fact, a long history of trying to adapt electoral institutions to a specific agenda of one party or person. This is true both for traditional electoral processes as well as for initiative and referendum processes. Within the field of direct democracy we are aware of both participatory devices without any decision-making powers, as well as plebiscites - popular votes initiated and controlled by a majority in the legislative or within the executive branch. This is a basic lesson from the sub-transnational experience and there is an obvious risk that actors will try to instrumentalize direct democracy beyond the nation-states.

For the transnational level—in our case Europe—it will therefore be of the greatest importance to design procedures of direct democracy which are as robust and accessible as possible. This includes a wide range of supportive elements, ensuring the fairness and equality of the instruments, and a very restrictive use of special majority requirements, which should mainly be about the necessary respect for national differences and autonomy. In contrast to local and national levels, where a broad set of direct-democratic instruments are known and (often mis-)used, the European level should start with a very limited set of initiative and referendum instruments, including the proposed agenda initiative as well as the mandatory constitutional referendum, bringing in the people from the very beginning of the process.

Regarding the ongoing European constitution-making process, the big challenge ahead is to both deliver and to make it as democratic as possible. To begin with, it will be necessary to resize the draft constitution into a very short and concise text, which would include the most important parts of sections I. (institutions and democracy) and II. (charter of basic rights). In addition, a new constitutional treaty should include a constitution-making clause (in section III, formerly IV), which would introduce the direct election of a new constitutional convention, as well as instituting a continuous dialogue between the drafters and the citizens. Such a new mini-CT could be agreed by the member states fairly soon (as early as 2008, for example), offering another great opportunity to combine the next European elections with a pan-European referendum on the new Treaty. This could then take place in June 2009.

In early 2007, there seems to be little evidence that the hope of some eurosceptic politicians and activists of simply scrapping the constitutional treaty will ever be realised. The question is much less WHETHER the transnational direct turn in Europe will take place or not, but HOW this new transnational constitution is to be designed and used. Exactly the same is true for the old hope of party politicians and other elite-oriented actors to just skip the introduction and use of the initiative and referendum tool. Wherever one has had a popular vote on a certain issue, there is a strong argument for revisiting the vote—by popular vote again. In this sense, a new European Treaty will face the referendum challenge again and again. One way to limit the challenge will be to both democratize the constitution-making process itself and to include in it accessible, citizen-friendly and non-antagonistic instruments of participatory and direct democracy.

The new ‘European approach’ will bring transnational democracy forward—but it will not be possible to do this without active citizens who are prepared to give of their time to become actively involved in the future of the European Union.

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