

Democracy in Europe: How the EU can survive in an age of referendums

By Mark Leonard

The European Union has never been loved, but for most of the last 50 years it has been accepted. Voters thought that as long as it made them richer and safer they were happy to leave the precise details of treaties to bureaucrats and politicians.

Those days are over. The French and Dutch voters showed why. Citizens are no longer willing to follow the lead of their governments. Many see Europe as a problem rather than a solution to problems. Increasing numbers of politicians – even in the heart of ‘Old Europe’ – are willing to use the EU as a political punch-ball to further their own careers. The latest Eurobarometer polls reveal that barely half of Europe’s citizens (52 per cent) think their country benefits from being in the European Union.

The timing of the EU’s fall from grace is unfortunate, because a growing vogue for direct democracy is giving the public a real say over the EU’s shape and structure. Before the latest round of enlargement in May 2004, nine out of ten countries held referendums on whether to join. And then when the constitutional treaty was agreed in June 2004, ten of the 25 member-states decided to ratify through referendum rather than parliamentary vote. If European leaders tried to revive the constitutional treaty, or replace it with a different document, they would find the precedent very hard to ignore.

The French and Dutch referendums have thrown the European Union into confusion. Officially, the EU is in a ‘period of reflection’, but the governments are unsure what to do. Fourteen countries have already ratified the treaty. Nine have not yet tried – and some of these have no intention of trying. Two have tried and failed. The Dutch and French political elites say that they will not ask their electorates to vote again on the constitution, and that it cannot be renegotiated. The Austrian presidency has promised to have a ‘roadmap’ in place in time for the EU’s June 2006 summit. But there is no consensus on what it should say.

Maximalists versus incrementalists

European leaders are caught in a ‘Catch 22’ situation. On the one hand they fear that an EU with 25 members – 27 when Romania and Bulgaria join in 2007 or 2008 – will not work effectively under the provisions of the Nice treaty. The list of grievances is long. The system of having one European commissioner per member is unwieldy (the Nice treaty says that a new formula must be found when the membership reaches 27). The voting weights agreed at Nice are illogical (larger member-states are under-represented, relative to their populations). The six-monthly rotating presidency damages the EU’s ability to run a coherent and effective external policy. The division of responsibility for foreign policy between the High Representative for Foreign Affairs, Javier Solana, and the Commissioner for External Affairs, Benita Ferrero-Waldner, creates unnecessary turf wars.

On the other hand, European leaders know that they will not be able to persuade the public to vote for treaty changes unless they can demonstrate that the EU delivers practical benefits – which is very difficult to do within the existing treaties.

So far, there have been two main responses to the dilemma. The maximalists, led by the Luxembourg Prime Minister Jean-Claude Juncker, with strong support from Austria, Belgium and Spain, as well as the European Parliament, think the solution is to ignore the French and Dutch votes. They cite as a precedent the EU's response to the Danish 'Nej' to the Maastricht treaty in 1992, and the Irish 'No' to the Nice treaty in 2001: the EU asked each country to vote again on the same treaty, with the addition of only protocols or declarations.

The maximalists set store by a declaration attached to the constitutional treaty, saying that if 80 per cent of member-states have ratified it, but the others have not, the European Council should meet to review the situation. They therefore hope that if another six countries ratify the treaty, a special meeting of the European Council will put pressure on France and the Netherlands to hold another vote. The problem with this strategy is, first, another six countries are unlikely to ratify; and second, even if they did, the European Council cannot force unwilling member-states to hold referendums. However, some of the maximalists, like Belgian Prime Minister Guy Verhofstadt, argue that countries which cannot ratify may have to be left behind: EU member-states committed to integration should move ahead with their own inner circle or hard core.

The maximalists also talk of drafting a 'social declaration' that would be appended to the treaty to make it more palatable to the French. The Austrian Chancellor, Wolfgang Schüssel, has pledged to keep the constitution on life-support during his country's presidency of the EU, in the first half of 2006. The countries that will follow, Germany and Portugal, have said in public that they will try to use their respective presidencies in 2007 to resuscitate the constitution (in private, however, senior figures in the German government acknowledge that it cannot be revived). The more moderate maximalists admit that the treaty as such cannot be revived but argue that large parts of it can be transferred into a new treaty.

The French government leads the opposite camp, that of the incrementalists. It is increasingly clear that a majority of member-states fall into this camp. Incrementalists want to bury the constitutional treaty and craft a new 'mini-treaty' that would amend the existing treaties but not be called a constitution – that word raised expectations and offered a tempting target to eurosceptics. The mini-treaty would include some of the most important but relatively uncontroversial provisions of the constitution – for example the creation of the posts of foreign minister and EU president, the reduction of the number of commissioners and the introduction of 'double majority' voting. The idea would be for most parliaments to ratify this package of changes without the need for another popular vote.

Some French leaders envisage quite an ambitious mini-treaty. Presidential candidate Nicolas Sarkozy, for example, wants to save 'part one' (the introduction and statement of the EU's goals), 'part two' (the Charter of Fundamental Rights) and bits of 'part three' (the detailed provisions). However, the more one includes in the mini-treaty, the greater the risk that some countries will want to hold referendums and thus risk blocking the proposed treaty change.

One variant of the incrementalist strategy would be to link treaty change to Croatia's accession to the EU. If the process of writing a mini-treaty was launched in the second half of 2007, the document could be ready before Croatia finishes negotiations in 2008 or 2009. The text could then be attached to the Croatian accession treaty as a protocol, and voted through by national parliaments. The incrementalists would seek to prove that they were not undemocratic by including the parts of the constitution designed to open up European decision-making to public scrutiny and empower national parliaments.

One of the obvious difficulties with the incrementalist strategy is that it will be hard to get 25 or 27 governments to agree on which provisions of the constitutional treaty should be saved. For example many small countries have little enthusiasm for the post of an EU foreign minister, which the big countries are keen on. And the Germans will insist that the Charter of Fundamental Rights be included, though that is controversial in the UK.

In theory there is a third camp, consisting of political leaders who would rather not change the treaties at all. The ruling Law and Justice Party in Poland, for example, regards the Nice treaty as an excellent document that should be kept unaltered (Poland, like Spain, did particularly well in the Nice treaty, winning a voting weight out of proportion to its national population). And in Britain many political leaders would happily stick with Nice – even though Prime Minister Tony Blair is an advocate for change. However, in practice, if most governments decide to negotiate a mini-treaty, Poland and other sceptical countries will play the incrementalist game and join in the talks.

Both maximalists and incrementalists stand for European Union business as usual, echoing long traditions in EU politics. The incrementalists hark back to the 'Monnet method', named after the EU's principal founding father. He argued that Europe should be constructed issue by issue, without involving the public directly. The maximalists, by contrast, are trying to complete the vision of the Italian MEP Altiero Spinelli. He penned the first draft European constitution in 1984.

Europe's triple challenge

Both maximalists and incrementalists can claim support from a number of European governments. But neither approach is capable of healing the rift that has emerged between the European project and its citizens. In fact, both strategies could end up making the EU even less popular. Although the arguments over the lost referendums will continue, many commentators would agree that European integration faces three particular challenges:

- ★ **A delivery deficit.** The latest poll by Eurobarometer shows that most European citizens share common concerns: unemployment, economic stagnation, and lack of security at home and abroad. But the EU no longer has a great deal of credibility in dealing with such concerns. Furthermore, some of the things the EU is doing – enlarging, promoting economic reform and reshuffling contributions to and from its budget – create anxieties that are easily exploited by populists.
- ★ **A consent deficit.** Rightly or wrongly, the EU is regarded as an elitist project that operates without the consent of citizens. One of the lasting legacies of the debate about the European constitution is that major changes to treaties, as well as future enlargements, will need to be agreed by referendum in some of the most important countries, such as France and perhaps the UK. This will make it very hard to get new treaties ratified.
- ★ **The EU's growing diversity** has created rifts between and within member-states. The low-paid in older member-states see enlargement as a threat to their welfare. The new member-states see 'social Europe' as a ploy to damage their competitiveness. These differences will make it hard to develop a single approach to economic policy co-ordination, migration, or foreign policy.

The maximalists could easily worsen all these problems. By focusing on institutions rather than a concrete policy agenda, they appear to favour 'ever closer union' over delivery. By ignoring the French and Dutch votes they reinforce the idea that the EU is undemocratic (a Eurobarometer poll of late 2005 shows that only 22 per cent of Europeans think the ratification process should continue). By threatening countries that cannot ratify with being 'left behind' in an 'outer circle', they risk creating a more divided Europe. And by insisting that cherry-picking should not be allowed, they may ensure that none of the constitutional treaty is saved.

The incrementalists' case is more plausible. The treaty changes they want are modest, designed to make the EU more effective. The most likely provisions of a mini-treaty – covering areas like voting weights, foreign policy or the size of the European Commission – caused virtually no controversy in the French or the Dutch referendums. However, incrementalists have underestimated the damage that the double No inflicted on the EU's image. They are wrong to think that the impact of No votes in referendums can be wiped out with a vote by national parliaments. What is more, they under-estimate the political pressure that will build up for further referendums, even on modest treaty changes. Denmark and Ireland would probably be legally required to hold popular votes, and the governments in many other countries would come under strong pressure to follow suit.

In any case, both the maximalist and incrementalist approaches are living on borrowed time. Both depend on a basic store of goodwill towards the EU – a store that is rapidly emptying. As the EU's public approval ratings fall, each treaty becomes more difficult to pass, encouraging fringe parties to portray the Union as an elite conspiracy. The maximalist approach, of pushing for a grandiose treaty, has already backfired. The incrementalists may prevail one last time: a mini-treaty could perhaps be ratified in every member-state. But the cost of pushing through treaty change by parliamentary vote in most member-states could be widespread resentment, and thus a threat to the viability of cherished EU projects such as enlargement.

The new politics of the European Union

If EU leaders want to modernise the Union's institutions, they will need to adapt to a new political landscape. In the next decade, the issues that define the EU's agenda will be different. 'Widening' will become more controversial than 'deepening'. Federalists have not disappeared from European chancelleries or the Brussels bureaucracies, but their political star has been on the wane for over a decade. Ironically, the process of negotiating the constitutional treaty pointed to the end of the federal dream. After 16 months of deliberations, the Convention on the Future of Europe decisively rejected key federalist demands, such as a directly elected president of the Commission, and a European Parliament with the power to initiate legislation. In the event, even the modest treaty that was agreed by governments was rejected in referendums. With the EU enlarging to 25 the cause of federalism has weakened. And the huge diversity of the member-states means that even if there was a will to move towards federalism, it would be almost impossible to agree on a common structure.

While many pro-Europeans still hope to revive the constitution, there are no longer any big integrationist projects like the single market and the single currency. As a result, the spectre of a super-state is likely to subside in sceptical countries such as Britain and Denmark. It will be overshadowed by the fear of enlargement

which is growing in countries like Germany, Austria, France and the Netherlands. Several lobbies have formed against further enlargement. Federalists fear that a wider Europe will be incapable of 'deepening'. Much of the right wants to exclude Muslim Turkey for cultural reasons. Much of the left fears that cheap labour from the east will put blue-collar workers on the dole. Because enlargement creates economic winners and losers, it is forging new political alignments.

The institutional balance in Brussels is also becoming more complex, and more political. One change is the relationship between the European Parliament and the European Commission. The Parliament's influence over the Commission has been growing ever since the Maastricht treaty, which made the terms of each Commission coincide with a parliamentary term. EU leaders have gradually moved towards the view that the political family of the Commission president should reflect the political colour of the majority in the Parliament. Thus after the 2004 parliamentary elections, the European Council did not seriously consider a centre-left candidate for the presidency. It appointed the centre-right José Manuel Barroso, who has led a Commission with a clear centre-right profile, and a liberalising, pro-enlargement agenda. Although the European Commission does not have the power to liberalise markets without the support of the member-states, it has become a lightning rod for fears about globalisation. The French No campaign was to a large extent a backlash against that agenda. There is a real chance that the 2009 European elections could provide a stage for debates on such pan-European questions, rather than merely measure the unpopularity of national governments.

Of course, it is referendums that have made the biggest difference to EU politics. In the future any move to widen or deepen the EU will require referendums. The next time a new treaty is negotiated, national leaders will find it difficult not to put the result to a popular vote. And France has changed its constitution, so that all future enlargements of the European Union – after Bulgaria, Romania and Croatia – will be subject to a plebiscite. Austria has also pledged to hold a vote on Turkey's accession.

Europe's political system is now under strain. Its decision-making structures are rooted in diplomacy, rather than politics. They were designed to help governments reach agreements through intricate back-room dealing – but not to win popular support for EU policies. The founding fathers crafted the institutions and procedures to produce workable compromises rather than ideological clarity. The strict division of powers between a powerful Council of Ministers (designed to represent the national interest), a technocratic Commission (designed to represent the European interest) and a weaker European Parliament (designed to represent the people of Europe) makes it difficult to pass any measure that is radical. Because any law needs the support of at least 70 per cent of the votes in the Council of Ministers (under the qualified majority voting procedure), it is harder to pass laws in Brussels than in any other legislative system in the world.

The EU has struggled to involve the public in debates over its most cherished projects. There are good reasons for this: arguments about the composition of tomato paste or lawnmower sound emissions do not fit into party political debates and are best left to technical experts. But as the Union has grown deeper and wider, it has started to deal with issues that are political, rather than technical. Its decision-making structures have failed to keep pace with this change. For example, when governments agreed on the convergence criteria for Economic and Monetary Union, there was precious little discussion about the macro-economic consequences. When the recent enlargement to the east was planned, there was much discussion of the impact on EU decision-making and the structural funds – but no real debate about the political, economic and security consequences of reuniting Europe. This dearth of debate has contributed to the brittle legitimacy of monetary union and enlargement.

Partly because of the lack of debate over the long-term goals of the euro and enlargement, citizens have tended to focus on their short-term costs. In the Dutch referendum campaign, France and Germany's bending of the rules of the stability and growth pact fuelled the sceptics' campaign. In France, the No campaign used the metaphor of the 'Polish plumber' to blame many of France's problems on enlargement to the east.

The lesson from the recent referendums is that 'Europe' has become a political issue across the EU. The dividing lines are not simply between maximalists and incrementalists, or between those who want looser or tighter European institutions. There is now a real debate about the model of political economy that Europe should adopt, with 'Brussels' becoming a scapegoat for much discontent. These debates will create strange bed-fellows, because the meaning of left and right varies from country to country (the German Christian Democrats call for more social Europe, while the British and Hungarian centre-left governments favour tax competition).

Yet this politicisation of the EU does not have to be destructive. For the next few years, because the great integration projects have been largely completed, EU politics will be less about building institutions, and more about ensuring that existing policies are delivered. In these arguments over policy, political differences will need to be aired. If elites avoid frank discussions, genuine differences do not go away – they simply provide a rallying

ground for populists. Politicians and commentators should therefore learn to see political conflict within the EU as normal, and avoid the over-blown talk of profound crisis that followed the French and Dutch Noes.

A new approach: democratic functionalism

A new catch-phrase is being mouthed by officials across Europe: “the French and Dutch votes were about the ‘context’ rather than the ‘text’”. In other words, the ‘Noes’ had more to do with frustration at the French or Dutch governments, the performance of the EU, or enlargement than any of the clauses in the treaty. Polling evidence certainly backs up such claims. If the analysis is correct, EU leaders will not be able to change public opinion simply by re-jigging the treaties. They will need to change the context, by adapting their political strategies to a new political landscape defined by enlargement and direct democracy. This new approach should have three dimensions.

L’Europe des projets

Europe’s governments agree that there is little point in trying to rewrite the current treaties before the French presidential election is over. However, although that vote will lead to the unpopular Jacques Chirac being replaced, political change in France will not, on its own, change the context. Europe’s fortunes will depend on a new set of policies as well as personalities.

The emphasis should be on making Europe stronger and more effective by focusing on high profile initiatives in areas that member-states cannot deal with on their own. French policy-makers have christened this approach ‘*L’Europe des projets*’. These projects should include foreign policy, migration and security, energy, completing the single market, and continuing the process which will lead to enlargement into the Balkans.

In each of these areas, much can be achieved without changing the European Union’s treaties. Given that treaty-based integration is off the agenda for the next few years, the EU should make a virtue out of necessity and declare a moratorium on new treaties until the new Commission takes office in the autumn of 2009.

However, the *Europe des projets* will eventually run into institutional barriers. It will be extremely hard to persuade integrationists to accept further waves of enlargement without tackling difficult issues such as the unwieldy size of the European Commission, the messy voting weights, or the EU’s inadequate policy machinery.

‘Smart referendums’

L’Europe des projets will not, on its own, reverse the impact of euroscepticism. Europe’s leaders will lack a real mandate for their European agenda until they face the voters in a referendum and win. But to have a chance of winning a referendum, they will need to absorb two lessons from the recent referendum defeats.

The first is on the nature of the treaty. Unwieldy texts – with clauses covering everything from voting weights to human rights – are a boon for No campaigners. Opponents can exploit the unintelligible clauses to drum up discontent, mobilising disparate groups behind single-issue grievances. Supporters of the treaties, on the other hand, find it hard to develop a coherent argument for a ‘Yes’. They spend their time parrying attacks on all fronts. In order to protect themselves from these attacks, European leaders should focus on more tightly-drafted treaties, preferably with a single purpose (in the same way that the Single European Act led to the single market).

The second lesson is that referendums are often as much about the popularity of national governments as about the future of the EU. In the recent round of referendums, European governments had hoped to create a ‘bandwagon effect’ by holding the first votes in the more enthusiastic countries. This would have allowed governments in more sceptical nations to urge their voters to vote Yes to avoid being left behind. With hindsight, we can see that a better strategy might have been to hold the votes on a single day: this might have encouraged citizens to see the referendums as part of a campaign on the future of Europe rather than a chance to give their government a ‘bloody nose’. Each country must decide whether it wants to hold a referendum on proposed treaty change, and some countries will avoid them. But there is a strong case for countries that do decide on referendums to come to an informal agreement to hold them on the same day.

One way out of the current impasse would be for EU leaders to gather together all the constitutional treaty’s clauses on EU foreign policy, and put them into a new treaty designed to make the EU globally effective. Governments should be able to make the argument that an EU with a more effective CFSP would have more clout in the world. And European citizens would probably understand this point: Eurobarometer polls over two decades show consistent support for a stronger EU foreign policy. The recent campaign to ‘Make Poverty History’ showed how a broad and popular coalition can be built. EU leaders should replicate its success by mobilising charities, churches and campaigning organisations behind a movement designed to equip the EU

with the means to tame globalisation, and to negotiate with the US, China and India from a position of strength. If such a treaty were passed – with yes votes in the countries that called referendums – it would remove the democratic stain of the French and Dutch Noes. The effect of the voters blessing a new treaty could even give the EU a broader ‘moral mandate’ for further institutional changes that would not necessarily need to be passed by referendum.

An EU of ‘pioneer groups’

The biggest challenge for EU leaders will be preparing for a more diverse Europe. If there are ‘smart referendums’ on further integration, some countries may vote No. These votes should be respected. The 80,000 pages of the *acquis communautaire* must remain intact, lest the single market start to unravel. But Europe’s leaders must prepare for a messier future, in which groups of countries are allowed to co-operate more closely in key areas.

The idea of a ‘one-size-fits-all’ EU has already been challenged. Some countries have opted out of the euro and the Schengen agreements. New members have been temporarily excluded from receiving full CAP payments, and the free movement of labour. In the future, integration within the European Union is likely to be driven by pioneer groups rather than treaties. A series of clubs, co-operating more closely for practical reasons rather than the ideology of ever-closer union, will drive integration in a series of different areas. Examples could include: the Schengen group emerging into a more integrated security community; the closer harmonisation of the eurozone’s tax bases; a group of countries agreeing to liberalise their markets for services; or the development of a European Defence Community.

As the EU enlarges, there could be an *à la carte* offer for new members. For example, Turkey is being threatened with ‘permanent safeguards’ on the free movement of people, and could perhaps be forced to accept less than a pro-rata distribution of votes at the European Council. Equally, some new members could be excluded from the eurozone for many years, even if they wanted to join.

Updating Monnet for a democratic age

The founding fathers of the EU understood the dangers of constitutional posturing. The ‘Schuman Declaration’, which the French and the Germans signed to launch the European project in 1950, set the tone for a pragmatic EU “Europe will not be made all at once, or according to a single general plan. It will be built through concrete achievements, which first create a de facto solidarity.”

Jean Monnet, the plan’s author, gave form to the political theory that academics have called ‘functionalism’. He thought that integration should start with concrete forms of co-operation rather than building institutions to an illusory idea of the international community. That insight is as relevant today as it was in the 1950s. But, unlike in Monnet’s era, the EU needs the public’s direct support – expressed in some countries through referendums – rather than the consent of elites.

That is why European governments must embrace a new approach. We could call it ‘democratic functionalism’. By taking the steps set out above, EU leaders could build a new political community organised around the challenges of globalisation, with the flexibility to accommodate different national priorities, and the consent of its citizens.

Of course this is a risky agenda. Referendums are unpredictable – and prone to be high-jacked by special interests. EU governments are not yet used to drafting treaties, or advancing policy agendas, with a view to winning popular votes. And an EU of pioneer groups will be messy and hard to understand.

But the risks of failed referendums are overshadowed by those of a European Union void of legitimacy. The EU is no longer a fragile project that needs constant momentum, a bicycle that needs to be peddled constantly lest it fall. The French and Dutch votes showed that Europe can face political set-backs without wiping out the gains of a half century of integration. On the other hand, if public resentment is allowed to build up without an outlet for expression, it could one day explode and take the EU with it.



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