Robert Schuman

The Constitution and the Citizens –
(Not) Much Ado about Nothing

- Markus Thiel

The Jean Monnet/Robert Schuman Paper Series

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These monographic papers address issues relevant to the ongoing European Convention which concluded in the Summer of 2003. The purpose of this Convention was to submit proposals for a new framework and process of restructuring the European Union. While the European Union has been successful in many areas of integration for over fifty years, the European Union must take more modern challenges and concerns into consideration in an effort to continue to meet its objectives at home and abroad. The main issues of this Convention were Europe's role in the international community, the concerns of the European citizens, and the impending enlargement process. In order for efficiency and progress to prevail, the institutions and decision-making processes must be revamped without jeopardizing the founding principles of this organization. As the member states negotiate the details of the draft constitutional treaty, the Jean Monnet/Robert Schuman Papers will attempt to provide not only concrete information on current Convention issues but also analyze various aspects of and actors involved in this unprecedented event.

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2. How did the member states figure in the framework of the Convention?

3. The necessity to maintain a community method in a wider Europe.

4. Is it possible for the member states to jeopardize the results of the Convention?

5. The member states against Europe: the pressures on and warnings to the Convention by the European capitals.

6. Is it possible that the Convention will be a failure? The effects on European integration.

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10. The failure of a necessary partnership? Do the United States and the European Union necessarily have to understand each other? Under what conditions?

11. Is it possible to conceive a strategic partnership between the United States, the European Union and Russia?

12. Russia: a member of the European Union? Who would be interested in this association?

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The Constitution and the Citizens –
(Not) Much Ado about Nothing?

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Abstract

While the Convention on the Future of Europe and its product, the Draft Constitution, might be considered a successful endeavor by many European policy-makers and other academic and socio-economic elites, it received little positive attention by the citizens. Aside from being a highly specialized and, for the ordinary citizen, complicated matter, few people actually are aware of the Convention process and the content of the Constitution. In this paper, I will locate the public awareness of the Constitution among the EU's population, lay out some basic ideas about the democratic legitimacy this act entails and look at ways that could facilitate the Constitution's acceptance in the future. Finally, I argue that, given the institutional structure of the EU and organizational constraints of the Convention, so far the democratic legitimacy has been sufficient but still awaits the challenge of ratification.

Introduction

The recent disagreement among major member state governments regarding the rules and the allocation of votes in the Council has stalled progress on the concluding negotiations of the Draft Constitution. But it did not only result in a waste of goodwill and time for this major reform project, but also disenchanted and confused European citizens. In some cases – most probably because of verbal threats of the negotiation partners – even doubt about the general future of the Union developed. Just recently one of the major actors in the development of the EU, Jaques Delors, warned that if the disunity and trend towards intergovernmentalism would continue, in a mere 15 years the political Union could fall apart.[1]

It appears ironic that the founding document which gave the impulse to convene and draft an EU Constitution, the Laeken Declaration of 2001, was born out of acknowledgment that with all the integration process and involvement of the EU in national politics, a more democratic legitimate and accountable Union was necessary.

"Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open."[2] In view of this, not only would a Constitution legitimize the EU for the citizens more strongly, a politically anchored

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[1] "Pessimistic Delors warns against European deconstruction", http://www.euractiv.com/cgi-bin/cgint.exe/539133-421?204&OIDN=1507084 , March 31, 2004.
[2] "The Future of the European Union. Laeken Declaration.", in: Shaw, Jo et al (eds). Ibid, pp. 138-139.

Union with a Constitution would also symbolize a single external identity as a global actor. This aspect has received increased attention with the many foreign policy challenges that occurred in the last decade and discussions about the general leadership within the Union in this policy field.

In this paper, I first take a look at the role of the civil society representatives in the Convention, discuss some of the theories treating the Convention as part of democratic accountability and unity efforts and finally, evaluate quantitatively and qualitatively popular support for this project. The topic of popular support for and meaning of the Constitution is important, but has not received much attention in the literature. However, a more abstract discussion about the well-known democratic deficit and general legitimacy of the Constitution has taken place amongst scholars in the field.[3]

The Convention and Popular Representation

The Convention, which was in part set up to enable increased input by all concerned groups within the member states according to the Laeken Declaration,[4] involved besides EU and national government representatives various civil society groups. At first sight, this process represented a step forward towards democratization of the EU, compared to previous inter-governmental conference (IGC) decisions made only by the heads of member states. If in fact the resulting Draft Constitution has brought more accountability and transparency for the people in the EU, it is currently a much-debated issue receiving more attention below.

The various delegations that made up the Convention – the national governments and their parliamentary representatives, the European parliament members, the representatives from the acceding states as well as members from the Commission and the Committees of the Regions, the Economic and Social Committee as well as a few other conventionnels – were guided under the presidium headed by Valéry Giscard d'Estaing. Some analysts argue, though, that there was an under-representation of certain groups (e.g. Euro-sceptic organizations or minorities), which compromised the Convention's democratic representativeness.[5] Euro-sceptics and democracy-advocates will point to a conscious effort to exclude potentially difficult parties. My take on it is rather the wish to proceed with the Convention in a timely manner, since the work on the Constitution itself was to be concluded before the European elections in June 2004 and a strongly diversified composition would have led to lengthy debates. Related to this point is the critique on the Convention president's autocratic leadership style, which was at times perceived as too dominant.

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[3] See: Magnette, Paul. "Will the EU be more legitimate after the Convention?", in: Shaw, Jo et al (eds). The Convention on the future of Europe. London: Federal Trust, 2003, pp. 21-41.

[4] For more information on the impact of the Laeken Declaration on the preparation and implementation of the Convention, see: Luzarraga, Francisco A. The First Outcome of the Debate on the Future of Europe: Between Deepening and Revision (2000 – 2002). Jean Monnet/Robert Schuman Paper Series, Vol. 2, No. 2, February 2003.

[5] Closa, Carlos. "Forging European Constitutional Patriotism: Deliberating on the Constitution within the Convention". CIDEL (Citizenship and Democratic Legitimacy in Europe) Working Paper, http://www.arena.uio.no/cidel/workshopZaragoza/CClosa.pdf, April 7, 2004.

Aside from its composition, the sole purpose of the Convention was to draft a consensus-based Constitution for the member states. As such, the Convention members were relatively free from reelection pressure and thus theoretically more inclined to deliberately work towards the common good. At the same time, national interests were vitally expressed by the member state governmental representatives participating in the Convention (e.g. during the voting rights issue in the Council).

Features designed to make the Convention more visible to the public "included the public nature of plenary sessions, the full availability of documentation via the website, and the structured – if not always successful – consultation with civil society, via the Forum and its website and via a specially convened plenary session in June 2002."[6] The Forum, consisting of a network of civil society organizations primarily from NGO's, the business and the academic world was invited to follow the Convention and provide input via the website and at specially held meetings with Convention members.[7] The inclusion of those organizations and interest groups is essential because civil society groups can help in observing and translating Euro-jargon into political terms and concepts ordinary citizens are able to understand. They are also imperative when it comes to distributing information to the wider, politically interested audience and as such have an important communicative function.[8] At the same time they play only a minor role in delivery and persuasion of relevant political messages, compared to the print- and audio-visual national media, which are the main information provider for citizens.

In addition, a specially designed website for the general public was set up by the Commission to supply information on the proceedings of the Convention and to engage more intensively with the citizens in a public debate.[9] However, there is no possibility for individuals consulting the 'futurum'-website to influence in any way the Convention, aside from commenting in a discussion area online. Also, the few thousand entries by those individuals recorded on the website are a poor turnout compared to the whole population of the current Union. A Youth Convention was held in July 2002 to take up concerns of the younger generation, which critically could be regarded as an EU public relations effort since most of these participants were selected by the Convention members themselves.[10]

Part of the deeper problem with popular involvement in the Convention is the complex subject matter dealt with in often rhetorical Euro-jargon, even though one of the Convention goals was to simplify preceding treaties in this revision and thus, make them more understandable and efficient. "When debates are cast in technical terms, deprived of passionate rhetoric and remote from the citizen's common sense, they do not draw the attention of the general public and do not help citizens understand the issues at stake."[11]

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[6] Shaw, Jo et al. (eds). Ibid, p. 17.

[7] For more information, see the website: http://europa.eu.int/futurum/forum_convention/index_en.htm , April 4, 2004.

[8] Bertelsmann Foundation & Centre for Applied Policy Research, "Civil Society and the Convention", Convention Spotlight 2002/06, www.cap.uni-muenchen.de/download/ spotlight/Spotlight_06-02_en.pdf, April 5, 2004.

[9] For more information, see the website: http://europa.eu.int/futurum/index_en.htm , April 4, 2004.

[10] Futurum Website, http://europa.eu.int/futurum/civil_society_en.htm, April 4, 2004.

[11] Magnette, Paul. Ibid, p. 32.

The media played (or rather, it did not play) its part in the insufficient dissemination of information about the Convention. In political theory, "democratic legitimacy in complex societies derives from the interplay of institutional consultation and decision-making operations with informal, media-transmitted, opinion formation processes within a public sphere of communication".[12] European print and audio-visual media are therefore necessary to provide information about political processes upon which citizens can build their arguments. In the case of the Convention, there has been a lack of media attention which is reflected in the overwhelming unawareness and lack of knowledge, as will be shown in the public opinion section of this paper. As Paul Magnette poignantly states, "the fact that the Convention has been largely ignored by the European press, and the absence of public debate outside the small circles of 'Europeanized' citizens – not to mention the comedy of the 'Forum' – are clear illustrations of the limit placed on this 'public' deliberation".[13] Realizing this problem, the current Irish Presidency set up a conference in April 2004 to address the communication deficit, and to look for ways to improve the EU's communication strategies, which in turn only affected Eurocrats and national governments.

Democratic Legitimacy of the Draft Constitution and the Constitutional Process?

The question of democratic legitimacy of the Convention and the draft development is closely connected to the issue of the legitimacy of the EU as a whole. Without wanting to go too much into detail about the latter – since there is a whole field of literature reserved for that topic alone - and leaving questions about the finality of the Union aside, a few basic aspects of and parallels to the constitutional process must be considered. If it were only for a simplification of previous treaties, it could have been attempted during another IGC and a Constitution would not be required. Paul Magnette skillfully takes up this problem, asking if the EU will be more legitimate after the Convention. In his conclusions, he carefully expresses optimism for the outcome as strengthening the Union's perception in the eyes of its population. He mentions the ratification of the Constitution as a key process;[14] I will turn to this issue in the last part of the paper.

Interestingly, even though Magnette depicts several aspects of legitimacy for the Union, only one, titled 'indirect legitimacy' refers to some kind of popular consensus or approval. In this model, the power of the EU is derived from its transfer from the constituent member states, whose governments received the mandate from its electorate. This model is strongly relying on the member states' authority and thus, is favored by intergovernmentalists. In terms of popular legitimacy, this approach is disadvantageous for the prospects of public acceptance of the Constitution. States have an inherent advantage in that their democratic legitimacy is directly bound to a decisive electorate and their political power linked to constitutional demos constituting a strong normative body. The EU, with its multiethnic population and indirect legitimacy cannot rely on a 'thick' collective identity comparable to the ones of nation states.[15]

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[12] Habermas, Juergen. So, why does Europe need a constitution?, European University Institute, http://www.iue.it/RSCAS/e-texts/CR200102UK.pdf, April 4, 2004.
[13] Magnette, Paul. Ibid, p. 32.
[14] Magnette, Paul. Ibid, pp. 37-39.
[15] Shaw, Jo. Ibid, p. 51.

The question evolves if some kind of democratic super-state Europe would be the answer – and if this vision is the one adopted by the Convention members? Even though this is open to debate, critical voices like Moravcsik claim that "this whole exercise is much ado about nothing, a misguided attempt to fiddle with a European Union that ain't broke, a Union as democratic as it should and can be".[16] From an intergovernmental point of view, there is much to this argument, pointing to the fact that the EU cannot and should not be compared to conventional views of statehood. Implicit is a refute of the calls for more direct democracy EU-wide. This is why Nicolaidis suggests a new way of thinking about European democracy: As "a new kind of political community, one that rests on the persistent plurality of its component people, its demoi."[17] Accordingly, she develops a theoretical model of an EU 'demoi-cracy' based on the sharing of identities, a community of projects and multi-centered governance, without pursuing forms of a super-state Europe. She invokes an active public sphere with the support of 'real' trans-European parties and the possibilities of modern communication technology. Although her vision is appealing, it seems illusionary with all the current problems and additional national interests that are constantly apparent. It is unlikely that such an abstract model of pluralist governance can compete with more traditional forms of popular allegiance such as statehood.

A way out of this dilemma is perceived by some as legitimization through common values *and/or* the pursuit of direct democracy. With regard to the former, in the absence of a unitary people bound directly to normative institutions, Habermas as a main proponent of 'constitutional patriotism'[18] suggests three functional challenges for the EU: First, he calls for a citizenship-based European civil society. Secondly, he denotes the construction of a Europe-wide public sphere of communication. Lastly and most importantly, he urges the creation of a political culture that can be shared by all citizens.[19] The current constitutional process establishes a foundation on which a common political culture, even with common values as included in the Charter of Fundamental Rights as part of the Constitution, could rest. But this process takes time, as the formation of nations proved, especially since national political cultures are still the predominant frameworks of political action in Europe. In a similar fashion, Fossum sees *values* (besides *rights* and *utility*) as an argument for the legitimacy of a constitution, even though he encounters the problem of indirect legitimacy mentioned above. Hence his conclusion "that for the EU to be able to foster a sense of legitimation trough values, it can not draw very much on a set of pre-political values in the manner that many nation-states have done. The European project […] must rely more on the role of rights and the deliberative quality of the ongoing process of integration".[20] The inclusion of the Charter of Fundamental Rights in the Constitution exemplifies a way of combining EU-wide rights with universal values without necessarily

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[16] Moravcsik, Andrew, cited in: Nicolaidis, Kalypso. "The New Constitution as European Demoi-cracy?", Online Paper of the Federal Trust, www.fedtrust.co.uk/eu-constitution, April 5, 2004, p. 3.

[17] Nicolaidis, Kalypso, Ibid, p. 5.

[18] The best definition for the purpose of this paper states that Constitutional patriotism is "part of the idea that the creation of a political community is a morally transformational act in which human beings develop relationships as citizens that tie them together independently of their prior associational ties to family, religion and the like", by Ingram, Attracta. "Constitutional Patriotism", in: Philosophy and Social Criticism, Vol. 22, 1996, pp. 1-18. The inclusion of a value-laden transformation as indication of the type of situated-ness of the individual in relation to society is important here.

[19] Habermas, Ibid, p. 18.

[20] Fossum, John Erik. "Constitution-making in the EU", in: Eriksen, Erik Oddvar & Fossum, John Erik. Democracy in the European Union. Integration through deliberation. New York: Routledge, 2000, p. 132.

stepping into the fallacy of nation-centric values. The creation of an open civic culture, however, takes more time and effort.

Direct democracy, in analogy to the political structures of the member states, is an expressed goal for many civil society groups and NGO's involved in the constitutional process. They perceive of the direct influence of the people through, for example, direct elections of the Commission president or referenda on treaties and the Constitution as an essential, legitimizing part of Western democracies.[21]

One of the major issues for them is the ratification of the Constitution by popular referenda in either a Europe-wide referendum or referenda in each member state. The European citizen's initiative, inserted into the Draft in Article 46 'last minute' as a way to include elements of direct democracy is for some critics only proof of the desperation of EU politicians who fear for public acceptance (and the ratification) of the Constitution. "It is vaguely worded, opens the door to single pressure groups and, more importantly, undermines national parliaments by giving citizens collectively a right which their elected representatives don't have – the right to ask the Commission to initiate a law."[22] Even though this questions the proper legitimacy of civic involvement over political mandate, for others it symbolizes a victory for direct participation and political involvement of the citizens. Will the clause requesting at least 1 million signatures in order to be heard, have any effect on the EU's legitimacy and the political (dis)interest of the European public? It is difficult to make a prediction for the future in that matter, but looking at the European Referendum Campaign, which wants to test Article 46 right away by collecting over 1 million signatures in favor of a Europe-wide ratification referendum on the Constitution, it seems to take the call for direct democracy very serious. "If legitimacy is to be strengthened there is a compelling case to include provisions to give a direct role to the citizens of Europe, by means of referenda on treaty changes, starting with the constitution itself."[23] With what success, will be revealed in the coming months.

Referenda can be positive as well as negative for the acceptance of the Constitution in particular and for future popular consensus for the Union in general. Referenda on such an important issue, it is theorized, will generate attention to the topic itself and also encourage civic participation, besides legitimizing political decisions. O'Brian and Keohane deliver the interesting example of Ireland and its referenda on the Nice Treaty. While at the first referendum in 2001, the Treaty was rejected out of fear for possible negative implications and ignorance, the second referendum changed Irish perceptions. The Treaty implications and the EU were lively discussed in the media, in public meetings and the public sphere. Politicians were forced, in order not to experience the same dilemma, to explain the issues at stake to the public. "By polling day the issues were understood and fears assuaged. The end result was a doubling of the vote in favor."[24] But calls for popular ratification do not only come from the citizens and their advocates. Ninety-seven of the 105 Convention members signed a petition recommending that

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[21] For more information, see the websites of OpenDemocracy, www.opendemocracy.net, TeamEurope, www.teameurope.info or the Initiative and Referendum Institute Europe, www.iri-europe.org.
[22] Stuart, Gisela. The making of Europe's constitution. London: Fabian Society, 2003, p. 23.
[23] O'Brian Dan & Keohane, Daniel. "Why Europe needs referenda", www.opendemocracy.net, April 5, 2004. See the campaign's website http://www.eu04.com/index.phtml?sid=271 for more information.
[24] O'Brian, Dan & Keohane, Daniel, Ibid, p. 3.

referendum in the member states be held, since a Europe-wide simultaneous referendum is time-wise and organizationally improbable. So far, only seven of the member states agreed to a popular vote on the Constitution, in many cases out of fear for its refusal or because they deemed it inappropriate to have such a matter be decided by the people. Most states pursue a vote through their parliaments, even though the discussion about popular involvement is increasingly debated in most of the member states. Especially countries that are disappointed about some of the final outcomes, e.g. the voting rights issue or the preamble (Poland and Spain), or have issues with its sovereignty and neutrality (UK and Ireland) might be prone to signal their discontent either directly or via their representatives and thus, stall the European-wide ratification process.

Public Opinion, the Media and the Constitution

Even though many citizens in (Western) Europe can be called de-politicized already, signified by a lack of interest in politics and low voter turnout, still, politicians often guide their actions by opinion polls. In the case of the EU, there is neither a direct mandate nor are the repercussions on EU-politicians immediate, so that public expectations and politician's behavior clash more often than at a domestic level.

For example, there is currently an astonishingly high support for the Constitution among the population of the EU-25. According to the latest Eurobarometer, the Commission's public opinion instrument, 77 % of the population in the 25 member states is in favor of adopting the Constitution as of February 2004, up 10 percentage points since the start of the last IGC in December 2003. For the newly integrated 10 countries, the figure is only slightly lower (73%). Only in Sweden and the UK less than 60% of the people support it. Even in case that their country is asked to make concessions in order to arrive at a workable compromise, an average of 62 % of the EU population would support such measures. Only 28 % are opposed to national concessions.[25]

While there seems to be a strong support of the Constitution as a way to further strengthen the Union and its future, there exists a contradictory information deficit: 73 % of respondents felt not well informed about the issue at hand.[26] Regarding the highly complex topic, the high occurrence of ignorance about the topic is understandable, maybe even desired by politicians because it can then stay in the professional realm of Eurocrats. On the other hand, the high support expressed for the common Constitution is a missed opportunity for them to capitalize on an emerging constitutional EU-patriotism. A question for further research would be if the recorded high support will fade or remain, once the population in the member states is confronted with the specific conditions set out for their nation in the Constitution.

In addition to these quantitative numbers, a few observations from my current Ph.D. project, in which I explore the impact of post-Maastricht integration politics on citizens, help to illustrate the above-mentioned statistics. Last summer, I interviewed 45 people in three different

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[25] European Commission, Flash Eurobarometer "The Future European Constitution", http://europa.eu.int/comm/public_opinion/flash/fl159_fut_const.pdf, April 5, 2004.
[26] Eurobarometer, Ibid., pp.3-5.

EU member states (Ireland, UK and Germany) to obtain qualitative, in-depth information about their attitudes and opinions regarding European integration and their identities. One of the questions of the semi-structured interviews included the perception of a common constitution. In the following, I take a look at the two Anglo-speaking countries and Germany. The UK and Ireland being strong Atlanticists, they both differ significantly in their support for the Constitution and the EU more generally. On the other hand, German respondents show more support for a federalist vision embedded in the Constitution.

Of the 15 Irish citizens, which according to Eurobarometer statistics are overall in 80% support (+ 3 %, compared to EU-25 average) of the Constitution, only 2 did either not know or care enough to give an answer. However, parallel to the EU-25 statistic, 71% of the Irish population feels badly informed about the issue. About half of my respondents admitted that they have not heard or read much about it. A great majority said it is a good or very good idea. While those emphasized the importance of unity that would be created by a EU Constitution, the problem of diverse pluralistic needs and opinions is recognized as well. One person, for example, stated: *"I think it would be very good. Except that there are so many countries in the EU, and a common constitution would be kind of neutral. Though it's good to have more linkages between Ireland and other countries."* Another participant touched upon the issue if something would change for the country: *"I suppose it depends on how much would change. You have your country and your constitution and if it works well for you and the EU changes it, people won't be happy if it has major effects on them. But then again, the constitutions in our countries are very similar, there are only minor differences. It should be ok then"*. Two people explicitly mentioned the importance of human rights: *"If it dealt with human rights, it would mean something"*.

In the British case, support for the new Constitution is the lowest, with 51% for it (-26 compared to the EU-25 average) and 30% against it. Statistically, the knowledge level in the UK is the same as in Ireland and the EU-25 average (71% 'badly informed'). But out of the 15 participants in my interviews, only 4 heard about it and felt knowledgeable enough to respond with something other than 'probably a good idea', or declined totally to comment on it. Well put was the following comparison: *"Like a Magna Charta. It's an important part, isn't it? It would basically complete the Union. But I hope there will still be room for individuality for each country"*. One in particular recognized the need for treaty simplification: *"The European legal framework or foundation is a mess, you have all those treaties and it's quite a disaster so it makes a lot of sense to simplify that. So I am for the idea of the convention"*. About half mentioned again the unifying aspect of a Constitution, but critical voices were more apparent: *"I think the EU by its political behavior tries to encourage European nationalists to feel as one, to regard themselves as similar. There has to be in that a strong aspect of racism"* or *"Ordinary people have to have a say in it...I know that's really hard! Many lobbyists have influence on the EU that the little people don't know about...its just such a heavy machinery that I am skeptical that it's going to work"*.

In Germany, the picture is a bit different: while also 70% of its citizens feel a lack of knowledge with regards to the topic, they are the strongest supporters among the three countries (83 % vs. 77 % EU-25). This observation goes hand in hand with the often-mentioned notion that the Constitution is agreeable if it does not change too much domestically. The importance of defining European values seems to be very important to Germans, since this aspect was named

by a third of the sample. Some thought that the Constitution had its own right by defining more clearly the terms of cooperation and therefore, making diplomatic interaction among EU member states more transparent: *"Grundsaetzlich begruesse ich es, dass es nicht nur geheime Diplomatie gibt sondern fuer mehr Transparenz gesorgt wird, wer was fuer wichtig haelt (Generally, I think it's good that there is not only secretive diplomacy, but that measures are taken to make it more transparent what each party wants).* Other respondents feel that a common Constitution will be hard to achieve because of existing differences in national interests. One answer to this issue is particularly creative: *"Ich kann mir es besser so vorstellen: jedes Land hat seine Individualitaet, seine Verfassung und vertritt nach aussen gleiche Interessen, um stark zu sein. Aber das ist dann auch genug (I can imagine that each country keeps its individuality, its constitution and shares common interests (only) externally, to be strong. But that's about it.)"*.

However, the overall feeling of being uninformed and also the disconnect between the Constitution and the citizens seems to be the common thread among many respondents in all three member states. Part of the awareness problem lies certainly in the lack of communication between informed elite circles, the media and the wider audience. The majority of EU citizens receive their information through national television or radio channels (65% of EU-25), followed by national print media (43%). The Internet, which was strongly utilized by the Convention and Commission, in this case has only a user-rate of 23 %.[27] The dominance of the national media in obtaining information versus the more 'specialized' use of the Internet might explain the limited knowledge of the majority of citizens.

The 'Convention Watch', an academic project funded by the Commission to investigate public perception of the constitutional process more closely, registered in most member states low involvement of the public. For the most part, academic and political elites took part in the few organized seminars and website-consultations. Unfortunately, "it seems that only those anyway dealing with issues relating to the EU got in contact with those initiatives".[28] The recurring problem of the EU's lacking significance for ordinary citizens and the increasing democratic deficit will eventually catch up during the ratification process, as will be argued below.

Conclusion

The outcome of the Constitution in terms of formal and popular ratification and acceptance is not yet totally determined. If not understood as delivering more democratic legitimacy and accountability to the public, the constitutional process might well backfire on the EU, making the Union more 'un-popular' than ever.

Will the Constitution then be viewed as a means to more democracy in the Union? Even though the Convention was set up to enable a wide range of opinions and input, and succeeded in presenting a Draft based on the consensus of the conventionnels, the unfortunate disagreement between major heads of governments (in particular the Franco-German versus the now dissipated Spanish-Polish front) destroyed in part the deliberate substance of the constitutional process

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[27] Eurobarometer, Ibid, p. 8.
[28] EUCON Project, http://www.euconline.net, April 5, 2004.

created during the Convention. Basically, discussion and consensus-finding were replaced by bargaining and aggressive negotiations, with the effect of stirring up sentiments of national threat in the countries concerned[29] and possibly, reducing the value of the Constitution to just another intergovernmental treaty. There is, however, a strong will on the side of the past Irish Presidency and the acting Dutch Presidency to achieve agreement through low-key consensus building and, more importantly, substantial support for a common Constitution among the population through improved means of communication. Thus, it is really dependent on the political will of the member governments to create with the Constitution a basis for popular allegiance in the months to come, instead of letting this unique opportunity be sidetracked by national sensibilities and calculated interests. The change in the governments of influential countries such as Spain and Poland increases the chance for a positive outcome. As the outcome of the latest IGC summit in June has shown, there was enough internal agreement and outside pressure to enable a deal on the Constitution.

But the signing of the Draft Constitution still leaves the major challenge. Also, the Constitution must face the critical test of ratification in the member states, which will probably produce some heated discussion and possible defeat in some cases. A problematic development in the last few months has been the attempt of opposition national parties to challenge the governing parties by calling for popular referenda, thereby using the issue as a means to discredit their national government and thus, focusing on national policies instead of considering it an important EU–wide endeavor. In particular, in the new member states the ratification process could be impeded by the negative stance of their governments towards the Constitution. The disentanglement of constitutional referenda and the European Parliament elections increases the chance that the referenda won't be (mis-)used to express dissatisfaction with the EU more generally, but the European election outcome already cast a shadow over the Constitution referenda. "If this constitution does not have the support of the people of Europe and on reflection is not deemed to signpost a structure for a Europe of the 21st century, then we simply have to go back to the drawing board."[30] It won't be that easy, but the ratification process will provide a chance to debate the future of the EU amongst its citizen and thus, increase the Constitution's significance and that of the EU's future more generally. That is why the outgoing Irish presidency under Bertie Ahern urged its colleagues to engage in active campaigns to inform people about the Constitution in order to avoid another delay – and to make the Constitution a real success.

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[29] Torreblanca, Jose Ignacio. "Who's afraid of the Convention?", The Elcano Royal Institute, www.realinstitutoelcano.org/analisis/302.asp
[30] Stuart, Gisela, Ibid, p. 57.