The Implications of the 'No' Vote in France: Making the Most of a Wasted Opportunity

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CHAPTER

THE IMPLICATIONS OF THE « NO » VOTE IN FRANCE – MAKING THE MOST OF A WASTED OPPORTUNITY

“The Treaty [establishing a Constitution for Europe] was not the question but the answer”
Jean-Claude JUNCKER, Luxembourg Prime Minister

INTRODUCTION

On 29th May 2005, French citizens were asked the following question: “Approuvez-vous le projet de loi qui autorise la ratification du traité établissant une Constitution pour l’Europe?” (Do you approve of the Bill authorizing the ratification of the Treaty establishing a Constitution for Europe?). When French people cast their vote, nine Member States representing nearly half the people of the European Union (EU) had already decided, by parliamentary or referendum method, to ratify the Treaty establishing a Constitution for Europe (hereby, the Constitutional Treaty)\(^1\). France was the second Member State to ratify by referendum after Spain where approval of the Constitutional Treaty was massive – but turnout low\(^2\).

54.67% of French voters answered “non” and hence rejected the Constitutional Treaty, even though France was one of the major proponents of the Convention on the Future of Europe which led to the drafting of the Constitutional Treaty. This result was especially striking as turnout was so high for a European consultation (69.3%) and so overwhelmingly negative (nearly 55%). Besides it was only the second time in the history of the French 5th Republic that a President lost a national referendum. Above all, it was the first time that a large and founder member of the European Communities and European Union rejected current European developments and failed to ratify a Treaty once agreed by the EU political leaders – with the exception of another failure in the early days of the European construction when the French National Assembly failed to ratify the European Defence Community Treaty in 1954.

This negative result, followed just three days after by another unambiguous majority against the Constitutional Treaty in the Netherlands, had resounding impact. It caused shock and surprise both at national and European levels. It was a scathing disowning of the French President and his government. It blocked the Constitutional Treaty ratification process, potentially paralyzed the institutional advancement of EU integration, and undermined the credibility of European governance. Understandably, the impact of the referendum outcome has fast become a burning issue in academic circles and, of course, in terms of political future for France and Europe. A recurrent and disturbing feature which stands out of most analyses on the French referendum is

* I am grateful to my colleagues, Professor Imelda Maher and Doctor Gavin Barrett, for their valuable comments made on an earlier draft. The usual caveat applies.

\(^1\) On the Treaty establishing a Constitution for Europe, see [http://europa.eu.int/constitution](http://europa.eu.int/constitution)

\(^2\) 77% of Spanish voters were in favour of the Constitutional Treaty, but the turnout represented only 42% of the electorate. By May 2007, eighteen Member States had ratified the Constitutional Treaty either by parliamentary procedures or by referendum (see footnote 17 below). Bulgaria and Romania which entered the EU in January 2007 had already ratified the Constitutional Treaty before accession.
indeed the political failure at French and European levels to explain, engage, communicate and debate effectively with citizens about the whole constitutional process. And the failure to engage is particularly remarkable in this case since the Constitutional Treaty was precisely meant to overcome some of these democratic failings, namely failure of accessibility, transparency, comprehensibility, and accountability (Hughes, 2005).

To understand the extent of this failure in the case of France is important to envisage the implications which the referendum result has had so far in the national and European context. The referendum process in France arguably did not bring the European constitutional project closer to French citizens. However, and paradoxically, it generated a democratic momentum which might bring about interesting changes for the European project. Halting the constitutional process, the French “non”, coupled with the Dutch “nee”, gave the opportunity of a period of reflection and recentered initiatives on the European construction along specific priorities. In this chapter, we look at the different paradoxes which punctuated the ratification process and the exercise of direct democracy in France by providing an analysis of the causes of the French “no” vote, in a first part. Understanding the negative result through this “paradoxical” lens will allow us to analyze the consequences of the “no” vote and consider some positive developments in the aftermath of the crisis, in a second part.

UNDERSTANDING THE NEGATIVE – QUESTIONING A DEMOCRATIC PARADOX

The constitutional process which led to the drafting of the Constitutional Treaty was regarded as a project of democratisation. The democratic element was a key concept not only in the content of the Constitutional Treaty itself, but also in its process of adoption – the Convention method. The democratic dimension could be prolonged at national level through the choice of a referendum and the political efforts and commitment during the campaign. Paradoxically, and while not calling into question the outcome itself – that is the referendum result as the “democratic product” – but rather the conduct of the whole process, it is argued that the French ratification process resulted in a political “waste” (Robert, 2005) which can be explained by the disputable choice to hold a referendum, to some extent, and by the ambiguous conduct and difficult context of the referendum campaign, to a larger extent.

The Treaty Establishing a Constitution for Europe – Emphasis on Democracy?

The emphasis on democracy was evident not only in the very raison d’être and content of the future European Treaty, but also in the process of its adoption. The perceived democratic deficit in the EU was recognised and accepted by the Member States at the Laeken European Council in 2001 as an impediment to the further successful development of the Union. The democratic challenge facing Europe implied several actions which were necessary to bring the European institutions closer to its citizens and to offer them better democratic scrutiny. More generally, Europe’s citizens expected a clear, open, effective, democratically controlled Community approach, developing a Europe which would point the way ahead for the world (European Council Laeken Declaration on the Future of the European Union, 15 December 2001). The need to ensure the democratic character of the European Union
was indeed a key dimension in the European constitutional project, which was to be reconciled with the deepening of integration.\(^3\)

Another contribution of the Laeken Declaration was the establishment of the Convention on the Future of Europe. Modelled on the Convention that had drafted the Charter of Fundamental Rights, it retained most of the key features that constituted this process as a move away from negotiations between governments to a new form of deliberative decision-making, including the presence of the Forum and the taking of decisions by consensus and in open session. The extraordinary process of the Convention had hailed as a “tremendous solution to the alleged democratic deficit in the European Union” thanks to “its openness and transparency, the closeness of its relationship with civil society and its deliberative decision-making-style” (Chalmers, Hadjiemmanuil, Monti & Tomkins, 2006, p. 74).

This analysis has to be taken with care and opinions differ as to whether the Convention method really was a democratic approach since the people were not directly involved in its drafting process. Despite the presence of the Forum the aim of which was to open the debate to organizations representing civil society, the main drafting body was the elitist Praesidium. It is acknowledged that the whole constitutional process put into motion by the Convention method was in fact infected with ambivalence (Chalmers, Hadjiemmanuil, Monti & Tomkins, 2006, p. 83). An interesting feature is the inherent ambiguity about the legal nature of the Constitutional Treaty – whether it being a constitution or a treaty, or both. In a sense, the Treaty drafting was not radical enough or orientated enough to the key issue of bringing the EU closer to the people and making it more accessible to them. Yet, the Convention method can still be regarded as having contributed to set a certain democratic momentum in line with this quest to resolve the legitimacy deficit at the heart of the EU.

The issue of the ratification of the Constitutional Treaty was also illustrative of this reticence as regards a fully-fledged democratic process at European level. The call for a pan-European referendum was dismissed confirming the unwillingness of the Member States to adopt a specific procedure deriving from the EU’s own legal order in order to amend its basic norm. Instead, under Article IV-447 of the Constitutional Treaty, the ratification process relied on the different methods of ratification in the various Member States and the entry into force was conditional on the adoption by each – and all\(^4\) – of the signatory countries in accordance with its/their constitutional procedures\(^5\). These are not identical in all the twenty-seven Member States as they depend on their legal and historical traditions. They comprise either or both of the following mechanisms: the parliamentary method whereby the text is

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\(^3\) The key elements of the Constitutional Treaty are: granting the EU a single legal personality under domestic and international law, dismantling the existing pillar structure, defining the powers of the EU institutions and simplifying the legal instruments and decision-making procedures, incorporating the Charter of Fundamental Rights as an integral part of the Constitutional Treaty, and enhancing the role of the national parliaments in the decision-making process of the EU.

\(^4\) The unanimity rule for entry into force proved controversial and was much debated as well. Even if it has been the rule so far concerning the ratification of European Treaties, it is worth mentioning that it is very derogatory to international (should the Constitutional Treaty be regarded as a treaty) and constitutional law (should it be deemed a constitution) – treaties generally enter into force after the ratification by a certain number, but not by all, signatories, and constitutions are adopted or approved by a majority of the people.

\(^5\) The core principle of the referral to the constitutional requirements of the Member States is actually enshrined in Article 48 TEU and dates back to the first EC Treaties. Its general expression can be found in the Vienna Convention on the Law of Treaties (Article 11).
adopted following a vote on a text ratifying an international Treaty by the State’s parliamentary chamber(s), or the referendum method whereby the text of the Treaty is directly submitted to the citizens, who vote for or against it; the referendum is decided either according to binding constitutional provisions or as a result of a political decision taken by the government.

The possibility of holding a referendum could have prolonged the democratic dynamic brought about by the drafting process especially after the success, and relief, following the unanimous adoption of the Constitutional Treaty by the Heads of State or Government on 18th July 2004 and its formal signature in Rome on 29th October 2004. Of the twenty-five Member States, nine decided to ratify the Treaty by referendum, namely Denmark, Ireland, Luxembourg, the Netherlands, Spain, Poland, Portugal and the United Kingdom – as did France. President Jacques Chirac announced the holding of a referendum on the Constitutional Treaty on 14th July 2004, almost one year before it was to take place (and before the Treaty was formally adopted). While this choice was certainly an effort to have more democratic input about European issues, it was also a disputable decision as a way of offering the Constitutional Treaty democratic legitimation in the case of France.

The Referendum Method – A Choice for More Democratic Legitimation?

The referendum is a way to associate “the people” with the exercise of legislative power or to consult them on important issues concerning the nation. The holding of a referendum thus contains a democratic promise and President Chirac was certainly convinced, to a certain extent, that such an important text deserved popular approval. His interest in this instrument of direct democracy is worth noting since he was an active promoter of this form of consultation and extended the scope of the referendum procedure in 1995. But France is not Switzerland, or Ireland, and the practice of direct democracy remains exceptional. The 29th May referendum was the 10th referendum organised under the 5th Republic and the second decided by President Chirac. In the particular case of European Treaties, the most frequent mode of ratification is still the parliamentary approval, as this was the case for the Treaty of Rome (1957), the Single European Act (1985), the Amsterdam Treaty (1997) and the Nice Treaty (2000).

The very choice of the referendum is questionable as it is, in the particular context of France, connoted and fraught with risks. It was officially decided by the President of the French Republic on 9th March 2005 under Article 11 of the 1958 Constitution. It is a discretionary power of the French President, the direct consequence being a strong “personalization” of the referendum. It seems though that only the referenda held at the initiative of De Gaulle are regarded as strongly associated with the person of the President and that the use of referenda since 1969

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7 President Chirac decided to hold a referendum for the first time in 2000. On 24th September 2000, 73% of the French voters approved the reduction of the presidential term from seven to five years. However, the turnout was extremely low with an abstention rate of nearly 70%.
8 Under Article 11 of the 1958 Constitution, “the President of the Republic may, on a proposal from the government when Parliament is in session or on a joint motion of the two assemblies, published in either case in the Journal officiel, submit to a referendum any government bill which deals with the organization of the public authorities, or with reforms relating to the economic or social policy of the Nation and to the public services thereto, or which provides for authorization to ratify a treaty that, although not contrary to the Constitution, would affect the functioning of the institutions” (translation from http://www.assemblee-nationale.fr/english).
(when De Gaulle resigned after a negative referendum on regions and Senate reforms) has been more objective and "constitutionally correct" (Foillard, 2003, p. 218). For example, even though the 1992 referendum on the ratification of the Maastricht Treaty provoked an acrimonious debate between supporters and opponents to the Treaty on the European Union, it never became a debate for or against the President.

What is, however, a common and well-acknowledged feature of all French referenda is its use for political ends. There is definitely a tactical use of referenda which has more to do with party politics than the quest for voters’ advice. The analysis of the two referenda hold on European Treaties, before this one – one the accession of the United-Kingdom, Ireland and Denmark in 1972, and on the Maastricht Treaty in 1992 – confirms the use of this mode of ratification as an instrument of political manoeuvres at domestic level. The objective is generally fourfold: to re-establish the legitimacy of the President in the public opinion thanks to a successful vote after difficult time for the majority in place; to provoke visible divisions in the Opposition; to weaken the opponents to the President in his own party and force them to support his political decision before the electorate; lastly, to assert a European leadership (Martin, 2005, p. 27). The 29th May referendum falls into that pattern. Critics were fast indeed to denounce the tactical move behind Chirac’s decision of holding a referendum. The goal was to reinforce his political authority, directly, by offering him an easy victory after bad results in regional and European elections, as well as indirectly, by isolating opponents in his own party forcing them to support him and by causing divisions within the opposition parties, especially within the PS (Socialist Party).

Curiously enough, the initiative of the 29th May referendum can hardly be regarded as a real choice by the French President. Although certainly influenced by tactical and personal motives, President Chirac’s decision was in fact imposed as the pressure to hold a referendum came from different corners. At European level, the consensus for this form of consultation was strengthened in May 2004 when the British Prime Minister Tony Blair decided to organize a referendum in the UK. At domestic level, the pressure increased after almost all political parties decided to support the choice to submit the Constitutional Treaty to a referendum, including the PS (François Hollande) and the UMP, Union for a Popular Movement (Alain Juppé and Nicolas Sarkozy9). It was the expression by political parties of a genuine demand for popular consultation on the new text coming directly from the electorate and grassroots militants10. President Chirac felt constraint and his decision reflects the somehow indirect reintroduction of the democratic input in the referendum initiative.

The choice of a referendum was questionable because it was fraught with risks in the given circumstances. The risk of failure, namely a negative vote, was patently obvious from a strict political point of view. Indeed, the government had just suffered two bitter defeats in regional and European elections, in March and June 2004 respectively, and the people could readily punish the government again. The choice of President Chirac appears even more paradoxical than the parliamentary method was safe under the circumstances (Martin, 2005, p. 26).

However, the greatest challenge for the President and his government was to fail the democratic exercise required by the referendum process. A referendum can be an “efficient legitimacy-producing device” (Auer, 2005, p. 133) if the citizens have a good knowledge of the pros and cons of the issue in question. This is why, in absolute

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9 The position of Nicolas Sarkozy is worth noting in this regard as he was definitely in favour of the referendum, which contrasts with his post-referendum stance.

10 Note also the internal referendum organized by the PS on 1st December 2004.
terms of international law, it is unusual that a treaty is put to a referendum to be ratified. Treaties are generally complicated legal instruments which are not easily accessible to ordinary citizens. European treaties can be regarded as even more complex than traditional international agreements because they represent an incremental process of integration with different layers of changes – they not only contain the new elements necessary to advance integration, but also include all the previous provisions on which the next steps of the European construction is to be based, namely the customs union, the single market and the economic and monetary union, to which the *acquis communautaire* must be added (Moussis, 2006). In the particular case of the Constitutional Treaty, the text was admittedly too long and its structure too complex, consisting of four parts, twenty-three chapters and a total of four hundred and sixty-five articles. The sheer volume of the document received by French voters before the poll was in itself impressive: one hundred and ninety-one pages comprising the decree on the referendum submission, the question asked and the proposed bill preceded by a preamble. There is certainly some degree of absurdity in asking the citizen’s approval on such texts unless the explanations and information about them is well passed on. The patchwork of inconsistent claims which explain the French negative result is certainly indicative of the degree of confusion among French citizens who blamed the Constitutional Treaty for too many things at the same time and this suggests some failings in the conduct of the referendum campaign.

*The Referendum Campaign – Failures in the Democratic Exercise?*

The long anticipated decision to hold a referendum was an interesting opportunity to have an in depth debate on the Constitutional Treaty and the European construction in general. Nevertheless, the analysis of the referendum campaign, which was indeed remarkable by its length and intensity, shows that the risks inherent in the exercise of direct democracy did happen. It has been argued that the 29th May 2005 referendum turned out to be a parody of popular expression (Robert, 2005). It was largely due to the fact that the “cadrage” of the referendum, which refers to the different elements reflecting not only the way the referendum campaign itself *stricto sensu* was conducted but also the circumstances in which it took place that is the product of media coverage, influenced the nature of the debate and allowed a certain number of distortions in the democratic exercise.

The broad array of explanations identified by analysts for the French “no” vote suggest indeed that the referendum debate was not as focused as it was supposed to be. The reasons for the “no” were more diversified than those for the “yes” – mainly motivated by the necessity to support and pursue the European construction – and more related to France’s economic and social situation than to the substance of the reforms proposed in the Constitutional Treaty (Eurobarometer, 2005). Broadly, there are four trends of explanations of the “no” vote (Brouard & Tiberj, 2006, p. 261). The first one is “the political distrust hypothesis”: French voters expressed their dissatisfaction with the political elites, their lack of responsiveness, and their inability to solve the major problems facing the nation. The second hypothesis is the “anti-Europe hypothesis” and explains the rejection as a rejection of the process of European integration itself; to a certain extent, thirteen years after the “yes” to the Maastricht Treaty by a narrow margin (51%), France is still seen as divided along a major value cleavage which affects the level of anti-European attitudes. The third hypothesis, and the most interesting finding which came out of the referendum result analysis, is the “EU criticism hypothesis” which explains the rejection as a policy-
disagreement and not an anti-European attitude; this disagreement was bound to be expressed by a certain category of the French population afraid of the image of an economically liberal Europe which would threaten the French social model, and in particular the French public sector and welfare system. The last hypothesis is “the executive popularity hypothesis” which explains the rejection as an indicator of the President’s and government’s popularity which was undoubtedly damaged at the time, particularly after the major electoral defeats of 2004.

Two phenomena are worth noting here as they reveal another set of paradoxes in the democratic process. The first one concerns the attitude of French political actors and the second one the motivations of the French electorate. Concerning the first paradox, a straightforward and direct question was asked to the French citizens on a Treaty which aimed to simplify the structure and functioning of the EU. Because the stakes of the ratification process were so important and the Constitutional Treaty, in fact, so complicated, a genuine “campaign of information” by French political actors was crucial. There was undoubtedly a willingness from some French people to understand the Constitutional Treaty as attested by the lively debates, the constitution of “collectifs de réflexion” (groups of reflection) and the deliberative consultations in various parts of the country.

Paradoxically, the conduct of such a campaign proved to be a very difficult task for the government and political party leaders. The government did not quite achieve the right balance between an ambitious campaign for the “yes” and a certain reserve out of consideration for the “no” camp. It did intervene on numerous occasions to orientate the vote in favour of the Constitutional Treaty, well supported in that matter by the unidirectional positioning of the main media during the campaign, quasi unanimously on the “yes” side. The experience of the Ministry of Foreign Affairs is illustrative of these difficulties: although motivated by the need to provide information to the citizens, it was called upon to show more neutrality after the launch of its information campaign on the Constitutional Treaty, named “Mission Europe”, after some opponents had complained that the Ministry was using public funds (representing a ten millions euros budget) to unofficially support a “yes” vote.

The French government was anyway incapable, to a certain extent, to explain key issues on the Constitutional Treaty when these were source of confusion and to redirect the debate when it clearly involved distortions of information and fallacious arguments. Three examples best illustrate these moments in the referendum campaign. First, the portrayal of the text as a “Constitution” was problematic. The fact that it was attached to the concept of a Treaty was certainly a source of confusion for the citizens – and also, of course, an object of study for lawyers and academics. Above all, the use of the term “constitution” carried important values and dramatised the debate as it was synonymous in the mind of most voters with intangibility. It also spectacularly raised expectations in France which could only be disillusioned by the reading of the extremely lengthy and technical piece of legal text which was the Constitutional Treaty (Puech, 2005). In this regard, it was surprising that the important decision of the Constitutional court of 19 November 2004, which shed light on this controversial issue, was hardly referred to during the referendum debate. Clarifying the nature of the relationship between the domestic legal order and the EU legal order, it said that the Constitutional Treaty retained the nature of an international treaty entered into by the States signatory to the EC and EU Treaties. The Constitutional court added that the name given to this new treaty did not require as such any ruling as to its constitutionality and that the title of the Constitutional Treaty had no effect upon the
existence of the French Constitution and the place of the latter at the summit of the domestic legal order.\footnote{Decision No 2004-505 DC on the Treaty establishing a Constitution for Europe (19 November 2004) at points 9 and 10.}

Secondly, on the Turkish accession, the legal mechanism organizing the accession of a candidate country, as well as the domestic ratification process of accession treaties, are easy enough to explain. This is a formal process involving compliance with strict provisions\footnote{Articles 49 and 6 § 1 of the TEU.} and stages which involve the EU institutions and the Member States\footnote{The Commission delivers the recommendation to start accession negotiations, if requested by the European Council; the decision to start formal negotiations on accession pertains to the European Council; the European Parliament approves the accession and the Members States will sign the treaty with the acceding country; eventually, the accession treaty will be ratified according to each country’s constitutional provisions, which might be a referendum in some cases.} – and this was not amended by the Constitutional Treaty. However, many politicians, often relayed by the media, presented the accession of Turkey as accepted and inevitable. Nor did Chirac, Giscard d’Estaing or anyone else persuade the French voters that the Constitutional Treaty certainly did not aid the Turkish case any more than the Treaty of Nice. Thirdly, the fallacious argument over the directive proposal on services in the internal market is illustrative of a “non masterised” use of a legal text and a selective reading of the Constitutional Treaty. A truncated version of Article 16 about the “country of origin” principle was presented by the media without mentioning the numerous exceptions (twenty-nine in total) to the controversial principle.\footnote{The so-called Bolkenstein directive proposal aimed at creating a single market for services within the EU, similar to the single market for goods. It contained the “country of origin” principle in order to facilitate the free movement of service providers on a temporary basis from one Member State to another on the basis of the laws of their country of origin/establishment without registering with regulators in the host Member State (a Polish plumber could work in France under Polish labour laws). Substantially amended, the directive was adopted in December 2006 by the EP and Council as Directive 2006/123/EC.} This could have avoided a lot of bad publicity about Polish plumbers!

The overall confusion was even greater as supporters and opponents to the Constitutional Treaty did not strictly follow political parties’ divide, as exemplified by the PS internal division. It was also fuelled by the controversial attitudes of some individuals, mostly defending the “yes” side. For example, former judge and member of the Constitutional court, Simone Weil, did not resign but took temporal leave off the institution in order to be able to publicly express her views in favour of the Constitutional Treaty, thereby violating the very independence governing the members of this institution.

The referendum campaign certainly generated ambiguity between representative democracy and direct democracy; when the choice is made to have a popular consultation and let the people speak, it is not appropriate to let their representatives and political parties monopolize the referendum campaign (Robert, 2005, p. 842). Also, never has the law been so present in a public debate about a referendum, yet never have lawyers been so absent (Monjal, 2005, p. 439). It is indeed remarkable that other actors, such as lawyers, were put aside during the debate. As more technical contributors, they could have enlightened the citizens about the legal and constitutional rhetoric behind the Constitutional Treaty and counteracted those political actors who would use legal arguments in a distorted way. It is a fact that the way the arguments for the “no” were brought forward mostly revolved around legal
arguments which were extensively covered in the press and media. These arguments were in many instances legally unsound as shown above.

The other paradox concerns the motivations of the French electorate. It was a simple question asked, but it was thrown into a complicated context. The political context was relatively tense with, schematically, a government clearly loosing ground after defeats in local and European elections, on one hand, and a still divided political left despite good results in the same elections, on the other hand. Besides, in terms of political motivations, the “major fractures”, not only within the French political class but also among the French people, which were already present during the Treaty of Maastricht referendum campaign (Keraudren & Dubois, 1994, p. 172) had matured into different views about the European construction. New cleavages appeared in the 2005 referendum campaign, which were different from the traditional ones, but juxtaposed to the old ones. Paradoxically, the use of the referendum process, liberating frustrations and fears, did not – could not – in its result reflect the maturation of these different logics into a unifying project around Europe and the rejection of the Constitutional Treaty expressed a sovereignist attitude claiming for less integration and a voluntarist approach claiming for a stronger social dimension of the European Union at the same time. A revealing finding came out of the post-referendum survey in this regard. It showed that a majority of French voters believed that the “no” victory could not only lead to the renegotiation of the Constitutional Treaty, but also to a renegotiation in order to achieve a more social text (Eurobarometer 2005).

Dominated by internal concerns and reflecting a loss of common ground between the elites of politics and ordinary citizens, the referendum debate in France was not European affairs oriented and gave rise to a very disputable conception of direct democracy. Greater then was the challenge faced by French and European leaders to find ways of dealing with the consequences of the negative result.

FORESEEING THE POSITIVE – CRISIS, REFLECTION, AND ACTION

There was no legal solution to the ratification conundrum faced after the French and Dutch negative referenda as unanimous ratification by all the twenty-five Member States was required for the entry into force of the Constitutional Treaty. The Member States gave themselves some political latitude though by agreeing in Declaration No. 30 appended to the Treaty to review the situation where four-fifths of the Member States have ratified the text, but where one or more have encountered difficulties in doing so. The problem was that the immediate aftermath of the ratification process failure did not see the emergence of any political leadership strong enough to revive the EU constitutional project. It was especially unrealistic to expect any significant initiative from France which was experiencing an unmistakable “fin de régime”\(^{16}\).

The reality of the crisis led to a period of reflection and some actions taken whether within the national or European context recentered initiatives about the European construction along specific priorities. These developments, through reflection and action, could arguably be regarded as setting the propitious conditions to build on the failure and failings of the French negative referendum and provide the incentive to restore the democratic momentum and advance European integration.

\(^{16}\) France was to elect a new President of the Republic by a two rounds voting system on 22\(^{nd}\) April and 6\(^{th}\) May respectively. His (or her) election was to be closely followed by Parliamentary elections, on 10\(^{th}\) and 17\(^{th}\) June 2007.
Immediate Aftermath – Crisis? What Crisis?

On one account, one could have wondered about the reality of the crisis in the immediate aftermath of the French decisive rejection. At domestic level, a mere reshuffle of government – President Chirac staying in office and replacing Prime Minister Jean-Pierre Raffarin with one of his closest allies, Dominique de Villepin, and bringing Nicolas Sarkozy back into the government in Villepin’s vacated slot at the Home Office – gave a certain continuity to the executive power, with more or less the same persons involved, as if nothing had happened. At European level, business went as usual within the institutions and the Member States; new policies continued to be generated and laws passed.

On another account, however, the “no” vote had a resounding impact both for France and the EU. In that sense, it was not so much a question of the reality of the crisis but rather a question about the kind of crisis faced. It certainly had implications for the French political regime and in particular for the institution of the referendum under the 5th Republic, which some declared “dead” (Robert, 2005, p. 845). It also isolated France from its traditional European partners – Germany in the first place, thereby weakening the “sacrosanct” Franco German couple. Lastly, the backlash proved quite difficult for the French government, weakened by the loss of confidence, to pursue some reforms that the country urgently needed.

Above all, the implications of the referenda amounted to a significant blow for the process of integration and, as matter of fact, paralysed the EU, at least its capacity to move forward – and this, until the French presidential elections of April/May 2007. It also had some kind of “spill over effect for the wider Europe” (Stefanova, 2006). Although the EU leaders stressed their commitment to the ongoing accession negotiations, culminating with the accession of Bulgaria and Romania in January 2007, the conclusions of the Finnish Presidency (second half of 2006) suggested that the EU would slow down the pace of enlargement in the coming years, leading to a kind of “enlargement fatigue” due to the inability of the EU to complete the reform brought about by the Constitutional Treaty (Tiilikainen, 2007, p. 4). Plunged into a period of considerable political weakness and ineffectiveness, the EU was also bound to experience a prolonged period of reassessment and retrenchment. One of the major implications of the French “no” vote was indeed the necessity to reflect on the profound questions raised about the nature, meaning, and direction of the European project.

What is next? – Reflection and A Few Scenarios for France and the European Union

Between the French rejection (May 2005) and the start of the German Presidency of the European Council (January 2007), the developments on the European construction were two-fold: the continuation of the ratification process and the start of a period of reflection. The ratification process went on and, by June 2007, eighteen (two-thirds) Member States ratified the Constitutional Treaty in total, following an extension of the original timetable. The French and Dutch votes, however negative, could not

17 The setback could also be felt in other parts of the world, prominently by the USA who have come to understand in recent years how much they need help from strong allies with similar values and then, more than ever, a strong and united Europe (International Herald Tribune, “France votes ‘non’”, Wednesday, June 1, 2005).

18 Two referenda (non-binding) were successful: in Spain, people voted in favour of the Constitutional Treaty on 20th February 2005 and it was eventually ratified by both chambers of Parliament on 18th
jeopardise the possibility for people in other Member States to express their views on the European project.

In its declaration of 18th June 2005, the European Council agreed to start “a period of reflection, explanation and debate”. The Member States also stated that the referenda results did “not call into question citizen’s attachment to the construction of Europe” but that “citizens have nevertheless expressed concerns and worries which need to be taken into account”. There was indeed an early consensus to admit that, however “invisible” the crisis might be, the French and Dutch referenda had long-term implications and called for serious reflection on the EU goals and governance. Nevertheless, given the variety of concerns, the diversity of views on the next steps and the different levels of action – European, national and even local – the task of how to take these concerns and worries into account appeared quite challenging at the time.

In this matter, the absence of political leadership could be blamed for the lack of direction and vision during this period hereby preventing concrete expression to the reflection and somehow dispersing the debate. However, it also appears that this unbridled (except for time constraint linked to EU Presidencies calendar) period of reflection provided the necessary outlet for all the concerns and positions expressed by and through the French referendum. In the first place, a variety of possible scenarios were proposed and analysed by commentators and think tanks – such as *Notre Europe*, *La Fondation Robert Schuman*, *Telos – eu*, *Confrontations Europe*, to name but a few19 - giving in depth perspectives to the reflection process. Secondly, a certain number of political leaders and key actors took a stand on the issue, confirming the part of responsibility they ought to take in getting over the crisis.

Schematically, three categories of scenarios emerged from the crisis (Ricard-Nihoul, 2005, pp. 36-37, De Búrca, 2006, pp. 211-214). The first category represented the least “accommodating” scenarios. At one extreme, some argued that the Constitutional Treaty was dead and should be forgotten and that we should live with the Treaty of Nice for a long time to come. At the other extreme, there were those who promoted the method already used in the cases of Ireland and Denmark, namely the adoption of a few protocols or opt-outs that would make it possible to resubmit a practically un-amended text to the Dutch and French electorates without too much delay.

A second category proposed renegotiating the text, which would affect the three parts of the Constitution document to varying degrees – but often with the emphasis placed on Part III about EU policies. The main idea here was to open a true constituent procedure with the putting in place of a constituent assembly. In this

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category, some “differentiation” scenarios were put forward but their impracticalities led to their rejection. In particular, one option could have seen four-fifths of the Member States being governed by the Constitutional Treaty, their relationship with the Member States who did not ratify the Constitutional Treaty being governed by current rules under the Nice Treaty. However lawful under international public law and in particular the 1969 Vienna Convention on the Law of Treaties, this appeared highly unrealistic as Member States would have found it impractical to work under differing rules of voting arithmetic and institutional composition.

The third category included the “Nice +” scenario recognizing that a return to the Treaty of Nice for some time was more than probable with, nevertheless, the proposal to recover a few elements from the Constitutional Treaty which could come into force without ratification via the provisions of the citizens’ initiative or control of national parliaments. As a variant to this category, there was the possibility to recover part of the text of the Constitutional Treaty by organising a small Intergovernmental Conference (IGC) and proceeding to ratification on the new version of this text.

Eventually, the third kind of scenario, probably the most simple and anticipated one, has thus far prevailed, namely a status quo in which the deficient Nice Treaty keeps governing the further enlarged EU. As for the fate of the Constitutional Treaty, a number of institutional actors and political leaders explored various options and some of their views, mainly leading toward the dismantling of the hard-won compromise package that was the Constitutional Treaty and leading to the so-called “cherry-picking” option, are worth mentioning. The EU institutions adopted quite a low profile stance on the issue. The President of the Commission José Manuel Barroso in particular quickly declared the Constitutional Treaty dead on September 2005. But some initiatives coming from the European Parliament (EP) interestingly revived the debate in concrete constitutional terms. For example, French MEP Gérard Onesta, member of the Green Party and Vice-President of the EP, submitted his very influential “Plan A+” in November 2006 as a response to the ill-received “Plan B” on the renegotiation of the Constitutional Treaty presented by MEP Andrew Duff one month earlier. While the latter advocated that the Constitutional Treaty could be rescued, but only by renegotiation and serious revision especially of Part III on the policies and functioning of the EU, the former was in favour of a new deal over the text in order to revive, not the Constitutional Treaty itself, but the constitutional process. Onesta suggests that the Member States should maintain the basic contents of the current draft (with the exception of giving up unanimity on treaty amendments), but that an IGC should split up the text into two parts – a Constitution and a Treaty. The Constitution would represent most of Parts I and II, which concern the

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20 An option in this situation could have been the use of “enhanced cooperation” (Article 43 TEU) if some Member States were willing to go further in the pursuit of European integration. However, this provision has not been used even among the most pro-integration Member States disappointed by the French “no” vote. It is true that the conditions attached to the implementation of such cooperation are so cumbersome that it was a little bit unrealistic. Another implausible scenario would have seen France’s withdrawal from the European Union. The current treaties are said to have been concluded for an unlimited period (Article 51 TEU and 312 ECT) and they do not provide for any right to withdraw. Whilst the Constitutional Treaty expressly states, for the first time, the existence of such right (Article I-60), it cannot be relied upon before the entry into force of the new treaty. There is no doubt that despite these legal niceties, a Member State which clearly wants to pull out could unilaterally do so as the ultimate foundation of European integration is to be found in the Constitution of each Member State. On the contrary, no Member State could be legally compelled by its partners to withdraw from the EU following a refusal to ratify a treaty.

21 On Gérard Onesta’s Plan A+, see [http://www.onesta.net/](http://www.onesta.net/)
institutions of the EU and the Charter of Fundamental Rights respectively, and the Treaty would represent Part III on EU policies. The difference between the Constitution and the Treaty would be reflected in the ratification procedures. While the Constitution would be approved by a double majority of Member States and citizens, the Treaty would require unanimous approval by national parliaments.

Valéry Giscard d’Estaing, former French President and former President of the Convention on the Future of Europe, suggested in February 2006 that the debate should be refocused on the only genuinely constitutional parts of the Constitutional Treaty, namely Parts I and II. Part III should not be abandoned but ratified by national parliaments. However, this solution would seem impractical as some Member States, such as Denmark and Ireland, would probably still need to hold a referendum on Part III even if it was only to codify current provisions.

The two runners up for the French Presidency, Ségolène Royal and Nicolas Sarkozy each faced at the time the potential challenge of negotiating the consequences of the negative vote with the other Members States and breaking the deadlock in the ratification process. Although they both had called to vote “yes” in the referendum on the Constitutional Treaty, their position in the period leading to the Presidential campaign and during it differed in many respects. After one year and a half of silence on the part of French political leaders, Nicolas Sarkozy was the first to officially express his views on the post-“no” situation. His Brussels speech of 8th September 2006 not only put Europe back on the national agenda but also relaunched the talks on the constitutional project at European level. Sarkozy proposed as a matter of urgency – and in order to give the EU its efficiency back – the renegotiation of a unique mini treaty before 2008. He suggested restricting the debate to the essential elements of the former Part I of the Constitutional Treaty, deemed relatively “consensual”. This “mini institutional treaty” would include an extension of qualified majority voting and co-decision, the principle of double majority voting of Member States plus citizens, the nomination of a European Foreign Affairs Minister, more stable Presidency of the European Council, the election of the President of the European Commission by the Parliament, the monitoring of the subsidiarity principle by the national parliaments, citizen’s initiative, support to enhanced cooperation and the grant of legal personality to the Union. The text could be adopted in early 2007 during the German presidency and ratified during the French presidency (second half of 2008). Being essentially a “technical” treaty, it should, according to Sarkozy, be ratified, in France at least, by the Parliament – then discarding another referendum.

In contrast, Ségolène Royal promoted the “Europe of results” (“l’Europe par la preuve”) and that the institutional reform should flow from the project and not the other way round. In October 2006, she advocated a democratic debate on European goals to be held under the German Presidency. Then, a Convention would be launched under the French Presidency to draft the text for institutional reforms. She proposed that the text be ratified on the same day according to procedure chosen by each Member State. Despite some reluctance among PS leaders, Ségolène Royal stuck to

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22 See also the Appel de Florence (17 November 2006), of which Giscard d’Estaing was a signatory, which recommended to keep Parts I and II of the Constitutional Treaty and to clarify Part III.

23 Nicolas Sarkozy and Ségolène Royal passed the first round of the Presidential elections on 22nd April 2007 with 31% and 26% of votes respectively. Nicolas Sarkozy eventually won the Presidential elections with 53% of the votes on 6th May 2007.


25 It was also referred to by the President of the European Commission, José Manuel Barroso, and the Vice-President, Margot Wallström, in their new citizens’ agenda in May 2006 (A Citizens’s Agenda – Delivering Result for Europe, COM(2006), 10 May 2006).
the option stated in the Party’s programme which was holding another referendum which timing would coincide with the elections to the European Parliament in June 2009.

Sarkozy’s proposal of the mini treaty gave rise to mixed reactions among the experts and was readily disparaged mostly by leaders of Members States which had already ratified the Constitutional Treaty. It gradually gained some acceptance for two obvious reasons: making a second “no” less likely (but see the rejection by the French National Assembly of the EDC in 1954) and being in line with the more reluctant Member States like the United Kingdom. These scenarios and statements have been accompanied by a certain number of actions necessary to effectively revive the EU project in the perspective of forthcoming events.

And next? – Action and Key Dates for Constructive Political Dialogue

Several important dates have marked European developments since May 2005, among them the fiftieth anniversary of the signature of the Rome Treaties in March 2007. But this was the German Presidency (January-May 2007) which reset the reform momentum and defined the EU’s priorities. Entrusted with the task to hold in-depth consultations with the Member States in order to explore possible future developments on how to continue the reform process, it declared that the reflection pause was over and that, by June 2007, the European Council should reach a decision on what to do with the Constitutional Treaty. German Chancellor, Angela Merkel, insisted on the necessity to revive the deadlocked Constitutional Treaty and bring the whole process to a successful conclusion by the next European Parliament elections in early 2009.

It soon appeared that another decisive date would be the French presidential elections in May 2007. In that regard, taking stock of the negative result and preparing for the “relance”, the French government, supported by the EU institutions, took a certain number of actions in order to address the implications of the “no” vote in two directions: first, by attempting to offer space and time for a constructive public engagement with European affairs; secondly, by promoting concrete initiatives for a Europe of projects. On the long run, the combination of these two kinds of actions – reflective/deliberative combined with active/concrete actions – might be particularly relevant in the context of France to revive the European constitutional momentum and maintain a sufficient interest in the integration process.

First of all, an obvious consensus emerged among the institutions and the Member States (but not necessarily among academic circles) as to the necessity of a fuller public engagement in the European debate. Given the causes of the “no” vote, that was an absence of optimal conditions for popular consultation, including full or perfect information, a reasonable and properly focused electorate, and a precise understanding of the implications of the vote, it is commendable advice. As a matter of fact, despite the tactical mistakes and the unfavourable political conditions of the referenda, the citizens have entered the arena of European politics. In the case of the French case, the experience of the referendum has transformed the main cleavages about European integration in domestic politics and has arguably increased the degree of influence of European affairs on national political dynamics. In order not to lose the referendum momentum and to build on the failure, the EU institutions and domestic political leaders have advocated the necessity to explain the continuing

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26 On Ségolène Royal’s position, see [http://www.segoleneparis.fr/node/1693](http://www.segoleneparis.fr/node/1693)
benefits of European integration and to involve the main institutional and policy actors in the process.

The EU institutions, namely the European Parliament and the Commission, have certainly played an important role in this respect, promoting national debates on the EU and its future, whether in the ordinary national fora or during election campaigns. The European Commission in particular issued in October 2005 its Plan D for Democracy, Dialogue and Debate with the objective to stimulate a wider debate between the EU democratic institutions and the citizens. It was part of a long-term plan to reinvigorate European democracy and help the emergence of a European public sphere, where citizens are given the information and the tools to actively participate in the decision making process and gain ownership of the European project. A better engagement of the citizens with the EU decision-making process was also logically one of the key priorities of the French government. In the wake of the negative result, it took a series of concrete measures to involve the national Parliament, local authorities, social partners, as well as to provide better deliberation conditions and information to the civil society.

In this context, some have argued that a process of “ politicization” of the European Union has started and that it should be pursued. There was indeed a momentum created by the referenda process and it would be “too politically unrealistic and too democratically disdainful” to go back to the form of technocratic and elites-led management that has prevailed in the EU governance so far (De Búrca, 2006, p. 7) – hereby acknowledging that there were failures of democratic practices that went beyond the context of France. This phenomenon can be seen as the most interesting implication of the negative result. Broadly, the process of “ politicization” means that the functioning of the EU must provide the conditions for a gradual opening of European political space to the citizens through mechanisms which will lead to a greater degree of accountability and legitimacy. However, the “ politicization” debate raises complex issues of form, method and substance (Ricard-Nihoul, 2006, pp. 1-15). Some have advocated an increase of the European political debate to partisan competition along traditional left-right lines and the application of the majority principle in the decision-making process (i.e. Professor Simon Hix cited in Ricard-Nihoul, 2006, p. 9). Others have argued that a mere transposition of the nation-state model of democratic functioning would not take sufficient account of the specificities of the EU political system and would actually damage the current institutional balance (i.e. Professors Paul Magnette and Jean-Louis Quermonne cited in Ricard-Nihoul, 2006, p. 9). In any case, emphasis must be put on the role of other actors such as the European parties, the media, the national parliaments and methods of direct participation by citizens, as key players at the core of this process. Another suggestion would be to draw on federal systems and “consociational” models of democracy in considering ways in which the EU could become more politicized.

However, the feasibility of a fully-fledged political dialogue, through a process of “ politicization” of the European Union space, remains to be seen. There was a lot of hope after the referenda that the European debate will form part of the national debate, especially during national elections. However, in the French case,

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28 COLONNA Catherine (2006) La France et l’Europe: “Relever les défis du présent et préparer l’avenir – un an de politique européenne du gouvernement, 22 June 2006, 26 p. Interestingly, for example, more importance was given to European affairs in the educational programme of future journalists!
even if the interest in politics has been renewed in the last sets of elections, as attested by the important turnout for the 29th May referendum (almost 70%) and massive turnout in the two rounds of the Presidential election (almost 84%), it is a rather worrying fact that the European debate was quasi absent from the Presidential election campaign. As matter of fact, European questions are only rarely at the heart of French political debates, traditionally focussed on the country’s internal problems, and it is possible that the negative referendum has made European issues a taboo (Ricard-Nihoul, 2007).

The process of politicization of European affairs within national spheres is more likely to be long and uneven. At European level, an agreement as to the methods of this process is needed as well as a change, at national level, in political rhetoric. Governments, politicians and opinions leaders, not only in France but across the EU, would indeed need to dramatically review the way they debate, present and communicate on EU issues and further developments. Even the communication strategy and policy of the main information provider on the EU, namely the Commission, has been seriously questioned for some time. For example, the Commission’s Plan D, “however well-intentioned, still looks more like a bureaucratic communications strategy to inform and convince the public about EU affairs than a genuine, bottom-up engagement in creating and debating European policy” (De Búrca, 2006, p. 215). Yet, the lack of deliberation forum within the EU and national fora and the gap between the EU institutions and its citizens, reflected in the “democratic deficit” diagnosis, is not a fatality. Contrary to a commonly admitted myth, the founding fathers of the Communities never had the intention of keeping the people in ignorance and some concrete actions were rapidly taken at the start of the European construction to bring the EU closer to them, especially in the area of education (Petit, 2006, p. 678).

This is where the second dimension of the action plan comes into play, namely a set of concrete actions around the idea of a “Europe of projects”. It was considered that this pragmatism could act as a bait to induce the citizens to embrace fully the debate on EU affairs. European leaders were indeed advised to forget meta-politics for a while and (re)embark on practical policy proposals in order for the citizens to see the benefits of integration. This was formally articulated by Tony Blair in February 2006 and also taken over by France in the aftermath of the negative referendum. The French government was willing to take initiatives seeking to promote a “pragmatic Europe” (“Europe concrète”) as a means to rebuild the confidence of the people in the European construction. Therefore, putting in place a “Europe of projects and effective policies” was the other priority of the government and they have promoted the proposals made so far by France in a variety of areas, from energy policy to research cooperation – praising, for example, the benefits of the ITER project in Cadarache and the GALILEO project in Toulouse.

**CONCLUSION**

The European Union remains an extraordinary achievement which is the product of fifty years of peaceful and voluntary unification of different nations formerly antagonistic. However, European citizens cannot be blamed for their lack of interest and dissatisfaction, as the integration process is hardly fascinating. It is clouded by hard negotiations which take place among complex institutions and produce hardly accessible legislation to the ordinary citizens. The “constitutional turn” of the Constitutional Treaty was supposed to change part of that but the opportunity was
somehow missed because of many flaws in the democratic input. Most of the Europeans, and the French in particular, did not quite see that the Constitutional Treaty, whatever its imperfections, was the best compromise found to address several issues left over by the previous Treaty. This was due to an immense lack of information and understanding between the citizens and political actors. About the referendum, tactical mistakes were made and political conditions at the time were not propitious.

The French “no” vote had some disastrous implications, in practical and political terms: paralysis, inefficiency and crisis of identity. It is very ironic that France has been a driving force in the EU construction, but has been responsible for halting twice a crucial step of further political integration, once in 1954 – when the French National Assembly rejected the European Defence Community (EDC), and today – when the French people rejected the Constitutional Treaty. The remoteness of the EDC experience makes it difficult, and somehow irrelevant, to compare with the current situation, but similarities exist. The EDC was a French initiative (Pleven Plan) – like France was the main supporter of the Convention on the Future of Europe which led to the Constitutional Treaty. The EDC was a Treaty containing the “constitution” of a Community. It also happened in a very menacing political context – menace of a possible German army. The 1954 French “no” provoked one of the most serious political crises ever experienced by the country, especially for political parties which were highly divided on the issue, resembling the situation experienced by the PS today. Also, it had serious repercussions for other countries – European countries but, most of all, the USA. However, some years later, the proponents of the economic Community were successful in their enterprise to revive European road to unity.

Demonstrating some of the positive implications of the 2005 rejection might fall into that window of hope opened after the decisive double negative referenda by two founding members of the European Economic Community. Precisely because it did produce a sense of crisis and has required that serious political attention be paid to the voices of popular disaffection and alienation from the EU (De Búrca, 2006, p. 211), the French “no” vote provoked an acute sense of urgency about the European construction and started the interesting process of involving the citizens in the arena of European politics. Dialogue and pro-activity seem to be the key ideas implied by the French “no” vote. Without going so far as arguing with Jürgen Habermas that EU democracy is the solution to global problems, that the EU will solve socio-economic problems posed by globalization, as well as capitalize on legal and cultural possibilities opened by it (McCormick, 2006, p. 398), the EU construction is definitely part of the answer to many problems. French politicians would be well advised to get over the message that the European construction is part of a timely response to the challenges faced under globalisation for as “Europe is our common future” (Berlin Declaration, 25th March 2007).

After the time of divisions and confrontation – confrontation of opinions between citizens and politicians, much anticipated by some (Keraudren & Dubois, 1994, p. 172) – comes the time of clarification. It is indeed a matter of clarification about the relevance of the reform process, especially in its institutional dimension with an EU counting twenty-seven Member States. It is also a matter to clarify the necessity of pursuing the integration process, especially to fully articulate legal integration with social integration. This concerns the EU institutions as well as national political leaders, whether acting at national or European level. However, whether it implies a real “politicization” of EU affairs and the emergence of an
European public sphere, or a return to a more bureaucratic and confidential style of management of EU affairs, as implied by recent developments\(^{29}\), remains to be seen. In any case, the amount of efforts to revive the EU reform process despite the crisis is crucial and must be the main lesson learnt from the “no” vote. As Jean Monnet once put it: “I have always thought that Europe will be made through crises and that it would reflect the sum of the solutions brought to solve these crises” (quoted in Delors, 2005, p. 719).

\(^{29}\) In particular, abandoning the referendum method in France and the United Kingdom, or the critics aimed at the German Presidency which was blamed for holding “behind closed-door talks” with Member States on the new text and leaving the public out of the debate.
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