

Communicating the EU through debate: opportunity structures for transformation

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Abstract

The language of 'debate' has emerged over the past decade to become a characteristic feature of political discourse in the EU. National governments (either individually or in the Council), the European Commission, and the European Parliament have all emphasised the importance of having a specific expert or general public debate, firstly on a range of issues (whether matters of everyday policy-making or on history-making decisions about the intended direction and underlying purpose of the Union), and secondly for a range of apparent purposes (whether to enhance popular participation in decision-making, to identify the options for further integration, or to legitimise decisions in the face of increasing public scepticism vis-à-vis the European project). Behind much of the rhetoric on the importance of debate in and on the EU is an assumption of transformation: that people's opinions and preferences regarding the future shape and direction might be transformed through the process of debate. However, this paper argues that the extent to which this transformative potential is realised, the existence of opportunity structures for transformation (OSTs), varies significantly. Norms of appropriateness, the presence or absence of a shared normative agenda, and the degrees of inclusiveness and formality shape OSTs and in turn the efficacy of debate as a political tool.

Introduction

Over the past two decades the European Union has continuously struggled with a distinct lack of public support, much to the puzzlement and frustration of the EU institutions. Citizens take advantage of EU legislation and harmonisation in day-to-day life afforded by policies on the free movement of labour, monetary union and the Schengen agreement as well as opportunities provided by programmes such as ERASMUS and Leonardo da Vinci. Yet, public support for the European idea, as evidenced by successive Eurobarometer polls has been stagnant or even declining. Recent referendums on new treaties were rejected in France, the Netherlands and Ireland; all countries traditionally pro-European. Turnout to European Parliament elections continues to fall and political parties opposed to the very existence of the EU become more vociferous. These ongoing developments have been taken as evidence of a 'crisis of politics' from which the EU is said to suffer. Such a crisis, or perhaps more accurately crises, are not of course confined to the EU level¹, but the Union has developed an approach to tackling these problems which relies heavily on a communication strategy. It is our contention in this paper that the Union has started to use the tool of 'public debate' on a range of issues to inform and engage the public and thereby gain its support.

The Commission, Council and Parliament have all been known to call for debates for various reasons on one issue or another. The Commission's 2001 Governance White paper was an early example²; and this has since been followed by its initiative 'Plan D'³, as well as the recent Communication policy agenda. The Council's declaration on future of the Union, which was annexed to the Nice Treaty,⁴ and the subsequent Laeken Declaration⁵ both identified the need for more extensive debate on the key challenges facing the EU. And the European Parliament for its part has emphasised the importance of debate in reference to...⁶). The range of debates varies focusing on everyday policy-making as well as more far-reaching issues concerning the intended direction of integration and/or purpose and aim of the Union as a whole. Some debates are elite-level or expert-led, for example Prodi's 'wise men' and the current work of the EU reflection group and tend to be focused on technical issues, or on identifying radical solutions. The benefits of elite or expert debate tend to be largely located in the *content* of the debates. However, in this paper we are focusing on public debate where it is not only the *content* but also the *process* of debate that is important.

Thus, the calling for and holding of public debates has been an important part of a broader strategy on the part of the EU institutions to connect more closely with citizens, in the official rhetoric, to 'bring citizens and EU institutions closer together'. One of the objectives of public debates, which is consistent with the post-Maastricht democratisation strategy is to inform citizens about important issues and ongoing processes at the European level. This is based on the assumption that part of the EU's

¹ See for example Jack Hayward's edited collection on 'Leaderless Europe' and Mair 2006

² See http://ec.europa.eu/governance/docs/comm_rapport_en.pdf.

³ See http://ec.europa.eu/commission_barroso/wallstrom/pdf/communication_planD_en.pdf.

⁴ See http://www.ena.lu/treaty_nice_declaration_future_union_26_february_2001-020302579.html.

⁵ See http://www.ena.lu/laeken_declaration_future_european_union_15_december_2001-020003970.html.

⁶ See http://www.europarl.europa.eu/news/expert/thematic_note_page/008-877-345-12-51-901-20061201TMN00876-11-12-2006-2006/default_p001c001_en.htm; http://www.europarl.europa.eu/eplive/expert/shotlist_page/20070605SHL07462/default_en.htm.

democratic deficit is an information deficit which can be overcome by passing informational resources from the top down. This has often involved attempts to stimulate a public debate among citizens, making the EU's impact more appreciated in people's perception of day-to-day politics (we will refer to this in the following as 'horizontal debate'). In addition, however, there has been a fairly new concern with using debates at the EU level to involve citizens more closely with the European Union's activities, consistent with the idea that 'real' communication is two-way, involving the EU institutions *listening* to citizens as well as *speaking*. The aim is thus to stimulate a discourse between European policy-makers and concerned citizens bringing citizens closer to the EU and improving the possibility that citizens' concerns are taken into consideration in day-to-day decision-making as well as providing a platform for citizens to contribute to the future shaping of the Union and its overall tasks and functioning (what we call hereafter 'vertical debate').

As we will see in the subsequent section the notion of debate has been invoked frequently at the European level over the past decade or so, and used, as we define it, for both horizontal and vertical purposes. The proliferation of calls for public debates by all the EU institutions, and the linking of debate with attempts to address the various democratic and legitimacy problems from which the EU is said to suffer poses questions about the meaning of the term 'debate', the exact aims that the Union hopes to accomplish through these debates and the actual success of the debates that are taking or have taken place. To this end, in the first part of the paper we undertake an analysis of the increasing propensity to 'debate Europe' and use these findings as a precursor to an empirical investigation in the subsequent sections of this paper. In the second section we investigate the link between democracy enhancement and debate, making reference to the existing literature on deliberative democracy and linking our findings specifically to the notion of debate at the European level – thus uncovering the potential merits (such as enhancing democratic legitimacy) for both horizontal and vertical debate at the European level. In the third part we outline our empirical investigation of two specific debate events: the Debate Europe website launched by the Commission, and the Convention on the Future of Europe (both of which involve elements of both vertical and horizontal debate). The objective of this empirical analysis is to develop an understanding of the strategy of using public debate as a tool, and its impact on the EU's democratic legitimacy. However, it may also provide policy-makers with empirical tools to enhance the effectiveness of future debates launched at the European and/or national level.

The trajectory of ‘debate’: empirical and theoretical dimensions

It is possible to identify a particular trajectory taken by the notion of ‘debate’ whereby it has become a feature of both empirical and theoretical dimensions of the EU. The commitment to ‘debate’ on the part of the EU institutions can be traced back to the speech of the then German Foreign Minister Joschka Fischer at the Humboldt University in May 2000. He then explored the question of a European *finalité*, of an endpoint for the European integration process, suggesting that “we must [...] consider how a future ‘large’ EU can function as it ought to function and what shape it must therefore take.”⁷ Fischer’s call for debating the future of Europe was taken up by a substantial number of other EU leaders over the following months.⁸ And although the ongoing IGC was not affected directly it became clear that the debate on the future or even the *finalité* of the Union had started. The need for changes to the EU’s status quo became most evident with the European Summit in December 2000 when the EU heads of state and government met for negotiating the final wording of the Nice Treaty. The sentiment among those involved was that the relentless process of bargaining and creation of package deals was becoming a less and less desirable way of making decisions. Tony Blair articulated these concerns when, on the final day of the conference he said ‘we can’t go on [doing business] like this’⁹, and the sentiment was formalised in the Declaration on the Future of the Union, annexed to the Treaty of Nice as Declaration 23. This called for a ‘deeper and wider debate about the future of the European Union... [to] encourage wide-ranging discussions with all interested parties’. The indication was that a different method of examining options and taking decisions was necessary if the Union was to either make progress or even continue at a basic level of competence, the implication being that the tried and tested methods of getting things done had outgrown their usefulness.

In March 2001, the then current Swedish and incoming Belgian presidencies of the Council, together with the Commission and the Parliament, officially launched the ‘debate on the future of the Union’ initiative with the inauguration of the Futurum website. In their joint statement to mark the occasion they outlined that the Union had committed itself to a debate which should reach out further than before to all sections of society¹⁰. This commitment was reiterated in more formal terms several months later by the Laeken European Council’s ‘Declaration on the future of the European Union,’ which outlined the parameters of the formal debate that would lead towards treaty reform, and specified its content. It reiterated the commitment to debate as a means of making progress by presenting the envisaged reform agenda as a series of questions. The Declaration outlined that a Convention would be convened to address and deliberate the relevant issues and try to identify possible responses to the questions posed. The European Council made the point that the outcome of the Convention was open and dependent on its members rather than the established preference-formation of member state government. Therefore, the Convention outcome, from the beginning was envisaged as a matter of argument-based debate rather than power-based negotiation.

⁷ http://www.jeanmonnetprogram.org/papers/00/joschka_fischer_en.rtf

⁸ Most notably, speeches on the Future of Europe were given by then heads of state / government Tony Blair (UK), Jacques Chirac (France), Lionel Jospin (France), Johannes Rau (Germany).

⁹ Garton Ash 2001

¹⁰ Persson et al 2001

In addition to the member states, the Commission, in its 2001 Governance White Paper, had also begun to adopt the language of debate, arguing that the broader debate leading towards the 2004 intergovernmental conference (IGC) should be accompanied by a discussion of how the Union could adapt its methods of working within the existing treaties. In proposing changes to the day-to-day operation of the EU it stated that 'democracy depends on people being able to take part in a public debate'¹¹ and to this end identified participation as a principle of good EU governance. More recently the Commission has continued to speak of the importance of debate. In response to the period of reflection called for by the Heads of State and Government following the rejection of the Constitutional Treaty by French and Dutch voters in 2005, the Commission launched 'Plan D for Democracy, Dialogue and Debate'. The following year it published a White Paper on a European Communication Policy, the first Commission document to mention the concept of 'a European public space for free debate on European issues'. This refers to the 'Debate Europe' initiative, which was launched after the publication of Plan D and which aims to implement the Commission's commitment to two-way dialogue, aiming to foster 'a general and permanent debate on the future of the European Union among people of all walks of life, both at country and EU level'¹².

Although, since the Convention, the notion of debate has been advocated mainly by the European Commission, recent developments show that it remains a concern of the member states, too. During their December 2007 meeting, the heads of state and government noted in the summit's presidency conclusions 'in order to have the Union anticipate and meet challenges more effectively in the longer term (Horizon 2020-2030), the European Council establishes an independent Reflection Group'¹³. This group consists of twelve members, charged with identifying the key issues and developments the Union is likely to face in the 2020-2030 period, and furthermore, to analyse how these might be addressed.¹⁴ Although the logic of debate is clearly present in the rationale for the Reflection Group and the task with which they are charged, it differs from the Commission's conceptualisation of debate most significantly in that the debate in question is a matter for an elite group rather than a public matter for all EU citizens. It is therefore a horizontal debate, albeit not at the public but at the elite level. The Commission, as evident by its Futurum website, the Plan D and the 'Debate Europe' initiative, focuses clearly on vertical debate, hoping to establish a closer link between the concerned public and the European-level decision-makers¹⁵.

Ireland, in 2001, launched a national debate with a special focus on the country's relationship with the European Union. As a consequence of the initial non-ratification of the Nice treaty, the Irish government

¹¹ Commission, 2001, p11

¹² http://ec.europa.eu/commission_barroso/wallstrom/communicating/debate-eu_en.htm

¹³ (16616/1/07 REV 1)

¹⁴ The full mandate can be found in the Presidency Conclusions, but it worth pointing out that the areas 'budget' and 'institutional reform' have been explicitly excluded from the group's agenda.

¹⁵ As these examples demonstrate, the notion of debate has been a characteristic of EU discourses over the past decade but the prevalence of 'debate' in political discourses is not only an EU phenomenon. The New Labour government in the UK has also been particularly fond of invoking the necessity for a 'national debate' with remarkable frequency. Indeed as one newspaper columnist observed, 'this year alone parliament has heard more than 100 calls for national debates to begin. Issues up for discussion have included: the future of policing; road charging; pensions; hoodies; Britishness; the comprehensive spending review; council tax; a bill of rights; the health service; the cost of medicines; drug laws; nuclear weapons; nuclear waste; and smoking' (Julian Glover in The Guardian, 12.07.06).

launched the 'National Forum on Europe'¹⁶ in mid-2001. The Forum 'animates and promotes public debate on the EU, its enlargement, its future and Ireland's place in it.' It was therefore an attempt at vertical debate, informing, on the one hand, Irish citizens about the content of the Treaty of Nice. On the other hand the Form was created to debate the affect the new treaty provisions may have on Ireland as well as given the Irish political elite an insight into the fears and expectations that the citizens may hold vis-à-vis the European Union. It has to be said at this stage, that the first part especially, was tinted by a clear agenda: the first referendum had failed and the Irish political elite¹⁷ were strongly in favour of ratification and the Forum's underlying agenda was to inform citizens about the EU to achieve a yes-vote in the second referendum. The reason behind launching a vertical debate was the hope that better-informed citizens would appreciate the benefits of Irish EU membership as well as the political importance of passing a new EU treaty that had been approved already by all other (then) 14 member states.

Recent practical developments such as these comprise one part of what has been termed a 'deliberative turn' in the study of the European Union¹⁸. The second part of this deliberative turn is the recent emergence of an academic discourse, drawing upon the ideas of deliberative democracy. This analytical shift is informed by the observation that the EU now has its own 'internal political arena'¹⁹ that cannot be effectively captured by the intergovernmentalism/supranationalism theoretical agenda. Starting with the question of how European integration can be explained, Eriksen & Fossum argue that whilst according to conventional theories, integration may occur through strategic bargaining or functional adaptation, 'it may also occur through deliberation or what is commonly referred to as arguing'²⁰. In this view, progress is made, or integration furthered, not through the *aggregation* of preferences, but through the *alteration* of preferences. Accordingly they identify the need for a conceptual framework for studying EU integration that can capture not only power and self-interest as driving forces, but also 'the role of deliberation and arguing in the establishment and validation of rules and by recognising the potential for consensus formation among parties with conflicting interests and values'.

What explains the emergence and increasing popularity of the notion of debate? In addition to providing an exchange of information, ideas and visions it has been linked with attempts to strengthen the Union's democratic credentials and enhance the legitimacy of EU governance. The deliberative democracy literature, which provides the basis of the deliberative turn in EU studies outlined above, provides a theory of the democratising and legitimising capacities of deliberation. The following section will assess the relevant literature and establish a framework for the empirical analysis in the final part of this paper.

Debate, deliberation and democracy

Not only is the notion of debate increasingly found in political and academic discourses at the EU level as we have heard, it is also part of a broader quest to address the EU's democratic deficit and legitimacy crisis, and more generally to help 'bring citizens and EU institutions closer together'. Whether the

¹⁶ <http://www.forumoneurope.ie/>

¹⁷ This includes the government as well as the mainstream opposition parties.

¹⁸ Neyer 2006

¹⁹ Hix 1999

²⁰ Fossum & Erksen 2000: 3

various public debates that have been called for or initiated in the EU will have positive democratic and legitimating consequences is partly a matter of empirical verification. However, before moving on to outline the empirical investigation, we examine in this second section some of the ways in which debate might produce democratic and legitimacy benefits by drawing upon ideas found within the deliberative democracy literature.

One of the legitimating features of debate, as highlighted by the deliberative democracy literature, is that by nature, it involves multiple and representative participants. Dryzek argues that 'the essence of democratic legitimacy should be sought in the ability of all individuals subject to a collective decision to engage in authentic deliberation about that decision'²¹. As it is unpractical for all concerned citizens to physically participate in a debate on a given issue,²² it is therefore important that all interests are equally represented and are given equal and fair participation in the deliberations²³. With consensus-seeking deliberation being the principle foundation of all decision-making, as opposed to majoritarian-based negotiations, the citizen (and not just her (elected) representatives) is thus re-conceptualised from passive-enabling to active-deliberating decision-maker or rather decision-contributor. The citizen's role (or that of her representative) thus changes from authorising and holding to account decision-makers once every four or five years, to engaged participant, involved in politics in a more continuous and ongoing manner through the means of deliberation.

Another implication of Dryzek's statement is that political decisions are legitimate not to the extent that they are made by elected representatives (who have been authorised by citizens to make decisions, and whom in turn they can hold to account), but that they are justifiable to said citizens through the means of public debate by and through citizens and/or their representatives²⁴ of their specific interests. This idea of decision-making based on representative public debate stands in direct contrast to the notion of 'permissive consensus', on which the EU decision-making procedure usually relies and which holds that ordinary citizens do not need to be told much about why their governments were making specific decisions at the European level, let alone be actively involved in the making of these²⁵. Rather, citizens could be satisfied with the assumed knowledge that governments at were acting in the best interests of the country. This of course limits the legitimacy of governmental decision-making at the EU level to *post-hoc* legitimisation while the remoteness of the process also limits government accountability for their EU-related actions. The underlying assumption here, to justify the permissive consensus approach to EU decision-making, is that there is only one 'right' answer to the question of a state's best interest, equating to the unified interest of its citizens. Furthermore, it is only the political elites that are placed in the privileged position to access what this 'best' or 'unified' interest was, which in turns justifies why citizens are excluded from participating through deliberation directly in the decision-making process.

²¹ Dryzek 2000: 1

²² Something that Rawls argues is in fact necessary for true deliberative democracy. In his view a pluralist scheme, in which politics consists of bargaining among groups with different (albeit representative) interests, is not fitting for a just society. Rawls 1971, pp.360-1.

²³ see Cohen 1989, pp.21-2.

²⁴ This does not necessarily refer to elected representatives in the sense of parliamentarians but can include interest groups, unions, or simply concerned private citizens taking part in deliberative decision-making at various levels.

²⁵ see, e.g. Franklin 2005, p.242

Evidently, the notion of debate as found in the rhetoric identified in the previous section stands in direct contrast to the notion of a permissive consensus. In fact, it was the member state governments themselves who realised that this principle was no longer acceptable in times when the legitimacy of EU level decision-making came under increased criticism. It was thus the member state governments that pointed to the link between debate and participation in the 2001 Laeken Declaration: 'In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.)'²⁶ This move illustrates that the idea of debate was suddenly considered to be an important factor for citizens to be able to contribute to the development of a long-term vision for the EU – though not, of course, to participate in the day-to-day routine of legislative decision-making. Regardless of our normative take on the success or non-success of this first attempt at public deliberation during the 2002/3 Convention experience and the potential impact of the Futurum website on its outcome, the Commission, more recently, launched another debate initiative: 'Debate Europe.'²⁷ Therefore, the EU leadership did not link the public debate surrounding the Convention to the relative failure of the Constitutional Treaty, rather they called for additional forms of public debate through this new online forum. Although the site does not offer a precise debate agenda, it promises citizens the opportunity to 'play [their] part in defining the [European Union's] way ahead.'²⁸ It seems obvious, therefore, that the EU has decided to involve citizens closer in the process of determining a vision for Europe, a subject that in previous decades was a monopoly of the highest echelon of political elites²⁹. Though it has to be added that in spite of the newly found concept of public deliberation, the EU has not completely given up on the idea of elite deliberation. The 2008-10 Reflection Group, led by former Spanish Prime Minister Felipe Gonzalez, and charged with debating the EU's future challenges (and propose solutions to these), exemplifies that the Union leadership believes in deliberation as a *modus operandi* to create new ideas and visions. However, as the Reflection Group shows, debate has not (yet?) become a prerogative of the public.

Whilst different deliberative theorists have emphasized different aspects of deliberation, Cohen argues that a shared normative agenda is an important precondition if deliberation is to have a legitimating effect. This means that the debate participants need to agree at the outset what it is that they are debating and what it is that they want to achieve in principle. This does not mean that they agree on the specific solution – otherwise there would be no need for a debate – but on a general purpose for their deliberation. The example of the Convention can be used to illustrate this point. The original proposal – put forward by the member state governments in the Laeken Declaration – was to deliberate the future of the Union and to address a catalogue of questions. The Convention leadership soon changed this general agenda and asked the members to leave their institutional affiliations behind and debate the future of Europe with the aim of drafting a European constitution. This idea of a constitutional moment was introduced and motivated the participants to agree on an entire new reform treaty. The exact wording of the final document was of course the outcome of the members' deliberation but the desired

²⁶ European Council 2001.

²⁷ http://europa.eu/debateeurope/index_en.htm

²⁸ http://europa.eu/debateeurope/index_en.htm

²⁹ see Fischer 2000, Jospin 2000, Blair 2000, Chirac 2000

outcome, the new constitutional treaty, would not have been achievable without this shared normative agenda.

Finally, deliberation can only be successful – and legitimate – if the outcome is based on justification rather than negotiation or bargaining. This means that a deliberative decision-making process cannot be based on power politics. It is not the person/party with the most votes that wins, but the one with the best argument or reasoning. The EU member states in the Council, already practice this approach, as decisions are rarely taken by vote but rather by consensus. Thus allowing for arguments of smaller and politically less powerful states to be taken into account, in spite of the fact that mathematically they could be outvoted.³⁰ Deliberation in this respect is therefore means and end at the same time. It is not about just exchanging views and then taking a vote but rather to understand all possible angles on a given issue and then for all participants to come to a solution that is beneficial to all. Rawls considers this as a key attribute for any decision-makers to be able to produce solutions that advance the common good rather than individual interests³¹

It is clear from this discussion that there are considerable pre-conditions that are necessary for deliberation to advance or even adhere to the idea of democracy – especially in the European context where deliberation is sought as a means to enhance democratic legitimacy. The question that arises for our research in the next section, is to what extent different forms of debate and deliberations that are used at the European level, live up to the preconditions listed above. Deliberation might appear to be a noble exercise but it will do nothing to bring citizens closer to the Union or to enhance democratic legitimacy if it is not conducted within the necessary and important parameters set by established theories on deliberative democracy.

Investigating debate and transformation in EU debates

In the following section we outline a programme of research aimed at investigating some of the assumptions that underpin the notion of debate as a potentially democratising and legitimising force in EU governance. We refrain from a normative argument about the political benefits or repercussions of debates and deliberation in the European context. Rather we are interested in an analytical assessment of the extent to which different examples (or cases) of debates allow for cognitive transformation in participants through processes of will and opinion formation, or the adaptation and modification of participants' opinions and preferences. We characterise these as 'opportunity structures for the transformation of opinions', drawing upon Kitschelt's notion of 'opportunity structures'³². This means that we do not intend to empirically analyse the impact of specific debate- or deliberation scenarios on will-formation or decision-making outcomes. Rather we seek to unpack the different characteristics of said opportunity structures that need to be in place in any given debate to provide the *potential* for transformation. To this end, our working hypothesis is that the different kinds of debate at the European level (our cases are outlined below) have different opportunity structures for transformation. And,

³⁰ IO, Vol 59, No. 4 (to be completed).

³¹ Rawls 1972.

³² Kitschelt, 1986 refined latterly by Nentwich (1998) to refer specifically to 'opportunity structures for citizen participation' in EU decision-making

consequently, the potential for debate to transform opinions (its ‘transformative potential’)³³ thus depends specifically on the characteristics of said opportunity structures, in particular the presence or specific values of certain variables.

We have identified four independent variables that might impact on the opportunity structures for transformation of opinions in our different cases:

1. Dominant norm of appropriateness
2. Presence of a shared normative agenda
3. Inclusiveness
4. The order of procedure

The norm (or norms) of appropriateness governing the debate can shape the behaviour of the participants. For example, a norm of appropriateness on the importance of reaching consensus is more likely to enhance the transformative potential of debate than one on the importance of reaching an outcome acceptable to most participants. The second variable refers to the presence or absence of an agreement held by all participants on the necessity of having a discussion, and what the discussion is for, or about. The third variable refers to the extent to which the debate involves a diverse, encompassing and representative number of participants. The fourth variable refers to the debate’s ‘order of service’: the order in which issues are addressed and participants can contribute as well as the extent to which this includes a constructive and goal-oriented deliberative approach to the debate at hand.

Following this, we argue that the specific configuration of these four independent variables has implications for the efficacy of the opportunity structures for transformation of opinion. In order to investigate this empirically we have selected two debate cases which are outlined in the following paragraphs: The Convention on the Future of Europe, and the Commission’s online ‘Debate Europe’ initiative.

The Convention

The Convention was established by the Laeken declaration in order to discuss a series of questions relating to the future of the EU, and specifically, to prepare for treaty reform. It comprised 307 members (including alternates), most of whom were parliamentarians from the member and then applicant states, though certain MEPs, Commissioners, and observers from the Committee of the Regions, Economic and Social Committee, and the social partners were also involved. The work programme of the Convention ran from February 2002 until July 2003, meeting in plenary session on a monthly or fortnightly basis. The proceedings of the Convention were published in their entirety on a dedicated website³⁴ (still available for consultation today), ostensibly allowing non-members to at least follow, if not participate, in the debates. However another innovation, outlined in the Laeken declaration which specifically aimed at addressing the requirement for a ‘deeper and wider debate’ stated in the (Nice)

³³ And in turn produce the democratic and legitimacy benefits implied by the institutions’ rhetoric on the value of debate

³⁴ http://european-convention.eu.int/bien_venue.asp?lang=EN

declaration on the future of the EU, was to establish a Forum for civil society running alongside the Convention proper. This Forum was – to all intents and purposes – a website. It claimed to allow civil society organisations to follow the Convention by publishing its proceedings (though as the mainstream Convention website also did this, it did not give groups access to anything they would not otherwise be able to get hold of), and it provided the mechanisms for organisations to make written contributions on issues relating to the Convention’s work programme which could serve as input into the formal Convention debates. Organisations wishing to avail themselves of this opportunity were required to register on the Forum website, providing details about themselves, and a summary of their contribution, as well as the contribution itself. The extent to which the contributions of the Forum for civil society actually made a substantive input into the Convention debates remains unclear. In the following we will examine to what extent the Convention on the Future of Europe’s opportunity structure for deliberative participation provided a potential for transformation of opinion of its participants as well as the wider public.

Norms of Appropriateness

Norms of appropriateness, as pointed out above, refer to the idea that participants in deliberations, acknowledge certain rules and behaviours that are common to and accepted by all. The Convention on the Future of Europe relied on a number of different norms that were respected by all participants and contributed to its successful conclusion. The membership was arguably the most important of these rules. The Convention members represented not only member state governments (as was the case in previous IGCs) but also representatives of national parliaments, the European Parliament, the European Commission as well as observers from the Committee of the Regions, the Social and Economic Committee, the European Ombudsman as well as three representatives from the social partners.³⁵ What is more important than this broad membership is the understanding that all members were equal – and thus there was no special role for the government representatives. In fact the Convention President, Valéry Giscard d’Estaing, stated in his inaugural speech to the Convention that its members ‘are the Convention.’³⁶ In fact, he explicitly stated that ‘the members of the four components of our Convention must not regard themselves simply as spokespersons for those who appointed them [...]but must make his or her personal contribution to the work of the Convention.’³⁷ The members were thus encouraged to deliberate as equals, trying to ‘foster a Convention spirit.’³⁸ Hence, members were supposed to consider themselves as became free agents, deliberating with Europe on their minds, as opposed to their own personal/institutional agenda.

In addition, the members agreed from the beginning that no votes should take place during the Convention negotiations. This meant that the final result was always supposed to be based on consensus rather than on a majority vote. Giscard, in his inaugural speech, pointed out that there is no guarantee that the Convention will produce a single document or a single list of recommendations but insisted that consensus will be the *modus operandi* for the deliberations of the Convention.

³⁵ For a detailed list of the membership see <http://european-convention.eu.int/organisation.asp?lang=EN>.

³⁶ d’Estaing, 2002 #1401.

³⁷ d’Estaing, 2002 #1401.

³⁸ d’Estaing, 2002 #1401.

Consensus as a decision-making process meant that deliberation had to stand at the centre of all Convention proceedings. A no-vote is much more explicit than withholding consensus. Members were therefore keen to contribute to the deliberations and to provide others with input in order to convince others and to make an impact on the final outcome. The Convention thus introduced strict speaking times, with the Secretariat introducing ‘the use of blue cards (interventions of one minute in response to main interventions) [which are complemented] by [...] a one-minute long right of reply (to be indicated by a green card) for those questioned.’³⁹ The detailed organisation of the speaking times was accepted by all members and guaranteed that everybody was given an equal amount of floor time and to be listened to by their fellow members.⁴⁰

In addition to the speaking time the Convention members also agreed to adhere to the need for a split of the Convention into three distinctive phases: listening, working and drafting. This clear distinction was also laid out by Giscard in his inaugural speech⁴¹ and provided the members with a clear structure and allowed for more patience and the willingness to listen – both of which are crucial factors for successful deliberations.

Shared Normative Agenda

The Convention’s agenda was drafted by the member state governments in the Laeken Declaration.⁴² And it contained a larger number of questions yet did not explicit call for a treaty revision never mind a complete constitutional document. It simply called for a simplification of the then-existing four treaties. The member state governments then asked in the Declaration whether ‘this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union.’⁴³ And leaving it up to the Convention to debate ‘what might the basic features of such a constitution be?’⁴⁴

The Convention thus set out initially with a very loose agenda. Yet, this was changed by the working methods announced and implemented by the Secretariat and the Praesidium. It was first mentioned by Giscard d’Estaing himself who announced in his inaugural speech that ‘[i]f we were to reach consensus [...] we would thus open the way towards a Constitution for Europe. In order to avoid any disagreement over semantics, let us agree now to call it: a “constitutional treaty for Europe”.’⁴⁵

During the first session Andrew Duff MEP gave a presentation during the March 2002 plenary session proclaiming that ‘first, at the top, we need to draft the legal text of a constitutional treaty, a basic law.’⁴⁶ This was echoed by Erwin Teufel, representative of the German Parliament, who, in his written contribution of April 2002, called for an ‘[e]laboration of a constitutional treaty based on the existing

³⁹ .Secretariat of the European Convention, 2002 #1406

⁴⁰ See also Norman, 2003 #1815

⁴¹ d’Estaing, 2002 #1496.

⁴² European Council, 2001 #116.

⁴³ European Council, 2001 #116.

⁴⁴ European Council, 2001 #116.

⁴⁵ d’Estaing, 2002 #1401

⁴⁶ Duff, 2002 #639

Treaties.⁴⁷ And even Convention vice-chairman Jean-Luc Dehaene stated on the day of the Convention inauguration that a 'founding treaty for an enlarged EU would be the ideal outcome of the new Convention on Europe's future'⁴⁸. Barely five months into the Convention and without the conclusions of a single Convention working group, the agenda had shifted to 'should' or 'could' draft a constitutional treaty but rather to an imperative 'have to': during his inaugural speech at the Youth Convention, Giscard instructed the young participants that 'we [the Convention] have to draw up a document for the future – a constitution or, if you prefer, a constitutional treaty for Europe.'⁴⁹

It is clear that the Convention members were quickly adopting this shared agenda: drafting a constitutional treaty. And it was clearly this shared goal that helped greatly during the final drafting phase. The negotiations, especially on the institutional questions, were very difficult towards the final weeks of the Convention in May/June 2003. Many observers and Convention members did not believe that a final compromise could be found.⁵⁰ But it was the shared goal of drafting Europe's first constitutional treaty that convinced participants to deliberate further and work towards an acceptable compromise. As a result almost all of the 205 participants gave their consent to the final Draft Treaty and only a handful of extremely Eurosceptic members drafted a 'minority report' expressing their discontent with the Draft Treaty and instead proposing different answers to some of the question posed by the Laeken Declaration.⁵¹

Inclusiveness

The Convention was also a very inclusive forum. First, the members included – as pointed out above – representatives from national parliaments, the European Parliament and the European Commission, in addition to the ones representing the member state governments. Although the Convention was not set up explicitly to draft a new (constitutional) treaty, it was nevertheless a commitment made by the member states to another round of major treaty reform. The results of the previous Convention on Fundamental and Human Rights, namely the Charter on Human and Fundamental Rights, was highly successful in its conduct. The Convention on the Future of Europe, in its composition, mirrored that of the first Convention and its reform activism was therefore no surprise to anyone. In fact, the diversity and inclusiveness of the membership (compared to a traditional IGC) was first and foremost introduced to bring European closer to its citizens and to engage better with them. Peter Hain, then-Minister for Europe and forthcoming UK government representative in the Convention stated in January 2001 that '[f]or the first time we have asked what it is that our citizens want the EU to do. I hope that the national governments and the political representatives of Europe will be open minded about their contributions, and that civil society groups will take up the invitation to put forward their ideas through the civil forum.'⁵² Not only was the inclusiveness part of the Convention's setting-up process, its Praesidium and members also continued to connect the Convention's work with as many citizens as possible. The plenary meetings were all carried out in public, all official documentation was made available on the

⁴⁷ Teufel, 2002 #710.

⁴⁸ Cronin, 2002 #818.

⁴⁹ d'Estaing, 2002 #1496

⁵⁰ See, e.g., Fuller, 2003 #1196; Castle, 2003 #1266; Sweeney, 2003 #1287.

⁵¹ See Heathcoat-Amory, 2003 #1587.

⁵² Hain, 2002 689.

internet and detailed summary reports of the plenary sessions as well as the working group contributions and conclusions were also uploaded.⁵³ This made the Convention very public and accessible in stark contrast to the secrecy surrounding negotiations during the EU's intergovernmental conference.⁵⁴

The Convention's working groups also conducted widely cast consultations with experts in relevant fields.⁵⁵ Although not necessary a way for ordinary citizens to contribute to the proceedings, it was still a way to make other voices heard and to guarantee that the Convention outcome would reflect the expert views as much as the members' vision.

Finally, the Convention members also undertook personal consultations with civil society representatives. In June and July 2002, under the chairmanship of Convention Praesidium member Klaus Hänsch MEP, representatives from 87 different organisations met with Convention members.⁵⁶ The final outcome was added as an official document to the Convention's files. Again, this kind of widely-cast consultation has never been undertaken before or after the Convention in any other treaty reform round. Thus, inclusiveness was a key factor in the Convention's set-up as well as its working method.

Order of Procedure

The Convention, from the beginning, had a clear and transparent order of procedure. We mentioned above the card-system that related to the speaking time allowed to each member – as well as the regulated response time to questions asks or comments made. But the most important procedural arrangement made was the introduction of consensus as the decision-making tool for the Convention's proceedings. The consensus rule led to changes in government positions because they reduced the participants' power of non-agreement. As Tsebelis and Proksch point out, the Convention Praesidium was responsible for the determination of where the consensus in the Convention laid.⁵⁷ The lack of voting meant that conventionnels were able to voice their disagreement on individual issues but not to vote them down (or even veto them). The Praesidium also established that the final document was submitted to the Convention as one draft treaty, thereby presenting participants with two options: giving their consent to the document or rejecting it in its entirety. This *de facto* withdrew the negotiation tool that is the power of non-agreement. Member states could no longer credibly threaten others with non-agreement, nor could they reassure themselves that they need not worry too much about proposals outside their zone of potential agreement⁵⁸ because they could simply veto them and fall back to the *status quo*. And the consequence was of course an increased role for the process of deliberation on which the Praesidium could then base the final consensus.

Another key factor of the Convention's rules of procedure was the organisation of the cumbersome amendment process. Once the Convention had accomplished its listening and working phase, the

⁵³ See the Convention website <http://european-convention.eu.int>.

⁵⁴ For an in-depth analysis see Risse, 2007 1959.

⁵⁵ See, e.g., Secretariat of the European Convention, 2002 #255; Secretariat of the European Convention, 2002 #1485.

⁵⁶ Secretariat of the European Convention, 2002 #1414.

⁵⁷ Tsebelis and Proksch (2007).

⁵⁸ See also Lax, 1986, 389.

Praesidium started to release different sections of the forthcoming treaty which were to be discussed and – where needed/wanted – amended by the Convention members. The first of these rafts was only released in October 2002, eight months into the Convention and it was only a schematic draft treaty containing nothing but a basic structure for the treaty that was yet to be drafted.⁵⁹ But it set the standard for the amendment process that started in 2003, namely the orderly submission of general comments or concrete amendments to the proposed text.⁶⁰ The Convention President even elaborated in an open letter to all members about the detailed conduct of submissions, amendments and revision of the draft text during the final weeks, stressing the importance of deliberation and procedures in order to ‘enable the Praesidium to [...] reach a consensus on the final product.’⁶¹

The Praesidium and Secretariat were the recipients of all amendments and they even produced overview-documents summarising the different amendments in order to improve visibility and transparency within the Convention’s rules of procedure. Finally, the Praesidium made sure that all amendments were available online⁶² and it provided the membership with detailed comments to indicate its reasoning for the amendments made (or refused) in newer drafts, indicating also who had supported and opposed specific changes.⁶³

As evident from this analysis all four independent variables, the Convention was a very effective arena for deliberative politics. All four independent variables indicate a clear opportunity structure for deliberation and thus a potential for transformation. The Convention gave all its members the same access to floor time and to the amendment process. The members were institutionally diverse and represented the citizens of the member states as well as the then-applicant countries. And, maybe most importantly, the goal that unified the Convention members: to draft a European constitutional treaty, was what propelled the members to a successful conclusion of their work.

Debate Europe

The Debate Europe initiative was launched in 2008 as a follow-up to the earlier initiative ‘Plan D – for Democracy, Dialogue and Debate’, adopted in July 2005 following the period of reflection called for by the European Council in the aftermath of the referendums on the Constitutional Treaty in France and The Netherlands. Debate Europe is an online forum where citizens can discuss various matters relating to the European Union. The description of the initiative on the Commission’s communication pages suggests that the forum provides an opportunity for citizens to voice their concerns to decision-makers directly, but there is little indication of which decision-makers and how. Elsewhere however it indicates that the Commission uses this forum to gauge public opinion and that it gives citizens the opportunity to connect with each other and with the staff at the European institutions (whether there is a difference between ‘decision-makers’ and ‘staff at the European institutions’ is not entirely clear. The discussions are split into a series of heading, the topics of which are intended to reflect the biggest challenges currently facing Europe and are ‘climate change and energy’, ‘future of Europe’, ‘European elections’

⁵⁹ Praesidium of the European Convention, 2002 540.

⁶⁰ See, e.g. Kiljunen, 2002 1470; Avgerinos, 2002 1478; Duff, 2002 1487.

⁶¹ d’Estaing, 2003 1574.

⁶² See <http://european-convention.eu.int/amendments.asp?content=414&lang=EN>.

⁶³ See, e.g., Praesidium of the European Convention, 2003 1585; Praesidium of the European Convention, 2003 1932.

'intercultural dialogue', 'women and politics', 'financial crisis and development', and 'miscellaneous'. Individuals wishing to contribute to the debates must register their details

In the earlier sections of this paper we argued that the notion of debate had become widespread and that this had been put into practice by the institutions in various ways, meaning the cases of debates that could be investigated are potentially numerous. The two cases selected here were done so following a roughly 'most different' logic of research design which suggests that the explanatory value of the independent variable is realised as a consequence of being applied to empirical examples which vary in several key ways. These cases in particular differ from one another along the following dimensions: participant type; level; nature of interaction; and focus. The Convention debate involved elite participants at the EU level in a face-to-face interaction with a general focus on the constitutional order of the EU. Debate Europe's participants are ordinary as opposed to elite citizens, debating at the EU level in a virtual forum on a mixture of policy-focused and general issues.

A preliminary analysis of these cases indicates that the value of the independent variables will vary from one case to another. In turn we would expect this to produce variation on the dependent variable in terms of two values: strong and weak. The presence of strong OSTs might indicate that the debate in question was more likely to produce the kind of democratic and legitimacy benefits that the rhetoric of the institutions implies whereas the presence of weak OSTs might indicate that the rhetoric on the normative benefits of debate was incongruent with its actual outcomes.

Conclusions

The emergence of the notion of debate, and the 'need for a public debate on X, Y or Z' in the language of the EU institutions is a recent phenomenon but one that has become widespread relatively quickly. The ideas implied by the notion of debate are consistent with what has been termed 'the deliberative turn in integration theory'. Accordingly we can find explanations in this body of theory for why debate has been so irresistible to policy-makers who are faced with difficult or controversial questions. Debate is assumed to be a solution to democratic and legitimacy problems which are intensively felt in the EU at the present time, partly because it involves a transformation of opinions. Nevertheless, a number of questions arise from this formulation which our research has sought to begin to address: How exactly does debate enhance democracy and legitimacy? Are all debates the same or are some better than others? How can the legitimating potential of debates be maximised?