

A Publication by The Swiss Federal Department of Foreign Affairs,
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sponsored by Presence Switzerland

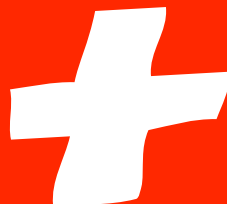


The European Constitution Bringing in the People

Contributions on "The options and limits of direct democracy
in the European integration process"

With a Preface by Micheline Calmy-Rey

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Edited by Fabrice Filliez and Bruno Kaufmann

The European Constitution – Bringing in the People

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Produced by the Swiss Mission to the European Union and IRI Europe

Translations and Proof-reading: Mirko Zambelli, Paul Carline, Liliane Küffer

Design & Printing: www.freeform.be

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Europe - for the People, by the People

**Préface de
Mme la Conseillère fédérale
Micheline Calmy-Rey,**
*Cheffe du Département fédéral
des Affaires étrangères*

Bien que la Suisse, pays pleinement européen par sa géographie, sa diversité culturelle et son histoire, ait pour l'instant fait le choix de rester en dehors des structures institutionnelles de l'Union européenne, nous suivons de près l'évolution de notre grand voisin et principal partenaire économique. Ce que l'UE est aujourd'hui et ce à quoi elle aspire influence le débat interne sur notre politique européenne. Le projet de Traité constitutionnel de l'UE rédigé par la Convention sur l'avenir de l'Europe contient plusieurs propositions visant à rendre l'Union plus transparente, plus démocratique et plus (con)fédérale. Dotée de ce Traité, l'UE deviendrait sans doute plus familière à nos yeux suisses. Qu'il s'agisse d'une plus grande proximité au citoyen par l'introduction d'une initiative citoyenne, ou d'un fédéralisme caractérisé par un partage des compétences clairement défini, toutes les réformes de l'UE dans ce sens établissent certaines similarités entre les systèmes de fonctionnement de la Suisse et de l'UE.

A mesure que l'UE s'élargit géographiquement et qu'elle poursuit son intégration,

l'instauration d'une plus grande légitimité démocratique s'impose. A l'heure actuelle, les institutions européennes trouvent leur raison d'être en premier lieu dans une volonté des Etats membres de réunir leurs moyens pour donner des réponses efficaces à des problèmes communs. La légitimité de l'UE se base sur la légitimité démocratique de chaque Etat qui la compose. Le rôle plus important accordé au Parlement européen dans le projet de Traité constitutionnel, mais surtout l'introduction d'un droit d'initiative ou encore l'idée, soutenue par bon nombre de Conventionnels, d'instituer un référendum sur ce projet de traité, font entrer l'UE dans une nouvelle logique : celle qui consacre l'Europe des citoyens. L'Union devra trouver un compromis entre une légitimité basée principalement sur les Etats membres et une légitimité issue directement des citoyens européens. Cette situation présente des parallèles avec celle de la construction de l'Etat fédéral suisse au XIXème siècle. Les obstacles à surmonter sont comparables : comment faire fonctionner ensemble 25 Etats ou cantons (et demi-cantons) souverains de taille et de poids variables ?

La Suisse a répondu à cette question par l'introduction d'instruments de démocratie directe (les droits d'initiative et de référendum) et par le principe de la double majorité: celle des Etats et celle des citoyens. Par souci d'efficacité, la prise de décision à l'unanimité des cantons a été abandonnée. En contrepartie, les citoyens se sont vu

accorder un rôle important dans le processus politique. C'est la voie que la Suisse a choisie. L'UE va trouver son propre chemin. Les expériences suisses en matière de démocratie directe peuvent esquisser des pistes de réflexion. La présente brochure en propose quelques-unes. Elle rassemble les exposés des différents intervenants du séminaire «Les options et les limites de la démocratie directe dans le processus d'intégration européenne», organisé à Bruxelles le 9 octobre 2003 par l'«Initiative & Referendum Institute Europe» et la Mission suisse auprès de l'UE. Je me félicite de l'écho positif qu'a reçu ce séminaire et souhaite que la présente publication puisse alimenter la réflexion dans le contexte du processus constitutionnel de l'UE actuellement en cours.

Europe - for the People, by the People

Preface by Federal Councillor Micheline Calmy-Rey,

*Head of the Swiss Federal Department
of Foreign Affairs*

Switzerland, a thoroughly European country in terms of its geography, its cultural diversity and its history, has chosen for the time being to remain outside the institutional structures of the European Union.

Nevertheless, we follow very closely all the developments occurring in our large neighbour and main economic partner. What the EU is today and what it aspires to be in the future influence Switzerland's European policy and the internal public debate about it. The project for an EU Constitutional Treaty drafted by the Convention on the Future of Europe contains several proposals that are designed to make the European Union more transparent, more democratic and more (con)federal. With the entry into force of this Treaty, the EU would become institutionally more familiar from a Swiss perspective. The proposals aimed at bringing the people closer to the Union, such as the introduction of a citizens' initiative, or those such as the clearly-defined division of powers (subsidiarity) that is typical of a federalist structure, are all reforms which establish certain similarities between the Swiss and the EU political systems.

As the EU enlarges geographically and deepens its process of integration, the need to

introduce greater democratic legitimacy becomes more evident. At the moment, European institutions derive their legitimacy in the first place from the will of the member States to combine their resources in order to respond effectively to problems that affect them all. The legitimacy of the EU is based on the democratic legitimacy of each of its member States. The greater role given to the European Parliament in the Draft Constitutional Treaty, the introduction of a right of initiative as well as the idea, supported by a large number of Convention members, of holding a referendum on the proposed Treaty lead the EU towards a new political paradigm which fully recognises the importance of "the Europe of the citizens". A compromise will have to be found between legitimacy mainly based on member States and legitimacy derived directly from European citizens. This situation presents parallels with the construction of the Swiss federal State in the 19th century. The obstacles to be overcome are also comparable: how can 25 States or cantons (and semi-cantons) of different sizes and importance be made to work together?

Switzerland's solution was to introduce elements of direct democracy (the rights of initiative and of referendum) and the principle of the double majority: that of the States and that of the people. Concerns about effectiveness caused the principle of the unanimity of all cantons to be dropped. To compensate for this, citizens were given an important role in the political process.

This is the path that Switzerland has chosen. The EU will find its own path.

However, Swiss experience with direct democracy can at least suggest certain directions that could be followed.

The present brochure proposes a certain number of pointers. It contains the views of the participants in the seminar on "The options and limits of direct democracy in the European integration process", which was held in Brussels on 9 October 2003 and was jointly organised by the Initiative & Referendum Institute Europe and the Swiss Mission to the EU. I am delighted with the positive response to this seminar and I hope that the present brochure will provide food for thought in the context of the current debate on the future functioning of the EU.

The European Initiative & Referendum Challenge

Introduction by Bruno Kaufmann

*President of the Initiative
& Referendum Institute*

A Constitution for Europe!

Until relatively recently, there was scarcely a single European politician who dared to use the word "Constitution" in connection with the European integration process. That was before "Nice" – the last attempt of the "Treaty Masters" – the governments of the member states - to retain full control of the European Union. During the unspeakably long nights on the French Riviera, voting weights and positions on the European Commission were shared out in a cack-handed and disgraceful manner. This was not without its consequences. While such countries as Poland and Spain were delighted with the unexpected increase in their power within the Council of Europe, the Irish – the only citizens able to vote on the treaty in a referendum – gave the Treaty of Nice a deserved thumbs-down.

It was clear, especially in view of the continued expansion of the EU – now consisting (since May 1st 2004) of almost half a billion people in 25 member states – that there was no way forward with the old treaty method. At their summit meeting in Laeken in December 2001, the heads of state and government managed to wrest

themselves sufficiently free of the past to hand over to a Convention (composed of a majority of EP members) the task of designing a draft constitution for Europe. The Convention began its work in the Spring of 2002. Bearing in mind the complexity, the wide range of issues and the limited time at its disposal, the Convention did a reasonable enough job – even if agreement on many contentious matters was in effect imposed by the Convention's chairman, former French president Valéry Giscard d'Estaing.

What is now even more important than the 250-page draft constitution itself is the current challenge of its ratification. In contrast to the earlier situation, when referendums (on the treaties) were exceptional, the new EU Constitution will be put to popular vote in a significantly large number of countries. The effect: European politics has become public, transnational politics – requiring the appropriate institutions. The European Parliament, re-elected in early summer 2004, is still engaged in a struggle for political influence, somewhat strengthened by the acquisition of new powers under the new constitution.

The European constituent process appears to be offering the possibility of a real breakthrough for the citizens of this corner of the globe. The draft EU constitution includes the very first transnational citizens' initiative right, which gives a minimum of 1 million citizens from "a significant number of

member states" the right to propose a new law or a new article of the constitution to the European Commission. What is initially only an indirect right of initiative will place a significant minority of European voters on a par with a majority in the European Parliament.

And that's not all: more and more citizens in a growing number of member states also want to have the last word on ratification. By the summer of 2004, it looked as if up to 13 member states (i.e. a majority of the EU25) would hold a referendum on the constitution. It was the UK Prime Minister Tony Blair, who in a U-turn announcement on April 20 made it clear that the people should have the final say on the constitution. Ratification by popular ballot would not only give the idea of a constitution part of the democratic legitimacy it requires, but would at the same time reinforce the trend towards a more widespread strengthening of representative democracy by the addition of elements of direct democracy.

Jean Jacques Rousseau's idea was as simple as can be imagined: people need laws to govern public life; if everyone is involved in drawing up those laws, then in the final analysis, everyone only has to obey themselves. The result: self-regulation instead of the dominance of some over others.

The utopian dream of yesterday is more and more becoming the reality of today. To be sure, it isn't so long ago since only

a minority of the world's population were living in countries with basic democratic rights. In 1980, only 46% of the world's population, in 54 countries, enjoyed the benefits of democracy. Today, more than two-thirds of people – 68%, in 129 countries – belong to the 'democratic' world. This process of democratisation applies especially to Europe, where it is now only in Lukashenko's Belarus that 'democracy' remains a swear word.

In the 2002 annual report of the United Nations Development Programme (UNDP), the democratisation of societies is described as one of the most important positive trends. At the same time, the UN experts define the further democratisation of democracy as the greatest challenge of our time and make it clear that: "True democratisation means more than elections. People's dignity requires that they be free – and able – to participate in the formation and stewardship of the rules and institutions that govern them."

The Swiss had realised this as early as the 19th century and had successfully fought for the introduction of direct democracy. The rest of Europe and the world are now catching up: since 1991, the number of national referendums has doubled. Of the total of 508 documented national referendums worldwide between 1991 and May 2004, 83 were in the Americas, 54 in Africa, 32 in Asia and 30 in Oceania. By far the largest number – 310 – were in Europe.

In the preceding decade, the total was only 129. Two developments in particular highlight this clear trend towards more (direct) democracy. Firstly, the democratic revolutions in Eastern Europe led to no less than 27 new constitutions, most of which were approved by the people in referendums. Secondly, the acceleration of integration within the EU opened the floodgates to a wave of direct democracy with transnational implications: 33 of the 43 national referendums in Europe and about Europe have happened since 1992.

Referendums were not invented by Switzerland. The first constitutional referendum took place in 1639, in the then independent American state of Connecticut. It was followed by similar referendums in Massachusetts and New Hampshire. In Europe, it was the French who took up this American impulse: in August 1793, six million French voters were asked to decide on the new democratic national constitution (the Montagnard constitution). Almost 90% of them voted in favour of the revolutionary new rules, which included the right of 10% of the electorate to demand a referendum. But the Revolution spawned the Terror, and the French continue to have little regard for direct democracy.

The idea of popular rights found fertile ground, not in France, but in Switzerland and in many of the states of the U.S. The most important phase of development of Swiss direct democracy occurred in the

second half of the 19th century, while initiatives and referendums became established in the West of the USA around the beginning of the 20th century. It was only after WWII that instruments of direct democracy became important in many other countries of the world – in Italy, Australia, South Africa and Mexico, for example. Over the last 200 years, 1363 national referendums have been held worldwide – almost half of them in the last 15 years.

Direct democracy as a complement to indirect democracy is neither a silly idealistic notion from the past, nor the hobby-horse of a small group of out-of-touch fantasists. It has shown itself to be, on the contrary, an extremely practical idea – especially at the local level. In 2003, almost 10,000 referendums were recorded in American communities alone, and since the introduction of the local referendum in the southern German state of Bavaria in 1995, there have been more than 1,000 popular ballots. There is obviously no shortage of either issues or active citizens in Bavaria: local politics has been invigorated, as member of the Bavarian parliament Klaus Hahnzog documented in his collection of essays entitled: "Mehr Demokratie wagen" ("Let's go for more democracy").

Let's go for more democracy: that's especially true for certain subjects. Across the world, referendums are being held on an enormous range of issues: the growth of the state, the constitution, road-building projects,

moral issues, town planning, taxes. But the one issue which dominates above all is the question of European integration. No-one could have predicted it.

The founding fathers of the EU didn't think much of the idea of involving citizens directly in decision-making at the European political level. It was less the experience of WWII than the growing threat from the Cold War which meant that the ideas for a democratic European federation developed in the 1940's were initially consigned to the waste-paper bin. Hence the process of integration during the 1950's was dominated by questions of economy and bureaucracy: the Monnet system did not provide for the direct involvement of the citizen.

It was another great Frenchman – President Charles de Gaulle – who was the first to formulate the challenge of a European referendum at the beginning of the 1960's: "Europe will be born on the day on which the different peoples fundamentally decide to join. It will not suffice for members of parliaments to vote for ratification. It will require popular referendums, preferably held on the same day in all the countries concerned".

It was to be another ten years before de Gaulle's successor, Georges Pompidou, finally dared to make a start and made the citizens of his country the first Europeans to take part in a referendum on Europe. On 23rd March 1972, a two-thirds majority voted in favour of extending the then European

Community northwards to include Denmark, Great Britain, Ireland and Norway. In retrospect, this decision did not only open the door to the north, but also to more (direct) democracy in Europe. In the same year, voters in both the Irish Republic (10th May) and Denmark (2nd October) decided in favour of joining the E.C. That was not the end of the matter: there were referendums on Europe in both Norway and Switzerland. On September 26th, the Norwegians voted narrowly against accession, whilst the Swiss voted massively in favour of a free trade treaty with the EEC, with 72.5% of voters saying "Yes".

This first great year of referendums in the history of the European integration process already clearly revealed the great disparity between referendum procedures in the different countries: whereas the French referendum was called by the French president and the result was merely advisory, the Irish popular decision on accession was prescribed in the constitution and was binding on the political leadership of that country. In Denmark, transfers of sovereignty to international organizations have to be put to referendum only when there is no 5/6ths majority in the national parliament. In Norway and Switzerland, finally, it was parliament (in the former case) and the government (in the latter case) which voluntarily decided to submit the issue of accession to the EC (Norway) and to the EEC Free Trade Treaty (Switzerland) to referendum.

We have now reached the stage where citizens in a majority (17) of the now 25 member states of the EU have had at least one chance of voting directly on the EU.

This number will rise to more than 20 when citizens in such countries as Poland, Portugal, Spain, Luxembourg and The Netherlands are able to vote in referendums on the EU constitution. This will be the first national referendum ever to be held in The Netherlands.

The quality of direct democracy is not determined by the number of referendums, however, but by the way referendums come about and by the design of the relevant procedures and majority requirements.

And on these criteria, many countries are still lagging far behind. In only 10 of the 43 European countries examined by the Initiative and Referendum Institute Europe do citizens – at least in part – enjoy that right which is decisive for the quality of direct democracy: the right to carry out initiatives and referendums even against the wishes of their government or parliament. Those countries are Switzerland, Liechtenstein, Slovenia, Latvia, Ireland, Denmark, Lithuania, Slovakia and The Netherlands. Referendums in France, Spain, Austria, Sweden, Norway, Hungary and Poland should really be classified as plebiscites, because they depend on the will of those in power.

The future of direct democracy in Europe and across the world depends on the free

expression and fair use of citizens' rights. The following represent the minimum requirements which must be met:

- Citizens must have the right to launch a popular initiative and referendum process themselves.
- Popular referendums must be binding. Non-binding consultations are often ambiguous; instead of solving problems, they create new ones.
- There must be no minimum turnout quorums: these permit non-voting to be used tactically and increase the likelihood of referendums being declared invalid.

It should also be a requirement for:

- all donations and campaign funds used in the run-up to referendums to be declared in the interests of transparency
- both sides in a referendum campaign to be given space and time in the media
- the role of government and of public debates in referendum campaigns to be clearly defined.

Many reforms which are 'sold' to citizens as 'participatory' or 'direct' democracy only reveal their true character when they are measured against the six requirements listed above.

The EU Constitution drawn up by the parliamentary Convention and agreed by the

heads of government now faces its sternest test – securing the approval of the citizens. In “The European Constitution – Bringing in the People”, light is shone from three angles on the question of direct democracy in the process of European integration.

In Part One, three leading European parliamentarians - Alain Lamassoure, Jens-Peter Bonde and Jo Leinen – explain why they support the campaign for constitutional referendums in all member states, despite their very different attitudes to the development of the EU.

In Part Two, Jürgen Meyer, Diana Wallis and Víctor Cuesta contribute their thoughts on the future design of the new EU Citizens’ Initiative Right. Finally, in Part Three, Andreas Gross, Andreas Auer and Jean-Francois Aubert illustrate very clearly the most important lessons to be drawn from the Swiss experience of direct democracy.

At this historic moment of the expansion of the EU from 15 to 25 member states, the contributions in this book offer signposts on the route to a more democratic Europe. The referendums to be held on the EU constitution will not guarantee a positive development, but they offer a unique window of opportunity. Much is at stake: (direct) democracy needs a bigger Europe, and Europe needs more (direct) democracy.

Another reason why we need a Constitution for Europe!

Bruno Kaufmann
Amsterdam/Brussels
June 7, 2004

Introductory statements

Dante Martinelli

Swiss Ambassador to the European Union

Ladies and gentlemen, I would like to welcome you to this Meeting of Experts on the "Options and Limits of Direct Democracy in the European Integration Process".

This meeting, held just a few days after the opening of the 2004 IGC, offers a great opportunity to discuss current issues of direct democracy and to learn from each other. I would like to thank you and the invited experts for your interest and willingness to participate in the meeting.

As you know, Switzerland has developed a unique model of democracy. Swiss popular rights have resulted from cultural, historical and political struggles. The model established by the 1848 Constitution looked more like a "parliamentary representative democracy". But democratic forces calling for more democracy and law-making by the people managed to introduce in the revised text of the constitutions of 1874 and 1891 the legislative referendum and the popular initiative. The referendum on international treaties introduced in 1921 was extended in 1977. More recently, in February 2003, a package improving and extending the instruments of direct democracy (initiative and treaty referendum) was accepted by 70% of the people and all the cantons. But Switzerland is of course not the only country in Europe to practice direct democracy.

In the last decade, direct democracy has experienced a revival in many European States. One can think of the referendums on the accession treaties in all Eastern and Central European States. But referendums have also been frequently held on important issues of European integration in both smaller and larger Member States, most recently in Sweden with the Euro-Referendum.

Interest in the instruments of direct democracy has grown with the work of the Convention on the Future of Europe, which the Swiss authorities have followed closely with great interest. The Laeken Conference in December 2001 did not provide for observer status for third-party states. This is one of the reasons why Swiss authorities and institutions have tried to contribute informally to the debate and to share their experiences by organising or co-organising conferences or meetings of experts. For example, the Foreign Affairs Committee of our Swiss Parliament has held several hearings both in Bern and Brussels with members of the Convention and other notable Europeans. Last summer, an international conference was held in Switzerland on "Federalism in a Changing World - Learning from each other", which was attended by the vice-president of the Convention, Giuliano Amato.

In this context, the Swiss Mission to the EU was pleased to organise, jointly with the IRI Europe, today's meeting.

Three main topics will be on the table: a Europe-wide referendum; the new Citizens' Initiative; and the lessons that can be learned from the Swiss experience.

The experts will tackle these different issues and try to answer the basic question:

What are the advantages of having ratification of the constitution by popular referendum in addition to parliamentary ratification?

Does a referendum in fact bring the institutions closer to the citizens, who should have a more direct say; or does a referendum have a conservative impact, slowing down the whole process?

And also the question that the Convention has not yet answered: what is to be done if the result of a referendum in a single country is 'No' ?

After these introductory remarks, it is my pleasure to give the floor to the co-chair Ms Heidi Hautala, Finnish MP and former member of the European Parliament and President of the delegation for relations with Switzerland.

Heidi Hautala,

MP in the Finnish Parliament, IRI Europe Advisory Board President, former President of the European Parliament delegation for relations with Switzerland

It is my pleasure to welcome such a well-qualified and -informed audience for this afternoon seminar on the search for ways of engaging our peoples in Europe. At IRIE, we have always said that we don't want a Europe for the people, but that our final goal is a Europe by the people. I therefore find it encouraging that we can see every day how in more and more countries people are realising that they should actually have a say. It is encouraging especially at such a crucial moment as today, as we face the conclusions of the European Convention and the beginning of the deliberations by the governments.

This afternoon, I believe that we can identify some central issues in this process in the course of which more and more countries - a majority of the Member States, I am sure - will end up organising a constitutional referendum. And here we can look to Swiss expertise and tradition, with no intention of simply copying the Swiss system, but of using it as a source of inspiration. I am sure that we can look there for some answers to questions that have not yet been answered. One of the questions would be, for instance: What will happen if one Member State rejects the EU Constitution? We know, of course, that it is not only the people

who could reject the constitution, but also a parliament. So although in principle there is no change, I think that the decision-makers are worried, because they realise that there is a greater risk attached to ratification by referendum.

I have to say that yesterday I paid close attention to the results of a French poll in which people were asked what they wanted in respect of the EU Constitution. It was interesting to note that a significant majority, 74%, is in favour of a constitutional referendum, and 72% are also willing to accept the Constitution. However, a sizable minority of 20% held negative views. The conclusion was that these people do not feel so positive about the EU Constitution because they feel that the EU has given them nothing. These are people who are worried about their jobs, and they are not necessarily the ones who will be winners in the process of globalisation. So I think we face a challenge in reaching these kinds of people and convincing them about our plans for greater integration.

This afternoon we will be looking at an innovation which the draft EU Constitution, drawn up by the Convention, has brought into the game. I mean the citizens' right of initiative. I am sure that we can look into how this right of initiative should be defended against governments which might not be so enthusiastic about it, but which will not necessarily reject it either. Today, we should also discuss how this right could

actually be turned into reality and what our input could be in the process.

As a former member of the European Parliament, I saw a dramatic increase in recent years in the number of citizens who are interested in making proposals to the EU. And we can hope that with this right of initiative we will really be able to create something that we can call a "common European public space", a "common European identity", which does not really differ between Spanish and Polish, or Estonian, Finnish and UK citizens, but which expresses a shared interest.

To conclude, I am relying on the participants and the distinguished speakers here this afternoon to come up with some concrete and practical proposals on how to advise our governments, how to advise our decision-makers, how to mobilise campaigns to defend the emergence of the citizens as a key factor in the European constitutional process.

A. The European Constitutional Referendums

Three steps toward a European Referendum

Alain Lamassoure

Member of the European Parliament (EPP, France), Former French Minister for European Affairs

It is very important that the final text agreed by the IGC - referred to as a "Constitution" by the Convention - be submitted to approval by vote of all European citizens. The European Convention had some limitations; its work was obviously not perfect. But the European Convention nonetheless did an excellent job. Unfortunately, the IGC will be the best demonstration of the importance of having a Convention and will show once more that at this stage in the European project, such a conference of political leaders cannot be expected to produce outstanding results.

The lack of creativity as regards terminology is one of the limitations that I personally regret. We have not shown such creativity and this becomes a real problem in dealing with the European project. We speak about a federal or confederate system. The EU is neither a federation nor a confederation. We should have invented another word, but we did not find the right one.

To be more precise, we had already found one: we used to call the EU "The Community", but we stopped using the word and I find that regrettable. The text which will be submitted for ratification is no longer a treaty: legally speaking it is one, but politically it is something else. It is not a constitution either. There is today no "people of Europe" which would be addressed by such a constitution. The EU is not a superstate: no-one wants to make it into one - not even the most federalist among us. Yet if this is neither a confederation nor a superstate, then what is it? We did not find the right word for it. Nevertheless, we now have to reach a new stage: the gathering in a common political entity of all the countries of Europe – or at least the majority of those countries which constitute the European continent. This new stage is the shift from the Europe of the governments to a Europe of the citizens - whilst still remaining a Europe of the States, based on the States, but in which the citizens are able to express their views and make decisions according to the principles of democracy. If we want to reach this stage, it will be up to the citizens to say whether they want it, and whether they want it in this form or not - in which case it would be necessary to invent other forms of it, to propose other forms.

This is why there were many of us within the Convention who supported the referendum as the method for approving the Constitution, and who recommended this option to all the governments concerned. Nearly 100 of the total of 210 members of the Convention were co-signatories to a formal appeal to submit the final text to referendum. This number is extremely significant and the signatories came from all political parties, all countries, all sectors of society. Among them you will find people who - from Jens Peter Bonde on the one hand to Jo Leinen and me on the other - have different visions of the future of Europe.

The current situation is actually quite amusing. The governments, all led by remarkable people, have difficulty in thinking in the medium term. When you are in government, three weeks seems a very long time; six months is much too far. The initial reaction of almost all the governments was to say: "We will allow our Parliaments to ratify the text which will be produced by the IGC and we will avoid creating difficult political problems". This stage has now come to an end in the majority of the countries.

We now find ourselves in a second phase in which all the governments are realising that the referendum cannot be avoided. This is very tedious when you are a political leader. Indeed, there is always a risk that the people will vote "no", even when all the

political parties are in favour. Take the recent example of Sweden.

The governments of some of the Member States have already announced that they will hold a referendum. This is the case (from the very start) of the Spanish Prime Minister, the Portuguese Prime Minister, the Danish and the Irish Prime Ministers. It is remarkable to note that the leaders of three Benelux countries, which have very little experience with referendums, have mentioned the possibility of holding a referendum. In France, the debate is still open and I am following it with a lot of amusement. Already eighteen months ago I announced in private to the French Prime Minister, and subsequently to the public, that it would all end up with a referendum. It will become obvious when the usual time limits for political reflection run out. At the end of this 2nd stage, it will become very clear that a referendum cannot be avoided.

We will finally reach the third stage, which opens up the question of how to organise a successful referendum. The term 'success' perhaps has different meanings for Jens Peter Bonde, for me or for you, but it is clear that we must make every effort - whatever our personal view on the subject is - to ensure that the political debate which precedes the ballot and the decision by the European voters is inspired by a choice for the future of Europe and the future of each of our countries in Europe, and not by consi-

derations of national politics. This is a difficult task. The first lesson can be taken from past experience, in particular that in Switzerland or Italy. In this respect, the Swiss have an extremely rich experience which shows us that all the details really matter: the way that referendums are organised, the way the question is asked, the timetable, the financial means available during the campaign, the transparency of the sources of these means, the debate in the media, the role of the governments or of the official authorities. There are always ways of distorting the polls and ways of having an authentic poll. Once this is guaranteed, we then have to make sure that the political conditions for guaranteeing the "quality" of the votes are truly met and that the vote is solely focused on the European question and no other.

The conditions can be different from one country to the next. In the case of France, it is essential that the initiative to call a referendum does not come solely from the President of the Republic, but also from the Parliament. It is equally important that all the political parties represented at the Parliament support the principle of a referendum. It does not matter whether they are in favour of Europe or of the European Constitution or have reservations about the text of the Constitution. The French national constitution provides for both procedures. I would strongly recommend the parliamentary procedure. If all the parliamentary groups across the political spectrum

-from the "europhiles" to the "eurosceptics"- co-sign the proposal, then we will have the best guarantee of focusing the voters on the European question and not diverting them from it according to their political preferences in the French domestic political game. Beyond the considerations which can motivate each of our States individually, there is a common recommendation which has been stressed by those members of the Convention who signed the call for a referendum: the referendum must take place everywhere on the same day. When it was decided in 1979 to elect the European Parliament by universal suffrage, the authors of the reform hoped that it would offer the opportunity for the citizens to "grasp" the debate on Europe. Let us have the honesty to admit that this has not been the case so far.

Every time we had a European parliamentary election in our countries, the national debate prevailed over all other considerations. The turnout has been low - Bruno Kaufmann gave us some figures: hardly 50% - and people have in general been motivated by the desire to censure their government on national policy. Europe is used as an excuse for restarting a national debate. If a referendum on the future of the European Constitution can be organised on the same day, then there will be a real debate on Europe in all of the countries at the same time. Then we will listen to each other in Denmark, in Finland or in Germany. Everything said during the campaign will be

significant everywhere. This will be the best way of ensuring that the citizens of Europe really have the last word in the choice about the future of Europe. And that will be a positive precedent to set for the future.

When eurosceptics and eurorealists agree

Jens Peter Bonde

*Member of the European Parliament
(EDD, Denmark)*

I am grateful to IRI Europe and the network Democracy International for having supported the collection of the 97 signatures of Convention members in the call for a referendum. I will never forget Alain Lamassoure's remark at our first press conference when he said: we disagree about everything, but we agree that those disagreements shall be resolved through referendums. This is why we are here. We disagree on the content of the constitution, but we see it as "the" constitution, which should be submitted to the citizens for final approval. Both eurosceptics and eurorealists have accepted the idea of having a referendum on the same day, despite the fact that the idea is federalist in nature. It is a splendid idea, because it would promote the first genuine European debate.

We also have to congratulate ourselves for the decision taken today by Portugal to hold a referendum on June 13, 2004, which adds to the impressive list of member states envisaging a referendum: Ireland, Denmark, Belgium, the Netherlands, Luxembourg, and Spain. Hopefully, we will also ultimately have France. Of the new member states, the Czech Republic will have a vote, because they will not be able to reach the 60%

majority in the two chambers of Parliament necessary for ratification. In Poland the mood is also in favour of a referendum. If we end up having all these referendums around Germany, then Jürgen Meyer might finally succeed in his campaign to have a voluntary referendum in Germany. This would be the crucial switch. We will end up having referendums in all the countries. That might even be the case in the United Kingdom. Our colleague Diana Wallis might be able to convince Tony Blair that he cannot do it without asking the people. This great momentum might come. The Committee for constitutional affairs supported this idea by 22 votes in favour to 3 votes against. Shortly afterwards, Sweden rejected the Euro in a referendum. That result was used to overturn the Committee's vote in the plenary session by the majority of the PPE and the PSE. At the end of the day, there was no call for referendums from the European Parliament. The only thing left was a call to have the referendum in June, in case such referendums were organised.

Why should we have a referendum?

It is because the text from the Convention is basically a treaty which establishes under international law a "constitution" which will then no longer be under international law. This is the very big difference from all previous treaties. It starts as international law: it establishes a constitutional law in which all possible conflicts between the States can only be solved according to

the rules in the constitution. It is explicitly forbidden to go to the international court to settle any disputes between the States. In legal terms, it means that a "state" has been created. Then it includes the right of participating states to leave if they so decide. Without suggesting a direct comparison, Stalin's constitution of 1936 had a similar rule. But it does not change the fact that once you have joined the Union, you are part of it in legal terms, you are part of the state as long as you stay, and getting out is not easy. Therefore we need to ask the people if they want to be part of that construction.

If you want to make an analysis of the constitution, you can go to Bonde.com and download a reader-friendly version of the Constitution in your own language. You will also find a 50-page index, cross-references in the margins, highlighted points etc. - so it is a very good tool for looking into the constitution. Then you can go to euabc.com and you can have all the words explained. There are explanations for 1000 words and there are 3000 links to go to all the different documents. And you have these in most languages. Not all of it, but the constitutional part of it is almost complete in all the languages of the EU and of the applicant countries. This is a good tool for helping to make an analysis. You will find a PowerPoint presentation as well - 40 slides - with the main features of the constitution.

I will now underline just a few substantial points. The text produced by the Convention is a constitution, because it looks like all national constitutions. It contains a common list of fundamental rights just as in national constitutions. It has a citizenship clause just like in Germany, where you have a federal and a Bavarian citizenship, for example, with no conflict between the two. The federal citizenship provides for international citizenship. The EU Constitution is built up in a structure analogous to that of the federal State of Germany. The legal primacy of community law is established. The EU is given a legal personality. There are no pillars any longer, which means that, seen from other countries, the EU will look like a State. The US, Japan, etc. will make all their international agreements with the EU and no longer with the participating States. With these changes the EU will have the appearance of a State from the outside. And inside the EU, you will feel as you do in your own State, with the same possibilities, with fundamental rights and citizenship, with the kind of competences that most federations have. It may be a little more centralised than in the US.

What is missing in this constitution, from my point of view, is democracy. There is no democracy in this constitution in the sense we mean it in all our national constitutions. The core element in a national constitution is the ability for the voters to participate in elections, to choose a new government and

to change the laws once you have a new majority in the Parliament. In the EU we can participate in the "European" elections, but the only effect you can have is to possibly change the Danish or the Finnish vote in the Council of Ministers, the vote of your national Minister. The members of the EP are elected, but that does not mean that you can change the laws - for the simple reason that the EP does not decide upon the laws. In fact, the legislative functions are exercised by the Commission and the Council. What the EP can do is to propose amendments, but it cannot decide upon the laws (except if it is operating under the conciliation procedure and first has an absolute majority in the Parliament). So the democratic procedure is missing.

Who then has the power to appoint our leading ministers, the President of the Council, the EU Chair of the European Council, the Commission president, the vice-president with responsibilities for foreign affairs, the EU foreign minister? Who will pick them? That will neither be the result of the elections for the EP, nor of national elections. That will be a decision by 25 Prime Ministers meeting after European Elections to share the posts between those of them who cannot be re-elected in their own countries. In order to have power in the EU, you need to be in the position where you can no longer be elected in your own country! This was not what we dreamed about when democracy was invented. The choice should be limited to

those who can be elected today and who can be held responsible tomorrow. When they are elected, they can then be sacked or re-elected depending on whether they are good or bad.

A European referendum - or a Europe-wide referendum?

Jo Leinen

*Member of the European Parliament
(PSE, Germany)*

I welcome the tremendous work that IRI Europe has done. It is a good example of how you can have a big impact with small resources. You came at the beginning of the Convention looking for contacts and then by the end you had – in cooperation with the activist network Democracy International - managed to collect more than 100 signatures among Convention members. I praise this tremendous work. Moreover, I am in favour of a referendum on the European Constitution.

I am happy that Jens Peter Bonde has spoken before me, because I now know how his campaign will be in Denmark. But let me explain the following: in his eyes the EU is the super-state we don't want, and this Constitution is a little bit like Stalin's Constitution of 1936. (JPB comments: no, I didn't say that, I only made some comparisons.) My colleague in the Parliament, Thorben Lund, normally a very reasonable person, reacted in the same populist way in the Danish media, saying that this Constitution brings us close to a federal state. The general secretary of the Union of European Federalists copied this article all around Europe. If it were true, it would have been a reason to be very happy about

this Danish comment - that we are now only 5% short of a federal state. Unfortunately, this analysis is not true. In the European Constitution, unanimity is preserved in many areas, such as the ratification and revision process, the budgetary system, and for other fundamental and important policies such as foreign policy, defence, taxation and social affairs. The result is unfortunately very far away from an effective Union and a federal Europe.

With 25 or 30 States, the inter-governmental method will simply not function any longer. Everyone knows it, but it is still difficult to get beyond this point. Nevertheless, Jens Peter Bonde created an intergroup called "SOS democracy". In 1999, I created an intergroup for the "European Constitution" and I told him: As far as your 10 points are concerned, I can agree with 9 out of 10 of them. I agree with you on all points which aim at more transparency and democracy. But when it comes to our EP resolutions and to the Convention debates on improvements for more democracy, "SOS Democracy" is always on the opposition bench. You criticise something that you should be supporting. This is the great contradiction of the Eurosceptics and therein lies a problem with the referendum on the Constitution. I do not want to have the referendum on the Constitution abused. It is so easy to mislead the public on European topics. I told my Bavarian friends that it would be much easier for me to have an anti-Europe speech in one of the big tents at the

October Fest - and I could have dozens of examples of how stupid the whole thing is - than to have a pro-Europe speech winning people over for this historic project.

Now to the referendum. It would be best to have such a referendum on the same day in all 25 member states. The formula for a European referendum should be inspired by the formula for majority voting in the EU. That means a double majority, a majority of States and of people - and why not a superqualified majority? The important thing is to overcome the veto.

There is a difference between a European referendum and a Europe-wide referendum held on the same day. In the European Parliament I am promoting an initiative called "The club of June 13, 2004" (because this is the day of the European elections). The idea is that you can use this unique opportunity next June for the formula: "1 day, 2 votes". The citizens would have two votes: one for their favourite party or candidate, and the other one a "yes" or "no" to the Constitution.

But of course this depends on how the IGC goes. If they finish in time in December 2003, then it will be possible to hold a Europe-wide referendum on June 13th. If they finish only under the Irish presidency, I think the June date will be missed. The later the IGC finishes, the fewer arguments we will have for holding the referendum on the same day as the

European elections. All those of us who support this idea should campaign for the formula "1 day, 2 votes" as an attractive formula which everyone can live with. With a referendum in all countries on the same day one could avoid a purely internal national debate and focus on a 'yes' or 'no' to the common European questions.

There is always a danger in holding referendums on European issues, because the opposition is always tempted to show the red card to the government. Depending on the economic situation or any other frustration, people might cast a negative vote against Europe only because they want to censure their government. The Maastricht Referendum in France was a good example. Chirac and his opposition were against this treaty until the very last moment. The French socialists in the Convention are totally in favour of the Constitution. But there are already strong forces in the socialist party in France looking for points they could criticise in order to oppose the Constitution in a referendum campaign. This situation is not very pleasant.

We should therefore run a campaign to hold a referendum in all states on the same day. We should use this seminar and other lobbying activities to push this topic onto the agenda of the IGC. Our slogan should be: The treaties have been agreed between governments; we want the agreement of our citizens

to the Constitution. Let's call for a Europe-wide referendum.

B. The European Citizens' Initiative Right in the EU

Questions & Answers about the new citizens' right

Jürgen Meyer

Representative of the German Bundestag in the EU Convention

The idea of European referendums is, as we have heard, still controversial. But the European citizens' initiative is already a success. It is in the draft constitution and no-one questions this proposal; there are no initiatives to abolish those sentences in Art. 46 of Part 1 of the constitution. As you know, in Art. 46 the draft says: "No fewer than 1 million citizens coming from a significant number of member states may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution". And then the important second short sentence is: "A European law shall determine the provisions for the specific procedures and conditions required for such a citizen's initiative". And that means that there are some questions still open with respect to procedures and conditions. Let me try to present 8 short questions and short answers to these 8 open questions about the text which I have just read to you.

1. Q: Is the European citizens' initiative a special kind of petition?

A: No, that would be a very deep misunderstanding. A petition, a citizens' petition, is already provided for in the present treaty text. It is in part 2 of the draft constitution, the charter of fundamental rights; it is something entirely different. A petition is addressed to the European Parliament (EP), whereas the citizens' initiative is an initiative addressed to the Commission. And that means that the people get the same right as the EP has at present. The wording of Art. 46 - and that was very important for getting the majority in the Convention - is identical with the wording which at present gives the EP the right to address the Commission, to use the right of initiative. As you know, that right belongs to the Commission. So, it is not a way of addressing the EP; the EP will of course become involved, will discuss it, but the EP cannot have the right to stop or delay such an initiative. It is addressed to the Commission.

2. Q: Do we need the signatures of 1 million residents - or citizens?

A: As the text says, we need 1 million signatures of citizens of the EU. So when I read sometimes that 0.2% of the residents of the enlarged EU would suffice, that is wrong. We need a bit more, 0.3% of

the citizens of the enlarged EU. And as you will agree, that is not a very high hurdle.

3. Q: How much time would one have to collect the signatures?

A: The proposal in this booklet, edited by Bruno Kaufmann, Alain Lamassoure and myself, is to provide for 8 to 16 months' time. That would be sufficient time and not too much. So 8 to 16 months.

4.Q: Should there be a list of excluded issues?

A: No, there should be no such list in the European law. Because the European citizens' initiative is limited to the Commission's competencies, therefore no further exclusion of issues is advisable.

5. Q: What does "a significant number of member states" in the text of the draft Constitution mean?

A: I think that a convincing proposal is that there should be 5 to 8 states in order to promote the transnational dimension of the initiative issues. And one might foresee that from any one state there should not come more than, let's say, 25% or 250,000, when you have only 1 million signatures. So there should be a limit to the percentage of signatures coming only from one state.

6. Q: How should the 1 million signatures be subjected to validation/verification?

A: The collection of signatures should be as free as possible, and electronic methods

– the Internet for instance - should be included. Verification should be done by member states' administrations by taking random samples. That is in my view a question which in practice is not too complicated, because the collection of signatures would not stop when you have 1 million. It would be wise just to carry on, to have 1.5 million or so, and then the question as to whether all these signatures can be verified as the signatures of citizens is only a theoretical question. But you have to find an instrument of verification.

7.Q: Does such an initiative need financial support?

A: Yes. A registered citizens' initiative should receive some basic structural resources from the EU, to fulfil its mission. The idea is, as I explained with reference to question 1, that the people get a similar right as the EP between elections. That is an important step - to have direct democracy as well as representative democracy. And if you finance the one - and that, as we all know, is the case with the EP - we cannot say there should be not a dime, not a cent for such a citizen's initiative. So I think it is clear and logical that there should be basic structural resources and support for such initiatives.

8.Q: Do you need an initiative committee, and with what status?

A: Yes. There should be such an initiative committee. Because, among other reasons, it should have the right to withdraw the

initiative, for instance if the EP introduces legislation which partly meets or is even better than the demand. So I think it's logical that such an initiative can be withdrawn by the committee.

So you see these 8 questions and answers show that some questions are still open, even though the European citizens' initiative is in the draft constitution. Nobody wants to abolish it, so we will have it. But the fight is not over, we have to commit ourselves to ensuring that this idea of direct democracy is a success also when it comes to the European law, and I am sure that the Commission will be happy to receive some formulations and proposals for this European law for which the Commission, as usual, has the right of initiative.

The Citizens Initiative – Bringing in the Parliament

Diana Wallis

*Member of the European Parliament
(ELDR, UK)*

I wanted to go a bit further into the Parliament's position in all this. Because I think that foremost in the minds of parliamentarians who've been supportive of this initiative has been the main aim of the Convention exercise, which was 'to bring Europe closer to the people'; to make our citizens feel that they have the possibility to move the European institutions, to get things to happen. But up until now we seem to have been taking things gradually, bit by bit: the only possibility our citizens have had within the European institutions is the Petitions Committee (though I would have to say that this is more than we have in my own member state, the UK, and indeed in some others).

Now I think you are right to draw the distinction between petitions and initiatives; that's absolutely right, but it is an existing structure where citizens have had the possibility to come to the European Parliament - although very much in negative mode, raising problems rather than in a progressive manner - saying: we want to put a piece of legislation on the table. And I have to say, when I first saw the way the clause was constructed in the draft constitution, and I saw that it was an initiative that would

go to the Commission, rather than to the Parliament, I had some doubts, as it seemed to me that what surely we are trying to do is bring things together, Parliament and citizens – in co-operation and in joint working.

We currently operate a model of representative democracy through the people's representatives. Now we want to combine this with direct democracy: that you bring those two strands together and that they work together to get what citizens want.

And I just have a lingering doubt in my mind that if things go to the Commission, some of the momentum may get lost - although I see entirely the logic of what you have proposed: that both citizens and parliament have equal and the same rights. You also mentioned in your last question the idea of an Initiatives Committee.

And that, I think, is what has been at the back of my mind, in the same way that we have a Petitions Committee. Would it not be an alternative model, that as well as maybe going to the Commission, the initiative also arrives at the relevant committee of the Parliament, which can take it up and champion it? Because I think that is the role that Parliamentarians should also be fulfilling. I see it very much, as I said, as a combined role, a joint venture if you like between elected representatives and citizens. And I don't like the idea of undermining or detracting from the potential combined force of that relationship.

I think that you could get tensions between the European institutions and I wouldn't

like to see that in any way undermine the citizens' right of initiative, which I think is so much needed. So, I am not going to go into other things, I think I wanted to give just that view from the Parliament: to put another possibility on the table.

Designing the first transnational citizen initiative

Victor Cuesta

Research Fellow at the University of Las Palmas

As the heading of article 46 of the Constitutional draft points out, the future European citizens' initiative (ECI) is a device of participatory democracy. Participatory institutions are not designed to state the popular will; they just provide a complement to the will of representative government, whereas the institutions of direct democracy (American or Swiss popular initiatives are classic examples) are designed to assert popular sovereignty by popular ballot. The European citizens' initiative is just an opportunity for citizens, organized around what is called "civil society", to design and to promote a political proposal within the law-making process of the Union. However, the importance of the ECI as the first institutional channel of transnational participatory democracy should not be forgotten. In fact, several political theories on democratizing the European polity, such as the cosmopolitan or deliberative theories, would be satisfied with the citizens' initiative as a means of countering the democratic deficit of the Union. I hope that the European citizens' initiative will serve to spread political power within society more widely and encourage dialogue between institutions and European citizens. Despite the interim character of article

46.4, I think it is a good time to make a first approach to the future institution. In this contribution I will try to advance a few basic points which should be taken into account during the next stage of normative development.

A new fundamental right for European Citizens

The implementation of the European Citizens' initiative will increase the political rights of citizens. However, it is necessary to point out that while other political rights are expressly mentioned by the Charter of Fundamental Rights, there is no specific provision regarding the fundamental right of citizens to participate through the initiative process. In title V, other political rights are mentioned: the right to vote and to stand as a candidate, the right of access to documents, the right to refer matters to the European Ombudsman, the right to petition, etc. So I wonder why there is no mention of the Citizens' initiative in the Charter. I would argue that a new article should be added to the Charter, including not only the right to support an initiative by signature, but also the right to propose draft legislation. This question is especially important in order to grant preferential access to the European Court of Justice in case of conflicts between the interests of citizens and institutions.

Territorial distribution requirement

A second important point to consider is the distribution of the signatures among member states. I imagine that the distribution requirement could be established either by a maximum number of signatures coming from one member state, or by having a minimum number of countries contribute with a minimum number of signatures each. An example of the first model could be: "No more than 25% of the signatures may come from any one member state". This means that the number of states involved might be rather small: only four. However, it also means that once the maximum number of signatures from a member state has been obtained, the signature campaign would stop and the potential total number of signatures would be underestimated. One option for the second model might be: "The signatures must come from at least six countries. Each country must contribute at least 50,000 signatures". This would involve a greater number of states. However, one highly motivated country might produce 750,000 signatures. Even if the second example seems to be more flexible, I hesitate to suggest which is the best model for enhancing participation.

The Legal Status of the Sponsoring Committee

A third important issue is the status of the sponsoring committee which must take on the legal representation of the initiative throughout the whole process. The sponsors must play an essential role, not only in the design of the legal draft and the promotion of the signature campaign, but also when the initiative is submitted to the European Commission and finally to the Legislature. The future law on the initiative should authorize participation by the sponsors in the plenary session of Parliament and within all the legislative committees. In addition, the right to withdraw the initiative if the European Parliament responds with proposals which largely satisfy the demands, and the right to be fully compensated for necessary expenditure, would be very opportune. Finally, we cannot forget the right to ask for judicial review.

Restrictions on subject matter

Article 46.4 allows the exercise of the citizens' initiative in all those matters on which the European Commission has competence. This provision must be endorsed by the proposed European law on the initiative. However, as with all kinds of legislative initiatives, the European citizens' initiative must respect the Constitution, especially the boundaries of European competences and the Charter

of Fundamental Rights. I regret that the citizens' initiative will have serious difficulties with matters such as foreign and security policy, which are excluded from the ordinary legislative process and absolutely dominated by the will of the Council of Europe.

Involvement of the Commission and judicial review

Another question to be answered by the future European law on the initiative is the involvement of the Commission in the process. When article 46.4 of the Constitutional draft states that European citizens will invite the Commission, what does "invite" mean? It seems safe to assume that the initiative must be submitted to the Commission before the beginning of the law-making process. I hope that this preliminary step would merely be for the purposes of checking that the initiative is constitutional. The Commission must play an impartial role. In case of political disagreement, the Commission should only have the right to present a second, alternative proposal. I believe that an intervention by the Commission in order to improve the form and language of the initiative could be welcomed. I would also argue that this preliminary check by the Commission must take place before the signature-gathering campaign in order to avoid further legal conflicts once the initiative has been launched. Judicial review in the event of rejection by the Commission

is a natural consequence of the fundamental character of the initiative right.

The process could proceed in the following way:

- Preliminary filing of the legislative proposal signed by the sponsors with the European Commission.
- The Commission checks the constitutionality of the citizens' proposal.
- If the initiative is constitutional, it is certified and ready for the signature campaign. In case of rejection there should be a speedy judicial review.
- Once the required number of signatures has been filed, the Commission automatically initiates the law-making process.

Signature collection (minimum length and verification)

The time period allowed for the gathering of signatures must necessarily be fairly lengthy, because of the territorial distribution requirement. One worthwhile suggestion would be to permit signatures to be collected throughout the period allowed in all the offices of the various European Institutions in the member states.

On the subject of the verification of signatures, coordination between the European Union delegations and national authorities will be essential, especially if the new European law on the initiative prescribes that signatures be verified. It would be

my hope that citizens' signatures would be presumed to be valid or, at least, that verification of signatures could be done simply by random sampling.

involvement of large numbers of European citizens.

Parliamentary procedure

My final suggestion for the design relates to the parliamentary procedure.

The law-making process launched by a citizens' initiative must be regulated by a special parliamentary procedure.

The specific provisions should be designed to fix short deadlines and to ensure a place for the sponsoring committee in all the debates and legislative committees.

Dialogue between the sponsors and the legislature must be continuous in order to give a new opportunity not only for participatory democracy but also for deliberative democracy. However, I fear that it will be far from easy to secure acceptance for the involvement of the sponsors in the deliberations of the European Council.

Before closing, I would like to stress that weaknesses in the operation of the citizens' initiative could come not only from restrictive legislation, but also from the diffuse character of European public opinion. It is clear that the absence of a European demos could reduce the democratic impact of our institution. I hope that innovative ways of encouraging participation can be found which will contribute to promoting a Europe-wide political culture and the

C. The Swiss Experience with Direct Democracy

Lessons to be learnt from and lessons not to be learnt from

Andreas Gross

*Member of the Swiss Parliament
and political scientist*

I would like to offer brief answers to 6 questions:

1. What might encourage the EU to look more closely at Switzerland?
2. What are the positive inspirations for the EU from the Swiss experience of direct democracy (DD)? (We should perhaps make it clear that direct democracy is not a Swiss idea; it is merely one which has been used quite frequently in a special way in Switzerland over the last 112 years or so).
3. What can't be learned from Switzerland?
4. What do too many Europeans mistakenly think they might learn and why would it be wrong to learn what they think they can learn?
5. What do Europeans have to learn if they choose direct democracy? (That also makes a difference. Europeans don't have to accept DD, but if they do accept it, there is something special they should learn).
6. How can direct democracy be used to deepen and widen the integration process?

1. What might encourage the EU to look more closely? It is perhaps first of all necessary to stress that DD is only one half of a pair of twins – the other half being federalism. And it is very interesting to consider in what way the two belong together and whether you can separate one from the other.

The first point:

I will be quite blunt and say that the modern Swiss State is much more interesting for European integration than the US, though most of the Convention members bought histories of America. The great difference is that Switzerland had to integrate old states, while the US only had to integrate new states. And as the EU also has its old states, it's much more interesting, because you have to take much more care in dealing with self-confident old states, states with a very well-established identity.

The second point:

It is possible to create a transnational "federation" whilst leaving sovereignty with the nations. You don't have to get rid of national sovereignty. Switzerland also learned this from the US.

The third point:

The dual character of a federation (created by the people and the member states) is always mentioned as a specific element of the new EU. Both Switzerland and the US have good experience of ways of ensuring that that character is created and maintained. The bicameral system for parliament is also something we learned from the US.

The fourth point:

This is a very important point: you don't have to like Switzerland to like direct democracy! This is the biggest misunderstanding I often face in such European discussions. Switzerland is not direct democracy: it is only an example of the use of DD in a specific country.

2. The positive inspirations as I see them. I will suggest four propositions as inspirations.

Firstly: it is possible to share power with the people. Those who have power do not have to be afraid of losing it if they share it. Power can even increase when you share it. It is not a zero sum game, but rather a win/win situation.

Secondly: when people participate, they learn more about the whole, about the thing they are participating in. Participation then also means identification in some sense.

Thirdly: decentralisation and participation (another set of twins) allow you to integrate different peoples and states. They enable

you to develop unity in diversity.

Participation enables a collective learning process and thereby increases the potential for reform of a society.

Fourthly (the classical answer): DD reduces the distance between citizens and politicians, increases the legitimacy of politics and offers greater identification of the parts with the whole as the outcome of a deliberative process.

3. What the EU cannot learn from the Swiss experience. This is very important, because you will be able to do much better than the Swiss if you can see the difference.

The first point is a fundamental one, as well as being a basic limitation: we still struggle with direct democracy in Switzerland.

The Swiss see democracy as a privilege and not as a human right. This is the paradox of the pioneer role. Switzerland was one of the first countries in Europe - in 1848 - to give so many participative rights to its citizens. It was a privilege for these people. But the very fact that it was seen as a privilege disguised the fact that it is a human right. Although the Canton of Neuenburg gave voting and participatory rights to non-nationals as long ago as 1857, when we today discuss the same issue - in the Constitutional Council of the Canton of Zurich, for instance - it is still almost impossible to get them to share these rights with those who do not have or do not want to have the red Swiss passport.

The second point is perhaps even more crucial for our debate.

The Swiss are very sensitive about their rights, but not sufficiently sensitive about the way these rights are used, and about the process which leads to the vote - in the sense that the quality of the result depends on the quality of the process. An 'unfair' process leads to an unfair result; if unfairness is left in the process, it undermines the legitimacy of the outcome. We have to do much more here in Switzerland and we can learn even from the Californian experience (which is difficult to admit today, when Mr. Schwarzenegger has just been elected governor) and also from Germany (from certain federal states) and other countries which are much more sensitive to the issues because they come from a tradition of a very competitive representative democracy.

4. What too many Europeans wrongly think they might learn from the Swiss experience.

Firstly:

DD does not make a society conservative or more conservative. It might help to think of the following image: the mirror is not responsible for the face you see every morning. You can smash the mirror, but the face remains the same. DD is like a mirror which helps one to see better and more clearly what troubles many people in their day-to-day lives.

Secondly:

DD is not a privilege for small societies. I would say that neither smallness nor geo-

graphy is an indicator of the chances for DD. What makes possible the establishment of democracy or enables participation is the result of cultural skills and technological possibilities and social developments. It is not the same for everyone. It can even be argued that DD is not "consensual" democracy: it is a specific culture of conflict. Small societies do not usually like conflict. So it is, in fact, a paradox that a small society has a very conflict-intensive political system. You can only explain this historically if you know that it was the opposition which in a manner of speaking 'imposed' DD on the Swiss people, and not the founding fathers or the liberal élite. Thirdly:

The public sphere as well as cultural integration - I would even say the demos - is not a precondition for, but a product of DD. This is the most crucial misunderstanding. You develop a public sphere by participating together in the public decision-making process. You come together when you share the same things. The best way of helping Europe to develop such a demos is by giving the people the opportunity to participate.

5. Now, as I said, I don't believe you should ever impose anything on people, but if you are considering implementing DD, then there are a number of things one can usefully learn. The first thing is about the design of DD - i.e. the design of the system - which determines its

quality. It is not just a question of having DD or not having it; how you implement it and how you define the rules is what determines the quality of DD you end up with. So it is not either/or; it is how you do it. I hope I have given you some ideas of how to do it if you want to get high-quality DD.

That is why I said: a citizen-friendly design is possible. Such a design is essential for the quality of DD (not too many signatures, not rushed). You need a completely different sense of time and that's why I am very happy that Mr Jürgen Meyer always talks of 8 to 16 months, for instance. When it is a question of communication, you need time for the necessary interactions. Everything in DD is about interaction and co-operation, instead of antagonisms and confrontation.

We referred earlier to the relations between the Commission and the EP and that it is essential to avoid antagonism here too, that it is important to encourage co-operation. This is the big difference between the design of the Californian system and that of the Swiss system. California is antagonistic - Parliament against the people - and Switzerland is much more co-operative. Something else that one can learn is that the heart of DD, its soul so to speak, are the processes of communication. You need a design which encourages communication and does not obstruct it. All the quorum rules, for instance, are obstructions to communication. Such things can kill the quality of the process, as it is

possible to observe sometimes in Italy. Quorums make it easier to win by boycotting the vote instead of having to convince a majority of the voters. So quorums really obstruct the communicative process. There is a further point which I feel is very important and which we have not yet discussed today: having the right to vote and being able to elect people – members of the EP, or even the President of the Commission – is not what DD is essentially about. DD is fundamentally about issues, not people. The logic of a debate about people to be elected is totally different from the logic of a debate about issues.

6. What Europeans may do much better than the Swiss if they choose DD. Size and quantity are not obstacles to DD, but they require special investments. This is also clear, I think, from what Jürgen Meyer proposed, for instance. You have to invest in the development of civil society and in the support of active citizens if you want to enable them to use DD rights at the transnational level. You need a set of rules to avoid unfair campaigning; you need to have transparency and a fair distribution of the opportunities for reflection, for discussion and for people to make up their minds. This means that you need to invest in building quality into the process: you can't just leave it up to the market to do this. DD design needs to include incentives which encourage transnational citizen engagement and transnational citizens'

movements. That's why a slightly more complex idea might be that the more countries you have signatures from, the less signatures you need. That would be a very interesting issue and there is a point of reference in the Bavarian Constitution: small towns have different requirements than big cities - the conditions for collecting signatures are not the same. So it is possible to develop specific elements of a DD polity which recognises the transnational structure of the entity we are dealing with today.

The final hypothesis:

A good DD design in the European Constitution would be a great support for the future of the integration process. It is important to say that you don't need to start with the whole ensemble. Even in Switzerland it was a long process before it was achieved at the national level as we have it today. We have much less DD at the national level than at the cantonal level and even at the communal level. So there is a complex set of many different requirements. You can decide how much to take out of this set: you can start with relatively little and add to it afterwards. You can take the best of different experiences, not only from Switzerland, but also from California, Oregon, Italy and Denmark in order to avoid the worst mistakes and discover a genuinely new and potent polity in the interest of Europeans and of the European integration process and in order to strengthen the

EU's policies. It would not be a copy of anything, but a way of doing better by trying harder.

Why Europe needs a stronger legitimacy than the existing treaties

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I would first like to thank the Swiss Mission and the Initiative & Referendum Institute Europe for having given me the opportunity to participate in this seminar, because the discussion has been very interesting this morning and it has been a very stimulating debate. I shall stick to the question I have been asked to answer: Is there a lesson to be learned from the Swiss experience in the current debate about the European referendum?

I shall focus on the issue of a European referendum as a means of adopting and/or amending the Draft Treaty establishing a Constitution for Europe. This issue has been thoroughly studied by a wide range of experts in both law and political science at an international conference organised by the Research and Documentation Centre on Direct Democracy (c2d) and held in Strasbourg in February 1997 (Andreas Auer/Jean-François Flauss (ed), *Le référendum européen*, Brussels 1997). My aim is to see whether there are any lessons to be drawn from the lengthy Swiss referendum experience that might shed light on that question. I believe there are.

I. Lessons from history

Beginning in 1815, Switzerland was governed by a covenant which established among the 22 cantons what is widely regarded as a Confederation of sovereign states. The covenant had no provisions relating to its own revision, but everyone accepted the idea that it could only be amended with the agreement of each single canton, i.e. by unanimity. After a short civil war, a draft constitution was worked out and adopted in June 1848 by a commission of the Diète, composed of one representative for each canton. Only a majority of the delegates voted in favour of the draft constitution. On June 27, however, the commission enacted two important transitory rules (just like art. 47 and 48 of the draft Treaty of the European Constitution): one providing that the federal constitution be approved by the cantons according to their respective constitutional requirements and the other stating that the results of the popular votes in the cantons be transmitted to the Diète, which was to decide if the new constitution had been validly adopted. The constitution was approved by referendum in 15 and one half cantons and rejected in 6 and one half cantons. On September 12, 1848, the Diète judged that it was supported by a vast majority of the people and proceeded to promulgate what has become the first federal constitution of Switzerland. It provided that any subsequent amendment to the constitution be approved by a majority of the people

and by a majority of the cantons, without requiring an otherwise qualified majority or a quorum of participation.

Lesson no. 1: Switzerland would have had no 1848 constitution had the amendment formula of the covenant of 1815 been observed. Unanimity is not a convenient way to adopt a new constitution.

Lesson no. 2: The decree of June 27 enabled the Diète to enact the constitution even though the latter had been rejected by a significant number of cantons. It was a revolutionary act, founded both on power and on the agreement by the cantons which had lost the war to take part in the new scheme of government (Jean-François Aubert, *Traité de droit constitutionnel suisse*, Neuchâtel 1967 vol. I, no. 287).

Lesson no. 3: The referendum device was well established in all the cantons. By providing that the constitution be approved by the cantons according to their respective constitutional requirements, the commission knew that it was the will of the people that would be decisive - which proved to be the case.

Lesson no. 4: By providing for an amendment formula requiring a mandatory referendum, the constitution of 1848 abandoned unanimity rule and created its own legal force and supremacy. Unanimity is not a convenient way to amend an existing constitution. It can be replaced successfully

by the compulsory constitutional referendum.

Lesson no. 5: In defining the amendment formula as a simple majority of both the people and the cantons, the founders succeeded in balancing, in a way which has proven to be highly appropriate, the basic principles of democracy and federalism.

II. The European referendum project

The Constitution for Europe needs a stronger legitimacy than the existing treaties. This legitimacy can only be a popular legitimacy. Indirect popular will as expressed by the European Parliament and by the legislatures of the Member States is not sufficient. Thus, a referendum on the adoption of the European Constitution seems to be a necessity.

A European referendum would also seem to be necessary in order to overcome the most probable effect of the unanimity rule retained by Art. IV-8 of the Draft Treaty, i.e. failure of the adoption of the European constitution. Only a popular majority can compensate for the loss of unanimity.

Referendums, as they have been organised during the last ten years in some member states on issues relating to European integration and as they are going to

be organised on ratification of the Constitution for Europe, are not “European referendums”, as their legal bases lie within national constitutional provisions. They tend to concentrate on national political issues, and thus submit the approval of the European Constitution to accidental conditions that are unrelated to the latter. Instead of providing popular legitimacy to the European Constitution, they represent a barrier to its adoption, and have a centrifugal effect on the European legal order.

A national referendum organised on the same day in all member states, as suggested by the European Parliament (NZZ September 25, 2003), could provide some legitimacy to the European Constitution. But it would require that Art. IV-8 be amended. As there is no referendum tradition in many member states, some of them even considering referendums to be unconstitutional, there would be not only a serious problem of national sovereignty, but also a serious problem of practicability. Who is to organise, and how, a European referendum in Germany, in Belgium or in Greece?

A truly European referendum would empower the people of Europe, as defined by the Constitution itself, to amend the latter and thus to become an organ, the highest organ of the European legal order. It could be provided for in Art. IV-7, it would need extensive implementing legislation, but it would not create a problem for national sovereignty. Swiss constitutional history

shows many proofs of the stabilising and highly legitimising effect of the mandatory constitutional referendum.

Learning from the Swiss experience could mean that some sort of double majority, taking into account the will of both the people and the member states, has to be provided for in defining the European referendum, be it of the real or the national type.

Learning from the Swiss (and the Italian) experience could also mean that qualified quorums of participation and/or of outcome have a de-legitimising effect on the referendum, as they allow a minority to impose its will on the majority.

Learning from the Swiss experience could mean, furthermore, that you do not need to have a common demos, characterised by cultural homogeneity and common history, in order to create a constitutional democracy. There was certainly no demos collectively exercising its *pouvoir constituant* in 1848, and there is still no demos exercising four or five times every year its power to amend the federal constitution.

Learning from the Swiss experience could finally mean that Art. IV-8 of the Draft Treaty would be amended by the IGC in order to empower the European Parliament to decide, on the basis of the results of the national ratification procedures, whether the European Constitution has been

validly adopted – a sort of European June 27 decree. But this would be a revolutionary act, and – most fortunately for the European people, but most unfortunately for the European constitution – we have no war to legitimise it.

Building federations by direct democracy

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The following reflections refer to direct democracy as it is practised in Switzerland at the federal level. Including direct democracy at the level of the cantons and the communes (cantonal and local entities) would not only confirm those reflections but could even reinforce them.

1. As a rule, direct democracy is a matter for the people, not a matter for governments or parliaments.

The federal government cannot call a referendum and its proposals can only be addressed to the parliament, which can decide freely on them.

As far as Parliament is concerned, amended or new laws adopted by Parliament are subject to the so-called "optional" referendum and a popular ballot will only be held if 50,000 citizens so request it. When the Parliament wishes to amend or to revise the Constitution, the draft must, according to the same Constitution, be submitted to the so-called "compulsory" referendum: in such a case a popular vote will be organized automatically without any prior request by the people. The risk of using the referendum as an instrument for a

plebiscite (whose purpose would be to support the general policy of the Parliament) is very theoretical and, to our knowledge, has never happened. To make it possible, the Parliament would have to propose a revision of the Constitution which would have no other purpose than to make the people vote on the Parliament itself.

Lastly, 100,000 citizens may, for their part, propose at any time a revision of the Constitution. This is what we call the popular initiative. This initiative does not have to be approved either by the Government or by the Parliament and leads necessarily to a compulsory referendum (except for the very few cases of invalidation, a total of four over a century). The popular initiative enables 100,000 citizens to put questions to the people which Parliament refuses to handle, or simply forgets to ask.

2. Anything which can be the subject of political action can be submitted to referendums: civil law, criminal law, taxes, social security, education, health, agriculture, the environment, land use planning, energy, transport, road traffic, foreign policy, etc. The only restriction is compliance with the overriding principles of international law forming a body of *jus cogens*. Initiatives conflicting with those principles would not be submitted to the vote of the people.

3. Some statistics

Between 1848 and 2003 there have been 517 federal referendums, which means that in a period of a century and a half the Swiss citizens have given their answer to 517 questions:

370 compulsory referendums; 212 proposals to revise the Constitution coming from the Parliament (156 accepted and 56 rejected), and 158 proposals put forward by means of the popular initiative (only 13 accepted and 145 rejected).

147 optional referendums on federal laws or similar acts adopted by Parliament (77 accepted and 70 rejected).

Taking into account that in most cases Parliament recommends to the people that they reject the revisions proposed by a popular initiative, one can conclude from these numbers that the political result of all referendums was favourable to the authorities in almost 75% of cases, and unfavourable in the other 25%. The result looks even more favourable to the authorities if one considers that the citizens have requested the optional referendum only 147 times out of nearly 2200 acts where the referendum would have been possible. It means that in more than 2000 cases (93% of the total), the citizens have considered that the work of the Parliament was reasonable enough not to call for a popular ballot.

4. It is well known that the turnout rate for referendums is quite modest in Switzerland. In a long-term perspective, the average is 50%, with some rare lower turnouts of 30% and some peaks of 80%. This low average appears to be normal, considering the number of questions submitted to the citizens (often about ten per year during recent decades).

5. Exporting Switzerland's direct-democratic institutions would be very difficult. It would already be difficult in another state such as France, Germany, Spain or Belgium, for this model of democracy would hardly suit a parliamentary or presidential political system. It would be even more difficult in the European Union, because the Europe "of the Fifteen" or "of the Twenty-Five" is at the present time rather weakly integrated. We can only imagine the explosive effect of a "European" referendum where legislation on a sensitive topic would be adopted by 70 million citizens against 40 million - especially if the divide is a geographical and national one (the states of northern Europe vs. the states of southern Europe, for example).

Great attention must be paid to the wording here. The Swiss direct-democratic institutions have an internal or "national" dimension. If they were exported to another state, for example to France or to Spain, these institutions would remain "national". A simultaneous referendum on a European Constitution in all the member states of

the European Union, as has been suggested, would simply represent a sum of "national" referendums. A "European" referendum would be something different; it would be the expression of a single electorate, where the votes of the Germans, the Hungarians, the Portuguese, the Lithuanians etc. would be mixed up in one single operation.

6. Beware of dubious analogies. The "legislative initiative" presented in art. I-46, al. IV, of the Draft Treaty establishing a Constitution for Europe only represents a petition or a popular motion and the European institutions (the Commission, the Council, the Parliament) would probably retain total control. A real European popular initiative would give to a certain number of citizens of the European Union, for example five or ten million, the right - with no possibility of it being opposed by the European authorities - to hold a referendum in which all the citizens of Europe would take part at the same time. The addition of certain modalities for the evaluation of the results, such as the provision for a double majority of citizens and states, would not hide the very innovative nature of such a procedure.

Oral comments

There is not much left to be said after what my colleagues Andreas Gross and Andreas Auer have presented. They have shown almost everything one can say about the Swiss experience. I will limit myself to adding a few comments.

Prof. Auer has told us that there was no "demos" of the Swiss people in 1848. I rather think that there has been a lot of "demos" in Switzerland even before 1848. The Swiss cantons could of course oppose each other, but in all countries you will find people divided into groups of antagonists. Despite that, the Swiss had a common destiny over the course of many centuries. Therefore, to say that the Swiss people did not exist in 1848 seems to me a little exaggerated, even though it is correct from a legal point of view. But from a political and a moral perspective, the Swiss people did already exist. Even the idea of a Swiss nation was developed at the beginning of the 19th century.

On the acceptance of referendums: the Swiss tolerate the results of referendums because they have had many of them! To be able to accept the results of referendums, you must have won and lost many of them. Acceptance grows from the experience of the instrument. That is why I would be a little reluctant to rapidly introduce a genuine European Referendum. I have given an example. It may be fictional,

but it is useful, just like all fictional examples. Let's imagine that the European legislator adopts a law on a sensitive issue (family law, for example). It is then put to referendum, a facultative one which is called at the request of a certain number of citizens. The referendum is organized and participation is normal. You end up with 70 million votes in favour and 40 million votes against. In my example, I add the fact that the 70 million are people from the northern states of Europe and the 40 million from southern Europe. You have to prepare yourself for the result of such a hypothesis. It could be explosive! Such a scenario is bearable in Switzerland and we accept it because we are used to such results. The more numerous Swiss Germans sometimes defeat the French-speaking Swiss. We are familiar with it, we are used to it, and we accept it.

Mr. Gross has said something extremely pertinent. He said that there is no reason, on the part of the authorities, to fear referendums. It is true; everyone knows it. Direct democracy in the hands of a government is something else. Elected authorities do not like a Direct Democracy such as exists in Switzerland, which is at the service of the citizens and not of the Parliament or of the Government. We see it in the Swiss history of the referendum. It took a long time and great persistence to extend direct democracy. But authorities are mistaken when they fear referendums. I referred in my written note to a few statistics on

"the results of referendums in Switzerland". At the federal level, over 500 referendums have been held since 1848. Over a century and a half the Swiss people have been asked more than 500 questions. When you look at the results, you will see that the people have supported the proposals of the Government and the Parliament (Federal Council and Federal Assembly) in 75% of the cases. It is also true that in 25% of the cases the Swiss people have rejected the authorities' recommendations. But this is absolutely normal in a democracy and it is even positive. Otherwise, I would ask myself whether the referendum is anything more than an instrument for presenting a good image of our country.

I would like to add something about double majority votes, because it shows that some fears are not justified, at least in Switzerland. A double majority vote is positive in its outcome when the majority of both citizens and cantons have approved the submitted proposal. Of the 500 referendums we have had in the last 150 years, 350 were governed by the double majority rule. Of the 350, on only 8 occasions have the cantons said 'no' and the citizens 'yes'. The reverse case, where the cantons said 'yes' and the citizens 'no', happened only 3 times, but it is not of great political interest, because no-one has ever seriously thought that the cantons could impose a new rule against the will of the people. So the double majority, as a blocking device in favour of the cantons, is not a problem

in Switzerland. Citizens vote and in some cases, where it is so provided by the Constitution, we have a federalistic element with the supplementary requirement for a majority of the cantons. As said earlier, out of 350 referendums with a double majority, the federalistic principle (cantons) has blocked the democratic principle (people) only 8 times. We should add that, in those 8 cases, the defeated popular majority never exceeded 56% of the votes cast. Now it is hard to imagine what the rule of the double majority would mean at the European level. In Switzerland, the most populous canton is Zurich with 1.25 million inhabitants and the smallest is Uri with 30,000. This difference of 40 to 1 is even more accentuated in Europe, for instance between Germany and the smallest member states.

I shall conclude by some references to the methods of direct democracy in the building up of federations. We can find at least three such methods in history: the American method of 1787, the Swiss method of 1848 and the proposed method in the present European context. The American method is probably the most elegant and the most convincing. The Constitution of the United States, as drafted by the Philadelphia Convention, contained an Art. VII which stipulated that the text had to be submitted to the vote of the elected members of ad-hoc conventions in the 13 States. The federal Constitution could only enter into force with a minimum threshold of

9 favourable States. The 9th positive vote arrived in June 1788 (New Hampshire). Such a state as New York only joined later on. None of the states were subjected to any constraint. This is an elegant method, a method that functions quite well when you have Indians far away in the hinterland and the Brits at a good distance.

In that sense, the American states were not in a situation of real danger. What happened in Switzerland was not so nice. It was even the worst method one can imagine: a majority of cantons imposed their will on a minority of cantons. Prof. Auer reminded us of it: 15 1/2 cantons against 6 1/2. Yes, but elegance was not the point in 1848. This is not theory, but simple political practice. Most of the reluctant cantons were neighbours of Austria, which was still at the time an Empire of a certain substance. Those cantons would have been left alone next to Austria, and that would have been more annoying than the Indian presence beyond the Mississippi. It was a coup, but everything soon returned to normal. Indeed the "forced" cantons, by virtue of participating in the elections for the new federal authorities, finally became Swiss.

What was said today? The Swiss did what the Americans did not do: impose a constitution on a state against its will. By contrast, in the system proposed by the European Convention, the constitution

cannot enter into force if a single state, which could even be the smallest, rejects it. Now we know that the states of the European Union do not all share the same views about the constitution and there are 25 of them. We should say to ourselves: this offer is being made to 25 states; let's see how many accept it. In my opinion, the system for the proposed constitution gives too much importance to the states casting a negative vote. After all, what is more correct? I can understand what happened in the Convention. No-one wanted to exercise constraint, no one wanted to say: if you don't agree, just get out. Of course, we should always try to persuade those who do not agree. But the vetoing states, by blocking the others, also exercise constraint. Therefore, if all the efforts to persuade those states do not overcome their objections, I think Europe should go ahead without them. That is the only workable solution: the American method.

Appendix

1. 41 Referendums on Europe in Europe (1972-2003)

	Country	Final voting day	Subject	Proportion of "Yes" votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the Constitution
1	France	23.4.1972	EEC expansion	68.28%	60.27%	No	President/ No	Art. 11 & 89
2	Ireland	10.5.1972	EC accession	83.1%	70.88%	No	Obligatory referendum/ Yes	Art. 46.2
3	Norway	26.9.1972	EC accession	46.5%	79.2%	No	Parliament/No	None
4	Denmark	2.10.1972	EC accession	63.29%	90.4%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art. 20
5	Switzerland	3.12.1972	Free Trade Treaty with EEC	72.5%	52%	Double majority (cantons, people)	Obligatory referendum/ Yes	None
6	Britain	5.6.1975	EC membership	67.23%	64.03%	No	Government / No	None
7	Greenland	23.2.1982	EC membership	45.96%	74.91%	No	Parliament / No	None
8	Denmark	27.2.1986	Common market	56.24%	75.39%	Non-approval requirement 30%	Parliament/ Yes	Art. 42
9	Ireland	26.5.1987	Common market	69.92%	44.09%	No	Obligatory referendum/ Yes	Art. 46.2
10	Italy	18.6.1989	European constitution process	88.06%	85.4%	No	Citizens' initiative / No	Art. 71
11	Denmark	2.6.1992	Maastricht Treaty	47.93%	83.1%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art.20
12	Ireland	18.6.1992 Treaty	Maastricht	68.7%	57.31%	No	Obligatory referendum/ Yes	Art. 46.2
13	France	20.9.1992	Maastricht Treaty	51.05%	69.69%	No	President/ Yes	Art. 11
14	Switzerland	6.12.1992	EEA accession	49.7%	78%	Double majority (cantons, people)	Obligatory referendum/ Yes	(Art. 89.5 and Art.123)
15	Liechtenstein	12.12.1992	EEA accession	55.81%	87%	No	Parliament/ Yes	Art.66
16	Denmark	18.5.1993	Maastricht Treaty	56.77%	85.5%	Non-approval requirement 30%	Parliament/ Yes	Art. 42.
17	Austria	12.6.1994	EU accession	66.58%	82.35%	No	Obligatory referendum/ Yes	Art.44

18	Finland	16.10.1994	EU accession	56.88%	70.4%	No	Parliament/ No	Art.22
19	Sweden	13.11.1994	EU accession	52.74%	83.32%	No	Parliament/ No	Chap. 8 § 4
20	Åland-Islands	20.11.1994	EU accession	73.64%	49.1%	No	Parliament/ No	None
21	Norway	28.11.1994	EU accession	47.8%	89%	No	Parliament/ No	None
22	Liechtenstein	9.4.1995	EEC	55.88%	82.05%	No	Obligatory referendum/Yes	Art.66 bis
23	Switzerland	8.6.1997	EU accession procedures. Blocking.	25.9%	35%	Double majority (cantons, people)	Citizens' initiative /Yes	Art. 121
24	Ireland	22.5.1998	Treaty of Amsterdam	61.74%	56.26%	No	Obligatory referendum/Yes	Art. 46.2
25	Denmark	28.5.1998	Treaty of Amsterdam	55.1%	76.24%	Non-approval requirement 30%	Obligatory referendum/Yes	Art.20
26	Switzerland	21.5.2000	Bilateral treaties with the EU	67.2%	48%	No	Facultative referendum/Yes	Art. 141
27	Denmark	28.9.2000	Euro accession	46.87%	87.2%	Non-approval requirement 30%	Obligatory referendum/Yes	Art. 20
28	Switzerland	4.3.2001	EU accession procedures. Start.	23.2%	55%	Double majority (cantons, people)	Citizens' initiative /Yes	Art. 139
29	Ireland	7.6.2001	Treaty of Nice	46.13%	34.79%	No	Obligatory referendum/Yes	Art. 46.2
30	Ireland	19.10.2002	Treaty of Nice	62.89%	48.45%	No	Obligatory referendum/Yes	Art. 46.2
31	Malta	8.3.2003	EU accession	53.6%	91.0%	No	Parliament/No	None
32	Slovenia	23.3.2003	EU accession	89.6%	60.3%	Turnout 50%	Parliament/Yes	Art. 169
33	Hungary	12.4.2003	EU accession	83.8%	45.6%	Approval 25%	Parliament/Yes	Art. 19 et 28
34	Lithuania	11.5.2003	EU accession	91.1%	63.4%	Turnout 50% Approval 33%	Parliament/Yes	Art. 147
35	Slovakia	17.5.2003	EU accession	92.5%	52.2%	Turnout 50%	Parliament/Yes	Art.93.2
36	Poland	8.6.2003	EU accession	77.5%	58.9%	Turnout 50%	Parliament/Yes	Art. 125
37	Czech Republic	14.6.2003	EU accession	77.3%	55.2%	No	Parliament/Yes	Ad-hoc law
38	Estonia	14.9.2003	EU accession	66.8%	64%	No	Parliament/Yes	Art. 105
39	Sweden	14.9.2003	Euro accession	42%	82,6%	No	Parliament/ No	Art. 4
40	Latvia	20.9.2003	EU accession	67%	72,5%	Turnout 50% of Turnout at last parl. elections	Parliament/Yes	Art. 79
41	Romania	19.10.2003	Constitut. Amendment for EU acc.	89,6%	55,2%	Turnout 50%	Parliament/Yes	Art. 3
*	23 countries: 17 EU 3 EFTA 2 autonomous regions	41 votes -1983:7 84-93:9 94-03:25	27 accession 11 reform 1 constitution 1 enlargement 1 withdrawal	Average 63% 9 × Yes 32 × No	Average 67% - 83: 70.2 - 93: 73.9 - 03: 63	17 countries with specific majority	Top-down: 23 Bottom-up: 18	7 votes without constitutional basis

2. The European Citizens Initiative (Art. 46.4) in the EU Draft Constitution

« No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative »

3. Articles on Direct Democracy in the Swiss Constitution

a) Voting in referendums

All Swiss citizens, whether living at home or abroad, who have reached the age of 18 and who are not disqualified on grounds of mental illness or mental handicap are entitled to vote. The term 'Stimmrecht' ('the right to vote') means the right to take part – literally to 'have a say' – in citizens' referendum ballots. However, the term is also understood more widely to mean the right to take up one's political rights or to exercise one's citizens' rights. The right to vote includes the right to take part in elections and referendums, to sign referendum demands and citizens' initiatives and to exercise other democratic rights.

b) The right of initiative

At the federal level, Swiss citizens can demand a referendum on a change which they wish to have made to the constitution.

Before an initiative can be officially recognised and launched, the signatures of 100,000 citizens who are entitled to vote have to be gathered within 18 months. An initiative can be formulated as a general proposal or be presented as a fully worked-out text.

c) The right to referendum

'The people' (i.e. all those with the right to vote) has the right to decide in retrospect on decisions made by parliament. Federal laws, federal decrees, open-ended international treaties and treaties which provide for accession to international organisations are subject to the facultative i.e. optional referendum. This means that if 50,000 citizens request it (by giving their signatures), the matter must be referred to a referendum. The signatures must be handed in to the authorities within 100 days of the official publication of the parliamentary decision. (All amendments to the constitution and accession to certain international organisations are subject to the obligatory referendum i.e. a referendum ballot must take place).

d) The right of petition

All persons of sound mind – not only those who have the right to vote – are entitled to direct written requests, proposals and complaints to the authorities. The latter must take note of such petitions. The authorities are not bound to respond, but in practice, all petitions are dealt with and responses given. Any activity of the state can be the subject of a petition.

4. Initiative & Referendum Glossary

<p>A (referendum) vote or ballot</p>	<p>Procedure by which those eligible to vote may accept or reject a proposal of the Federal Assembly or of the People. Voting may take place at the polling station using a voting form or by post.</p>
<p>Citizen-friendly</p>	<p>In the context of initiatives and referendums, the degree to which the I&R rules on thresholds, hurdles, quorums, voting methods etc. make the process as free and fair as possible for the voter.</p>
<p>Citizen law-making</p>	<p>The political system of proposing, approving, amending and deleting laws by popular initiatives and referendums.</p>
<p>Consensus democracy</p>	<p>A form of popular sovereignty which aims to involve as wide a cross-section of actors (parties, unions, minorities, civil groups etc.) as possible in the political process and to reach consensus decisions. Because it is relatively easy to overturn parliamentary decisions in popular referendums, parliament - and, before the parliamentary debates begin, also the government - have to look for compromises which will satisfy as many important (those which are considered capable of forcing a referendum) political groups as possible. Historically, it was the referendum which shaped consensus democracy.</p>
<p>Constructive referendum</p>	<p>A popular proposal relating to a referendum proposal, which is linked to the calling of a referendum. The constructive referendum gives a certain number of voters the right to present a counter-proposal to a decree which is subject to the facultative or optional referendum.</p>
<p>Consultative referendum</p>	<p>Politically important, but not legally binding, decision of the electorate (sometimes also including those who are not registered citizens). The consultative referendum can in principle relate to any issue which the state deals with or might deal with.</p>
<p>Deciding question</p>	<p>When both an original initiative and a counter-proposal are to be decided upon in a referendum ballot, it could result in a 'double Yes' (because it is possible to vote for both proposals). The deciding question is used to determine which of the two proposals should be implemented when both have been accepted.</p>
<p>Double 'Yes'</p>	<p>If the Federal Assembly in Switzerland submits a counter-proposal in response to a popular initiative, the voters may approve both the counter-proposal and the initiative and at the same time indicate which of the two they would prefer if both were approved. The proposal (initiative or counter-proposal) that is ultimately accepted is that which receives the most "yes votes".</p>
<p>E-voting / electronic voting</p>	<p>Form of voting in which voters are able to vote with the aid of a special electronic voting system by completing an "electronic ballot paper", which is then sent via a data network to the office responsible for the vote.</p>

Facultative / optional referendum	Referendum that is held if a certain number of voters have requested a referendum on, for example, a new or amended act or on an international treaty.
Federalism	Federalism (from the Latin 'foedus', meaning 'a treaty') is a form of state in which the individual members of a federal state or confederation retain, to a large extent, their sovereignty while also sharing in government. Many important functions of the state are determined by the cantons under their own powers. The federal constitution enshrines the principle of cantonal sovereignty, except where that sovereignty is explicitly limited by the constitution. The cantons exercise all the rights which have not been transferred to the Federation.
Finance referendum	Also known as the 'expenditure referendum'. This is linked to a parliamentary decision on public spending and is therefore different from a referendum on legislation. All decisions which involve, or may potentially involve, public expenditure fall within the remit of the "expenditure referendum". The "expenditure referendum" is governed by cantonal law.
Fundamental human rights	Basic human rights do not only guarantee legally enforceable claims by individuals; as objective principles, they also permeate the entire rule of law. They are binding on all the organs of the state, especially the legislature.
Human rights	Rights which belong to every individual and which cannot be removed by law - for example, the right to life, the right to freedom of religion and expression.
Indirect counter-proposal	A draft which is not a formal counter-proposal to the initiative. It can be presented by parliament or the government and follows a different decision-making path from the initiative.
Individual initiative	In the Swiss canton of Zurich an initiative can be launched by a single individual. The initiative will go to referendum if it is supported by the Cantonal Council.
Initial signature quorum	Minimum number of signatures required to launch an initiative.
Legislation	The enactment of laws. In a democracy, legislation is enacted by parliament as one of the three separate powers of state. Laws passed by parliament are implemented by government and by the relevant authorities and controlled by the judiciary. In a direct democracy the people have extensive rights of co-determination in legislation.
Legislative initiative	A legislative initiative is used to demand the creation, amendment, extension to, or repeal of, a law. The legislative initiative exists in all the cantons.
Legislative referendum	Laws passed by parliament are subject to popular ballot in every canton. The referendum is either obligatory or facultative.
Multiple option ballot	The voter is able to choose between a number of different versions of the same basic proposal. Multiple option ballots occur, for example, in Switzerland when an initiative proposal and a counter-proposal by the Parliament, two or more initiative proposals or a referendum proposal by Parliament and a counter - proposal handed in by voters (popular proposal) are set against one another.

(Minimum) participation / turnout quorum (normally expressed as a percentage) in a (referendum) vote	It is possible to make the validity of the ballot dependent on a minimum number of voters taking part. Minimum participation quora used to be required in some places. The subject is once again a matter for debate in certain areas. The demand for minimum quora is based on the argument that a referendum vote is not representative, if only a minority of the electorate has actually voted.
Participation / turnout (in a referendum vote or election)	The number of citizens (expressed as the actual number or as a percentage of the electorate) which turned out to vote in a referendum ballot or election. The turnout figure is the total of all the voting slips, whether valid, invalid or blank.
Petition	Written submission with no particular form that any person may send to a state authority. A petition may contain a proposal, a criticism, or a request, and the subject matter may be any state activity. The federal authorities must acknowledge a petition, but need not respond to it.
Plebiscite	"Referendum" launched and controlled from above.
Popular initiative	Popular initiative by which a specified minimum of voters may propose a new law or constitutional amendment.
Popular referendum.	Optional referendum that is held if the People, i.e. a minimum of 50 000 voters so request.
Popular sovereignty	The principle (inscribed in the constitutions of most European countries and in the draft EU constitution) which states that all powers of the state derive from and reside in the people.
Postal voting	Method of voting in which voters send their ballot papers to the office responsible for the vote and are not required to go to the polling station in order to vote.
Referendum booklet (explanatory booklet or pamphlet)	A pamphlet or booklet in which the proposal(s) submitted to the voters are explained, and in which the arguments of the committee responsible for the initiative or referendum together with the opinion of the Federal Council are summarised. It is published by the Federal Chancellery in the four official national languages and sent to the voters via the communes along with the other voting documents.
Referendum initiated by authorities	Some constitutions provide for the president, government or parliament to submit to referendum a decree which is not subject to an obligatory referendum.
Right of recall	Citizens have the right to recall parliament or the government. This right is exercised by means of a citizens' initiative.
Right of recall (of an initiative)	A popular initiative can be recalled (withdrawn) by the initiative committee. At the federal level, recall is allowed until such time as the government sets the date for the referendum. An initiative submitted as a general proposal can not be recalled after it has been approved by parliament.

<p>Right of veto</p>	<p>Voters have the right to a referendum vote on an administrative or governmental decision of parliament. The finance referendum is a form of administrative referendum.</p>
<p>Right to vote</p>	<p>An obligation on the part of voters to take part in elections and referendum votes. The voter is not obliged to physically exercise his right to vote - he (or she) can hand in a blank voting slip. Compulsory voting exists in certain states.</p>
<p>Simple majority</p>	<p>Proposals which are put before the people for decision in a ballot are accepted if a majority of the turnout votes in favour - or rejected if a majority votes against.</p>
<p>Unity of subject matter:</p>	<p>Registered voters can only vote 'Yes' or 'No' to referendum proposals (unless they refrain from voting altogether). Under these circumstances, a free and unequivocal expression of political will is only guaranteed if the referendum proposal can be reduced to a single political question. The principle of unity of subject matter applies to all popular ballots, regardless of whether they have originated in a popular initiative or in an obligatory or facultative referendum.</p>

Ressources - Links and Literature

Think-Tanks and Research Institutes

Academia Istropolitana Nova (Slovakia): www.ainova.sk

C2D - Research and Documentation Centre on Direct Democracy: c2d.unige.ch

Eurocomment: www.eurocomment.be

Friedrich Ebert Stiftung: www.fes.de

Initiative & Referendum Institute at The University of Southern California: www.iandrinstitute.org/

Initiative & Referendum Institute Sweden: www.iri-sverige.org

Institute for Democracy and Electoral Assistance: www.idea.int

Marburg University, Research Center Direct Democracy: www.forschungsstelle-direkte-demokratie.de

Referendum Unit at Electoral Commission: www.electoralcommission.gov.uk/referendums

Scientific Research Institute for Direct Democracy: www.widd.ch

SlovakForeignPolicyAssociation: www.sfpa.sk

Swiss Development Agency DEZA: www.deza.ch

The Federal Chancellery of Switzerland: www.admin.ch/ch/d/pore/index.html

University of Tartu Eurocollege: www.ec.ut.ee/ec/index.php?eng

Political Organizations and Campaigns

ERC (Finland): www.kansanaanestys.fi

ERC (Netherlands): www.europeesreferendum.nl

European Convention: european-convention.eu.int

European Referendum Campaign and Democracy International: www.european-referendum.org

Kampanjen for Europaeisk folkeafstemning (Denmark): www.folkeafstemning-eu.dk

More Democracy (Germany): www.mehr-demokratie.de

Swedish Referendum Campaign: www.folkomrostning.nu

TEAM (EU skeptical network): www.teameurope.info

UEF (Federalist network): www.eurplace.org/orga/uef/uef.html

Vote 2004 (London): www.vote-2004.com

WIT (Belgium): www.wit-be.org

Europe Aid: europa.eu.int/comm/europeaid

New IRI Europe Literature 2004:

1) *Direct Democracy in Europe*. Edited by Bruno Kaufmann and M. Dane Waters. Carolina Academic Press. ISBN 0-89089-262-8.

2) *Direct Democracy in Switzerland*. DVD. Edited by Swissinfo and IRI Europe. Presence Suisse: http://www.swissworld.org/dvd_rom/eng/direct_democracy_2004/index.htm

3) *Transnational Democracy in the Making*. IRI Europe Handbook 2004. Edited by Bruno Kaufmann, Alain Lamassoure and Jürgen Meyer.

About the Initiative & Referendum Institute Europe

The Initiative & Referendum Institute, Europe (IRI Europe) was founded in 2001 and has quickly become the premier research and educational institute on I&R in Europe.

IRI's mission is to develop insights into the theory and practice of I&R among politicians, the media, NGOs, academics and the public throughout Europe. IRI Europe is an independent, non-partisan and non profit-making organisation. The Institute advocates the I&R process and is dedicated to offering facts, promoting research, providing services to the public and bringing together key actors in the field of democracy.

The first working years were dedicated to developing new information channels, networks and educational tools. In the context of the European integration process and the debate on the European Constitution, IRI Europe initiated, coordinated and evaluated major efforts to bring more participation by the citizens into the political processes on all levels – concentrating first and foremost on promoting new I&R tools and securing the quality of existing ones.

- IRI established a pan-European network of I&R experts in politics, academia, media and civil society, providing meeting places, interactive communication tools and an improved understanding of the potentials of direct democracy.

- With major publications such as the IRI Europe "Initiative & Referendum Monitor" (featuring a ranking of I&R tools in 43 states and assessing the EU accession referendums), the "IRI Europe Handbook – Transnational Democracy in the Making" (following up the EU-dimensions of the I&R process) as well as the Initiative and Referendum Almanac "Direct Democracy in Europe" (the most comprehensive reference book on European I&R), the Institute laid the foundations for further well-informed development.

- IRI established expert and working groups around governmental and parliament structures in the EU and other countries. As the initiator and coordinator of the EU Convention's working group on "direct-democratic tools in the European Constitution", the Institute contributed to the establishment of the "European Citizens' Initiative" in the draft EU Constitution.

IRI will increase its fundamental commitment to offering the basics for stronger European democracy/ies by offering new tools of information and education.

- The DVD "Direct Democracy in Switzerland" is part of a comprehensive publication programme on the Swiss case, which offers a reader-friendly insight into the most experienced I&R country in the world.

- On the European level, IRI is coordinating state-of-the-art expert work around the new "European Citizens' Initiative" in close cooperation with the EU and developing a list of 'Basic Criteria for Free and Fair Referendums in Europe', which will contribute to quality checks for most future referendums.
- By following up the networking work inside the European Convention, during which more than half of all members from 25 European states joined the call for more I&R, IRI is establishing competence centres in many countries, offering a platform for the specific needs around I&R in these countries.

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"As the EU enlarges geographically and deepens its process of integration, the need to introduce greater democratic legitimacy becomes more evident. At the moment, European institutions derive their legitimacy in the first place from the will of the member States to combine their resources in order to respond effectively to problems that affect them all. The legitimacy of the EU is based on the democratic legitimacy of each of its member States. The greater role given to the European Parliament in the Draft Constitutional Treaty, the introduction of a right of initiative as well as the idea, supported by a large number of Convention members, of holding a referendum on the proposed Treaty lead the EU towards a new political paradigm which fully recognises the importance of "the Europe of the citizens"

Micheline Calmy-Rey in the Preface to "The European Constitution – Bringing in the People"

With contributions from Bruno Kaufmann, Dante Martinelli, Heidi Hautala, Alain Lamassoure, Jens-Peter Bonde, Jo Leinen, Jürgen Meyer, Diana Wallis, Victor Cuesta, Andreas Gross, Andreas Auer and Jean-Francois Aubert.

