

**Trans-national democratic innovation in the European Union:  
Flirting with deliberative and plebiscitary design**

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**Abstract**

The Treaty of the European Union has ushered in a new trans-national democratic institution: the European Citizens' Initiative (ECI). Prior to this plebiscitary innovation, the EU had experimented with a series of trans-national deliberative designs. This paper explores the emergence and impact of these very different democratic innovations which aim to increase and deepen citizen participation in the European political process. Particular attention is paid to the role of the aborted European Constitution in affecting the trajectory of democratic reform. The paper offers an analysis of the democratic characteristics of these different deliberative and plebiscitary designs, in particular their potential to realise trans-national citizenship.

**Introduction**

Public authorities at various levels of governance have over recent years experimented with, and on some occasions institutionalised, democratic innovations: institutions that have been specifically designed to increase and deepen citizen participation in the political decision making process (Fung, 2003; Smith 2009; Warren 2009). This has often been part of an explicit strategy to respond to perceived democratic deficit. It is not a surprise then that the European Union has itself engaged in a degree of experimentation, given the extent to which commentators contend that this level of governance exhibits a democratic deficit *par excellence* (Culpepper and Fung 2007). But institutionalising democratic innovations is challenging in any polity; designing and embedding *trans-national* citizen participation is another matter entirely. After all, with the European Union we are talking of a highly-populous, multi-national and multi-lingual polity: over 500 million people, from 27 member states using 23 official European languages.

There is no question that the EU represents a significant test case for those interested in democratic design. Trans-national democratic innovations explicitly challenge those sceptics who believe that citizenship cannot be enacted in a meaningful way across such a polity. Scepticism draws on a number of (overlapping) arguments. The classic challenge to citizen participation on such a large scale is one of feasibility. Primarily this relates to the 'economy of time' (the time needed to understand and deliberate on complex issues) which is taken to be a strong democratic justification for delegation of decision making (Beetham 1999: 8-9; Dahl 1988: 110; Warren 1996: 242). Feasibility constraints are taken to be even more pronounced when decisions are made across such a large, complex polity as the EU. But the scale of the EU – in particular its trans-national nature – also brings with it other types of challenge in particular related to identity. For Miller, the very idea of citizenship only makes sense in relation to national identity. It is only on the basis of such shared national identity that claims to the common good, so central to ideas of shared citizenship, will be understood and respected. As he argues, 'those that aspire to create transnational or global forms of citizenship have failed to understand the conditions under which genuine citizenship is possible' (Miller 2000: 81; see also Miller 2010). While Miller focuses on the role of the nation state in generating the conditions for citizenship, Will Kymlicka offers a different take on the necessary identity for citizenship: in his case shared language. It is a shared language that gives us access to the ritualistic aspects of communication that are so central to political debate. A technical understanding of another language is not enough. As Kymlicka argues: 'Put simply, democratic politics is the politics of the vernacular. ... we can expect – as a general rule – that the more political debate is conducted in the vernacular, the more participatory it will be' (Kymlicka 1999: 121). The EU is unquestionably a hard case for democratic design since any innovation will need to overcome (or at least ameliorate) all three of these constraining factors: feasibility, national identity and language.

Against the background of such sceptical commentary, the aim of this paper is to analyse and account for the current trajectory of democratic innovation in the EU. While the EU has a long pedigree in engaging organised interests (sometimes as an explicit proxy for citizen participation<sup>1</sup>), there has been increased experimentation with new forms of citizen engagement within the last decade. The key event in explaining recent developments is the rejection of the proposed Treaty Establishing a Constitution for Europe in 2005 following popular negative votes in both France

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<sup>1</sup> For example, the Citizens' Agora, established in 2007 by the European Parliament is promoted as 'a unique tool, in both structure and breadth, for discussing with *citizens* issues on Parliament's agenda'. However, in practice it 'represents a link between the European Parliament and European *civil society*' (emphasis added). See <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=70&language=EN>

and the Netherlands. The 'period of reflection' that followed led to an explicit engagement on the part of European institutions with deliberative ideas which informed a series of trans-national democratic innovations. Creating opportunities for citizens of Europe to deliberate about collective concerns provided one potential answer to the democratic deficit. But there was a failure to embed, invest in, and learn lessons from these experimental trans-national deliberative designs. Instead, the decision at the Lisbon Intergovernmental Conference (ICG) to transfer directly many of the articles from the failed Constitutional Treaty into the 2010 Treaty of the European Union established the legal basis for the European Citizens' Initiative (ECI). With its implementation in April 2012, trans-national citizen engagement takes a plebiscitary turn. The paper reflects on the implications for trans-national citizen participation in the European Union of this shift from deliberative to plebiscitary engagement and the extent to which the emerging institutions provide a response to the sceptics of trans-national citizenship.

### **Flirting with deliberative design?**

Deliberative democratic theorists have developed a particular analysis of the democratic deficit in the EU (Bohman 2007; Eriksson 2009). For example, James Bohman argues that the legitimacy of the EU (as well as any other polity) rests on both popular and deliberative legitimacy: not only the 'extent that the people have genuine opportunities to shape or assent' to any reform, but also the 'extent to which the deliberative process of citizens offering reasons to each other in mutual justification plays some role' (Bohman 2007:139). Against these criteria, Bohman argues, significant reform processes, in particular the development of the proposed European Constitution, fail. The same is arguably true for more mundane European policy making.

And it was in response to the same political project – in this case the rejection of the proposed Constitution by France and the Netherlands – that a more deliberative perspective on strategies of citizen engagement began to emerge amongst European policy makers. This was made explicit in a number of policy documents, perhaps most vividly in the 2006 European Communications Policy White Paper which promotes the development of a European 'public sphere':

People feel remote from these decisions, the decision-making process and EU institutions. There is a sense of alienation from 'Brussels', which partly mirrors the disenchantment with politics in general. One reason for this is the inadequate development of a 'European public sphere' where the European

debate can unfold. Despite exercising the right to elect members of the European Parliament, citizens often feel that they themselves have little opportunity to make their voices heard on European issues, and there is no obvious forum within which they can discuss these issues together. (CEC 2006: 4-5)<sup>2</sup>

While parts of the White Paper were explicitly deliberative in tone, it is another thing to move from such rhetoric to actual institutional design across such a populous, geographically extensive, multi-national and multi-lingual polity.

With the adoption in 2005 by the European Commission of *Plan D for Democracy, Dialogue and Debate* (CEC 2005), later superseded by *Debate Europe*, the institutional challenge was to a certain degree answered. While around 75 percent of the projects funded under Plan D are best described as traditional information campaigns, others attempted to create opportunities for deliberative engagement on the part of EU citizens (Euréval et al 2009: 29). And democratic experimentation was not only happening under Plan D/Debate Europe: trans-national democratic innovations with a deliberative element were organised under different European programmes. In a relatively short space of time between 2005 and 2009, Mundo Yang (2013) documents 22 transnational democratic designs with a deliberative element,<sup>3</sup> sponsored by a range of different initiatives: Citizenship Programmes; Plan D/Debate Europe; eParticipation Preparatory Action Programme; 6<sup>th</sup> and 7<sup>th</sup> Framework Programmes for Research and Technological Development of the EU. To this list of designs, we can also add the Futurum online platform created to inform the constitutional process in 2001.

What can we learn from this fairly intense period of deliberative experimentation? How did the organisers of deliberative events/projects deal with the combined challenges of scale: feasibility, linguistic and national diversity? What forms did trans-national citizenship take?

The first lesson from such experiments is that in practice many of the democratic innovations were organised primarily according to national and/or linguistic distinctions rather than along trans-national lines. For example Ideal-EU funded under the eParticipation programme in 2008 engaged French, Italian and Spanish young people (14-30 years) in debates around energy policy, but through national

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<sup>2</sup> For more evidence of the interest in deliberative governance within the EU, see Friedrich (2013).

<sup>3</sup> Yang defines 'transnational' as designs that engage citizens from three or more EU member states.

(and therefore linguistic) 21<sup>st</sup> Century Town Meeting-style events and online forums. Only at the end did national delegates come together to meet with the president of the Climate Change Commission of the European Parliament (Talpin and Monnoyer-Smith 2013). Similarly, the European Citizens' Consultations 2009 organised under the Debate Europe programme, utilised 28 national websites (two for Belgium in Flemish and French) and 27 randomly-selected mini-publics to develop a series of recommendations across a range of policy issues (e.g. economy, employment, social policy, health and environment). Again, only at the end was a group of 150 volunteers from the national debates (all of whom had to speak English) brought together to review the overall recommendations and hand them over to EU policy-makers (Kies et al 2013). Evidence from the analysis of these two impressive designs suggests that they achieved a significant degree of deliberative quality. However, the form of democratic citizenship they embody remains primarily national in character, reinforcing the European Commission's own conceptualisation of the European public sphere as 'building the European dimension into the national debate' (CEC 2006: 5). Citizens considered European issues with fellow nationals rather than with citizens drawn from across different European nations. Trans-national engagement and thus a trans-national form of European citizenship was realised to only a limited extent in such experiments, in many ways reinforcing the positions of sceptics such as Miller and Kymlicka.

However, amongst the deliberative experiments, there are examples that are explicitly trans-national in character: Futurum and two deliberative polls (Tomorrow's Europe and Europolis) offer particularly interesting instances. Both designs explicitly aimed to promote trans-national and trans-lingual interaction between participants.

Futurum – a web-based discussion platform – was established in 2001 to enable citizens to contribute to the debate on the European constitutional process, with explicit reference to the need to 'bring the European Union closer to its citizens and reduce the perception of a democratic deficit' (Futurum website quoted in Wright 2007). Futurum translated its basic pages into 10 languages. Citizens could post comments, respond to the posts of others and add new threads *in any European language* (for more detail, see Wodak and Wright 2006; Wright 2007). While English remained the predominant language on the forum, a significant minority of contributions and threads featured a range of languages (Wodak and Wright 2006: 262). These were not translated unless participants did so themselves (for example, using online translation software).

Futurum represents one of the most impressive attempts to harness the information and communication technology (ICT) to support trans-national citizen engagement and is an example of the way in which such technology can overcome limitations of space and time: it does not require participants to gather in one place at the same time. But there are at least three limitations to the realisation of inclusive trans-national deliberation. These limitations are expressions of a central design feature: participation in Futurum was self-selecting. First, this means that those contributing to the platform were the already politically-interested, particularly those with an interest in European affairs. Second, the uneven digital divide across the EU meant that access to the platform was not inclusive across the polity.<sup>4</sup> And third, those citizens who were multilingual or English-speaking were at some advantage in following and engaging in debates.<sup>5</sup> This led to fairly uneven rates of participation across social groups (including across linguistic and national divides) and tends to reinforce Kymlicka's scepticism of the potential of multilingual engagement. Future developments in translation software may well reduce the hegemony of English, although those with a multi-lingual competence are likely to remain at some advantage (van Parijs 2011). And over time, the digital divide is likely to reduce substantially. But neither technical solution would affect the first design limitation: it will be the politically-interested who select into participation, thus giving a potentially biased perspective on the views of the European populous.

The deliberative polls, Tomorrow's Europe and Europolis, were both organised in partnership with James Fishkin and colleagues: the first under Plan D in 2007; the second under the 7<sup>th</sup> Framework programme in 2009. Deliberative polls typically engage a random selection of a few hundred citizens from the relevant population, bringing this heterogeneous group together for a couple of days to hear evidence from witnesses who they are able to question and to discuss issues amongst themselves in small groups.<sup>6</sup> A distinctive feature of deliberative polls is that the randomly-selected participants complete a questionnaire (with the same questions) before and after the event – hence organisers have a record of changes of opinion as citizens become more informed about issues. As Fishkin argues, the combination of

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<sup>4</sup> The internet penetration across Europe (not just the EU) stands at 58.3 % in 2011. But this figure masks great differences across member states: amongst EU member states this ranges from Sweden with a penetration of 92.4% to Cyprus at 38.7 %  
<http://www.internetworldstats.com/stats4.htm>

<sup>5</sup> The dominant language on the Internet is English, but only 32 percent of European citizens whose mother tongue is not English believe themselves to be proficient enough to take part in a conversation in that language (Cederman and Kraus 2005: 303).

<sup>6</sup> The use of random selection means that deliberative polls sit in the family of democratic innovations known as 'mini-publics' which also includes citizens' assemblies, citizens' juries, planning cells and consensus conferences. For an examination and comparison of these designs, see Smith (2009: 72-110). For details of deliberative polls organised around the world, see <http://cdd.stanford.edu/> and Fishkin (2009).

random selection and structured deliberation means that a 'deliberative poll attempts to model what the public *would* think, had it a better opportunity to consider the question at issue' (Fishkin 1997: 162). The two European deliberative polls deviated from standard deliberative polling practice (simple random selection) through the use of quota sampling to ensure pre-determined levels of representation from across the member states of the EU. Additionally, both deliberative polls relied on a barrage of translators to ensure that a participant who spoke any of the EU's official languages could follow and contribute to the plenary sessions of the deliberative polls. For feasibility reasons, the smaller breakout sessions had to be organised in particular combinations of languages to ensure translation could be supported. The plenary session of the polls relied on the same translation technology as the European Parliament – and used the same space. No citizen able to communicate in one of the 23 official languages of the European Union was excluded on linguistic grounds. Both deliberative polls provide evidence that face-to-face trans-national deliberation can lead to significant change in opinions across a range of European policy issues (Fishkin 2009; Isernia et al 2013). The experience of the polls offer credible evidence that random selection can be used to overcome the challenge of scale; that citizens are willing to engage with non-nationals in deliberations about European affairs; and that this can be enabled through the use of translation. This should not necessarily be a surprise: after all European elites (whether national representatives, Commissioners or Parliamentarians) make extensive use of translation facilities in negotiating and deliberating on European issues: why this should not also apply to citizens is difficult to understand.

A second lesson is that such designs are perceived to be expensive, particularly face-to-face innovations such as the deliberative polls that physically bring citizens together from across the EU and rely on costly translation which is necessary to ensure the inclusivity of deliberations. The expense of organising face-to-face innovations is one explanatory factor for the apparent decline in funding in the last few years for such initiatives. Where the EU continues to experiment, it is online initiatives that are taking priority. In their discussion of *Europolis* for example, Pierangelo Isernia and his co-authors (including Fishkin) reflect on the expense of European deliberative polls and suggest that for a polity of the scale of the EU, online deliberative polling may be a cheaper and thus more acceptable alternative (Isernia et al 2013). But there are reasons to be sceptical about the idea that new technology provides the answer. First, there is some concern that the interest in online engagement may be driven by other agendas than meaningful democratic engagement: for example, in his analysis of *Your Voice in Europe*, Romain Badouard (2013) argues that the consultation platform was established in part to lower the

cost of impact analysis rather than any concern with achieving democratic deliberation. Even if this is not the case, there may be a false economy at work. We have already noted that there were some limitations even with the impressive Futurum design. We are still some way from understanding how inclusive and reasoned online deliberation – particularly trans-national and lingual deliberation – can be enabled. It will require significant investment and creative design to begin to realise this goal (Smith et al 2012). The unwillingness of European decision makers to spend what are relatively insignificant sums relative to the overall budget of the EU on developing innovative democratic institutions may be an indicator of the extent to which the amelioration of the democratic deficit is really a priority. In simple terms, what price democratic engagement?

A third lesson, which will be further reinforced if the move towards online engagement continues, is that very few (if any) of the designs provided meaningful opportunities for participants from across nations and language communities to craft recommendations together. The final event of ECC09 is one rare exception, but as we have already noted, the overall design was primarily nationally-organised and participants in the final trans-national session had to be English speakers. As for the more explicitly trans-national democratic innovations, Futurum allowed participants to leave comments and respond to others; Tomorrow's Europe and Europolis measured the opinions of individual participants with pre-prepared surveys. In neither design was there any expectation that citizens would work together to offer creative solutions to policy problems. There is thus a missing design in this period of experimentation: the institution that creates space for trans-national engagement in which participants from different nations and linguistic traditions craft recommendations together. One possible model for this is a multi-lingual and trans-national version of the Citizens' Assembly that was established first in British Columbia (2004) and then in Ontario (2005-06). In both examples of this large-scale mini-public, a (near-) random selection of citizens were brought together over a period of months to learn about electoral systems, take evidence from fellow citizens, deliberate amongst themselves and then provide recommendations on whether the provincial electoral system should be reformed. A cross-section of citizens proved willing and able to deliberate and come to judgements on a highly technical and politically-contentious constitutional issue (Warren and Pearse 2008).

This relates explicitly to a fourth lesson from the deliberative experiments: there has been no noticeable impact of the designs on policy making either *individually* or *collectively*. This is the most disappointing element of the period of experimentation – there was a failure to embed designs in the policy-making process. Many of the

evaluations of these experiments point towards the empowering effect of engagement on participants, but then regret that the outputs of these designs failed to have any effect on the European decision making process. As Julien Talpin and Laurence Monnoyer-Smith (2013) suggest in their analysis of Ideal-EU, any empowerment through such innovations is likely to dissolve as citizens realise that their contributions are not considered valuable by decision-makers.

But why this failure? None of the innovations were designed to be given full control over decisions (a reasonable design limitation given their experimental status), but in each case those organising the initiative were under the impression that they would be integrated into the policy-making process within relevant European institutions. Part of the failure obviously rests with EU policy makers. When sponsoring these innovations, policy makers had failed to consider how to integrate their outputs into decisions about current policy challenges. This meant that the results of citizen participation were typically overlooked.

But there are also some failures in design that might be laid at the door of organisers rather than European policy makers. For example, one of the reasons why participants in the Convention process were able to ignore much of the debate generated on Futurum was because it was 'perceived to be a relatively anonymous, largely unrepresentative group' and there were questions about 'how to effectively and fairly summarise the debates' (Wright 2007: 1172). The challenge of 'unrepresentativeness' indicates the important role that random or targeted forms of selection might play in increasing the perceived legitimacy of democratic innovations at the European level. The latter problem relating to outputs of debates was replicated across many of the designs: vague recommendations, value statements and/or aggregation of opinions too general to offer useful guidance for policy makers. The impressive trans-national deliberative polls are a perfect example of this problem. They provide policy makers with a series of results for the aggregated preferences of citizens against pre-defined survey questions, but no real sense of how those citizens would make hard choices of the type facing decision makers.

There is no clear evidence that any of the EU institutions receiving reports on the judgements and outputs of democratic innovations made any use of them – they are rarely if ever mentioned in later official justifications of related decisions. And what is abundantly clear is that there is no evidence that officials have drawn together lessons from across the 23 experiments in order to inform and improve future engagement strategies. Part of the explanation is the way in which the different innovations were funded from a variety of different European programmes – it

provides another vivid example of the fragmentation and inertia of this complex institution that can undermine creativity and lesson-learning. The collective wisdom that could have been accrued from the different democratic innovations has been lost.

While the funding for these experiments provides evidence that there is (or at least was) some degree of interest in deliberative engagement amongst the European political elite, there was no clear plan for how these would link with ongoing decision-making processes, or will on the part of decision makers to attend to citizens' perspectives. The first phase of deliberative experimentation offers a series of lessons for how we might better design institutions to realise trans-national citizenship (Smith 2013). But further experimentation was not forthcoming. The fate of these democratic innovations gives succour to the view that the discourse of deliberative engagement has run far ahead of considerations of how citizen engagement can be institutionalised in political decision making (Friedrich 2013).

### **Embracing plebiscitary design?**

In comparison to the relatively brief 'flirtation' with deliberative design where no innovation was given significant standing in the political process, the rapid institutionalisation of the European Citizens' Initiative (ECI) represents a significant change of direction for trans-national citizen engagement. The ECI is likely to displace any lingering interest in deliberative design. The ECI was launched officially in April 2012 and those propositions that attract the required 1 million signatures from citizens collected from across at least seven Member States will generate a hearing in the European Parliament and a meeting with and formal response from the European Commission.<sup>7</sup> In the press release welcoming the speed of agreement between the Parliament and Council, Maroš Šefčovič, Vice-President for Inter-institutional Relations and Administration states:

The ECI will introduce a whole new form of participatory democracy to the EU. It is a major step forward in the democratic life of the Union. It's a concrete example of bringing Europe closer to its citizens. And it will foster a cross

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<sup>7</sup> Registered initiatives can be viewed at <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>

border debate about what we are doing in Brussels and thus contribute, we hope, to the development of a real European public space.<sup>8</sup>

Whereas the innovations we discussed in the first part of the paper are related very much to the deliberative turn in democratic thought and practice, the ECI is motivated by a different stream of thinking: direct or plebiscite democracy. The two approaches to democratic engagement are distinct, typically emphasising different democratic goods and designs (Saward 2001; Smith 2009). The ECI can be seen as part of the broad movement in advanced industrial democracies towards institutions that offer more direct control to citizens (Scarrow 2001). But while it might bear a family resemblance to forms of direct legislation - and (injudiciously) borrows the name of one design - it does not give citizens any final decision making powers. This is important because as we will discuss further below, the democratic legitimacy of direct legislation rests on the form of political equality embodied in the final ballot. The characteristics of the ECI mean the family resemblance is actually closer to the existing European Parliament Petition (and 'petition' would have been a more accurate designation), although in comparison the ECI is explicitly trans-national in its design, requiring the organising 'citizens committee' and the 1 million statements of support to come from at least one quarter of the Member States.<sup>9</sup>

The period of deliberative experimentation can be understood as part of the *reaction* by European policy makers to the failed Constitution; paradoxically the ECI is the *product* of that failed process.<sup>10</sup> During the Convention, a small group of NGOs aided by two members of the Convention lobbied hard but unsuccessfully for direct democratic designs and an initial compromise proposal for the ECI was rejected by the Presidium. However, much to the surprise of those lobbying on its behalf and other members of the Convention, the ECI was included in a series of last minute amendments announced on the final day (12 June 2003) by its president Valéry Giscard d'Estang. The ECI appears in the articles summarising 'the principle of participatory democracy' (Article I-46):

No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate

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<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1720&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>9</sup> The right to petition the European Parliament was enshrined in the Treaty of the Functioning of the EU (TFEU). In comparison to the EPP which can be proposed by a single signatory, the ECI requires registration with the European Commission before the collection of signatures; at least 1 million signatures; national verification (and thus shifting of costs!) of signatures; public hearing at the European Parliament following verification; and the adoption of a communication by the European Commission.

<sup>10</sup> For an extended explanation of the process of adoption of the ECI, see Smith (2012).

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.<sup>11</sup>

The ECI was not on the political agenda in the run-up to the Convention: there was certainly no broader public debate about the institutional design beyond the small number of NGOs promoting more extensive direct democratic reform. And it was still not a matter of much public debate when it appeared again in Article 11 of the 2010 Treaty of the European Union (or Lisbon Treaty). In agreeing the Treaty, a decision was made under the Merkel presidency not to open up any issue from the aborted Constitution unless there was *unanimity* amongst Member States to do so – an incredibly high threshold was put in place in order not to undo what had been a complex set of trade-offs in the Convention. From that point on the institutionalisation of the ECI has been fairly rapid. Anticipating the Lisbon Treaty, the Commission adopted a Green Paper in 2009 and launched a public consultation. The final structure of Regulation 211/2011 was then agreed, again relatively quickly, between Council and Parliament, coming into force in February 2011. The first initiatives can be launched officially from April 2012. As such, a last minute entry into the proposed Constitution which received almost no public scrutiny now takes its place as arguably the main vehicle for citizen engagement in European affairs.

There should be little doubt that at times qualifying petitions that carry support of 1 million-plus citizens are going to have significant normative power and affect the agendas of European institutions. It is also the case that at the level of *principle* the ECI is motivated by the idea of trans-national citizenship and engagement. After all, 1 million signatures will be required which includes a minimum level of signatures from at least 7 member states. But the actual *practice* of the ECI may undermine this ideal, enacting only a relatively weak form of European citizenship.<sup>12</sup>

As would be expected from any piece of European legislation, the Regulation includes a number of compromises, which in themselves do not undermine the trans-national principle, but do generate political inequalities across nations. So, for example, we find differential classification of 'citizen' across Member States due to different verification procedures: for the majority of nations, personal identification documentation will limit signatories to nationals; for others where such

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<sup>11</sup> The European Convention, Draft Treaty establishing a Constitution for Europe (July 2003) [www.european-convention.eu.int/docs/Treaty/cv00850.en03.pdf](http://www.european-convention.eu.int/docs/Treaty/cv00850.en03.pdf)

<sup>12</sup> I owe this distinction between the principle and practice of trans-national citizenship to a comment from Jo Shaw.

documentation is not required, the category is residents (Ireland, Netherlands and the UK), residents and non-resident nationals (Belgium, Denmark, Estonia, Finland, Germany and Slovakia). This means that different groups will be enabled/disabled to participate and the ECI will have an impact on the exercise of free movement rights since the variety of verification procedures will have differential effects on the ability of non-nationals to sign petitions in their country of residency (Dogan 2012). Further inequalities creep into the process in relation to the threshold number of signatories required in each member state: for example, Germany requires a minimum of 74,250 signatures compared to only 3,750 in Malta. Digressive proportionality entails deviation from equal treatment (ibid), but a deviation that is manifest throughout the institutional architecture of the EU. Setting the same threshold proportions for each Member State would have been too demanding for the larger polities; setting the same total number for all states would have a significant negative impact on smaller states. It is interesting to speculate what this will mean for the signature collection strategies of organisers: a focus on a small number of medium or larger states where a lower proportion of the citizenry is needed to achieve the national threshold; or a focus on the smaller states where the threshold number of signatures required is lower. And in terms of geographical spread, the 7 out of 27 requirement means that an initiative does not need to achieve geographically representative support from across the Union: the ECI certainly requires trans-national mobilisation, but the support for an initiative can be concentrated in a minority of member states. While these sources of inequality are troublesome, they are not dissimilar to many of the other compromises that are generated within the complex political project that is the EU.

A more significant concern from a democratic perspective relates to which actors will be the agents of initiatives. The term ECI implies that this will be citizens qua citizens, but evidence from regimes that have institutionalised direct legislation suggests that the normative power of the ECI will be shaped primarily by organised interests. A successful initiative will require organisers to mobilise 1 million signatures in the 12 month period following registration. A minimum figure of signatures has been put in place to protect the Commission and Parliament from being overwhelmed with proposals with little trans-national support.<sup>13</sup> Experience from California, where a similar rate of signatures is required for securing a proposal on an initiative ballot,<sup>14</sup> suggests that this is almost impossible to achieve without professional signature drives. And such drives are highly expensive: in excess of \$1

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<sup>13</sup> The European Parliament Petition Committee (PETI) receives over 1000 petitions per year to consider given its lack of minimum thresholds.

<sup>14</sup> In California, the number of signatures required for a successful statutory initiative is 5 percent of the turnout for the previous state election (over 400,000 signatures) collected within 150 days. For a constitutional initiative, the figure increases to 8 percent

million to qualify an initiative (Lupia and Matsusaka 2004: 471). The ‘substantial political resources (money and manpower)’ required to meet signature thresholds means that ‘organised interests clearly have an advantage over most individuals’ (Magleby 1984: 58; see also Gerber 1999). But the ECI introduces an innovative approach to signature collection: it allows organisers to collect signatures online. It is security concerns that have been one of the main brakes to such a development in California (Baer and Ulrich 2008). And rather than the costs of accessing secure software falling on organisers, Article 6(2) of the ECI Regulation shifts the burden onto the Commission which is required to establish, maintain and make available ‘open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation’. The first version of this software was made available for testing in late December 2011, with future versions to follow.<sup>15</sup>

This capacity to collect signatures online and the requirement on the Commission to make available secure open source software is a significant step towards democratising the signature collection process, evening out some of the imbalances we witness with more traditional face-to-face signature drives. Even so, organised interests – civil society organisations, business groups, political parties and the like – will remain at some advantage compared to ordinary citizens simply because of their more extensive resources. Online signature collection alone will not radically alter the power dynamics of direct democratic institutions.

While there are concerns about the extent of citizen access to the ECI (in terms of organising successful petitions), the use of the term ‘initiative’ is arguably misguided and somewhat disingenuous. This term is typically reserved for a mechanism whose legitimacy rests on political equality: all citizens have equal decision making power through the equal right to vote (even if in practice there tends to be a differentiation in participation – see Smith 2009: 113-119). While often confused with referendums, an initiative in its common usage enables citizens to put a legislative measure (statutory initiative) or a constitutional amendment (constitutional initiative) to a binding vote if they are able to submit a petition with the required number of signatures from fellow citizens. It is this combination of the equal right to petition followed by the equal decision making power of citizens on which the democratic legitimacy of such direct legislation rests (Saward 1998). The process that the EU has institutionalised is simply the petition element of the initiative. Agenda-setting power (which itself is likely to be dominated by organised interests) is not

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<sup>15</sup> <https://joinup.ec.europa.eu/software/ocs/news/european-citizens-initiatives-online-collection-software-now-available>. See Commission Implementing Regulation (EU) No 1179/2011 for specifications.

complemented with decision making power in the hands of citizens. The Commission will be under pressure to respond positively to validated initiatives and is likely to act on occasion to forestall public pressure and the registering of a proposal. However, the absence of the popular vote means that the ECI will not have the same disciplinary effect on decision-makers as citizens' initiatives commonly understood.

Finally, it is worth considering the nature of the public debates that the ECI will engender. Well-supported initiatives are likely to gain significant media exposure and lead to a degree of public reflection. But any public debate will not be structured in the same way as campaigns in direct legislation. While deliberative democrats in particular are often critical of the democratic qualities of referendum and initiative campaigns (Chambers 2001), at least there is usually some level of public education (e.g. through voter information pamphlets) and funding of pro and con camps to ensure a degree of fairness in the public debate. A successful proposition supported by 1 million or more signatories and the public and media attention that this will engender will give Commission officials some idea that it is an issue of some public concern; but limited sense of the strength of popular opposition (unless a counter-proposal is mobilised) or broader public opinion. The European Parliament was able to negotiate a formal Hearing for any successful proposition into the Regulation – in many ways a reflection of the on-going struggle between the Commission and Parliament. This is a welcome public forum for consideration of successful propositions, but will be an occasion for a debate involving only interested MEPs; some way removed from a more structured public debate.

### **Concluding thoughts**

The EU is a significant test-case for realising meaningful citizen participation at the trans-national level. It is through the development of democratic innovations at this level of governance that practices of European citizenship can be enacted. What we have learnt from the period of deliberative experimentation and now the institutionalisation of the ECI is that there are grounds to be optimistic that political spaces that enable the realisation of aspects of European citizenship can be actively shaped, if there is political will. Constraints associated with the scale of the polity – the economy of time and national and linguistic identity – represent significant challenges to trans-national engagement; but there is evidence that they can be overcome, or at the very least ameliorated, through careful and creative design. The European deliberative polls (amongst other deliberative designs) and the ECI offer very different insights into how this might be achieved.

The ECI represents a significant departure from many of the democratic innovations that the EU sponsored immediately after the Constitutional crisis. The period of trans-national deliberative experimentation that took place before the ECI's institutionalisation appears to have been forgotten or at best neglected – there has been a failure to learn and embed lessons from the impressive variety of designs. It is a last minute addition to the aborted Convention process that has been institutionalised into the EU architecture. Democratic innovation at the EU level is currently much more influenced by direct democratic rather than deliberative democratic insights. If there are any additional innovations, these are likely to be online designs, although we have raised questions about the motivations behind such an approach. There are considerable challenges to be overcome before online forums realise democratic expectations.

In many ways this is a lost opportunity. Not only because deliberative institutions in their own right are worth further experimentation, but also because introducing a deliberative reform to the ECI may well alleviate some of its apparent democratic limitations. While direct and deliberative models of democracy are often viewed as competing and antagonistic, their principles and practices can be mutually supportive (Saward 2001). If it is right to be concerned that successful initiatives are often likely to represent the interests of the already-well-organised and that it will be difficult for the Commission, Parliament and others to judge the standing of any particular proposition amongst the broader public, a supplementary deliberative institution could increase the ECI's democratic legitimacy. Quite simply, any proposition that achieved the requisite ECI thresholds (1 million signatures; minimum thresholds from at least 7 Member States) would immediately launch a European deliberative forum constituted by a representative sample of European citizens to consider the issue in question. This could be in the form of a trans-national deliberative poll or 21<sup>st</sup> Century Town Meeting which would generate considered preferences from participants; or more substantially a Citizens' Assembly of the type institutionalised in British Columbia and then Ontario which would offer informed recommendations on any proposition. While a particular organised interest might be able to mobilise 1 million signatures in support of a proposition, a trans-national mini-public of this sort would then offer the Commission, Parliament and the wider European public a considered judgement on the issue representing a diversity of perspectives from across the European citizenry. And there is good evidence that the judgements of mini-publics such as the British Columbia Citizens' Assembly are viewed, at least by citizens, as trustworthy (Cutler et al 2008; MacKenzie and Warren 2012). A successful proposition that withstood the scrutiny of such a trans-national

deliberative forum would then have significant (and importantly more legitimate) normative force. The deliberative experiments that were organised in the aftermath of the aborted Constitution indicate that organising such trans-national deliberative engagement, while a challenge, is possible.

The formal institutionalisation of the ECI in April 2012 offers one particular approach to realising trans-national citizenship, although deliberative democrats and others will be quick to challenge its democratic legitimacy and its capacity to respond to the current democratic malaise. The ECI will doubtless have a more profound impact on European decision making than any of the previous deliberative experiments, but like its predecessors there are aspects of its design that indicate that European political elites are running scared of embedding meaningful citizen engagement in the European political decision making process. First, even with the development of open source software, it is not at all clear that the ECI represents a new avenue of participation for citizens qua citizens rather than organised interests which already have significant access to the centres of power. Second, the political will of decision makers to shift the balance of power when it comes to decision making is still weak: there was a failure to link any of the deliberative experiments to particular political decisions; the same is arguably true for the ECI, albeit it on occasion it will have significant agenda-setting powers. In other words, 'citizens' initiative' is a rather inappropriate designation of this new European institution (Damjanovic et al 2010). Despite the rhetoric and some efforts in establishing democratic innovations, European citizens remain a great distance away from power.

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