CHAPTER 21
EVERYTHING SHALL NOW BE POPULAR: EXPLAINING ELITE BEHAVIOUR IN THE CONSTITUTIONAL TREATY REFERENDA

Rasmus Leander Nielsen

INTRODUCTION

Unprecedented in the history of intergovernmental treaty negotiations, 10 Member States were poised to let their electorates vote on the Constitutional Treaty. The step-by-step referendial process, however, did not even make it through the second stumbling block. After Spain ratified the Constitutional Treaty in the first of the series of scheduled votes in spring 2005, France and a few days later the Netherlands both voted ‘no’ in early summer. Luxembourg subsequently endorsed the Constitutional Treaty, but by then most of the other referenda had already been indefinitely postponed with several capitals later indicating that the Constitutional Treaty ballot might never take place.

Had all the scheduled referenda on the Constitutional Treaty taken place, the total of referenda related to European integration would have far exceeded 50 (including trade relations and other associations with the EU, see Table 1). Moreover, this decade has seen an increase in the frequency of referenda with Ireland voting twice on the Nice Treaty, Denmark and Sweden both voting whether to join the euro zone, and the multiple accession referenda in 2003 in eight Eastern European states and Malta. Furthermore, Switzerland (thrice) and Romania also voted on issues pertaining to the EU. This surge of direct democracy in relation to European integration and ultimately constitutionalism yields several questions about how we are to understand the referendum institution and the implications that follow. This chapter seeks to explain elite behaviour during the Constitutional Treaty process from both a theoretical and a comparative perspective as well as to briefly contextualise these referenda in a historical perspective. While referendum studies of voting behaviour have mushroomed in recent years, only a few studies have theorised about the motivation and behaviour of political elites in this process. Analytically, this is unfortunate if we are to fully grasp the dynamics of constitutional engineering and further develop analytical frameworks of intergovernmental bargaining, domestic political elites’ contentions over integration, and the

1 The title is taken from a song title by Danish poet and philosopher Nikolaj F. S. Grundtvig (1783-1872). This translation is taken from Marcussen and Zöllner (2003, 114).
ratification process of EU treaties.

As it is political elites who take the decision to hold the vast majority of EU referenda, often without formal constitutional requirements or clearly voiced public demands, this chapter asks the following questions. First, from an analytical point of view, why are referenda convened by elites in the first place, i.e., what underlying motivations influence these decisions and what concerns—normative and/or strategic—are referenda anticipated to resolve? Some competing hypotheses are identified from the literature, stressing normative, constitutional, institutional, intergovernmental, or domestic political aspects in contemplating the decisions to convene referenda.

Second, how well do the theoretical explanations fare when confronted with the empirical record, and most significantly, what led elites to convene referenda in order to ratify the Constitutional Treaty? In this sense, we are more interested in this chapter with the process leading to, rather than the final outcome of, the referenda, the broader comparative implications rather than the idiosyncratic features of the respective votes, and finally and most importantly, elite motivations for convening the referenda in the first place rather than why voters voted as they did. The conclusion is that domestic political dynamics were imperative in the vast majority of cases.

The remaining parts of the chapter unfold in the following manner. In the next section, a brief historical account is offered followed by an introduction and discussion of some competing hypotheses as to why referenda are convened. Next, each of the scheduled Constitutional referenda are assessed and contrasted to these hypotheses. Lastly, the findings and implications are discussed before some concluding remarks are given.

**WHERE AND WHY ARE EU REFERENDA CONVENEDED?**

*Where?*

Since the early 1970s, 47 referenda have been held in relation to European integration (see Table 1). The majority of these have been in relation to accession. Only 14, including the four on the Constitutional Treaty, have been held to ratify major EU treaties (cases in bold in Table 1). In fact, had all the scheduled referenda taken place, it would have doubled the number in this category of votes. Another fact that can be observed from Table 1 is that, prior to the Constitutional ballots, it was mainly Ireland (1987, 1992, 1998, 2001 and 2002) and Denmark (1986, 1992, 1993 and 1998) which had put treaties to a popular vote with France being the sole exception to the rule, voting on the Maastricht Treaty in 1992. Although several other Member States in the past have considered or discussed this option (e.g., Portugal