

The Digital Revolution and Europe's constitutional process. E-democracy between ideology and Institutional practices

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Abstract

Europe is currently going through an important stage of its constitutional process. It is difficult to predict what kind of institutional frameworks will emerge within the European Union. This complexity is promoting a greater consideration for the process aimed at creating an ever-closer unity among European peoples. Such a goal could be achieved by shifting its emphasis from the integration itself to the concerns related to the integration as a cultural process, and by interpreting 'culture' as a political tool for further expanding this construction process. Initiatives and policies able to enhance shared roots are undoubtedly essential for the creation of a common public sphere capable of overcoming the current EU differences. However, little attention has been paid to policies likely to become equally or even more important: the public sphere transformation due to the introduction and spread of ICTs. The aim of this paper is to analyze the *e-democracy* diffusion at the European level. In particular, I will take into consideration the e-democracy models from a cultural and ideological point of view.

Biographical Note

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Introduction

Europe is currently undergoing a very peculiar time in its own constitutional history. While the old pillars that historically sustained the individual nation-state's constitutions are crumbling down, we are facing an unprecedented building process for a European constitution. Such a process, however, is still being interpreted with categories and perspectives modelled on political and institutional experiences of the past: people, sovereignty, nation, democratic legitimacy – an heavy burden rather than a weaving of meaningful terms for today's and tomorrow's outcomes. The edges of this process seem uncertain, not only for its own inclusive dynamics. Indeed, the issue of its extent remains still unresolved – and

impossible to solve. Therefore, also undefined is the process length. It is not clear when it could be considered closed. But it's also impossible to know exactly when it began. Unless we want to establish its birth date with the Convention launch (2001), on one hand, and on the other with the Constitution ratification - originally scheduled for December 2003¹!

These transformations and difficulties have become even more challenging with the dramatic war in Iraq and the referendum results in France and Netherlands. The victory of "No" has again given strength to those advocating the argument that Europe is not ready yet for its own Constitution. But also those actors supporting the need to open up a constitutional path have constantly exposed the cultural weakness of such a process, its political ambiguity and poor communication skills². If one of the main goals of the constitutional process is to produce symbols of political identity and belonging, then the actual instances would have been inadequate, even counterproductive, in accomplish such goals. According to this political and cultural line-up, these weaknesses could be overcome by widening the public debate focused on the constitutional process and pushing a social democracy model not adjusted on the economic standard imposed globally by the United States³.

Whatever are the theoretical and juridical perspectives currently undergoing in Europe, we must avoid the "traps" that, fueled by commonplaces and analysis mistakes, could make more complex and uselessly difficult the path undertaken. While some of these traps have already been pointed out by Yves Meny (2002)⁴, here we plan to focus on another trap originating from the acceptance of a basic alternative: a yes or no vote to the Constitution. Actually, the constitutional process currently evolving in Europe goes beyond the significative stage opened with Convention establishment and the results of ratification procedures still in progress. The same Constitutional Charter is, indeed, just one piece along a historical and political transformation whose deep roots and cultural and institutional offsprings are often missed by current analysis.

We propose here that another piece of such constitutional process are the changes produced by the communication technologies diffusion. Europe's future, if there is one, depends much more on the ICTs than on those strategies addressing shared and symbolic sub-values that, instead, so far have been considered the main ground for the foundation of a shared policy⁵.

¹ The Treaty has been signed by Convention members on October 2003.

² Cfr. European Commission (2006). *White Paper on a European Communication Policy*. Brussels, 1.2.2006. COM(2006) 35 final. The Commission also launched a 'Plan D for democracy, dialogue and debate', intended to involve citizens in a wide-ranging discussion on the European Union – what it is for, where it is going and what it should be doing.

³ According to the Eurobarometer survey (2006), despite ambivalent attitudes quite widespread, there are expectations and hopes that Europe will not reduce itself to being a single market and a mere free trade area, not even a Europe based on unrelated projects; on the contrary, the citizens expect progress in European integration in many fields and wish to see Europe assert itself collectively on the world stage. One may think that the reluctances, the criticisms and the disillusionments that can be observed currently vis-à-vis in the European Union stem less from a weakness of "demand" of Europe than from a perceived lack of visible political "offer", involving an overall goal and a comprehensive political project that citizens would find attractive and stimulating.

⁴ The first «difficulty comes from the expectation at European level of prejudices and stereotypes deeply rooted in national traditions and cultures». Secondly, we should avoid to overcharge the Constitutional Charter with expectations (dreams and illusions), as if its definition could warrant in itself a solution to the problems that today Europe is facing. A third element of confusion «is what we could define as a wrong benchmarking». One we recognize that the European construction has sui generis features, it is counterproductive to use ideas rooted in their national origins. The fourth difficulty arises right here, from the inability to envision, at least until today, a post-national democratic order capable of learning the "realist" lesson by using it for a practice and design that could overcome the current limitations and embrace innovation instead of deny it.

⁵ Not only the volume of eServices provided by governments in the EU continues to grow, but also the ICT sector continues to grow faster than Europe's overall economy. Ict Contributed nearly 50% of EU productivity growth between 2000 and 2004, with software and IT services currently the most dynamic growth area (5.9% for 2006-2007). Cfr. the Commission's annual progress report on i2010. IP/07/453. Brussels, 30 March.

Therefore this paper aims to draw attention on such a loose piece, with particular emphasis on e-democracy's constitutional meaning and relevance.

After framing the problem in this context, we can directly relate different e-democracy policies and practices to the current constitutional transformations and challenges, as well as to the theoretical and political debate's main issues surfaced during the last two decades.

Democracy deficit and Europe's public sphere

Between 2002 and 2004 the European judicial and political scene was attempting to achieve not only a functional objective – “clarify, simplify, improve” – but also answer a pressing question about Europe's future or, to quote Joschka Fischer, “*Quo vadis*”, Europe? We are in the second half of 2007, and that question is looming now more than ever: the old knots are still undone while new difficulties and wounds have been added⁶. In particular, the democratic deficit problem is re-surfacing, along with the need for (new) strategies able to fill the legitimacy gap that is threatening to knockout the Old World. The poor democracy level of Europe's political and institutional system, emerged since 1979 in the first elections for the European Parliament, has lowered even more with time, especially after the Berlin Wall fall. In 1979 only a few politicians and scholars worried about such democratic deficit, while later it became a central issue of the EU political agenda and the related cultural and ideological debate. And *pour cause*: the top-down nature of the “Europe's shared home” building process could not accommodate the democratic nature that people wanted or was expecting from them.

For a reality provided with movable “borders” but without a common “population” and language, the democratic deficit was a structural and insurmountable fact, as confirmed by a constitutional euro-scepticism. What was missing were the cultural and functional premises that historically had fueled and made possible the nation-state's democracy development: the only and true source of political power legitimating in the European context (Grimm, 1996).

Some analysis partially agreed on this diagnosis, but also rejected its prognosis, linking the poor legitimating of Europe's institutions especially to the weakness of a European public sphere “that is a pre-requirement of both a deliberative legitimating and a representative accountability” (Della Porta and Caiani, 2004). What is important in such a position, which became predominant in the cultural debate in the wake of Habermas work (1996)⁷, is that it has an explicit match at institutional level: the valorization and/or creation of the premises leading to the establishment of a European public sphere is not just a discussion topic in the academic world, but also the goal of specific EU policies⁸. The connection between the democratic deficit overcome and the building of a European public sphere has a structural and binding nature: there cannot and will not be a democracy, there cannot and will not be a democratic legitimacy until a super-national public sphere will take shape, so to create room later for the democratic process development. Even more, the establishment of a European public sphere will provide a fundamental contribution to the creation of a common awareness, exactly because it is able

⁶ Cfr. the recent arrangement for a new Treaty at the European Council held in Bruxelles (June 2007).

⁷ In recent years, however, Habermas work on the public sphere has been criticized. There are now other theories and frameworks providing different ways of problematizing and exploring the public sphere. But even when his work has been strongly criticized, nevertheless it remained central. Cfr. AA.VV. (2004). After Habermas. New Perspectives on the Public Sphere. Edited by Nick Crossley and Michael Roberts. Blackwell Publishing. *The Sociological Review*, 1(52).

⁸ Last year, the Commission set out an Action Plan with a detailed list of specific measures aimed at improving its communication skills with citizens. These include, for example, the strengthening of Commission representative offices, a better internal co-ordination and planning, refining language and presentation content, and increasing the access points for citizens. A six-month public consultation was concluded on 30 September 2006, during which individuals and institutions were able to comment on the main ideas put forward in the White Paper. Cfr. Eurobarometer (2006a; 2006b).

to weave a relationship between European citizens and political Institutions, a place where to give birth to a Europe-specific public opinion.

Sure enough the overlapping/intersection of different communication territories - International, national, regional, local and sub-cultural – is and will be an indelible trait of the European experience. However, it is exactly this complexity that propelled the “search for a shared public sphere, able to transcend Europe’s diversity. In the first place there was the attempt to develop a “European audiovisual space”, promoting film and television shows as a collaboration of different states⁹; then we had the setting of a “European information area” centered on the telecommunication, computer and media convergence... The first project puts emphasis on cultural values and legacy, while the second one focus its attention on the image of an inter-connected society and on the information exchange” (Schlesinger, 2002).

Therefore, up to the beginning of the new millennium the EU is moving at least in two directions in its effort to create a public sphere: the cultural track – with a series of programs and initiatives aimed at strengthening and exploiting that fabric of values, sensibilities and aspirations that is deeply rooted in our history and is able to create new traditions (Shore, 2000) – and information channels – through the establishment of communication networks able to overcome localism and nationalism typical of mainstream news production¹⁰. This kind of attention explains also the increasing interest showed by empirical research and theoretical thought regarding the European public sphere issue (Risse, 2002). This interest was mirrored by EU financial support and was almost always focused on media, TV, and press operative systems, considered as the main communication means (and the most powerful as well) to create/express public opinions, although not the sole production tool available to deliver symbolic and identity content. Such a policy, however, was heading against the media system’s specific features and its strong ties with political and institutional powers. It is not clear if with time the public spheres became a bit “more European”¹¹, while it is proven that the communication strategy did not provide (yet) the answer they everybody expected: to fill the legitimacy gap and create the premises to overcome the democratic deficit¹².

There is no doubt that these are crucial endeavors for Europe’s future. In the last few years, though, another issue surfaced, maybe a more important one: the public sphere transformation due to new technologies introduction and growth. These issues are a priority in EU’s political agenda. Indeed, the

⁹ Venturelli, Shalini S. (1993). The Imagined Transnational Public Sphere in the European Community’s Broadcast Philosophy: Implications for Democracy. *European Journal of Communication*, 8, 491-518

¹⁰ The prevailing viewpoint within the communication research field is that a pan-European public sphere independent of individual states does not exist. Occasionally described as a “utopia”, it seems also relatively unlikely that there will be a development towards a pan-European public sphere in the mid-range. Cfr. Machill, Marcel, Beiber, Markus and Fisher, Corinna (2006). Europe-Topics in Europe’s Media. The Debate about the European Public Sphere: A Meta-Analysis of Media Content Analyses. *European Journal of Communication*. 21(1): 57-88.

¹¹ On problems and sometimes ambivalence of empirical results in this research field, cfr. Trenz (2005).

¹² This is also the Commission idea (2006): “...the ‘public sphere’ within which political life takes place in Europe is largely a national sphere. To the extent that European issues appear on the agenda at all, they are seen by most citizens from a national perspective. The media remain largely national, partly due to language barriers; there are few meeting places where Europeans from different Member States can get to know each other and address issues of common interest. Yet many of the policy decisions that affect daily life for people in the EU are taken at European level. 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”.

financial and organizational effort to establish communication networks based on new digital technologies is widespread, involving several different actors and institutional places at the heart of the EU¹³. Such an effort began to re-map and enrich the research agenda and the public debate (Zimmermann and Erbe, 2002; Jankowski and van Os, 2005; AA.VV., 2005), while at the same re-fueling expectations and hopes for the possibility of a democratic polity, after all¹⁴ - and rightly pushing for its actual establishment¹⁵. If it is too early to draw any conclusion about the success and efficacy of the many initiatives launched toward an eEurope implementation, it is possible and useful to focus on the analytical dimensions enabling a typology attempt of e-democracy in Europe.

...Not only Portals

Historically the interest in ICTs as tools for improving the institutional innovation and the democratic process dates back, in the European scene, to the 1980s. In those years the political dictionary embraces new concepts and “electronic democracy” becomes one of them even before the US *Reinventing Government* philosophy emerges as the leading paradigm all over the world. In the Old World, however, at that time the “electronic democracy” is limited to a few local experiences: Amsterdam and Bologna are the most known and become two case studies. A sort of horizontal exchange is taking place: in the EU there is still no political strategy for this kind of initiatives. But can we say that, referring to electronic democracy, there is a European policy - and, therefore, a European model? During an important conference held at the Internet Oxford Institute (AA.VV., 2004), Paul Timmers strongly explained that: “As of today, no explicit eDemocracy policy has been formulated at EU level...There is certainly a question of mandate at European level: democratic participation, elections, etc. are in the Member States realm. The proposals for contributions at European level need to be critically reviewed as to their legal basis, usefulness and justification in line with respect of subsidiarity”¹⁶.

¹³ “Digital technologies such as the Internet can offer new communication channels on European issues, new forums for civic debate and new tools for cross-border democracy. However, political leadership is needed if Europe is to fully exploit the Internet’s potential and ensure that it does not create new divisions in society. *The i2010 Initiative* already seeks to close the gap between the information society ‘haves and have nots’ – addressing such issues as equal opportunities, ICT skills and the inequalities between Europe’s regions in terms of Internet access”. The White Paper also states, with a certain emphasis, that “Europe is the largest website in the world”.

¹⁴ “We still lack a clear understanding of how the Internet and other forms of electronic communication might contribute to a *new* kind of public sphere and thus to a new form of democracy” (Bohman, 2004). It is worth noticing that this author, along with other such as Pierre Levy (2006), believes that the European experience is the best stage for experimenting forms of “transnational democracy”.

¹⁵ The following excerpt, from the report titled “Developing a European Polity. The case for governance on the Internet at European level” (Shanin, 2002: 7), explains fully this aspect: “Whilst admitting that there is a democratic deficit at the European Union level, it is possible to say that the network governance model (which is the predominant model for understanding the EU at present) is not undemocratic in itself. The task is therefore not to create a new democratic environment, but to develop the environment already in place to help cure the crisis in public participation. The Internet might provide a suitable medium for this communication model, but in itself, the *politically-neutral network technology serves no purpose*”. The activation of this communication and discussion networks “has the likely effect of not only reducing the democratic deficit through more defined information channels, but also have the potential to encourage greater involvement between all actors involved in the public sphere. This in turn, may lead to the legitimation of the European polity and all political initiatives within it”.

¹⁶ The same position, with a direct wording, has been expressed by Philippe Schmitter (2005): “Neither e-democracy nor

This statement reveals a true problem, but does not take notice of the recent years' advancements. Also, when Timmers underlines the difference with the e-government sector, which instead is "rich in specific policy targets and related actions", he exploits a widespread belief in the scientific and institutional areas that, however, arises several interpretation problems. Despite the variety of theoretical and methodological patterns, though, there is a common thread in such initiatives, that is the attention to a "web-presence" dimension: a new space – a virtual one but provided with time and structure frames – where to experiment with innovative skills about institution and democratic practices'. According to this approach, the institution "openness" level, intended as an acceptable degree of transparency and interactivity, represents the measure unit of government true adherence to its basic social mission. Assuming that a web-site openness could be an outlet to gain entree in the institutions' working logic, in their essential philosophy, the CyPRG researchers evaluate the transparency and interactivity of institutional web-sites by analyzing different variables included in the so-called web-presence dimension (La Porte et. al.: 2002). Transparency is placed at one end of this continuum, while on the other we have interactivity¹⁷. Along with the web-presence dimension, the constitutional traditions are enabling, often unconsciously, the establishment of a normative base for electronic democracy's projects and policies. This aspect is not missing in research studies available, but it is somehow translated – we could almost say, reduced – as the relation existing between *e-democratic techniques* and political objectives. Assuming that the reality produces democratic (not alternative) visions that emphasize, according to different value systems, the representative, participative or deliberative aspect, the problem is to choose the best techniques to promote or strengthen those aspects of democracy that we want to push forward. This approach is best illustrated by the following table:

EU-democracy exists. Both are projects imagined and advocated by theorists and practitioners, but have not been realized – yet" (p. 187). Nevertheless, "e-democracy does have several potentially interesting features for overcoming some the most obvious difficulties if and when the EU does decide to democratise itself" (198).

¹⁷ Cfr. "Democracy and Bureaucracy in the Age of the Web", the Cyberspace Policy Research Group (CyPRG) and the e-Democracy Center report (Trechsel et. Al, 2003).

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Source: Trechsel, A., Kies, R., Mendez, F. and Schmitter, P. (2003) *Evaluation of the Use of New Technologies in Order to Facilitate Democracy in Europe: E-democratizing the Parliaments and Parties in Europe*, European Parliament, STOA (Scientific and Technological Option Assessment) Report, Directorate-General for Research.

However, as acknowledged by the same authors, the analysis of such techniques in the long range unavoidably leads to address the “institutional visions for the future of the EU polity”. This theoretical opening, though, is left in the background and restricted to the “ontological dualism” included in the studies on the European integration process. What it is the EU then, a variable of the organizational power structures already known or a power structure *sui generis*? Under this assumption, the alternative for spreading ICTs and electronic democracy practices is between two strategies that do not, however, produce different institutional models.

The first option, the attempts to provide an answer to the classical problems of legitimacy and accountability, is essentially based on the activation of mechanisms and dynamics able to rebuild and strengthen the relation fabric between citizens-voters and institutions. The second option, instead, that sees the EU as a power structure *sui generis*, is centered on the creativity and innovation of e-democracy strategies. In particular, Philippe Schmitter advises to give way to a series of new mechanisms – defined as “e-politicking via ICTs” – to promote a European democracy in a stage where the political integration process becomes more charged and evident. This analysis proposes a certain path, but fails to pursue it to the end. Within a wide range of opinions, it is still possible to single out the positions providing a significative insight about the nature and extension of constitutional issues: which are the institutional networks, actors, and value systems that deserve a constitutional relevance and legitimacy? As with the web-presence, we should make explicit the significance of this analysis dimension, beginning from the tradition still firmly rooted in a classic vision of constitutionalism¹⁸.

As a theoretical rule and institutional project, the traditional constitutionalism is defined “as a set of

¹⁸ The main research quoted here is Maduro work (2004), unless otherwise noted.

legal and political instruments limiting power constitutionalism as limit to power". The related legitimacy principle is "the legitimacy of the institutional e procedural mechanisms through which power is exercised in a polity". According to such political and theoretical position, often critical about the need or the opportunity for a European Constitution, the legislative and constitutional processes are both expression of the inter-government legitimacy's predominance. This constitutionalism is fostering a political and institutional advancement addressing particularly the state role and its ability to aggregate different interests "through the mechanism of universal and democratic deliberation at national level". One of the consequences is a poor attention to the concept of "European citizenship." "Individuals are not conceived as potential actors and principals in European communities, and this is reflected in the concept of its political process... European citizens are treated by European policies in accordance to the negotiation level reached by their respective Member States".

Tightly linked to the European citizenship concept as a derivative status, on the political and institutional side, we have acknowledgement of the representative principle centrality, and particularly of the election-parties-parliament loop, as a pillar of the democratic polity. The other constitutional tradition also admits the weakness of the "democratic pillar", but supports ruling principles leading to different strategies of institutional transformation. Some believe that the supposed "emerging model of European constitutionalism" coincides with a *new governance* affirmation and, in particular, with the *open method of coordination* (OMC). This pragmatic form of constitutionalism, born as an answer to the limits and stiffness of a *hard* constitutional position supporting the integration process, would have give way to more efficient mechanisms and procedures of decision-making, conflict resolution, resource allocation, and authority attribution. A *soft* constitutionalism, as someone wrote, but not without its own strength about ruling and regulation.

The most important aspects of this constitutionalism are opposed to the above described concept, particularly concerning the overcome of power differences along authority levels predefined and decided by the sussidiarity principle. Essentially, here we have less emphasis on representative institutions as legitimacy pillars and the inclusion of a wide range of actors in the policy-making process as an answer to the practicality and democracy problem.

A lesser importance among the classic institutions in the political representation, on one side, and weakened inter-government dynamics on the other, imply the acknowledgement of organizational and administrative practices' constitutional relevance – "the distinction between EU administrative law and EU constitutional law, and between the EU constitutional framework and its administrative organization is rather blurred" (De Burca, 2003: 6)¹⁹ – as well as the importance of the policy integration, which diminishes the state's sovereignty and at the same creates super-national bonds that do not oppose the basic logic of multilevel governance but, in fact, are its unavoidable corollary. Therefore, these constitutional traditions provide different visions of the European democracy, thus aiding those policies and initiatives that, as we will examine below, stand out significantly even if they cannot be considered mutually alternative choices²⁰.

¹⁹ The author says also: "There is no clear administrative actors distinct from legislative decision-makers...And as a consequence of these characteristics of dynamic evolution and blurred lines of governance, significant developments in the 'administration' of the EU are themselves always of potential constitutional significance, and contribute to shaping the EU's constitutional form and nature".

²⁰ The e-democracy analysis at European level must take notice of the EU institutional system's nature, with its separation of decisional powers, among the Cabinet, the Commission, and the European Parliament. Also, each of these entities supports a different perspective about the EU, that is, each of them tend to develop and impose its own vision for the Constitution, which should be inter-governative, super-national or trans-national.

Constitutional models of electronic democracy

Once the two dimensions have been defined, we can establish a four model profile²¹.

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The interest and effectiveness of the above typology relies on its ability to become a revision grill for the theoretical literature and empirical material available; that is, as an indicator toward a reflection and research path. This typology is not a precise reference tool for a varied reality that seemingly is escaping any logical approach (Coleman and Norris, 2005).

11. Consultative e-democracy

This model provides room for experiments and practices that interests or are carried out by elective bodies – parliaments and councils - or administrative and government bodies producing communication networks (not only on-line) aimed at facilitating access and consultation for citizens and social groups when approaching specific decisional outputs. The consultative events could be carried out through e-techniques that are not different from those used during the above described experiences. Indeed, in many of such events already underway, especially at local level, the boundaries about practices of participative and deliberative democracy appear quite blurred. For instance, the Scottish parliament experiment (AA.VV., 2004) envisions a pattern inspired to such principles as

²¹ Diaz and Peart (2007) define a different typology of e-Democracy initiatives.

accessibility, transparency, openness and equality. Or, as in the British case, as detailed by the 2004 report titled *Connecting Parliament with the Public*, the UK House of Commons Modernisation Committee proposed to use regularly the on-line consultations within a framework also including several feedback mechanisms²².

However, the results of the European empirical analysis are still under scrutiny, especially about the evaluation of e-democracy advancement. The same e-democracy Center report explains that, until 2003, “of the e-techniques being experimented with, e-access is undoubtedly the most widespread”. Similar conclusions are reached by more recent studies based on a different perspective, such as the one covering the main European cities (Torres, Pina e Acerete, 2005). It is however possible to draw a line, since particularly at the present stage these experiments feature a vertical information and communication flow, or are confined anyway in paths defined by policy makers. This does not make insignificant such experiences, nor it is a “betrayal” of the expectations carried by ICTs.

The transparency principle is, when fairly and consequently understood, an engaging one, even if often *thought* in a simplistic way. As the Madrid experiment shows, the actualization of such a principle is not an easy matter. For its voter magnitude (136.227 people) and organizational procedures (along with the Internet, other communication channels were used), this project is one of the most characteristic of the consultative model’s working logic. Two of its aspects deserve our attention. First of all, the definition of the electoral body: with an innovative choice, citizens belonging to social and age groups usually excluded from the political and electoral participation process, could express their opinion through direct or remote voting procedures. The most interesting and ambivalent result is that the consultation was able to mobilize a good amount of European and South American citizens, thus becoming an “excellent mechanism to facilitate the integration of the different communities living in the central district”. At the same time, though, African and Asian citizens were completely left out, even if they represented a significative reality in the same district (4). Secondarily, the nature of the participatory process is charged with many meanings – from an improved social cohesion to the balance for an increasingly *party-centric* politics – but it is still trailing along pre-organized patterns. As stated in the same report, the Madrid experience “is not binding... (and is) a public consultation aimed at making a decision on a series of public interest issues” (9). However, voters expressed their opinion on questions and answers selected after a debate where the only participants were the institutions responsible for that project, something pointed out by many critics. Similarly to other pilot projects (Chadwick and May, 2003), a closer link with the institution is certainly helped by the use of ICTs, but the same institution is in charge of setting the agenda and the alternatives about which voters can then express their opinion.

12. Participative e-democracy

One of today’s most common positions believes that the consultative e-democracy, featuring a vertical information flow between institutions and citizens and a limited set of technicalities, is a preamble to the participative model affirmation. Actually, it could be its embryo – which, however, could both remain in that completed state or evolve even further. Until the mid-1990s the participative model has been fueled especially by the “virtual communities” utopia (Howard Rheingold). In Europe this vision did not reach a wide audience, though. It has never entered the political institution field, neither at the

²² The report paragraph no. 59 states the following: “There have now been several experiments with on-line consultation on an ad hoc basis, both by select committees and by all-party groups. They have generally been successful and have proved effective as a way of engaging members of the public in the work that we do and of giving a voice to those who would otherwise be excluded. We urge select committees and joint committees considering draft legislation to make on-line consultation a more regular aspect of their work”.

state nor, even less, at the EU levels. Instead, policies and initiatives developed certain practices that, even in the more creative national outposts such as the Blair's UK, although innovative were always aiming at sustaining and pushing the constitutional architecture of representative democracy. Indeed the propulsion for the participative model affirmation comes exactly from the spread of e-voting practices and from the classic institution rush – parliaments and parties – to jump on-line, to launch their own web-site. The participative model's main features show the marks of a political culture that is the pillar of constitutional democracies: the centrality of the citizen-voter and the representative network, whose fair workings define the political system legitimacy. Such a vision is articulated in the main documents produced by the Council of Europe, the European Parliament and in the (few) reports addressing this issue from a super-national viewpoint.

There is an *incipit* shared by the different contributions and, in a figurative way, expressed by the eDemocracy working group within the European Parliament Research Initiatives (2005): "Democracy only works if people use their right to participate in the decision making process and thus actively make use of their right to vote". But the heart of democracies seems to miss some beats, since the electoral process participation is declining with an alarming trend: from 1979 to 2004 "across Europe" the voting participation decreased from 63% to 45,7%. Although Norris (2005) exerts caution in drawing any conclusion from such figures and, especially, urges to give more attention to the structural variables, this position does little to stop the projects based on the use of ICTs to reverse such a trend. In fact, in preparation of 2009 elections, once we missed the deadline with last year's election, the eDemocracy is considered "as a serious tool to strengthen democracy, bring people back into the political process, and assist in resolving complex issues by drawing on wide portions of the citizenry in individual countries and throughout the EU". The risk of "techno-determinism" surfacing in similar quoting is openly dismissed with a deeper effort to define the participative model's main features, under the project called "Making democratic institutions work" launched in 2002 by the Council of Europe. This project, inspired to the principles of the "*Declaration on a European Policy for new information technologies*" drafted in Budapest in 1999, aims to explore the ICTs potentialities "as means for improving people's direct participation in shaping the democracies they live in" (Council of Europe, 2003: 3). The emerging belief enhances the use of technology for an active participation, not limited only to the electoral occurrences, with citizens becoming part of a policy-making process where, however, the final decision remains still in the hands of the governing (31). Here a quite debated idea is surfacing, whether the introduction and diffusion of other practices than voting could pave the way to direct democracy procedures able to change the same nature of representative democracies. The answer provided by the Council of Europe is that, after examining the results from different member states still dealing with the electronic government implementation, such procedures should be tested: "What is clear is that e-democracy must allow greater potential for the public to set the political agenda, not just respond to a pre-set agenda dictated by the political class.

We need to use the processes of e-democracy –on-line polling, discussion group, citizen panel and so on - to tease out the citizen". Therefore, the Council of Europe plans to verify whether the ICTs could help to reaffirm, and how, the so-called *common acquis*, that is those principles (such as parliament's centrality, representation, transparency, subsidiarity, participation) rooted in time and representing the fabric of the European democracy's founding values.

The other opportunity relates to the nature of technologies, which is not politically neutral since their use affects the expression of specific values. The Council of Europe puts its emphasis on the new technologies as tools to improve democracy, along with the awareness of the tensions associated with their spreading. In particular, it underlines the opposition between the 'realist' belief expressed in the common *acquis* with the parliament's centrality and the new belief of a "strong democracy" enabling a

wider participation of actors well beyond the voting experience (Pratchett and Lowndes, 2004: 80)²³. Essentially, the participative model, strongly promoted by the Council of Europe, includes both the practices launched at national and local levels (taking the UK example as a paradigm) and super-national initiatives such as the E-POLL or Telecities projects, aimed at developing the communication networks' interactivity within a framework exploiting and fostering the classical institution role of political representation.

13. Deliberative e-democracy

The deliberative model, often identified with the participative one, differentiates itself because of its emphasis on the centrality of the discursive process, which under certain conditions provides the judicial base for the final decisions, (re)building the democracies' symbolic and cultural web. The deliberative action main goal is integration through rational reasoning. Participation in political life presumes and requires the chance to discuss and examine valued options and alternative policies. The decision-makers should be able to explain and justify their outputs. The deliberative methods encourage a preference forming process rather than their simple expression/assertion²⁴. Some consider this form of democracy an object of desire, the ideal horizon in the debate for Europe's future; others instead regard it as its emerging form. In both cases, the starting point is Habermas work, and particularly his concept of public sphere. The point is not to anachronistically bring again to life a homogeneous public sphere passed away and buried long time ago, but rather to embrace as a structural and unavoidable element the multiplicity of levels and areas where citizens share their experiences, interacting with the institutions or even outside them. This network of audiences – and public spheres – should become the institutional pillar of our democracies.

However, up to date the experiences belonging to such framework neither are so many nor particularly significant, while instead the deliberative democracy has set foot into the European constitutional process with the launch of the Convention activities. Defined as “the first truly European communicative discourse about ‘polity’ in a fully European public space”, this initiative aroused much enthusiasm, “even if 55 percent of the EU Twenty-Five states population had never heard of it” (Schmidt, 2004: 14). This project overcomes the traditional constitutionalism, centered on the Intergovernmental Conference (IGC) role, especially with the activation of a super-national communication network. Indeed, despite the Convention comprised members of European institutions – national parliaments and governments – who were supposed to assure its representative value, that is, its democracy, since the beginning we saw a process and method development supposedly more efficient to face the challenge of the “*constitutional moment*”²⁵. A difference highlighted by Valéry Giscard d'Estaing in his opening speech: the Convention spirit resides in its expression of all Europeans and its work as a deliberative body separated from an IGC.

²³ As a result, the Council “is caught between two fundamentally opposing beliefs that are linked to potentially contradictory models of democracy. On the one hand, there is a desire to defend parliaments as the home or representative democracy and to protect their primacy as the centre of political debate and deliberation. On the other hand, in the face of declining parliamentary legitimacy across Europe, there is a desire to find new mode of political engagement, new political space and new spheres of political deliberation. While the aim might be to defend representative democracy and its institutional home – parliament – the consequence could be to further undermine the legitimacy of the very institutions that such measures are seeking to protect” (50).

²⁴ For a comprehensive analysis of the relationship between participative and deliberative democracy, cfr. Gbikpi (2005).

²⁵ To quote Laeken: “the Union stands at the crossroads. A defining moment in its existence”.

While in the past, with the IGC in charge, any conflict resolution was being managed behind closed doors, the Convention required visibility to such conflicts by providing access to the discussion documents. But visibility and accessibility are not enough to set up a deliberative model. Indeed, the pre-arranged virtual space requires the widest participation possible of the entire so-called civil society, with its territorial and functional branches, along with the individual citizen: everybody can express his/her own opinion on any aspect under discussion and on Europe's future as well. Also, a feedback mechanism assures that such opinions are in turn made public and broadcast in a self-sustaining communication network²⁶. Under such circumstances, the Convention expands the public debate on Europe's future in an on-going, collective and open *Constitution-making* process, where "the EU is an emerging value community" that acknowledges and exploits any diversity (Fossum, 2004: 251)²⁷.

Some have underlined the limitations of such a process, and rightly so: the Convention did not show any particular attention or consideration about public opinion involvement and an effective opinion-making process toward a constitutional debate. If this initiative was supposed to create a European *demos*, there is no doubt that it produced a negative result. However, independently from the evaluation on this controversial aspect, it is important to underline the model working logic – even if it remains to be seen the opportunity and simplicity of its reproduction elsewhere.

4. Administrative e-democracy

This model is a more advanced version of the e-government, not its negation, an advancement only partially due to its technical solutions. Often the e-government has been criticized because its implementation has been characterized by a technocratic and management-like vision, with a certain twist of the original idea where probably the most significant outcome is the reduction of citizens to consumers-users of services provided. If this is true, it is certainly negative and could also help to explain why many e-democracy projects underline the difference, and even the irreducibility, existing between these two institutional innovation strategies. The electronic democracy should foster a return to politics, while the electronic government could push far away from it - if it's focused, that is, on the mere reorganization and rationalization of administrative function and machinery. We believe, however, that this idea underestimates the important novelties introduced in the physical construction of contemporary democracies, and also reveals an interpretative problem. How could we explain otherwise the European Commission attention toward a strategy of institutional transformation where e-government policies are the necessary premises for electronic democracy implementation? Could it be enough to just define it as one of the many contradictions pestering the Old World? Maybe one that asks for more democracy but then leaves any decision about its path at the command of an administrative rationality and the marketplace?

Some cultural and institutional dynamics lead to an overlapping of these two areas, or even better, to a convergence between the logics of e-government and e-democracy (Chadwick, 2003; 2003a). First, we have to consider the idea that the reorganization of administrative practices should have

²⁶ In this "constituent" stage, the role of the press has not been particularly satisfactory. Beside a few exceptions, the national media used traditional news-making patterns, reporting especially about the internal political debate.

²⁷ The author states also: "The Convention would need to establish, not only that a set of European values exist, but also that they are sufficiently deep and delimiting so as to serve as a foundation for a genuine European community and identity." This essay provides a good analysis of the discussion and meaning expressed by the Convention about such constitutional projects.

disrupted the traditional system (based on functional and hierarchical features and inspired to a secrecy principle) in favor of an institutional model “closer to the people”. But there is a part of its history – and the wording expressing its development - that will make impossible to differentiate those two aspects. The reconstruction of the trusting bond between institutions and citizens requires in particular the rejection of information management’s centralized structures to prefer instead a model based on information spreading and sharing. Some proposal and initiatives go even beyond this point, to plan the citizen involvement in policy-making procedures. Along this road, we reach administrative reform policies that formally establish practices of e-voting and e-networking. Despite the management bias, the introduction of feedback mechanisms becomes an opening towards participative and deliberative practices somehow foreign to the original logic. The integration of such mechanisms and procedures in order to involve citizens and civil society groups leads to the transformation of public sector activities and processes.

“E-government potentially blurs the distinction between executive and legislative functions by creating opportunities for citizens *as citizens* to have direct political influence upon public bureaucracies in ways that have not existed before” (Chadwick, 2003).

One of the most significant novelties in the institutional and judicial culture transformation is the transparency principle. While in the past only the most important initiatives ever reached the public – through the publication of Green Papers and White Papers – today there is rather the tendency to publish every document: the entire process of formulation, interpretation and update of the legislative framework is available on the EU web-portal. “This constitutes a dramatic shift from the past.... This kind of continuous transparency, more so that formal access rights, enables interested parties to make their views known to the Commission and to national regulators, thus actively shaping the course of a common administration” (Bignami, 2004: 15)²⁸.

It is around the end of 1990s that the transparency principle gains a wider interpretation, embodying also the right to participate in the legislative and administrative policy-making process. The Commission has been particularly careful in its revision of that principle, assigning to civil society actors a crucial role along the governance process. Here it is important to underline that, at the higher level of the EU’s institutional system, an *administrative e-democracy* practice takes foot, something that later will find a not-so-expected actualization even at the lower grades of Europe’s *Net governance*, both at national and local levels. In particular, with the December 2002 update of the June 2001 White Paper on the governance²⁹, the Commission introduces in the on-line communication network a twofold consultative form. First, “the Commission consults the civil society on major legislative proposals by publishing on its website a description of the specific issues open for discussion, then it also publishes the civil society responses and summarizes them, along with an explanation of their inclusion or rejection in the Commission’s legislative proposal in a memorandum attached to the proposal. The Commission also actively asks the opinions of certain ‘focus groups’, namely those who will be affected by the policy, will be involved in its implementation, or whose organizational mission is directly related to that policy” (16). However, at the end the choice between the two visions is a political one, and the same Commission must take it.

In general, we should note the emergence in the European scene of an administrative model centered on the “*good administration*” concept, where the protection of citizen rights relies on the

²⁸ “Where the new commitment to transparency has affected the Commission most is precisely in the administrative arena.” This author provides a good reconstruction of the stages and the meaning given to the transparency principle along the European administrative law’s history.

²⁹ Here are the five principles for a good governance listed in the White Paper openness, accountability, effectiveness, coherence, and participation.

assertion and effectiveness of the lawfulness principle (Fortsakis, 2005). Such a principle is affirmed by the Fundamental Rights Charter and is also included in the Constitution, even if not so explicitly, in the section mentioning other principles, in particular the equality principle. *Transparency* and *openness* are not just technical features of a web-site, but rather two constitutionally crucial principles that must be adopted by public administrations and transformed in founding and guiding elements of their own activities. When correctly understood and effectively integrated with the other principles mentioned above, foremost the equality one, these two principles exert a wide effect on the administration workings, up to transform their fundamental logic: the democratization of representative political systems must take this road too, both at national and EU levels.

Conclusions

The various e-democracy models above described provide different answers to the “democratic deficit” and the European governance problems. Such a diversity, however, is taking place within a technical and ruling mechanism focused on the institutional dimension of e-democracy practices and its ability to prevent the participative decreasing and to revive, according to the most optimist visions, the sources of democracy legitimating. Therefore the basic assumption of the institutional action on the Net is that, by improving and strengthening the communication networks between citizens and institutions, such institutions could be able to deal with the general trend toward people’s estrangement that risks to undermine the representative democracy roots. For the most part the initiatives implemented both in the administrative sector and in other institutional areas – where there is a broader drive for the adoption of participative and deliberative practices – are pushing forward their attempt to rebuild (whereas it is broken) the relationship with the civil society and to regain citizens’ interest in political participation, party involvement, *res publica* matters, and in general to produce a higher level of trust in the public institutions. This outcome helps to explain why the research agenda priority is focused, more than on grass-roots e-democracy practices, on the analysis of those structures created and managed by political and government institutions. As we said earlier, it becomes also evident that the institutional action on the Net is designed and evaluated almost exclusively through the analysis of factors and processes closely related to the on-line institutional presence. The four democracy models used to arrange conceptually the different European initiatives emerge from the varied political sensitivities when facing the same technological environment, the World Wide Web.

The centrality acquired by the institutional web-presence dimension within what seems to become a coordinated system of pan-European planning and research environment mirrors, therefore, an electronic democracy vision politically oriented toward the Net more superficial areas. The final objective of e-democracy policies, that is, the restructuring of interactive spaces between institutions and citizens within the web environment, represents also the main limitation of this approach as far as it tends to ignore, or to put on a secondary plane, the constitutional strength of such policies³⁰.

E-democracy is one of the most incisive and pervasive transformations of the democratic and government process’ tools and logic, even when there is much emphasis on the dimension of administrative rationalization. With its ambivalent and nevertheless tightened relationship with the e-government, the electronic democracy, in its administrative version, do not suffer any political legitimacy deficit: this seems in fact, if we are able to acknowledge it, the main experimental area for innovative practices and for the reorganization of European public spheres.

³⁰ Another aspect of the problem is the regulation and governance of intermediate areas on the Net. If we extend the electronic democracy idea to the patterns applied by the institutions to the Net architecture legislation, we can notice the weakness of Europe’s strategic dealings, essentially aimed at building interactive public spaces on private foundations and territories.

The e-democracy faces the obvious risk of becoming the new key-issue of the “reform rhetoric” or a new myth, rather than a conscious benchmark for strengthening and expanding democratic institutions and practices (Lusoli, 2006). This process aims at a transformation that “calls out for an intellectual revolution” (Meny: 2002) and that, given the lack of reference models and shared recipes, should be able to manage the hereditary concepts of the national democracy building – this is undoubtedly one of the most daunting challenges.

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