

Europe and the people:

Examining the EU's democratic legitimacy



Edited by Adam Hug

The Foreign Policy Centre



Europe and the people: Examining the EU's democratic legitimacy

Edited by Adam Hug

First published in June 2016 by
The Foreign Policy Centre (FPC)
Unit 1.9, First Floor, The Foundry
17 Oval Way, Vauxhall
London, SE11 5RR
www.fpc.org.uk
events@fpc.org.uk

© Foreign Policy Centre 2016
All rights reserved
ISBN 978-1-905833-31-3
ISBN 1-905833-31-8

Disclaimer: The views expressed in this publication are those of the authors alone and do not represent the views of The Foreign Policy Centre or the European Commission Representation in the UK.

Printing by Intype Libra
Cover art by Copyprint

Acknowledgements

The editor would like to thank all of the authors who have kindly contributed to this collection and provided invaluable support in developing the project. He would like to thank colleagues at the European Commission Representation in the United Kingdom for all their help and support through the Call for Proposals 2015/16, enabling the FPC to independently develop its research and events, most notably Caroline Winchester, Grahame Blythe, Dr Nikos Pipiliagkas, Jacqueline Minor, Jan Krauss and Marco Casalaz.

The editor is also very grateful for the support of the Universities of Edinburgh and Leeds, particularly Professor John Peterson and Dr Simon Lightfoot. As always he is indebted to the support of his colleagues at the Foreign Policy Centre, in particular Anna Owen and Deniz Ugur.

Executive Summary

The European Union finds itself at a critical juncture. The long-term political impacts of the 2008 economic crisis and the rising pressures of globalisation have helped to drive public distrust in traditional sources of influence and authority. As a supranational institution trying to bring together the disparate wills of 28 member state publics and their governments, the EU feels this strain more than any other international institution due to its size and scope.

Irrespective of the outcome of the UK membership referendum, the EU needs to improve the way it consults its citizens and stakeholders about what it does, while strengthening and expanding the national pillars of its democratic input. The EU needs to improve both its 'input' and 'output' legitimacy by making its processes more transparent and creating more opportunities for national and public involvement, while being able to more clearly show that its end products are making a positive difference in the lives of citizens. Further attempts to artificially create a European 'demos', by handing more powers to the European level or grafting additional democratic mechanisms onto EU institutions are likely to fail to respond to a public mood that is seen to demand greater national and local control. Despite its existing democratic structures, often overlooked by critics, there is no public consensus about whether the EU as it is currently constituted is fully democratically legitimate or if it ever could become so given the challenges it faces. However this publication suggests a number of incremental steps that over time could help to improve the EU's accountability and democratic legitimacy as it wrestles with deep and wide ranging economic, political and strategic challenges.

Put simply, these ideas for reform include:

- Involving national parliaments at an early stage in the development of EU legislation, further developing the yellow, orange and red card subsidiarity warning systems and enhancing their role in final EU decision making. Further exploring ideas such as Damian Chalmers' proposal of a 'Green Card', whereby one third of national Parliaments combined could propose new laws.
- Exploring new national mechanisms that could potentially disapply or limit certain EU laws, following input from national parliaments or the public.
- Considering the creation of new EU mechanisms at an EU level to provide independent scrutiny of the application of subsidiarity and prevent creeping Europeanisation without the express consent of member states, such as an EU Subsidiarity Council watchdog.
- Reconsidering the emerging common 'spitzenkandidaten' process for selecting the Presidency of the Commission, given its reduction in power for member states.
- Re-examining the election processes for the European Parliament (EP) and adopting measures to strengthen consultative links between the EP and national Parliaments.
- Reforming and reinvigorating the EU's structures of consultation and stakeholder engagement. This could include reconstructing the European Economic & Social Committee to involve the election of representatives from within its constituencies, refreshing European Parliament Agora and Citizens consultations, and better integrating the European Citizens Initiative with national petition systems. Improving the production and dissemination of simplified, issue-based information (in 'plain English' and other languages) about EU consultations and initiatives which could help facilitate awareness-raising by campaign groups.

Contents

Executive Summary	3
Introduction: Europe and the people-Examining the EU's democratic legitimacy Adam Hug	5
What our authors say	9
The European Union and the Restoration of Democratic Authority Professor Damian Chalmers	11
Between technocracy and democracy: How stakeholder engagement might be a solution to the EU's legitimacy problems Dr. Matt Wood	16
Brexit and the Democratic deficit in British politics Dr. Jim Buller	20
Is British sovereignty at stake in the EU referendum? Dr. Victoria Honeyman	23
Europe by the people: How could the EU's structures be more directly accountable to its citizens? Oli Henman	26
The Greek crisis: The post-democratic logic in action Dr. Marina Prentoulis	29
The Juncker Commission and public support for the EU: Doing good or doing the right thing? Adriaan Schout and Hedwich van der Bij	32
A tale of two referendums Professor James Mitchell	36
Conclusion Adam Hug	39
Recommendations	42

Introduction: Europe and the people-Examining the EU's democratic legitimacy

Adam Hug¹

The EU finds itself in a period of severe political turbulence. Though this collection comes into being with the UK's continued membership of the European Union very much in doubt, the UK is far from alone amongst member states in experiencing profound, and in some cases existential challenges about how they relate to the EU.

Across the continent, Europe is seeing the rise of both Eurosceptic and Eurorejectionist parties that tap into concerns not only about the EU but about the modern world. The economic upheaval of the Eurozone crisis has had a long political tail, for example in this collection Marina Prentoulis describes the problems created by the Eurozone's response to the Greek debt crisis, a heavy-handed approach that has fundamentally weakened support for the EU within Greece and amongst those on the left across Europe. The refugee crisis, driven by conflicts in Syria, Libya and elsewhere, is feeding into broader concerns about identity and the nature of society across Europe. However, concerns about identity are perhaps most acute in Eastern Europe, for the most part where refugee flows are lowest, but where unease about Western European social liberalism adds to growing political movements underpinned by nativism and 'traditionalism'. Even at the heart of 'old' Europe, there are deep concerns about the future direction of the European project, such as in the formerly Europhile Netherlands, as touched on in Adriaan Schout and Hedwich van der Bij's contribution, and as witnessed in the referendum rejection of the EU-Ukraine Association Agreement, for many used as a proxy measure for public dissatisfaction with the EU. So, questions about the transparency and accountability of EU structures are not restricted to the UK and the debate around the democratic legitimacy of the European project are unlikely to subside, irrespective of the outcome of the British referendum vote.

The crisis of institutions

"People in this country have had enough of experts."² This claim, perhaps coming from an unusual source in the cerebral UK Justice Secretary Michael Gove, encapsulates the widespread lack of trust in political, business and academic elites who operate within systems reliant on high knowledge levels rather than widespread public engagement. From the rise of Donald Trump in the United States, to populist (and in some cases extremist) challengers of orthodoxy from Marine Le Pen to Alexis Tsipras in Europe, politicians and campaigners are tapping into deep reserves of distrust towards traditional sources of authority. This is therefore not a particularly auspicious environment into which to introduce a collection of expert essays putting forward a somewhat technical and nuanced analysis of the strengths and weaknesses of the EU's current arrangements and proposing ideas for incremental reform. The emotions that a belief in a lack of EU democracy can elicit are strong but there is a gap between the sometimes visceral feeling of disenfranchisement and some of the more niche analyses of constitutional law and practice that often underpin the arguments made by the EU's critics.

In their detailed paper for the House of Commons Library, *The European Union: A democratic institution?*, Vaughne Miller and Jon Lunn³ set out a four main areas where the EU is increasingly seen as impinging on traditional conceptions of national sovereignty:

- 'The increased use of qualified majority voting (QMV - about 74%) for the adoption of legislation in the council;
- Limiting Member States' powers by removing their veto in the Council of Ministers;
- Expanding the policy areas in which the EU has a role, sometimes excluding action by Member States (EU 'exclusive competence');
- An increase in executive power and a decrease in national parliamentary control with deeper EU integration.'

Similarly, there were further grounds listed as 'other aspects of the perceived democratic deficit:

- 'The EU executive body, the Commission, is unelected;
- The European Parliament (EP) is too weak compared with the Council and Commission;
- EP elections are not really 'European' elections and turnouts are low;

¹ Adam Hug has served as Policy Director at the Foreign Policy Centre since June 2008. He leads the organisation's research on Europe, the former Soviet Union, the Middle East and human rights.

² Henry Mance, 'Britain has had enough of experts, says Gove', June 2016, <https://next.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c>

³ Vaughne Miller and Jon Lunn, *The European Union: A Democratic institution?*, House of Commons Library, April 2014, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP14-25>

- The EU is too distant from voters;
- The EU adopts policies that are not supported by the majority of EU citizens;
- The Court of Justice makes law rather than interpreting it;
- There is a lack of transparency in the Council's adoption of legislation and in certain appointments (e.g. EU Commissioners);
- EU law has primacy over national law and constitutions.'

This publication seeks to examine many of these areas of concern. At its heart there are concerns about the expansion of majority voting, often supported by previous UK Governments as a means to embed the single market, and the practical implication that decisions by one set of governments at a European level will continue to bind their successors until a new majority (or unanimity depending on the issue) is found amongst the 28 member states to do something different. This latter point creates an inherent point of tension with a conception of national parliamentary sovereignty, such as that particularly put forward in the UK, whereby in theory no parliament can bind the actions of its successors.⁴ These tensions are not unique to the EU but to many other international agreements. As Victoria Honeyman discusses in her essay in this collection, many of the international bodies and agreements to which the UK and other EU member states are also party, place permanent obligations on its signatories or members irrespective of the composition or wishes of future governments. Public concern about the democratic implications of this problem often manifests itself in issues on the political right over the role of the European Convention on Human Rights and the European Court of Human Rights, while on the political left concerns have focused on the implications of international trade deals (the WTO's rules being legally enforceable on its members) and on the implications of security agreements (such as NATO's Article 5 on collective defence). UN treaties also place binding duties on their signatories, though for the most part they lack enforcement and implementation structures. As Professor Mattias Kumm suggests, all international agreements and treaties have an intrinsic democratic deficit when 'many international obligations can't be unilaterally revoked by the state as a matter of international law, even when the majority of citizens using democratic procedures wants to do so.'⁵ If a future government (or public) of any member state or treaty signatory decides the benefits of continued membership under the rules created by a predecessor no longer outweigh the costs, it can opt to exit that organisation, something the UK may be poised to do in the case of both the EU and the European Convention, though the ability to exit UN treaties is more complicated. Where the EU differs from other arrangements however, is in both the breadth and depth of its remit, that magnifies the potential grounds for concern from those worried about encroachment on national democratic prerogatives, despite possessing more democratic structures and public consultation mechanisms than many of these other international bodies.

Growing concerns about the democratic implications of international agreements, and indeed globalisation more broadly, should not mask the fact that trust in traditional institutions and authority figures at a national level are, for the most part, in decline: from lower trust in business leaders in the wake of the 2008 financial crisis⁶, to trade unions across the continent losing members and trust in the media gradually reducing (with particular spikes over incidents such as the UK phone hacking scandal).⁷ Eurobarometer pan-European polls have shown significant reductions in trust in national governments. In October 2001, of the then member state governments, only France, Italy and the UK had higher rates of distrust than trust, but by November 2015 only Finland, Luxembourg, Malta, the Netherlands and Sweden remained more trusted than not, with even these suffering a significant loss of support, for example in the Netherlands where trust in the Dutch Government fell from 70% to 52%.⁸ In their contribution to this collection, Adriaan Schout and Hedwich van der Bij actually show that in most member states trust levels in the EU ran higher than trust in national governments. Their graph shows the UK amongst the lowest for trust in both national governments and the EU, but one of the minority where the EU trust rating is lower. However, it should be noted that trust in the UK government is almost 20% lower than the next nearest country

⁴ It should of course be noted that at a national level in the UK, parliament has introduced a range of different legislation on issues from equality and aid spending to EU referendums and deficit reduction, that seek to bind the actions their successors. Albeit ultimately they are Acts of Parliament that can be repealed by their successors at a potential political price.

⁵ Professor Mattias Kumm, *Constitutionalism and the Moral Point of Constitutional Pluralism: Institutional Civil Disobedience and Conscientious Objection*, 2012, <http://csecl.uva.nl/binaries/content/assets/subsites/centre-for-the-study-of-european-contract-law/map-1/paper-prof-kumm.pdf?1333633569000>

⁶ Jo Confino, *Public trust in business hits five-year low*, Guardian, January 2015, <http://www.theguardian.com/sustainable-business/2015/jan/21/public-trust-global-business-government-low-decline>

⁷ European Broadcasting Union, *Trust in the Media 2016*, <http://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-MIS%20-%20Trust%20in%20Media%202016.pdf>

⁸ EU Commission, *Public Opinion- Trust in the national government, 2001-2015*, <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Chart/getChart/themeKy/18/groupKy/98>

whose national government trust rating is higher than the EU's, hinting at the deeper malaise in British public trust across many institutions. But it is important to note here that when citizens do not trust their national governments to deliver for them, such scepticism bleeds through into their actions at a European level, with the EU rarely benefitting.

As a number of contributors to this publication note, while in constitutional principle the UK Parliament is sovereign, in practice it has one of the most powerful central executives in the democratic world. It is the UK Government (and those of other member states) that are the primary tools in influencing the EU agenda through the European Council, the Council of the European Union and in their selection of Commissioners. Some of the tensions surrounding European level activity relate to the tensions between Parliament and the Executive, as discussed in Jim Buller's essay, and it remains an open question as to what extent, given the lack of public trust in national parliaments⁹, procedural measures such as the emerging 'red card' for national parliaments acting together to block unwanted legislation, address demands from the public for greater accountability, particularly given public attitudes towards Parliamentarians and domestic political institutions.

EU democracy and accountability

As Dr Matthew Wood puts it in his essay, at the heart of the EU debate there is a tension between 'technocracy' and democracy, efficiency and public accountability, a focus on output or input legitimacy as discussed by a number of contributors. There are inherent tensions about how to increase the democratic legitimacy of existing structures, both enhancing national level accountability of EU institutions and strengthening EU level democratic structures. For example, as discussed in Schout and van der Bij, the 'spitzenkandidaten' (lead candidate) process tried to create a democratic mandate for the selection of the President of the Commission, by designating preferred candidates of the main European level political parties ahead of the 2014 European elections. In the UK the two largest political parties opposed the development of the common candidate structure for choosing the Presidency of the European Commission, the Conservatives because of their withdrawal from the European People's Party (EPP) and opposition to perceived arch-federalist Jean Claude Juncker as the representative of the centre-right, Labour over similar concerns about the process and perceived unsuitability of the European Parliament's arch insider Martin Schultz as the left's standard bearer. Both shared concerns about the transfer of power to choose the Commission President away from national governments, through the European Council, to the European political families. The requirement to declare ahead of the elections was seen to preclude a number of potential candidates still serving as heads of government who could not engage in a speculative candidacy without undermining their domestic credibility. If the 2014 process sets the marker for future elections and Commission Presidencies, embedding the European Parliament as electing rather than simply approving the choice of member states, it marks a significant transfer of power away from national governments at a highly inopportune time.

The Commission Presidency notwithstanding, there are limited short-term political incentives for political parties, in the UK at least, to fight European elections on issues relating to the European Union. They are used by parties often as a second order election primarily on domestic issues with tenuous or non-existent links to the EU. The obvious exception to this domestic myopia is that they provide a clear platform for previously marginal parties campaigning on a Eurosceptic ticket, from UKIP to the Alternative for Germany (AfD) and the Front National in France, to help build their profile and organisational base. The first publication in this series back in 2010, *Reconnecting the European Parliament and its people*,¹⁰ highlighted a number of structural concerns about the operation of the Parliament and its relationship with member state publics, with many of the recommendations remaining valid today. This is not a slight on the often hard and important work done by MEPs, but ahead of the 2014 UK European Parliament elections only 11% of people believed they could name one of their regional MEPs, while a separate survey showed that only 7% were able to do so correctly.¹¹ There remains merit in considering that publication's call for restoring a constituency based electoral system, particularly in the context of the UK.¹²

⁹ European Commission, Trust in the National Parliament, 2000-2015,

<http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Chart/getChart/themeKy/18/groupKy/89>

¹⁰ Adam Hug (ed.), *Reconnecting the European Parliament and its people*, Foreign Policy Centre, September 2010,

<http://fpc.org.uk/publications/reconnectingeuropeanparliament>

¹¹ Julian Coman and Toby Helm, Voters can't name their MEPs as poll highlights disengagement with EU, *Guardian*, May 2014,

<http://www.theguardian.com/politics/2014/may/10/voters-cant-name-their-mep> and Will Dahlgreen, European Elections? What European Elections?, *YouGov*, April 2014, <https://yougov.co.uk/news/2014/04/14/european-elections-what-european-elections/>

¹² The report proposed a Mixed Member proportional System, similar to the AMS system used in for the devolved institutions Scotland and Wales but with a national top-up list to provide the level of proportionality required under EU rules.

Engagement and public education

It is clear that in member state publics, at least in many countries, there is not a European level 'demos' that is actively engaged with EU level political debates and processes. When looking at EU democratic engagement are we expecting too much, given that few ordinary members of the public even engage in the detail of UK government legislation, with a similar situation in many other member states? However, while levels of understanding about how domestic law is made, or in many cases by whom, are low there is often a basic understanding that MPs play a role and through their votes in general elections the country as a whole can, to some extent, influence the course of political development, though how deeply remains a contested question.

At whatever level, public engagement with particular political topics is driven by engagement with a mix of broad but emotive issues and specific campaigns with an identifiable end goal, even if campaign participants do not engage in the mechanics of how that goal is achieved. The closer to the citizen or the more emotive the issue, the more likely there is to be engagement or at least awareness, making some of the more technical EU level issues more challenging for citizens to become involved in. However there *are* perhaps gradually emerging coalitions of public interest, particularly on the more radical left and right that see a shared project across Europe from anti-austerity to anti-immigration, even if on the right the desire is to have fewer shared projects across Europe. The challenge for both the EU institutions and for civil society is to find ways to simplify its consultations and explanation of the issues from both EU and political jargon, reducing them down to a debate about clear issues to enable debate to filter out into wider society, as they have to a certain extent over issues from TTIP to fishing practices. While there are a number of issues around the rise of so-called 'clicktivism,' such campaigning networks have the ability to help diffuse simplified information about EU level debates to ordinate people. However, despite its worthy intentions, the European Citizens Initiative (ECI) currently does not have the required level of awareness at a national level to reach out far beyond the already engaged. The UK and other governments could explore integrating links to the ECI on national petitions websites.

There is and will remain much of the EU level debate that is difficult to relate to directly due to its technical nature. Therefore, as Wood and Henman discuss in their papers in this collection, when looking at how to connect citizens in member states to the political debates at an EU level, there is a need to improve the accessibility and accountability of stakeholder-driven structures so that ordinary members of businesses associations, trade unions, campaigning groups, charities and professional bodies can be aware of the arguments being made on their behalf in Brussels. Few members of the public and relatively few potential constituent members know what the Committee of the Regions and the Economic and Social Committee are, let alone what they do. These formal structures need to be made more transparent and accountable to the membership bodies and civil society organisations that ordinary citizens in member states are part of. Civil society, business and trade union groups need to do more in their day to day activities (as contrasted to their activism in the UK referendum debate for example) to show what they are doing at a European level and how their members can influence it. In many member states civil society is more trusted than other political actors and institutions, though with some caveats further into Eastern Europe, so there remains great untapped opportunities to engage their members more consistently with the EU level debate.¹³ There of course remains the issue that some of the EU level representative bodies (of national representative bodies) face some of the same challenges as any other European level institution, managing the tensions of 28 member state groups and the personalities of their leaders, so much needs to be done by national level groups directly with EU interlocutors.

The scale of the challenges facing the EU is enormous and this publication can only seek to scratch the surface of one specific but important area that underpins many of these broader concerns. This *Europe and the People* publication brings together a range of experts with differing views about the EU to examine the extent of the EU's democratic legitimacy, whether there are ways to strengthen it, and how concerns about a perceived lack of democracy impacts upon how the EU is viewed.

¹³ Eurobarometer stopped measuring trust in NGOs in 2005, however the Edelman Trust Barometer series has shown consistently over time that NGOs are the most trusted organisations in society, though its most recent report also notes an uptick in business and media trust see: <http://www.edelman.com/insights/intellectual-property/2016-edelman-trust-barometer/>

What our authors say

Professor Damian Chalmers writes that the central challenge for the European Union (EU) is not whether it can become more democratic. It is rather whether it can contribute to democratic authority within the European Union. That is to say, its democratic credentials must provide citizens with better reason to obey its laws than the credentials from competing sites of authority and there must be the possibility for these reasons to be contested. His piece argues that there are circumstances where the European Union can make a case for its democratic authority. However, the European Union has failed to be sufficiently attentive to these circumstances, to allow these to be weighed sufficiently against competing claims, and to allow proper contestation about the merits of these competing claims. He suggests how this might be done.

Dr. Matthew Wood argues that, contrary to popular imagination, the European Commission is slowly democratising its institutional procedures through different mechanisms of stakeholder engagement. After reviewing this agenda, he suggests reconceiving what democracy means at the EU level, challenging the notion of majoritarian 'control' and instead posing the notion of 'slow democracy' as the way forward for legitimising the EU, following the political theorist Michael Saward's recent work. Wood ends by arguing for incremental legitimacy. The EU will arguably never see a decisive 'moment' of democracy, but it needs to work on long-term efforts at furthering and deepening stakeholder engagement, particularly in mending the damage done by the imposition of an austerity agenda in Greece.

Dr. Jim Buller assesses the claim that the EU has undermined parliamentary democracy in Britain. He argues that the system of multi-level governance at the EU level has weakened Westminster's scrutiny and educative functions, but finds that this development was unavoidable. He argues that David Cameron's recent proposals to strengthen the role of national parliaments in the EU legislative process are unlikely to rectify this state of affairs. Nor can this democratic deficit be satisfactorily addressed by uploading the model of representative democracy to Brussels. Instead, his paper calls for a rethink concerning what legitimacy might mean in the context of Britain's relations with an organisation characterised by supranational governance. It concludes by suggesting that Fritz Scharpf's distinction between 'input' and 'output' legitimacy (and his focus on the latter) might be a more fruitful way forward.

Dr. Victoria Honeyman writes that the issue of sovereignty has been repeatedly discussed during the run up to the 2016 UK EU Referendum. However, what is sovereignty, and what does it mean to the British people? Her article aims to establish what British sovereignty actually looks like, attempts to establish whether Britain's sovereignty is fundamentally at threat from the EU, and if it is, whether that is an unacceptable price to pay for EU membership. By considering the British constitutional arrangements, her article argues that the notion of British sovereignty includes certain key facets, not of constitutional importance, but of 'Britishness' and that this 'Britishness' is really the issue at the heart of the sovereignty debate.

Oli Henman argues that democratic legitimacy relies on active participation of people in EU decision-making but in many member states people do not feel empowered to shape EU policies so he asks how this engagement can be renewed. There are a number of approaches to democracy, including deliberative and direct forms of democracy, which place power directly in the hands of citizens. The EU has been experimenting with these approaches to enable greater engagement to take place. Henman examines how well these attempts to build policy based on citizens' direct preferences have actually worked and whether they provide ways for the EU to be opened up to more direct democratic scrutiny. His essay analyses some of the new forms of democratic engagement that have been tested in recent years and suggests how they could go further to enable citizen voices to be heard.

Dr. Marina Prentoulis argues that the Greek negotiations between the SYRIZA-ANEL government and the troika (ECB, EC, IMF) exemplify how a combined post-democratic and neoliberal hegemony is attempting to exclude politics as 'the will of the people' from the European institutions. The domination of technocratic expertise provides a screen behind which neoliberal policies are adopted as the only possible solution to contemporary challenges. A progressive counter-hegemonic discourse has to simultaneously challenge this domination at three levels: at the grassroots level with the organisation of pan-European movements; at national level, by removing neo-liberal parties from government; and at the European level, by forming cross party progressive alliances within the EU and by allowing more scrutiny and deliberation of the EU institutions at a national level.

Adriaan Schout and **Hedwich van der Bij** write that recognising the severity of the EU's legitimacy crisis, the Juncker Commission has tried to regain public confidence by proving that the EU can solve major problems. The question is, however, what kind of EU is created when the policies of the Juncker Commission are implemented? Juncker's assumption seems to be that people will accept deeper European integration only if the EU delivers. This leads to two fundamental questions: will the public accept deeper integration even if it delivers growth, jobs and solutions to the migration crises? And, is Juncker's analysis correct that faltering public trust in the EU originates from a lack of EU outputs? One conclusion we can draw is that Juncker is silent on the EU's finalité (end goals). The swift and effective policies Juncker strives for might be dangerous because they may involve integration by stealth of the sort the public may not want. Secondly, the EU's legitimacy crisis may have a different source. Whereas Juncker wants to increase the trust people have in the EU, the Dutch government sees the trust people have in weak member states as a more fundamental problem. As a result, the Juncker Commission might be heading in directions that conflict with Dutch analyses of the EU's governance deficits and preferred actions. Lack of trust in the EU is not the issue per se; lack of trust in weak member states is.

Professor James Mitchell's essay compares the Scottish independence and EU referendums. Each had their origins in internal party management but the Scottish independence referendum became an opportunity for a wide-ranging debate on Scotland's future including, but not exclusively, its constitutional status. While both had highly adversarial elements, one (the Scottish referendum), has seemed to allow for more deliberation and greater opportunities for public engagement. Ultimately, neither is ever likely to finally resolve the some of the questions under discussion.

The European Union and the restoration of democratic authority

Professor Damian Chalmers¹⁴

Introduction: The challenge of democratic authority

The democratic qualities of EU decision-making can always be improved. However, if all these were addressed, would there be greater popular acclaim for the Union? Public opinion has been largely unmoved by rearrangement of its legislative chairs and settees. It is also unclear whether these changes would secure a more crucial test, namely that of democratic authority. For the European Union to have democratic authority, it is insufficient for it to have democratic qualities. It must persuade citizens that these qualities warrant obedience to its laws over claims from rival democratic processes, notably domestic ones. And, in this, the European Union starts from a position of disadvantage. National claims to obedience are stronger than European ones, with over 90% of EU citizens feeling attachment to their country while less than half feel attachment to the European Union.¹⁵

The circumstances of EU democratic authority

If that is so, can the European Union ever claim democratic authority? Well, there are circumstances where it can.

If democracy first involves government *by* the people, EU law-making can secure the involvement of British citizens in a number of measures that would otherwise not be possible for these citizens. These measures go to the realisation of transnational 'goods' (e.g. trade, migration, travel and restoration of the environment) or the combatting of transnational 'bads' (e.g. pollution, financial meltdown or organised international crime). Neither can be secured unilaterally as we cannot force other states to trade with us or to stop them exporting financial risk to us. The choice is often the costly one not to engage in certain activities or to regulate these by standard international treaties, which are not very adaptable and secure little citizen engagement as they are inter-executive arrangements.

Democracy involves, secondly, government *for* the people. 'The people' comprises us all individually and collectively, as well as past and future generations. It is not democratic, therefore, for the majority to slaughter the minority, deny the past, or lay waste to the land. Majoritarian institutions may abuse individual rights, and often fail to advance minority, diffuse (e.g. consumers and women) or future interests (e.g. the environment or future wealth) as, historically, none of these interests have been able to mobilise sufficient clout within parliaments. Most constitutional democracies have, consequently, set up courts or regulatory agencies, to counter this problem of majoritarian abuse. The European Union can offer added value here by being removed from national populist pressures and offering new avenues for these interests to advance their causes. It is thus unsurprising that the European Union has been at the forefront of protective legislation in environmental and consumer protection, anti-discrimination law and financial services law.

Thirdly, democracy is concerned with correct answers. It is not democratic to decide the world is made of cheese and therefore ban all heating on the grounds that this may melt it. If knowledge is central to policy-making, its parameters and the state of it can often be uncertain. The European Union benefits from the combined expertise of twenty eight states. It can allow this knowledge to be vetted and tested more extensively by more actors than any national system can. It offers the possibility of more choices through more correct answers.

Challenges to EU democratic authority

Even if these circumstances allow the possibility for the European Union to have democratic authority, they open a window on a number of challenges which can undermine democratic authority within the European Union even where a case is made *prima facie*.

First, there is a democratic threshold test. Any democracy, be it justified on procedural, ethical or epistemic grounds, must demonstrate that it secures sufficient amounts of these to warrant its authority. EU law-making may

¹⁴ Damian Chalmers is Professor of EU Law at the London School of Economics and the National University of Singapore. He was Head of the European Institute and the Jean Monnet Centre at the LSE for four years. He has held Visiting Appointments at the CEU, College of Europe, Copenhagen, EUI, Fundacao Getulio Vargas, Instituto de Empresa, Institute of Advanced Studies Vienna, and Fudan (PRC) as well as being a Strauss Fellow at NYU and a Senior Fellow on the British ESRC 'UK in a Changing Europe' programme. He was co-editor of the *European Law Review* for six years.

¹⁵ European Commission. Standard Eurobarometer 80, *European Citizenship-Autumn 2013, November 2013*,), http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_citizen_en.pdf
This comparison was discontinued in subsequent Eurobarometer reports.

secure better engagement by British citizens than international treaty-making, for example, but is it sufficient engagement to make a strong democratic claim? This threshold question is a matter for democratic debate. And the European Union is poor on this. Questions of citizen involvement and the European Union's values were discussed prior to the Constitutional Treaty but only in the context of an ambitious system-building project. Beyond that, there is little evidence of regular on-going debate with most EU law amendment tied to a narrower agenda of regulatory reform.

Secondly, there is a democratic balance challenge. If any of these procedural, ethical or epistemic elements above are absent, a system cannot be democratic. However, the balance between them is a matter for democratic debate. Some will wish to see the procedural element emphasised whilst others stress the importance of democratic values. The complex interaction between EU and national law, however, often makes this balance insusceptible to transparent democratic contestation. An example will make the point. When the Scottish Government's tariff on minimum pricing for alcohol was struck down because it violated the EU provisions on free movement of goods,¹⁶ it was difficult to argue that this was because of a conception of democracy in which values of international trade were to be prioritised over national representative procedures for developing health policy.¹⁷ Few expected the tariff to be struck down and the ripple effects were unanticipated. The EU law cut across the policy in an oblique way so that it both trumped the minimum pricing law and destabilised the wider regime on lowering the consumption of alcohol.¹⁸

Thirdly, it fails the relative democratic authority test. These circumstances only provide a case for EU democratic authority which has to be set against claims made by other settlements – be these local, regional or international – to democratic authority. This competition is not something one-off, but continues during the life cycle of the law. Granting primacy to EU law over national law, as the Court of Justice does,¹⁹ pre-empts this as it assumes that one site of law-making, *a priori*, enjoys more democratic authority than the others. This begs the question; what is so good about EU procedures, values and its capacity to get things right that we do not check them when they come into conflict with those of other systems but just assume that they are democratically better?

How to resolve all this? This requires both pan Union and domestic responses.

Pan Union relative democratic authority: Abolishing the monopolies in the formulation and adoption of EU law

To make EU decision-making processes responsive to possible losses of democratic authority entails two easy reforms. Neither requires Treaty reform as both could be done through inclusion in the proposed inter-institutional agreement on Better Regulation.²⁰

The first is to introduce more competition into legislative agenda-setting. As is well known, the Commission currently enjoys a monopoly over this. It asks too much of a single institution both to be responsible for promoting a particular mission, that of European integration, and to be continually policing that task to ensure it is done with democratic authority. These dual roles create a conflict of interest within the Commission and, as an administrative actor, it has no structures within it to allow democratic contestation over this question.

It should be possible for a number of national parliaments to have agenda-setting power alongside the Commission.²¹ These could propose new EU laws, amendments to existing EU law, or the repeal of EU laws. An advantage of this is diversification of access to the law-making process. Those with insufficient resources, networks or interest to lobby Brussels could contact their local MPs to propose reforms. This would, in turn, provide incentives for national parliamentarians to set out ideas when they run for office, entailing that EU became a central part of contestation and debate at national elections.

¹⁶ Court of Justice of the European Union, C-333/14 *Scottish Whisky Association et al v Lord Advocate*, EU:C:2015:845.

<http://curia.europa.eu/juris/document/document.jsf?docid=166846&doclang=EN>

¹⁷ Judiciary of Scotland, *The Scotch Whisky Association & Others, Re Judicial Review* [2013] ScotCS CSOH_70 <http://www.scotland-judiciary.org.uk/9/1040/PETITION-FOR-JUDICIAL-REVIEW-BY-SCOTCH-WHISKY-ASSOCIATION-And-OTHERS>

¹⁸ The point of minimum pricing was that alcohol related mortality was highest amongst those with high alcohol consumption and low incomes. A tax, as suggested, by the Court of Justice, could not target this group whilst a minimum price could. C. Angus et al, 'Model-based appraisal of the comparative impact of Minimum Unit Pricing and taxation policies in Scotland' (April 2016, University of Sheffield) 9-10: https://www.shef.ac.uk/popolopoly/fs/1.5653731/file/Scotland_report_2016.pdf

¹⁹ Most recently, C-273/15 ZS *'Ezernieki'v Lauku atbalsta dienests*, EU:C:2016:364.

²⁰ European Commission, *Proposal for an Inter-institutional Agreement on Better Regulation*, COM (2015) 216. May 2015, http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_216_en.pdf

²¹ If this is to be done without Treaty amendment, the formal process would be for the Commission to put forward any proposal made by a third of national parliaments. A commitment in an inter-institutional agreement would bind it to do so.

Its greatest advantage is that the institutions with most to lose from EU law-making would be in charge of policing the EU's democratic authority. This is, of course, being trialled with the 'green card' initiative which builds on earlier proposals,²² with a number of national parliaments being enthusiastic about the idea and sixteen putting forward a 'green card' for EU measures in the field of food waste.²³ However, it is currently insufficiently defined and the quorum is not established. My proposal is that it should be a third of national parliaments. If these considered that what an existing EU law offered was weak relative to the possibilities offered by national law, they could propose its repeal or amendment. The democratic authority of EU law would be subject to sustained oversight.

The second is to establish a new bicameral process within EU law-making for the adoption of EU legislation.

The first chamber, a virtual one, would be comprised of national parliaments and the second would, as is the case now, comprise the trilogue involving representatives from the Commission, the council and the European Parliament. This bicameral process would require any legislative proposal, prior to first reading by the Council, to have been adopted by two thirds of national parliaments.²⁴ Following this adoption, the formal procedures of the ordinary legislative procedure or other law-making procedures would run their course. In practice, in all likelihood, the matter would then be agreed at trilogue, also before the first reading of the Council.

The rationale for this is that these two chambers represent more clearly the cleavage between parliaments and government with one chamber, the trilogue, as is typically the case with domestic legislatures, more strongly influenced by executives. Another advantage is that prior agreement by national parliaments would limit the scope for smoky room deals within the trilogue by national parliaments placing parameters on what can be agreed and setting out more openly issues of contestation. However, the greatest is that parliaments typically have to assent to collective action for a measure to have democratic authority. The restrictions on private autonomy are weighed against the benefits and freedoms secured through collective action with measures only taken once the latter is seen by a representative body as being more advantageous. This does not take place currently within the main EU law-making procedures where only executives, the Commission (in deciding whether to adopt a proposal) and the Council, have the power of assent. Requiring national parliaments to assent would rectify it, and would allow, equally importantly, any new measure to be vetted against the test of relative democratic authority, namely does it bring democratic benefits that outweigh those which could be secured by other arenas?

Relative democratic authority within the European Union: The end of the era of the primacy of EU law

The above reforms to the EU legislative system do not address the problem of multiple allegiances. What happens to those parliaments unconvinced of the case for the Union having the democratic authority to adopt the measure or believe that a current measure no longer has democratic authority? If the main political parties have to be in favour of EU membership for a state to retain its membership across time, there is also the issue of those citizens whose views and allegiances are poorly mediated through the party system. A balanced system of relative democratic authority must also provide for national actors being able to make a case that national law enjoys such authority over EU law. The impossibility for these to exercise effective political voice is, indeed, what corrodes much of the trust in the European Union.

The central implication of this is that it should be possible for a national parliament to pass a statute disapplying an EU law. Equally, as the party system poorly reflects many citizens' allegiances and preferences, it should be possible for this to be done more directly whereby a citizens' initiative, including a certain quorum of petitions, could make a case before a constitutional council composed of senior public figures that an EU law lacks relative democratic authority. This council could then hold hearings, taking views from different parties, and make a ruling on whether this is the case or not, with concomitant consequences for the EU law. To be sure, these public figures might epitomise the elites so often decried in current debates, but their decisions would be visible and subject to debate by the public, and would thus have to show sufficient responsiveness to those making the initiatives.

²² D. Chalmers, *Democratic Self-Government in Europe* (2013, Policy Network, London), 9-10.

²³ House of Lords European Union Committee, *The Role of National Parliaments in the European Union* (2013-14, 9th Session, SO) paras 55-58. The food waste proposal was made in July 2015 and can be found at <http://www.parliament.uk/documents/lords-committees/eu-select/green-card/green-card-on-food-waste.pdf>

²⁴ Formally, this can be done through an agreement for the Council not to vote on the matter until this has happened.

This disapplication has, however, to be subject to a number of checks and balances. Whilst a state is part of the European Union it is also a member of a community in a broader sense. This requires that it justifies any action with potentially negative consequences for other members of the community, hears their views, seeks to minimise the effects of this action, and, in exceptional cases, provides reparation. What does this mean in practice? If an EU law is disapplied, through either route, there must be an impact assessment to evaluate its effects on the interests of other EU states and their citizens. Equally, prior to any disapplication, these should be able to make their case. Next, in instances of disapplication, care should be taken to minimise the impacts on the interests of other EU citizens.

Alongside this, there would be a need to account to other national institutions. The disapplication, impact assessment and case for disapplication should, thus, be sent to other national parliaments. If more than half think the measure disproportionate or carried out in bad faith, the matter could be referred to the European Council for resolution. It is unlikely that this referral would be made frivolously as national parliaments would be aware that they would be establishing precedents which may be used against them. If that is not possible, EU law would be disapplied, but, as a member of a community, the State would have to accept that it could be subject to proportionate countermeasures.

Membership of the community also implies some constraints. Would it be possible for the state to disapply the EU Directive prohibiting race discrimination or certain tenets on free movement, for example? It would be egregious if this were the case. It should be, thus, accepted that there are certain tenets of a community which are seen as so fundamental that they cannot be disapplied without membership being put into question. Indeed, Article 2 TEU sets out a basis for this within EU law but providing a series of values – human dignity, freedom, democracy, equality, the rule of law and respect for human rights – which provide a foundation for the Union. To these, free movement could be added. This is not to say Member States would be required to observe every new judgment of the Court of Justice. It should be possible for them to assert that the Court has taken an unwelcome and unanticipated line of reasoning. It would be less open to them to challenge well-established lines of reasoning which have been in place for a number of years.

Typically, this course of action encounters two objections.

The first is that it cannot be done without amendment of the Treaties because of the doctrine of primacy of EU law. As mentioned above, this has been repeated consistently by the Court of Justice. However, who says that it has a monopoly on this question? The better view is that it is an important actor on questions concerning the authority of EU law, but only one amongst a number. The overwhelming majority of national constitutional courts consider that they, not the Court of Justice, have the final say on the authority of EU law, and most refuse to give it unqualified authority.²⁵ It is not clear that it is something that lies exclusively within the power of courts. At the Lisbon Treaty, the Intergovernmental Conference set out its views on the authority of EU law, implying that it believed this to be a matter for national governments.²⁶ This position has been reaffirmed by the Decision of the Heads of Government on a new settlement in the United Kingdom. This Decision includes detailed interpretation of a number of provisions of EU law, most extensively Article 45 TFEU on free movement of workers. It conveys a belief that national governments can make authoritative interpretations of EU law, and one imagines the quality of that law, alongside judicial institutions.²⁷ These could, therefore make a statement qualifying primacy if they so wish.

The other objection is that it would lead to the end of the European Union as we know it. Member States would cherry pick EU laws they like and not apply others. This would lead to a culture of free-riding and mistrust which would unravel the European Union. The challenge for this assertion is that no evidence is provided and, the evidence out there stacks the other way.

The first example is Norway. Norway applies a lot of EU law within the context of the EEA. There is no primacy of EEA law within Norway. However, the EFTA Surveillance Authority finds that transposition rates for Directives in

²⁵ For a review see D. Chalmers, 'European Restatements of Sovereignty' 186-213 in R. Rawlings et al. (eds.) *Sovereignty and the Law* (2013, Oxford University Press)

²⁶ Declaration 17 to the Lisbon Treaty.

²⁷ European Council, Conclusions of the European Council, 18 and 19 February 2016, EUCO 1/16, Annex A, Section D, 1, (a)(b) and (c), February 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/>

Norway compare well, when looked at over a period of time, with EU States.²⁸ This is a good proxy for compliance as transposition involves the putting in place of a national legal regime which, in turn, means that the state and other actors are now bound by their own national law.

The second example is the Mercosur arrangement within South America. Mercosur law has primacy over national law. However, there have been repeated concerns about compliance. In short, primacy does not secure the effective operation of a regional trade arrangement.²⁹

If this is all too exotic, the best example is to be found within the European Union. Most EU law is not directly effective and so primacy cannot be enforced for it in national courts. Such law has to be enforced through infringement proceedings. If one looks at recent statistics, one finds that in 2012, the Commission found a case to answer in 1405 situations ('files').³⁰ In 2014, the respective year when most of these cases reached the Court, only 44 judgments were given, of which the Commission won 41.³¹ In short, only 3% of the cases where the Commission found a likely breach of EU law resulted in a judgment. It is implausible to think the negotiated settlements in the other 97% resulted in strict adherence to EU law in all cases. The Union did not cease because of that.

The reasons for compliance with EU law or international law are, thus, more complex than simply assertion of its priority. More important is that such conflicts are mediated in a structured and transparent manner which allows room for mutual accommodation. It is certainly desirable to the current status quo of insistence on a unipolar European Union with diversity managed secretly by civil servants through the infringement proceedings.

That being so, the Heads of Government could take a Decision qualifying the primacy of EU law subject to the procedures and constraints set out above. This would, indeed, do much to enhance the democratic authority of the European Union and little to diminish its effective operation. If such processes should be agreed multilaterally, the British Government could do worse than push the way, if there is a Remain vote, through setting out this design in any future Sovereignty Act.

²⁸ In May 2015, the EFTA Surveillance Authority recorded Norway as failing to transpose 0% of the Directives required of it against an EU average of 0.7% in the corresponding fields. EFTA Surveillance Authority, *Internal Market Scoreboard No 36, EEA EFTA STATES of the European Economic Area* (2015, October 2015, EFTA Surveillance Authority, Brussels) 6-8, <http://www.eftasurv.int/media/scoreboard/Internal-Market-Scoreboard-No-36---October-2015.pdf>

²⁹ Consultative Opinion 1/07 *Norte v Laboratorios Northia*, Decision of 3 April 2007 (Mercosur Permanent Review Tribunal); April 2007 http://www.tprmercotur.org/es/opiniones_consultivas.htm and R. Malamud, 'Presidential Diplomacy and the Institutional Underpinnings of MERCOSUR: An Empirical Examination' (2005) 40 *Latin American Research Review* 138.

³⁰ This was the number entered into EU Pilot. The Commission only does this if it believes there is a case to answer with a view to resolution within twelve months. European Commission, *Monitoring the application of Union law: 2012 Annual Report*, COM (2013) 726, 7 http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_30/sg_annual_report_monitoring_eu_law_131023.pdf

³¹ Court of Justice of the European Union, *Annual Report 2014* (2015, OJEC, Luxembourg) 107. http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-03/en_ra14.pdf

**Between technocracy and democracy:
How stakeholder engagement might be a solution to the EU's legitimacy problems**
Dr. Matt Wood³²

Introduction

There is a quite fundamental tension within the EU project between what we might quite simply call technocracy and democracy. On the one hand, the founding principles of the EU emphasised subsidiarity and the need for support for the project among member states and their populations. On the other hand, the EU has developed as a largely expert-driven, depoliticised collection of institutions that seems impenetrable to the everyday citizen. Despite acknowledging this technocratic form to be quite unfortunate from a democratic perspective, EU officials claim solving transnational problems outside of representative electoral politics is a vital aspect of the EU's value to its member states. So in a strange catch 22 situation, the EU's supposed value and worth of pooling transnational expertise and policy learning is the exact reason it is chastised by so many for being out of touch and undemocratic.

In this essay I will argue that there is a way of (partially) squaring this democracy-technocracy circle through further democratic innovations expanding the European Commission's current agenda. The Commission has recently ramped up efforts to engage with the public and stakeholders in innovative ways, contrary to many characterisations in the British media. Further democratic innovation would include involving everyday citizens in decision making from the bottom up – including citizens juries, online polls and community forums. Even in the more technical aspects of EU activity such methods could be used, they merely require expanding and diversifying existing practices of 'stakeholder engagement' in innovative and creative ways. This squares a circle by re-casting democratisation as an incremental process of opening up a wider variety of spaces of decision making to public input and visibility. Following the political theorist Michael Saward, I call this form of gaining legitimacy *slow democracy*.³³ The Commission thus appears as the unlikely source of (partial) democratic salvation for a system otherwise potentially doomed by its insularity.

The Commission's stakeholder engagement agenda

In 2001 a widely cited European Commission White Paper stressed that, despite a commitment to subsidiarity in existing Treaties, 'many people are losing confidence in a poorly understood and complex system to deliver the policies that they want'.³⁴ It hence proposed that the Commission should 'renew the Community method by following a less top-down approach and complementing the EU's policy tools more effectively with non-legislative instruments'.³⁵ In practice, this meant the need for 'stronger interaction with regional and local governments and civil society'.³⁶ Hence, in 2003, the Commission adopted several reforms, including a 'new information and communication strategy' aiming to 'provide the general public more actively with information on European affairs', as well as, for example, improving the 'openness' of the Commission's documents by making them accessible online, incentivising regional and local authorities' involvement in EU policy making, and adopting minimal standards for consulting civil society organisations.³⁷ 'Stakeholder' engagement has hence become critical aspect of Commission activity, and it has developed initiatives for sourcing opinions from citizens, including 'Interactive Policy Making', to 'allow spontaneous information feedback online'.³⁸ This took shape in the form of the Your Voice in Europe (YVE) website. YVE is an online forum enabling constant feedback from EU citizens on impact assessments conducted by the Commission for policy proposals, evaluation initiatives and 'fitness checks' reviewing the performance and effectiveness of EU initiatives and Commission Green Papers. While data on groups using these processes is sketchy, scholars analysing EU interest group representation found a total of 4,501 different contributors to 142 consultations between 2005-9, a figure that is likely to have diversified since then.³⁹ In 2002 the Commission also created the EuroInfo Centre, which provides relevant information on EU laws for businesses, and the Coneccs Database, which provides information for European citizens on how they can engage with European policy makers, either directly or via EU civil society groups.

³² Dr. Matt Wood is Lecturer at the University of Sheffield Department of Politics and Deputy Director of the Sir Bernard Crick Centre. His current work focuses on legitimacy in the EU, with a focus on stakeholder engagement by the European Commission and decentralised agencies. He is an ESRC Future Research Leaders grant holder and Knowledge Exchange Fellow.

³³ Saward, Michael. "Agency, design and 'slow democracy'." *Time & Society* (2015): 0961463X15584254.

³⁴ European Communities (2001) *European Governance – A White Paper*, Official Journal 287, 12/10/2001, p1.

³⁵ *Ibid.* p.2

³⁶ *Ibid.* p.2.

³⁷ European Commission (2003) *Report from the Commission on European Governance*, Luxembourg: Office for Official Publications of the European Communities, pp.11-15

³⁸ *Ibid.*, p.17

³⁹ Rasmussen, Anne, Brendan J. Carroll, and David Lowery. "Representatives of the public? Public opinion and interest group activity." *European Journal of Political Research* 53.2 (2014): 250-268.

The above description suggests a burgeoning level of 'external' consultation and engagement, online and offline. Since 2012, however, the Commission, in its own words, has been 'planning to consult more frequently and more effectively, at all stages of the policy-making process'.⁴⁰ In 2012 the Commission launched the European Citizens Initiative (ECI) aiming to extend direct public involvement with Commission work. The initiative allows a group of citizens from at least 7 EU countries to create a petition to be submitted to the Commission online. If the petition gets over 1 million signatures from across Europe, the Commission will respond to it. Julian Greenwood argues that the ECI has the potential to enhance the relationship between EU institutions and civil society.⁴¹ However, by the end of 2014 only 1 ECI had managed to get a response from the Commission – on providing water as a public good – and only 20 had been set up.⁴² Other forms of 'direct' or 'deliberative' engagement with citizens have been trialed in the form of democratic 'experiments' including two deliberative polls in 2007/8 on general principles of EU policy, citizens' conferences on urban sustainability, transport and poverty, and citizens' consultations aiming to get citizens talking about the future of EU democracy.⁴³ In general, though, 'direct' citizen engagement through deliberative and direct democratic tools has proceeded in a piecemeal fashion.

More substantially, the Commission has ramped up attempts to integrate the views of civil society and business within its policy making processes. The Commission's *Better Regulation* agenda, which grew out of the 2001 White Paper, aims to bring greater stakeholder and public involvement into the actual decision making processes of core EU institutions. In December 2015 a draft agreement between the Commission, European Parliament and Council on the agenda stated that 'Public and stakeholder consultation is integral to well-informed decision-making and to improving the quality of law making'.⁴⁴ This meant that:

*'the Commission will, prior to the adoption of its proposal, conduct public consultations in an open and transparent way, ensuring that their modalities and time-limits allow for the widest possible participation. The Commission will in particular encourage the direct participation of SMEs [Small and Medium Enterprises] and other end-users in the consultations. This will include public internet-based consultations.'*⁴⁵

Such an agenda for broad-based stakeholder and public consultation has been reflected in a deeper and more diverse range of consultation processes. Consultations now happen earlier in the policy process, including 'Roadmaps', which detail proposed major initiatives to stakeholders, and 'Inception Impact Assessments', which consult on a new policy problem at the European level, issues related to subsidiarity, and discuss objectives and options as well as the likely impacts of each option. These are implemented by all DGs within the Commission. Legislative proposals produced by the Commission are also subject to eight-week public consultation periods following their adoption. Draft delegated acts and important implementing acts also now have a four-week consultation period attached.

Stakeholder engagement, legitimacy and slow democracy

So, contrary to much popular imagination in the UK, the European Commission is introducing democratic mechanisms of sorts in its decision making. Of course, engaging stakeholders certainly isn't the only way to increase legitimacy. Inviting input from selected groups in society to a relatively small and defined forum does not guarantee representativeness or accountability.⁴⁶ There is also the constant danger of monopolisation by powerful interests in global corporations and the 'usual suspects' in NGOs and transnational professional advocates. Existing research on YVE, for example, shows how business tends to dominate this process, although broader interests tend to get more involved in more politically salient issues that affect a broader swathe of the European public.⁴⁷ Can stakeholder engagement – a term so often abused to legitimate decisions already taken by 'expert' elites – offer any real legitimacy for EU decision making? My answer is yes, for two reasons. Firstly, 'democracy' has never been just about elections and expressions of popular will. Commentators have argued for greater 'majoritarian control'

⁴⁰ European Commission (2015) 'Better Regulation', web page, accessed 18/3/2016, available online at: http://ec.europa.eu/smart-regulation/stakeholder-consultation/index_en.htm

⁴¹ Greenwood, Justin. "The European Citizens' Initiative and EU civil society organisations" *Perspectives on European Politics and Society* 13.3 (2012): 325-336.

⁴² Boussaguet, Laurie. "Participatory mechanisms as symbolic policy instruments?" *Comparative European Politics* 14, no. 1 (2016): 107-124.

⁴³ Ibid.

⁴⁴ European Parliament decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (2016/2005(ACI)).

⁴⁵ Ibid. (italics added).

⁴⁶ Papadopoulos, Yannis. "Problems of democratic accountability in network and multilevel governance." *European law journal* 13.4 (2007): 469-486.

⁴⁷ Rasmussen, A., and Carroll, B. J. (2014). Determinants of upper-class dominance in the heavenly chorus: Lessons from European Union online consultations. *British Journal of Political Science*, 44(2): 445-459.

of EU institutions, by allowing more contestation over core policies like free movement.⁴⁸ However, the important role of knowledge in decision-making is difficult to get around, particularly in many complex policy areas like chemical or medicines regulation controlled at the EU level. If this is indeed the case, then looking for how the public can have a say in otherwise technical decision making may be the best that can be hoped for, in areas like aviation regulation, food safety or disease control. Such arrangements can be successful, too. As political scientist Eva Krick has recently shown using Germany as an example, hybrid public and expert scientific committees can produce effective decisions.⁴⁹

While stakeholder engagement may, to some extent, be the best that can be hoped for given the EU's 'functional' aims and orientations, the stronger and more interesting argument, I suggest, relates to what the political theorist Michael Saward called *slow democracy*.⁵⁰ Saward's simple argument is that democracy never was about total public control, nor was it about a single 'moment' where all can see a democratic explosion of popular will. Rather, it is slow, incremental, specific to policy areas and, temporally, at least, *slow*.

Quoting Sheldon Wolin, Saward argues:

'Political time is out of synch with the temporalities, rhythms, and pace governing economy and culture ... [i]n contrast to political time, the temporalities of economy and popular culture are dictated by innovation, change, and replacement through obsolescence'.⁵¹

Political culture, Saward argues, has 'sped up' to the extent that public institutions often cannot keep up, with the laborious proceduralism of democratic processes. 'Democratic' processes and structures thus come to be seen as anachronistic compared to the speedy access to goods and services provided by the market. The answer, he argues, is to change our ideas and expectations of what 'democracy' genuinely entails, through the notion of 'slow democracy':

*'What set of institutions or devices, in what order, for which people, enacting what principles, can be assembled into a workable democratic design that may be resilient in the face of pressures such as social acceleration?'*⁵²

On this justification, stakeholder engagement can become a vehicle for democracy because it *incrementally* improves opportunities for citizen influence on complex European policy making, whilst coming in line with the more functional aims of the EU in general. It would also slow down and subject to scrutiny decisions taken in private (such as those on the emerging Transatlantic Trade and Investment Partnership) and highly opaque practices of corporate governance (the efficient, yet highly opaque channels of offshore wealth storage exposed in the Panama Papers springs to mind). In other words, the justification is not about introducing mass citizen engagement. Arguably, this is unrealistic at a level where so few citizens identify. Rather, it is about *designing democracy differently* to allow for citizen involvement in as many arenas as possible, something similar to Professor John Keane's notion of 'monitory democracy' – whereby democracy occurs through multiple groups monitoring and contributing to policy, rather than representation through elections.⁵³ This means institutionalising more routes for public involvement in a realistic manner.

Incremental legitimacy

Will this lead to great legitimacy for the EU? Is there not the need for a radical, game-changing solution to what Giandomenico Majone calls the 'democratic default'?⁵⁴ I argue not. Examine the history of democratic regimes and they have taken decades, if not centuries, to stabilise. What is unique about the EU is it is comprised of already fully formed democratic states with well-oiled political systems, attempting to create something bigger, based around different forms of identification and mobilisation. While nation states have taken centuries to gain some semblance of democratic legitimacy through electoral representation, the more systematic and sustained indicators of

⁴⁸ Hix, Simon. *What's Wrong with the Europe Union and How to Fix it*. Cambridge: Polity, 2013.

⁴⁹ Krick, Eva. "Negotiated expertise in policy-making: How governments use hybrid advisory committees." *Science and Public Policy* 42.4 (2015): 487-500.

⁵⁰ Saward, Michael. "Agency, design and 'slow democracy'." *Time & Society* (2015): 0961463X15584254.

⁵¹ *Ibid.*, p.3.

⁵² *Ibid.*, p.11.

⁵³ Keane, John. *The life and death of democracy*. London: Simon and Schuster, 2009.

⁵⁴ Majone, Giandomenico. "From Regulatory State to a Democratic Default." *JCMS: Journal of Common Market Studies* 52.6 (2014): 1216-1223.

democracy: openness of decision making, accountability, non-domination (protection of basic rights), etc. are all in evidence to some degree in some areas of EU decision making. The trick now is to push them further, into areas like monetary and fiscal policy. Huge damage was caused to the legitimacy of the EU by the mistreatment of Greece in its debt crisis. Large swathes of popular support washed away from EU institutions at exactly the point when the discipline of the ECB seemed to overrule the legitimate will of the Greek people. Saward argues that democratic mechanisms are incremental in nature. I might add that their legitimacy can be wiped out in an instant by a fast-paced authoritarian moment such as this. The key for EU institutions is to recognise they are in a long game of legitimation – they must institute transparency, accountability and deliberative mechanisms as widely as possible, whilst being aware that those mechanisms are fragile. Democracy has always been ‘slow’, and is not about mass popular uprising and instant success, but long-term development of institutions to open as many arenas as possible to citizen involvement at an everyday level.

Brexit and the Democratic deficit in British politics

Dr. Jim Buller⁵⁵

Introduction: the European Union and the democratic deficit in British politics

'Stripped of power to influence or decide matters of state, we shall have created the classic recipe for failure: responsibility resting with a body of people who do not have the authority to discharge that responsibility in full measure. This will result in public disillusionment with politicians and with people's capacity to obtain satisfaction through their elected representatives. In the fullness of time that disillusionment will turn to frustration and anger, which will lead ultimately to the rejection of established political leadership, traditional party loyalties and the whole body politic.'

Chris Gill MP during the debates on the Maastricht Treaty.⁵⁶

Whatever its benefits, European Union (EU) membership has rarely been advocated in Britain because it is believed to enhance the democratic quality of its political institutions. The current Brexit referendum campaign is no exception to this rule. The Remain camp has repeatedly stressed the economic advantages of membership, while highlighting the adverse material consequences of withdrawal. In doing so, they have cited a range of academic evidence suggesting that Brexit would lead to a loss of trade, a slump in investment, a sterling crisis, which in turn, would have a long term negative impact on growth and jobs.⁵⁷ Historically (as the Chris Gill quote from above indicates), Euro-sceptics have played up what they see as being the deleterious impact of the EU on British democracy. By 'democracy' they mean *representative* democracy and more specifically the sovereignty of parliament as specified in the British Constitution.

Why in particular is the EU thought to undermine democratic legitimacy in Britain and what, if anything might be done to reverse this state of affairs? To answer these questions, it is important to distinguish between sovereignty and democracy as these terms can sometimes be used interchangeably, leading to confusion. In *formal or constitutional* terms, sovereignty refers to parliament's supreme legislative authority within the UK. Westminster is free to make or unmake any laws on any subject and no parliament can bind its successor. In *practice*, sovereignty means *executive power*. Since 1945, Britain has often experienced single party government and providing that governing party has a reasonable majority in the Commons, it can use its executive power to get the bulk of its legislative programme enacted. This outcome is assisted by other features of the British political system, namely its party discipline, adversarial culture and lack of institutional pluralism. To make this argument is not to imply these properties are a constant. For example, the devolution of power to Scotland and Wales (not to mention the advent of a more obstructionist House of Lords) has clearly complicated governance from the centre in recent years. But it remains the case that Britain is one of the most centralised polities in the western world.

When it is argued that EU membership subverts democratic legitimacy in Britain, it is important to keep this distinction in mind. As suggested, parliament has rarely played a substantial *policy-making* (as opposed to policy-influencing) role. It is the executive (ministers and civil servants) governing through parliament that make policy⁵⁸ and in this sense, it is misleading to suggest that the EU has had a detrimental impact on democracy. However, parliament fulfils other tasks which are important to sustaining the legitimacy of the British political system. By investigating, discovering and publicising what the executive is doing, MPs undertake a substantial *scrutiny* role, helping to hold the executive to account for its actions. At the same time, parliament can provide a crucial source of information about politics. In other words, it plays an *educative* role, helping to concentrate the minds of the electorate on the central issues of the day. It is these functions that we need to consider when appraising the impact of the EU on democratic legitimacy in Britain (for classic Euro-sceptic examples of this argument, see contributions by Michael Spicer or Michael Portillo).⁵⁹

⁵⁵ Dr. Jim Buller is a Senior Lecturer in Politics at the University of York. He has written widely on the subject of Britain and the European Union, including recent articles in the *New Political Economy*, *British Journal of Politics and International Relations*, *West European Politics*, *Contemporary European Politics* and *British Politics*. His latest book, *The Dynamics of Depoliticisation in Comparative Perspective* (with Pinar Donmez, Adam Standring and Matthew Wood) will be published by Palgrave in 2017. He is also chair of the PSA Anti-politics subject group.

⁵⁶ Hansard (Commons), vol. 201, 18 December, 1991, col. 415

⁵⁷ HM Treasury, *HM Treasury Analysis: the Long-Term Economic Impact of EU Membership and the Alternatives* (Cm. 9250), April 2016, <http://bit.ly/2213kgL>

⁵⁸ As we shall see the decision-making process is more complicated than this picture leads us to believe.

⁵⁹ Portillo, M. (1998) *Democratic Values and the Currency*: Occasional Paper 103. London: Institute for Economic Affairs. And Spicer, M. (1992) *A Treaty Too Far*. London: Fourth Estate.

One final preliminary point needs to be made. While the Leave camp argues that the EU denudes parliamentary democracy, such an assertion may not apply to all parts of Britain. It is certainly the case that the Scottish and perhaps the Welsh government view the relationship between EU membership and parliamentary democracy in different terms. Scotland's First Minister, Nicola Sturgeon has repeatedly suggested that if Britain votes to leave the EU, but the majority of Scots opt to stay in, this outcome may be enough to trigger another independence referendum. In other words, the Scottish Nationalist Party minority government are likely to institute a plebiscite where they will advocate that Scotland breaks away from the UK parliament. Just before the recent elections to the Welsh Assembly, Labour's First Minister Carwyn Jones dropped similar hints.⁶⁰ Put a different way, any pre-occupation in Britain with the adverse impact of the EU on parliamentary democracy maybe *a largely English concern*.

What is it about the EU that weakens parliament, in particular its ability to carry out its scrutiny and educative functions? The key problem is the dominant style of decision-making in this supranational organisation – sometimes referred to as multi-level governance (MLG).⁶¹ Decision-making in large complex organisations like the EU can hardly be a top down affair, with a single executive controlling matters from the centre. Instead, governance in the EU is organised horizontally across multiple levels that span territorial spaces. Representatives from 28 national governments, the various EU institutions, as well as a plethora of societal groups and other stakeholders coordinate their thinking and behaviour in a number of transnational networks that cohere around various policy sectors. Decisions within these networks are reached through what can often be a protracted process of deliberation, negotiation and compromise. It is crucial to point out that MLG is *not confined to the EU*: it can be found in many national settings as well. Its predominance reflects the fact that domestic policy-makers now govern in a globalised world, where problems are increasingly complex and difficult to manage. To use an often cited phrase: governments no longer 'row', they can only 'steer'.

MLG at the EU level undermines parliament's scrutiny and educative capacities because this style of decision-making lacks visibility and transparency.⁶² The process of bargaining and agreement in networks is informal, even opaque: indeed, these features are a *necessity* if legislative gridlock is to be avoided in Brussels. Moreover, because these transnational networks contain a considerable number of actors, responsibility for outcomes is diluted, making it difficult to know who to blame if things go wrong. Reaction to Tata's recent announcement that it will close its steelworks in Port Talbot is a case in point. Many workers at the plant blame Conservative ministers for this outcome. They are said to have prevented the European Commission from taking more stringent action to prevent the dumping of cheap Chinese steel on world markets (a charge which ministers deny). At the same time, the Cameron government claims it is powerless to take the Tata plant into public ownership because EU state aid rules forbid such a move. This judgment is almost certainly correct, but is also convenient for a Conservative administration that is extremely keen not to be pressured into an act of nationalisation.⁶³

Put in different terms, European integration has had the overall effect of increasing the power of the executive vis-à-vis the legislature at the national level. As power inexorably shifts upwards, it become more and more difficult for MPs and the public to monitor what is going on, let alone hold ministers to account. More to the point, Euro-sceptics in Britain have long suspected that successive governments have acquiesced in this Europeanisation process because political leaders understand these governing advantages. Despite its drawbacks, EU membership is convenient because it offers ministers too many places to 'hide' from parliament; provides too many ways for blurring lines of accountability; grants too many opportunities for escaping (or minimising) culpability if mistakes are made.⁶⁴ According to this interpretation, EU membership *depoliticises democracy* in Britain: it reduces the scope for agency and choice, while constraining the space for deliberation and social interaction.⁶⁵

⁶⁰ Peter Campbell and Jim Pickard, 'Welsh First Minister Warns of Crisis if UK backs Brexit', *Financial Times*, March 2016, <https://next.ft.com/content/566615ce-f0dc-11e5-9f20-c3a047354386>

⁶¹ Bache, I. and Flinders, M. (eds.) (2004) *Multi-level Governance*. Oxford: Oxford University Press and Marks, G., Hooghe, L. and Blank, K. (1996) European Integration from the 1980s: State-centric v. Multi-level Governance. *Journal of Common Market*, 34 (3) 341-78.

⁶² Papadopoulos, Y. (2007) Problems of Democratic Accountability in Network and Multilevel Governance. *European Law Journal*, 13 (4) 469-86.

⁶³ Jim Pickard and Michael Pooler 'Port Talbot Steelworks Could Be Part Nationalised', *Financial Times*, April 2016, <https://next.ft.com/content/69dc8904-0008-11e6-99cb-83242733f755>

⁶⁴ Blyth, M. and Katz, R. (2005) From Catch-all Politics to Cartelization: the Political Economy of the Cartel Party. *West European Politics*, 28 (1) 33-60.

⁶⁵ This definition of depoliticisation is from Hay (2007). It should be stressed that Hay would not necessarily agree with the way I have utilised his definition here. See Hay, C. (2007) *Why We Hate Politics*. Cambridge: Polity.

Britain and the European Union: Rethinking the concept of legitimacy in an era of Multi-Level Governance (MLG)

Is there any way of addressing this democratic deficit that is consistent with Britain's continued membership of the EU? What of David Cameron's demand (during the recent renegotiations) that national parliaments' collective role in the EU legislative process should be further enhanced? This proposition builds on the Early Warning Mechanism (EWM) which became part of the EU's decision-making structure after the ratification of the Lisbon Treaty in 2009. Under this procedure, if a majority of national parliaments object to draft EU legislation (by issuing a 'yellow' or 'orange' card) they can compel the Commission to reconsider its proposals. Bearing in mind the Euro-sceptics' concern about the impact of European integration on parliamentary democracy, this move makes sense. That said, it is unlikely to have a significant impact in the short to medium term. The EWM does not give national parliaments a 'red' card: they have no power to unilaterally reject laws coming down from Brussels. Research has demonstrated that at the time of writing, the number of yellow and orange cards that have been issued is very small.⁶⁶ Indeed, the EWM was deliberately designed to produce such outcomes. If reversals brought about by national parliaments under this mechanism were routine, the EU legislative process would grind to a halt.

More radically, we might suggest that our conventional understanding of democracy is ill-suited to the realities of national governance in the twenty-first century. As we have seen, if domestic policy-makers are to be effective in an interdependent world where complex problems span territorial boundaries, they will have little choice but to *govern beyond the nation state*. Conventional models of representative or parliamentary democracy which imbue the debate about the EU's impact on Britain cannot cope with this change or provide an adequate basis for theorising about political legitimacy. In this sense, the problem is not so much with the EU as an organisation, but with the way we think about democracy, certainly in England. However, to make this point is not to suggest that the way forward is to upload this representative model to the EU level. As has been widely documented, elections to the European Parliament are 'second order' affairs, which remain plagued by low turnout in Britain. As a result, the Parliament itself is not an institution which has engendered much interest or affection and this situation is unlikely to change anytime soon.⁶⁷

A more plausible, but controversial, way forward is to develop a narrative which suggests that EU legitimacy can be established in Britain/England, but not in ways associated with conventional understandings of representative democracy. One suggestion in this context is to promote Fritz Scharpf's distinction between input legitimacy (government *by* the people) and output legitimacy (government *for* the people).⁶⁸ If (as noted above) government *by* the people becomes more and more difficult in the necessary world of multi-level governance, perhaps a better way of thinking about the legitimacy of the EU is in terms of *what it does for Britain*. In this context, we might conclude that the EU as an organisation enjoys legitimacy in Britain to the extent that the majority of British people believe it is helpful in solving problems and furthering the public interest. If such an argument appears implausible, consider the following prediction concerning the Brexit campaign over the next six weeks: (i) the Remain camp continues to focus on what it sees as the economic benefits of EU membership; (ii) the British public votes to stay in the EU because they are persuaded by the Remain camp's arguments that the EU enhances British prosperity. This is despite the fact that the Leave campaign has highlighted what it sees as the dangerous impact of the EU on British parliamentary sovereignty. Such an outcome is hardly conclusive proof that the Scharpf thesis might be applicable to Britain. But if the British electorate returned such a verdict on June 23, it would suggest that they approve of the EU because of what it does for Britain irrespective of the constraints it may impose on its democratic processes.

⁶⁶ Cooper, I. (2015) A Yellow Card for the Striker: National Parliaments and the Defeat of EU Legislation on the Right to Strike. *Journal of European Public Policy*, 22 (10) 1406-25.

⁶⁷ Mair, P. (2005) Popular democracy and the European Union Polity. EUOGOV, European Governance Papers (C-05-03) <http://www.ihs.ac.at/publications/lib/ep3.pdf>

⁶⁸ Scharpf, F. (1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

Is British sovereignty at stake in the EU referendum?

Dr. Victoria Honeyman⁶⁹

Sovereignty is a word which has featured heavily in the debate surrounding the 2016 EU referendum. Those in favour of Brexit argue that Britain has sacrificed its sovereignty to a faceless, bureaucratic organisation and this has fundamentally weakened Britain, allowing the nation to be ruled by Brussels. Those in favour of Britain remaining in the EU argue that British sovereignty has been pooled with that of the 27 other member states, making us stronger, not weaker. Even the language surrounding the debate is indicative of the stance taken by those speaking – ‘sacrifice’ is used by supporters of Brexit, ‘pooling’ is used by those in favour of remaining. The pursuit of truth is a little beyond the scope of this article but it will focus on the issue of sovereignty and what it means to Britain, and whether the British understanding of sovereignty is fundamentally at odds with that of the EU.

What is sovereignty?

Robert Leach argues that ‘the term “Sovereignty” is used to describe two linked concepts – independence in relation to other states, and supreme power within the state, involving “Parliamentary Sovereignty” in the case of the United Kingdom’.⁷⁰ For the general public, the argument regarding sovereignty usually revolves around ‘who rules’? Who has power over their lives and who has the right to make decisions on their behalf? Technically in Britain, sovereignty is retained by Her Majesty’s Government and the functions of Parliament, on behalf of the Sovereign, the British Head of State. In reality, sovereignty is located not in one or two branches of government, but at numerous levels of the constitutional system. Sovereignty resides in Parliament, within government and the governing party, even at local government level, where many decisions affect the day-to-day lives of citizens and their rights and responsibilities. Many larger cities now have elected mayors, or will do in the very near future, another individual who makes decisions for the public. Individuals living in London have the Greater London Assembly, while individuals in Scotland, Wales and Northern Ireland have regional Parliaments and Assemblies which hold sovereignty. Therefore, while sovereignty is a fairly straightforward concept, it is actually spread across many levels of government and many geographical locations. Therefore, perhaps the concept of sovereignty outlined above needs revision. Members of the public assume that sovereignty is the power of the government that it is related to elected representatives sitting in the House of Commons, seeking election every five years, under the current constitutional arrangements, but the term also seems to include a less concrete concept.

Leach also referred to sovereignty as a term which related to independence from other nations and states. This definition implies more than just independence, it implies a sense of imperviousness from the impact of actions in other nations or regions of the world, something which virtually every nation in the world fails to have secured. The old saying, ‘that when America sneezes, Britain catches a cold’ is indicative of the inter-connectedness of international politics, where nations are rarely impervious to the actions of others. It is perhaps this element of sovereignty which is the most troublesome within the EU referendum debate. Britain is, like virtually every other nation on earth, reliant on complex international relationships to ensure our economic and political stability, perhaps more than the political elite would wish to admit. Is that web of relationships diminishing British sovereignty, both in terms of our right to rule ourselves, but also in terms of our ‘Britishness’? Sovereignty seems to refer not only to government or state power; it also seems to refer to something quintessential about us. Rather than being about power over the people, sovereignty seems to be bound up with our ‘Britishness’, the constitutional arrangements which make us British and the key elements of our national character, things we wish to hold dear. This less academically accurate definition of sovereignty is perhaps more in keeping with the debate surrounding sovereignty which is currently being held in light of the EU referendum. The issue is not simply about democracy, it is about Britishness and the retention of British values, an issue which has frankly been largely ignored, glossed over by this catch-all term – sovereignty.

A foreign influence within Europe?

As is often stated in relation to Britain’s constitutional arrangements, they are largely organic, without a single, formal document outlining the rights of the people or the structure of government. The British governing system has evolved over time, buffered and battered by events and popular uprisings to offer protection to individuals,

⁶⁹ Dr. Victoria Honeyman is a Lecturer in British Politics at the University of Leeds. After completing her PhD in 2005 at the University of Leeds, this was published in 2006 by I B Tauris, entitled ‘Richard Crossman; A Reforming Radical of the Labour Party’. Subsequently, she turned her academic focus on British foreign policy, publishing on the foreign policies of both the Labour and Conservative parties. She is Chair of the British International Studies Association Foreign Policy Working Group and appears regularly on both national television and radio programmes analysing British politics.

⁷⁰ Leach, Robert. 2015. *Political Ideology in Britain*. 3rd Edition. London and New York. Palgrave Macmillan. p168

votes for women and the working classes. Power has moved both towards central government and, in some cases, out towards the regions. While Britain perhaps lacks the forward planning of some of our closest friends, such as the USA and France, in having a constitution, we also lacked the bloody revolutions which forced constitutional change. The British public are rightly proud to claim that they have the mother of all Parliaments and a long standing democratic system, which while not perhaps being the envy of the world, certainly seems to be largely fit for purpose. However, the structure of the British political system has shaped the opinions and expectations of the British people as to what governance and democracy should be, key factors in any discussion of sovereignty. While the House of Commons might be accused of 'Punch and Judy politics', the British people appear to be considerably less forgiving of coalition deals and discussions, which are often reported as 'backroom settlements', a term which has connotations of secrecy, corruption and vested interests. These 'backroom negotiations' are often crucial to allow coalition governments to function effectively, but they are viewed within Britain as somehow morally murky. While the British public criticise their own democratic arrangements, such as the role and composition of the House of Lords, MPs expenses and our First Past the Post voting system, the public seem considerably less forgiving or accepting of different, if convoluted, governing systems, including coalitions. Indeed, there is a sense in which the British public, and perhaps the British political elite, can only really accept organisations which operate with a governing system which we recognise as similar to our own. Interestingly, in the EU debate, we have seen many chickens come home to roost. British politicians, like politicians from virtually all EU nations, have tended to blame the EU for policy outcomes which they wish to disassociate themselves from, deflecting negative attention towards the 'nameless, faceless bureaucrat'. Unfortunately, British MPs are now being forced to accept responsibility for some of these issues, to deflect negative attention away from the EU.

This certainly seems to be the case with NATO. The North Atlantic Treaty Organisation has an inter-governmental system which the British people and politicians can easily understand. Britain can be as involved as it wishes in conflict and simply opt out of action it dislikes. The only real rules that the public are aware of are that each member state contribute two per cent of their GDP to defence spending and respond in some way to attacks on member states. However, as the failed experiment of the European Free Trade Association (EFTA) proved, economic groups often require cohesion which intergovernmental structures can struggle to provide. This was evident fairly early on in EFTA, where the organisation simply couldn't match the performance of EEC nations, meaning several of its members began to crave EEC membership. This requires more rules, more compulsion, something which is inevitably going to have to be introduced by the central organisation, not by national governments, to ensure consistency in every member state, where small differences in policy can make a massive difference to outcome. This compulsion and the agreement necessary to reach it, are relatively easy when you have a very small number of nations grouping together, but when the group expands from six to nine, or eventually to 28, that process becomes considerably more difficult meaning more nations are forced to comply with policy which they are not entirely in favour of, either in principle or practice. Without this collectivism, decisions would be impossible to reach and policy would not be implemented consistently, meaning the idea of a 'common market' would evaporate and be replaced instead with a race to the bottom where all EU nations attempted to undercut each other, doing considerable damage in the process.

The EU has, since its inception, attempted to deal with its policy making process in different ways. While there is an EU Parliament which discusses and votes on policy, the policy initiative is usually suggested by the EU Commission, made up of representatives of the 28 member states. The EU has a President, an individual to represent the EU, who is agreed by the national governments of the 28 member states. The role of the public in the EU is somewhat more remote than it appears in national government, an impression which is exacerbated by the fact that much EU decision making goes on in Brussels, another nation many miles away from Britain.

However, while this governing style is alien to many in Britain, and even to other EU member states, perhaps we need to consider how accurate our perception of our own governing system is when considering the movement of sovereignty to Brussels. The British political system is built for strength. Majority governments have a large amount of autonomy and power and are often able to navigate policy through the Houses of Parliament with only minimal difficulty, depending on the strength of the opposition, the size of the majority and the policy under discussion. Elected majority governments are able to introduce policy which they did not include in their manifesto with no discussion with the public and the removal of either a leader or a party from government is extremely difficult. Therefore, perhaps the differences between the governance of the EU and the governance of Britain are not as acute as they may first appear. Perhaps the key issue at the heart of this debate on sovereignty is really about the

British being told what to do, as part of a larger organisation, whether that worry be real or imagined, rare or more regular. Perhaps in Britain, we accept a lack of democracy while our standards in the EU are somewhat higher.

The way forward?

The problem it seems is about standards. The British public are willing to accept a lack of democracy within their own democratic system, but are scathing about a similar lack of democracy within the EU. Perhaps it is that the British democratic system is our own, while we feel no ownership of the EU system, leading to criticisms that our sovereignty has been undermined by individuals on the continent. This has led individuals such as Boris Johnson to make comments suggesting that other European nations have long attempted to create a 'united states of Europe' including Hitler and Napoleon.⁷¹ I am sure that the current EU President Jean-Claude Juncker, will find the parallels between himself and Hitler rather distasteful, as do many others. However, the underlying message remains. Is Britain a prize which other EU nations have long plotted to seize? Are the EU attempting to steal our sovereignty and create a 'united states of Europe'? The answer to that is not clear. Some individuals will inevitably want that, but it does not make it a realistic threat. Many contestants of Miss World seek world peace, but we are no closer to that laudable aim. The intentions of others are not as crucial as our own intentions. Britain has an opportunity to shape the EU into an organisation we can be proud to be a member of, to deal with some of the major flaws within the grouping, to shape its future aims to suit our agenda. Instead, we are threatening to leave, a course of action which will almost certainly not buy more concessions, but lead to resentment, as was the case after the 1975 referendum. In an increasingly global world, the question has to be asked – how can we best secure our sovereignty? How can we best secure our global position and ensure that our view of the world is heard? The US-UK special relationship is key to this, no doubt, but be under no illusions, the US serve themselves first and the UK, at best, second. The Commonwealth, is a soft power organisation, an organisation which has failed to provide Britain with an international voice and shows no signs of changing, instead focusing on its work on democracy, economic reform and human rights. Other organisations, such as NATO, the UN, WTO, the World Bank, all have specific agendas and areas of expertise. The EU might not be perfect, but the UK should consider its options carefully before throwing away its membership of one of the largest trading organisations in the world, an organisation which requires sovereignty to be pooled, or sacrificed, in order to secure benefits for all, including the British people. The world of the early 20th century is no more, and Britain's Empire status is also dead. Perhaps Britain really should be the Greeks to the EU's Romans, focusing on shaping the organisation in keeping with its values and ideas.

⁷¹ BBC News Website. 16th May 2016. Available at: <http://www.bbc.co.uk/news/uk-politics-eu-referendum-36295208>

Europe by the people: How could the EU's structures be more directly accountable to its citizens?

Oli Henman⁷²

Introduction

Recent years have seen a growing disconnection across Europe between people in many countries and the institutions of the EU; this is leading to a direct challenge to some of the EU's founding principles as people do not feel empowered to shape EU policies. Many political parties are tapping into a public mood that sees EU institutions as distant and out-of-touch with the concerns of ordinary people and they are therefore increasingly tempted to reject the entire notion of the EU, but are there ways that the EU can be opened up to more democratic scrutiny? This essay analyses some of the ways that citizens and civil society organisations can engage with the EU, and how they can push for greater transparency and accountability.

Perhaps one of the major questions that underlies this debate is a changing view on what we expect from democracy. Whereas in the past citizens were content to vote for their local representative once every four or five years and to trust their representative to work on their behalf, today attitudes have shifted in favour of more regular interaction with the institutions of the state. People are increasingly keen to understand decisions that affect their lives on a regular ongoing basis; whether engaging with their local budgets, the balance of welfare spending or the decision to go to war, they are no longer content to be passive observers. Instead, in many parts of Europe, there has been a rise in activists who employ social media and direct action to raise awareness of causes and to engage directly on key policy decisions, such as the online campaigns and petitions site Avaaz. This in part reflects a generational shift in forms of engagement, the rise of so-called 'clicktivism' whereby the use of technology allows for rapid dissemination of information and a speedy way to engage with public opinion and show support for particular causes. So the dissatisfaction with traditional politics is not limited to the European Union, in fact there are very similar concerns raised with national and local political structures that still employ 20th century methods of engagement, including day-time meetings and arcane language which limit the possibility for wider engagement outside a technocratic circle. At the same time, some of these expectations may be limited as single issue campaigns may not enable a wider appreciation of the trade-offs that must be considered in managing complex budgets and services.

So the real question behind this is how to re-shape the institutions of the EU (as well as national and local government) to respond to changing expectations and to move towards a more participatory form of democracy. How could Europe be more directly led by the people? Let us now consider the various areas where this renewal could take place.

Deliberative democracy

One way for Europe to be shaped by the people is for a stronger sense of deliberative democracy to take shape. The notion of deliberative democracy, which goes back to Jurgen Habermas, is based on the idea that better understanding of an issue leads to healthy debate, which ultimately leads to better decision-making and it therefore provides a strong impulse to increasing dialogue between citizens and government institutions.

The European Economic & Social Committee

In this area it is useful to note that the European Union has always included a strong focus on dialogue between economic actors, from the early days of the Coal and Steel Community a strong emphasis was placed on 'social dialogue' between representatives of business interests (so-called 'Employers') and those of labour unions (so-called 'Employees'). Therefore there has been a long-standing focus on deliberation to include these expert views in order to shape economic policy. This led to the formation of the European Economic & Social Committee (EESC)⁷³ as one of the original institutions of the European Economic Community under the Treaty of Rome (1957). The EESC includes representatives from Group I Employers, Group II Employees, plus a third group which is named

⁷² Oli Henman is the Head of International Networks at CIVICUS, where he is active in promoting good practice in participation, global advocacy and engagement with multilateral bodies such as the UN, EU, Commonwealth and other international institutions. He has considerable experience in working with civil society participation and governance in Europe and in South America. In his previous role at the National Council for Voluntary Organisations (NCVO) he spearheaded the development of the European Network of National Civil Society Associations (ENNA) and regularly contributed to policy developments on citizen participation in EU decision-making; he was also a co-drafter of the Council of Europe's Code of Good Practice on Civil Participation. He is half-Brazilian and started his career working on participatory budgeting in the favelas and rainforests of Brazil; which led to a thesis on the Participatory Budget of Sao Paulo for his MPhil in Latin American Studies at Oxford University.

⁷³ European Economic and Social Committee <http://www.eesc.europa.eu/>

'Other Interests' and includes representatives from professional associations, academics, farmers and Non-Governmental Organisations (NGOs), drawn proportionally from each EU member state.

The EESC therefore provides a forum that brings together representatives of different economic and social interests from across Europe on a regular basis with a full-time secretariat based in Brussels. It plays an advisory role in the drafting of EU legislation and is able to scrutinise draft regulations and directives as well as initiate its own reports on key issues, under 'Own Initiative Opinions'. The EESC also hosts a series of wider public events to include other key stakeholders, such as NGOs, think tanks and associations as part of their deliberation and often provides a space for dialogue and engagement with EU decision-makers.

The EESC offers a regular channel for engagement and debate but there are still concerns about how far it is truly representative of civil society views as the representatives are generally appointed by member state governments and often have limited engagement with their own constituencies. In order to ensure a more accountable approach, it would be preferable to develop a system of selection within each constituency, whereby candidates are able to put forward their proposals through open hustings and are elected by their peers.

European Citizens Consultations and the European Parliament's AGORA

Another way for greater deliberation to take place is through direct consultation between citizens and the EU institutions. There were a series of attempts to host wider consultations in the period surrounding the adoption of the Lisbon Treaty (2009) including a series of European Citizens Consultations and the European Parliament's AGORA.

The European Citizens Consultations were hosted in 2007⁷⁴ and 2009⁷⁵ and aimed to bring together a cross-section of European citizens in every member state of the EU to discuss their priorities for the future of Europe. The process was supported by major European foundations, such as the King Baudouin Foundation and by the European Commission. The process included: a) online dialogues and setting key thematic areas for discussion; b) conferences with a randomly selected cross-section of citizens in each EU country; c) sharing key priorities to draw out EU-wide recommendations. The process was successful in reaching a wide range of views but it proved difficult to sustain the dialogue once the initial project support came to an end, some of the discussions have nevertheless continued through blogs on the Open Democracy website.

The European Parliament's AGORA⁷⁶ was an attempt to bring a cross-section of citizens into the main debates of the European Parliament. There were a series of AGORA sessions on different themes as follows: 'The future of Europe' 2007; 'Climate change' 2008; 'The economic and financial crisis and new forms of poverty' 2011; and 'Youth unemployment' 2013. Each AGORA aimed to bring together a cross-section of citizens and civil society organisations to debate each theme with representatives of the European Parliament. The profile provided by MEPs and the use of the European Parliament buildings raised the profile of these sessions, however they still struggled to reach out beyond those who are already engaged in EU policy-making and there was limited awareness outside Brussels.

Direct democracy

While the forms of deliberation described above allow for consultation and discussion between citizens and the EU institutions, they do not have any direct power to call for action by the decision-makers and could therefore be seen to be relatively weak. There are also strong calls for better ways to enable direct democracy, whereby citizens would be able to raise concerns directly within the legislative process.

As part of a growing awareness of the need to reform the EU institutions to reflect a changing approach to policy-making, a new tool was adopted as part of the Lisbon Treaty: the European Citizens Initiative⁷⁷ (ECI), which was established in 2012 and enables citizens to place an issue directly on the agenda of the European Commission. This process operates like a petition, whereby a specific legislative proposal can be put forward and requires a million signatures from a geographically representative sample of at least 7 EU countries to be collected within one year.

⁷⁴ Open Democracy, European Citizens Consultations, 2006-07, https://www.opendemocracy.net/blog_terms/european_citizens_consultations_0

⁷⁵ Involve, European Citizens' Consultation 2009, <http://www.involve.org.uk/blog/2006/03/19/european-citizens-consultation-2009/>

⁷⁶ European Parliament, Citizens' AGORA on Youth Unemployment (6-8 November 2013), <http://www.europarl.europa.eu/atyourservice/en/20150201PVL00041/Agora>

⁷⁷ European Commission, EU Citizens Initiative, <http://ec.europa.eu/citizens-initiative/public/welcome>

There have been a number of ECIs over the past 4 years, including the first three successful ones 'Right2Water' (defending water as a human right), 'One of Us' (opposing abortion) and 'Stop Vivisection' (against animal testing), which have all led to public hearings and official responses from the European Commission, including specific actions.

There have been concerns with the ECI, in terms of the kind of personal information required to verify the signatures and the cost of a web platform to host this information, as a result the European Commission has provided a free 'Online Collection Software'⁷⁸ to lower the barrier for provision of names and to facilitate the process. In order to launch an initiative it is still a requirement to prove that the issue falls under the competency of the European Commission so a degree of technical knowledge is required by the organisers but many of the actual ECI sites have been accessible and user friendly to a non-expert audience.

But are these reforms enough?

In this essay there is a clear summary of some of the ways that the EU institutions can engage with citizens and move towards a Europe governed 'by the people' but there is still a gap between this rhetoric and the reality of the experience of many citizens of Europe, so what more can be done? How far can civil society bodies act as a bridge for people to engage in EU debates?

Firstly, in order to raise awareness and to ensure that people have access to share their ideas, there needs to be greater dissemination of the ways that citizens can hold the EU to account. This could be led by online forums where people can continue to share their priorities and find ways to connect with other people who share their concerns in other parts of Europe. The ECI process is one way to build this debate and civil society bodies should also continue to develop direct campaigns for their members to connect with EU decisions that affect them, such as recent effective campaigns around fishing regulations.⁷⁹

Secondly, some of the institutions highlighted in this essay remain too focused on technocratic discussions within Brussels; it is time for them to be opened up to a wider range of participants. In particular the EESC, if it is to continue to play a meaningful role in the 21st century, it must provide better access to information and develop new ways to gather public opinion on key social and economic issues through a stronger and simpler web presence. The EESC could be renewed as a forum for stakeholders and citizens to come together and share priorities on thematic issues, to include access to research, expert opinions and polls to gather latest views, thereby enabling a much richer and more diverse engagement in EU policy-making.

Finally, the core institutions, such as the European Parliament and European Commission must strive to be more accountable and accessible. For the European Parliament this could include the following reforms: hosting wider public debates such as the AGORA online and in targeted sessions in different parts of Europe linking more closely with national debates; highlighting the opportunity to engage at specific points in the legislative process, with case studies of recent decisions; joint sessions with the EESC and wider stakeholders. For the European Commission this could include the following: directly elected European Commissioners; regular summaries of latest legislation in plain language format; public emphasis placed on role of ECI as a way to enable citizens to participate directly.

Throughout this essay I have argued that the understanding of democratic processes has changed fundamentally in recent years. The EU is not the only body that must adapt to a changing world, but it suffers from a particular risk in that it covers such a broad range of countries and a very diverse range of priorities from its citizens. It therefore requires serious commitment from the decision-makers to open more space for structured dialogue and engagement, otherwise there is a risk that citizens will simply decide that Europe does not listen to them and they could walk away.

⁷⁸ European Commission - Joinup, ECI Online Collection Software, https://joinup.ec.europa.eu/asset/ocs/asset_release/ocs-17

⁷⁹ Fish Fight, supported by Hugh Fearnley-Wittingstall and the Marine Conservation Society <http://www.fishfight.net/>

The Greek crisis: The post-democratic logic in action

Dr. Marina Prentoulis⁸⁰

Introduction

In 2015 Greece was at the centre of the European economic crisis, a crisis which revealed the prevailing logic dominating EU institutions. The Greek crisis, which began in 2010, was an offshoot of the global financial crisis of 2008. It started with the announcement made by the then Prime Minister George Papandreu that Greece would be subject to the lending mechanisms of the Troika (European Commission, European Central Bank, International Monetary Fund). The increasing pressure of the financial markets and the mounting public debt rendered successive Greek governments unable to meet their payments to the country's lenders. In an attempt to avoid the spread of the crisis within the Eurozone and to avert Greek bankruptcy, the EU, the countries of the Eurozone and the IMF intervened with bailouts.

In return, the lenders, adopting the hegemonic neoliberal logic already prevalent within the EU's institutions, demanded the imposition of severe austerity and structural adjustment. The crisis culminated in the negotiations between the Greek government of SYRIZA/ANEL (Independent Greeks) and the Troika in the period between February 2015 to July 2015. Although by then it was clear that the strategy of austerity had failed to rejuvenate the Greek economy and deal with the mounting public debt, the negotiations adopted were exemplary of the post-democratic logic: the suspicion of EU institutions about democratic politics and the desire to submit them to closer regulation.⁸¹

The rise of SYRIZA and the emergence of 'the people'

The disaffection of many of the people of Europe with the austerity policies implemented as a remedy to the inability of the countries of the European South to meet their responsibilities to their lenders and to control their public debt, was first expressed in the indignant protests of May 2011. At the same time, however, these indignant movements, and this is true not only for Greece but Spain too, were more than that. They signaled a convergence of a series of diverse demands⁸² around the issues of political accountability and representation⁸³ at both the national and transnational levels.

The crisis of political representation at the national level led to hostility towards the main political parties that had dominated Greek politics for forty years (ND and PASOK) and opened the way for the electoral victories of new political actors, actors willing to challenge the prevailing neoliberal solutions and the demands of the lenders.⁸⁴ The progressive but rapid accession to power of SYRIZA (Coalition of the Radical Left)⁸⁵ signaled a new phase for both Greece and Europe which went beyond the economic demands and questioned the state of democracy itself.

SYRIZA's emerging power rested on its ability to engage with the indignant movement in Greece and to construct its own discourse that connected the diverse, heterogeneous demands of the protests. From 2012 SYRIZA had been using a populist discursive logic, a logic dividing Greek society between 'us' and 'them', where the 'them' referred to the political forces within Greece that consented to the lenders' demands. SYRIZA became the embodiment of the 'will of the people'.⁸⁶ At the same time, the 'us' and 'them' division extended beyond the borders of Greece, with the 'us' bridging demands of the peoples of countries like Spain and the 'them' posing these people against the European establishment.⁸⁷

⁸⁰ Dr. Marina Prentoulis is a Senior Lecturer in Media and Politics. She joined the University of East Anglia in 2009. She completed her PhD in Ideologies and Discourse Analysis at the Department of Government, University of Essex. She has been involved in contemporary social movements and has been acting as a SYRIZA London spokesperson in 2015. She is one of the spokespersons of 'Another Europe is Possible' campaign. Her article (with Lasse Thomassen) 'Political theory in the square: Protest, representation and subjectification', *Contemporary Political Theory* (2013) 12, 166–184, won the Contemporary Political Theory Annual Prize for 2013.

⁸¹ Colin Crouch (2010) *Post-Democracy*, Cambridge and Malden, Polity Press, p. 23.

⁸² Dimitris Theodosopoulos (2014) 'The Poetics of Indignation in Greece' in P. Werbner et al, *The Political Aesthetics of Global Protest*, Edinburgh University Press, pp. 368–388.

⁸³ Marina Prentoulis and Lasse Thomassen (2013) 'Political Theory in the square: Protest, representation and subjectification', *Contemporary Political Theory* 12:3, 166–84.

⁸⁴ The programme of SYRIZA had four main points: Elimination of the humanitarian crisis in Greece; proposals for the freezing of household debts exceeding one third of the household income; the restructuring of the state dealing with issues of tax evasion and corruption; and finally, rejuvenation of the economy and strengthening of socio-economic rights (i.e. increasing the minimum wage and respect of collective agreements).

⁸⁵ At the parliamentary elections 2009, SYRIZA was the fifth party with 4.6% of the vote. In the parliamentary elections of 2012, it placed second with 26.9%. In January 2015, it placed first with 36.3%.

⁸⁶ Yannis Stavrakakis and Giorgos Katsambekis (2014) 'Left-wing populism in the European periphery: the case of SYRIZA', *Journal of Political Ideologies*, 19:2, 119–142.

⁸⁷ Marina Prentoulis and Lasse Thomassen (2015) 'The winds are changing: a new left populism for Europe', <https://www.opendemocracy.net/can-europe-make-it/marina-prentoulis-lasse-thomassen/winds-are-changing-new-left-populism-for-europe>

The victory of SYRIZA in the January 2015 elections and the formation of the SYRIZA/ANEL government brought the 'will of the people' to the Greece/Troika negotiations. A 'bridging' agreement was signed in February 2015 that enabled the Greek government to receive the last installment of the lending programme, despite the evident hostility of the Eurozone leaders towards the Greek government. The implicit promise was that the democratic mandate of the people would halt the demands of the lenders. Under the pressure of the deadlines of July and August 2015, when Greece would have to pay €6.7 billion and €2.2 billion to the ECB and the IMF respectively, a new round of negotiations started with unprecedented visibility in the European mainstream media.

Post-democracy and neo-liberalism

From the start, SYRIZA had maintained that the negotiations were not an economic but rather a political matter⁸⁸, implicitly questioning, on the one hand, the dominance of technocratic expertise of the EU institutions and the Eurozone, and on the other, the neoliberal logic embedded in this dominance. This is one of the key conditions of post-democracy: 'politics' becomes a game between elected governments (in this case the German government leading the negotiations and the rest of the Eurozone leaders) and elites that work towards the maximisation of business interests⁸⁹ through structural reforms enabling market competitiveness. The demand put forward by the Greek government for a 'political solution' was rejected time and time again, on the grounds of the 'rules' of the EU and the soundness of neoliberal economics. As German Finance Minister Wolfgang Schäuble put it: 'Athens can vote as many times as it likes in favour of a deal that promises, even in the vaguest terms, to write off some of its colossal debts, but that doesn't mean the rules allow it'.⁹⁰

There are a couple of paradoxes around the 'rules' of the EU and the Eurozone, paradoxes that did not go unnoticed by commentators. The first is that the fascination with the rules, rules unknown to the public, is also a testament to how the technocratic expertise is confined to established power centres. The second is that the rules evoked in the case of the eurozone crisis, seem to be interpretations that would support the neoliberal proposals. As one commentator said: 'Many of these rules either do not exist, or they constitute some rather far-fetched interpretation of existing rules'.⁹¹

The negotiations reached their zenith and the lenders issued an ultimatum to the Greek government on June 29th 2015. The Greek government's appeal to the European Stability Mechanism (ESM) to provide liquidity to the Greek banks was also rejected,⁹² and capital controls were put into effect, a move perceived as a cynical attempt by the EU institutions to pressure Greece into submission. At this point, the Greek government evoked the only possible tool available to resist the demands of the EU institutions: namely the democratic mandate of the people and called for a referendum on July 5th 2015. This move was met with rage by the European leaders as was the outcome of the referendum, which overwhelmingly rejected (62% of the vote) the lending agreement proposed by the institutions. Sigmar Gabriel, Germany's deputy chancellor and the head of the Social Democrats, told the Berlin daily Tagesspiegel: 'With the rejection of the rules of the game of the eurozone, which have been expressed with the majority of Nos, it is impossible to imagine negotiations over programmes worth billions'.⁹³

Framing the narratives of the neo-liberal consensus

Post-democracy and the neoliberal hegemony combined to create the hostility towards the political processes that brought 'the people' to the forefront of politics, and the close safeguarding of the 'rules of the game' by technocratic experts. In the first instance, the displacement of politics from the people to experts is legitimised by a set of narrative frames that invoke a disciplinary narrative: expertise is called upon either to treat the 'sick' Greece or to discipline the 'unruly' child before further bad behaviour or illness contaminates the rest of the eurozone countries.⁹⁴ Furthermore, the crisis is individuated and ethicised. Despite the calls of the Greek government for a 'European solution to a European problem', Greece is singled out and a series of frames invoke the stereotypical representations of the European South, all of which accumulate around the Greek case. The dominant narrative is

⁸⁸ The Greek Prime Minister Alexis Tsipras characterised the negotiations in his speech of July 11th 2015 as 'an ideological and political battle'.

⁸⁹ Colin Crouch (2010) *Post-Democracy*, p.4

⁹⁰ Phillip Inman, 'Greece's debt can be written off-whatever Wolfgang Schäuble says', *The Guardian*, July 2015,

<http://www.theguardian.com/commentisfree/2015/jul/17/wolfgang-schauble-greek-bailout-morally-right>

⁹¹ Wolfgang Münchau, 'The make believe world of eurozone rules', *Financial Times*, July 2015, <http://www.ft.com/cms/s/0/e903ad46-3201-11e5-8873-775ba7c2ea3d.html#axzz47USjIDVH>

⁹² The ECB refused the National Bank of Greece of the European Stability Mechanism resulting to the end of liquidity for Greece.

⁹³ Kate Connolly, 'Germany reacts to Greek referendum with anger, puzzlement and solidarity' *The Guardian*, July 2015,

<http://www.theguardian.com/world/2015/jul/05/germany-greek-referendum-anger-solidarity>

⁹⁴ Yannis Stavrakakis (2013) Dispatches from the Greek lab: Metaphors, strategies and debt in the European crisis, *Psychoanalysis, Culture & Society*, Vol 18, 213-224.

one that characterises the Greeks as 'lazy' and 'living beyond their means'. These moral weaknesses serve to explain the structural deficiencies of the Greek state ('the Greek state is oversized') and ultimately to explain the relationship between Greece and other Eurozone countries ('the German taxpayers are saving Greece').⁹⁵

The legitimisation of neoliberal policies depend to a large extent on the language used by the technocratic class. This class seeks to transform the economic sphere into an independent realm above and beyond political action. This realm is ruled by the laws of the market that present themselves as 'common sense'. The overarching frame of 'household' economics ('if you have borrowed too much on your credit card, you will have to cut your expenses until you pay it off') was offered time and again by the mainstream media as justification for the severe austerity proposed by Troika. Despite the conflation of macro- with micro-economics, this framing further enabled the exceptionality of the Greek case, while simultaneously foreclosing any questions around the structural deficiencies of the eurozone. Within this narrative, moral claims around issues of debt, expenditure and investment are reiterated.⁹⁶ Debt and expenditure pointed to failure, while investment (enabled by privatisations and deregulation of the labour market) is seen to lead to a prosperous future.

Conclusion

The Greek crisis and the negotiations that followed exemplify the retreat of egalitarian politics from the EU power centres. This retreat is achieved with the exclusion of politics as the 'will of the people' at national and European level. This is achieved through the domination of technocratic expertise in decision making centres. This technocratic expertise takes on the role of the guardians of the 'rules', rules invented or interpreted in alignment with neoliberal policies.

The challenge to neoliberal policies has to start at the national level first, by voting out national neoliberal governments advocating austerity and second, by electing larger numbers of progressive MEPs to the European Parliament. This will pave the way for a counter-hegemonic discourse at the EU level and will challenge the existing balance of power within the EU institutions. Not an easy task, taking into account that many publics (including the German one) are pushing in the opposite direction, having internalised the narrative that a flawed Greek state and an irresponsible Greek public is impinging on German taxpayers. The implications of these neoliberal narratives in re-enforcing nationalism and prioritising national interests over unity and solidarity cannot be overstated. The blame game of turning the European partners against each other may be putting the future of the union in jeopardy but can be very useful, not only in national politics but also in avoiding questions over the structural deficiencies of the EU and the Eurozone, questions that would lead to the re-evaluation of the neoliberal economic orthodoxy.

Without challenging these narratives at the national level, at the grassroots and at elections, transnational institutions will continue uninterrupted, implementing the same agenda. Something, however, that could have a democratising effect is the direct engagement of European publics with the EU institutions, a challenge to the distance created by the dominance of technocratic expertise.

The European Commission has been the body attracting most of the criticisms labeled as 'undemocratic' and 'unelected'. Although these accusations are often misleading because they ignore the role of elected national governments in appointing Commissioners and the role of the European Parliament in electing the President of the Commission, it does testify to the perceived distance between European people and European institutions. More scrutiny at the national level, before the appointment of a Commissioner and deliberation over his or her agenda could potentially assist in re-introducing the public into this process. This suggestion, by no means new, is one of the ways we could cast 'expertise' to its proper place: assisting rather than substituting for democracy.

⁹⁵ In an oppositional account, one could argue that the state expenditure of Greece (as a percentage of GDP) increased after the crisis of 2008 while between 2000 and 2006 Greek state expenditure decreased from 47% to 43% and during that period it remained lower than the equivalent state expenditure of Germany. Second, the loans for Greece, in particular from Germany, were coming not from tax revenues but were low interest loans from the German government, which in return lent with interest in Greece, a process which ultimately benefited the German taxpayers.

⁹⁶ For a more detailed discussion on neoliberal hegemony, see Doreen Massey (2015) 'Vocabularies of the Economy' in *After Neoliberalism*-

The Juncker Commission and public support for the EU: Doing good or doing the right thing?

Adriaan Schout and Hedwich van der Bij⁹⁷

Introduction

The EU's legitimacy and possibly its existence as a political project are in danger. Last year the Vice-President of the Juncker Commission, Frans Timmermans, admitted that 'for the first time' he believed the European project could run aground.⁹⁸ As the EU is plagued by multiple crises, or even by the perfect storm, it is widely seen as underperforming. To respond to the persistent crises in member states, particularly in Southern Europe, the Juncker Commission is committed to swift and effective actions to prove to the European public that the EU can act, for example by solving the refugee crisis, raising investments and creating jobs. Juncker's diagnosis is that 'trust in the EU is at a historic low' so an ambitious integration agenda is called for.⁹⁹

Yet the EU's permissive consensus can no longer be taken for granted – not even for Juncker's well-intended policies. The increasing number of national referenda on European issues demonstrate either a longing of EU citizens for a bigger say in European affairs or a growing dislike of the EU. This raises the question: for what kind of Europe could there be public support? And how does this relate to the actual course of the Juncker Commission? This article seeks to compare how the EU's legitimacy crisis is perceived by the Juncker Commission and in The Netherlands. It might be that the Commission, and first Vice-President Timmermans, are heading in directions that conflict with Dutch analyses of the EU's deficits and preferred actions.

Recognising the severity of the depth of the EU's legitimacy crisis, Juncker presented his team of Commissioners as the 'last chance Commission'. His mandate would be the last opportunity to restore the confidence of citizens in the European Union. Juncker's promise to restore the confidence of EU citizens is necessary but also ambitious. This article first discusses the attempts of the past few years to regain public confidence (spitzenkandidaten and effective EU policies) and addresses Juncker's vision of the EU's finalité (end goal). It subsequently examines how Juncker's diagnosis of the EU's legitimacy crisis compares to how this is diagnosed by the Dutch government.

The 'spitzenkandidaten' procedure and its consequences

Juncker expected to contribute to the EU's (input) legitimacy by campaigning as a 'spitzenkandidat'. He is the first President of the Commission who publicly campaigned during the European Parliament elections as a figurehead of the European People's Party. A greater role for the Commission President was already foreseen in the Lisbon Treaty. It was hoped that the nomination of a 'spitzenkandidaten' from European party families would lead to sharper political debates and politicisation of the EU.

However, it is questionable whether the spitzenkandidaten has increased public support for the Commission. First of all, during the European elections it became clear that the national political parties campaigned mainly for their own European election programmes. The differences amongst national parties within the political families in the European Parliament proved to be too big to realise an effective joint election campaign. Secondly, the spitzenkandidaten procedure strengthened the connection between the European Parliament and the Commission. This has changed the balance of power between the EU institutions. Where the Council and Parliament still occupy an equal position as co-legislators, the Juncker Commission appears more like a government under democratic control of the Parliament.¹⁰⁰ It is debatable whether this type of European federalisation and centralisation is universally accepted as a way to solve the gap between the EU and its citizens. Rather unhappy with this potential governmentalisation of the EU Commission under the supervision of the European Parliament, as a minister

⁹⁷ Adriaan Schout is Coordinator of EU affairs at the Dutch Institute of International Affairs ('Clingendael') in The Netherlands. Working in different think tanks, he has been able to combine academic research, policy analysis and consultancy, and he has worked as independent expert for national governments and EU institutions. Areas of specialisation include economic governance, EU agencies, European multilevel public management, and Dutch EU policies. At the moment Adriaan Schout is member of the advisory committee on EU affairs in The Netherlands. He has published in the major academic journals and frequently appears in Dutch and international media on Dutch and European politics. His book together with Andrew Jordan *The coordination of European Governance* (Oxford University Press) won the Prize for Best Book in European Integration Studies.

Hedwich van der Bij is a Research Fellow Europe at the Dutch Institute of International Affairs ('Clingendael') in The Netherlands. Her research is focused on European governance and European institutions. In particular, she studies the ambitions of the Commission Juncker, the level of parliamentary oversight on the European Semester and the governance structure of the emerging European border and coast guard. Before Hedwich van der Bij started working as a researcher at the Clingendael Institute in 2015, she worked for two years as liaison officer for the Dutch Labour Party (PvdA) at the European Parliament

⁹⁸ Frans Timmermans, 'Citizens' Dialogue in The Hague', January 2016, http://ec.europa.eu/citizens-dialogues/netherlands/den Haag/index_en.htm

⁹⁹ Opening statement on the approval of the Commission Juncker in European Parliament, October 2014.

¹⁰⁰ Adriaan Schout and Hedwich van der Bij, 'Juncker weet niet wat hij met de EU wil', *Volkskrant*, November 2015, <http://www.volkskrant.nl/opinie/juncker-weet-niet-wat-hij-met-de-eu-wil~a4181557/>

Timmermans pleaded for the strengthening of the role of member states in EU decision making.¹⁰¹ So, in the long run, the beneficial effect of the 'spitzenkandidaten' procedure is questionable.

Swift and effective European action

Juncker has expressed the need to improve the EU's (output) legitimacy by swift and effective European action. One of his operating principles is that the European people are losing trust in the EU. The EU, in his view, needs to solve the European problems at hand, as citizens will judge the EU 'on the basis of its efforts and results, and the improvements they experience in their own lives'. Hence, Juncker wants to increase the EU's output legitimacy. This explains in part the haste with which Juncker has been administering his investment fund (EFSI) and with managing the migration and refugee flows coming through Turkey. The activism of the Juncker Commission is part of the Commission's operating principle that the EU should be big on big things and small on small things. The big things include increasing employment, handling the flow of refugees, and dealing with the call for a European Border and Coast Guard Agency. The small things relate to reducing the regulatory burdens stemming from the EU.

Living up to the expectations of the people is no easy task given the different concerns and the level of distress among European citizens. Some member states have lost confidence in the EU because of a slow economic recovery and high unemployment. While in member states where the economy is doing better, people fear a transfer union in which they have to pay for the cost of member states that lag behind economically. Moreover, countries with a relatively large influx of refugees look to, especially, Eastern European countries to open up their societies to refugees too. Finally, governments feel threatened by European activism and European insistence to reform and cooperate. Hence the EU faces multiple crises of confidence but the extent to which the solutions will be accepted varies from country to country.

The lack of vision on the finalité of Europe

An EU that is big on big things raises the question, what kind of EU is created in the long term when the policies of the Juncker Commission come to fruition? Interviews within the European Commission indicated a focus on 'doing the right things'. But, when asked what these measures would imply for the EU as a political system, i.e. whether it would lead to further federalisation, answers followed to the effect of 'let's not turn practical solutions into philosophical debates'. Yet, Juncker's focus on output legitimacy can have negative effects if it involves integration by stealth. The question is whether the public wants a better EU, whether it wants a less intrusive EU, or whether it wants alternative courses of action.

Juncker has been particularly concerned with the long-term impact of the crises measures on public support. He has been less outspoken about the kind of EU that is being constructed. The Four Presidents Report from 2012 drafted by then President of the European Council (Van Rompuy) is less outspoken than the Five Presidents report Juncker drafted in 2015. Earlier, Juncker compared the measures taken during the euro crisis with repairing a burning aeroplane whilst flying: 'They were successful overall. Yet mistakes were made. There was a lack of social fairness. Democratic legitimacy suffered as many new instruments had to be created outside the legal framework of the European Union'.¹⁰²

It seems his attention is focused on practical solutions while avoiding finalité discussions. Juncker states that he is not a (fanatical) federalist.¹⁰³ On the one hand, he shows understanding for the fears of Member States regarding a European super-state, by promising effective policies on 10 priority areas and less European interference. On the other hand, he actively contributes to the presidentialisation and politicisation of the Commission through enhanced cooperation with the European Parliament. Amidst the policy discussions he is quite silent on the EU's finalité but that does not mean that the Commission (perhaps unconsciously) steers the EU in certain directions. The swift and effective policies Juncker strives for might involve creeping centralisation and backfire when it comes to public support for European integration.

¹⁰¹ Frans Timmermans, Monnet's Europe needs reform to fit the 21st century, *Financial Times*, November 2013, <http://www.ft.com/cms/s/0/346f4ff4-4c82-11e3-923d-00144feabdc0.html#axzz4AQdxlmzX>

¹⁰² Jean-Claude Juncker, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political guidelines for the next European Commission, July 2014, https://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines_en.pdf

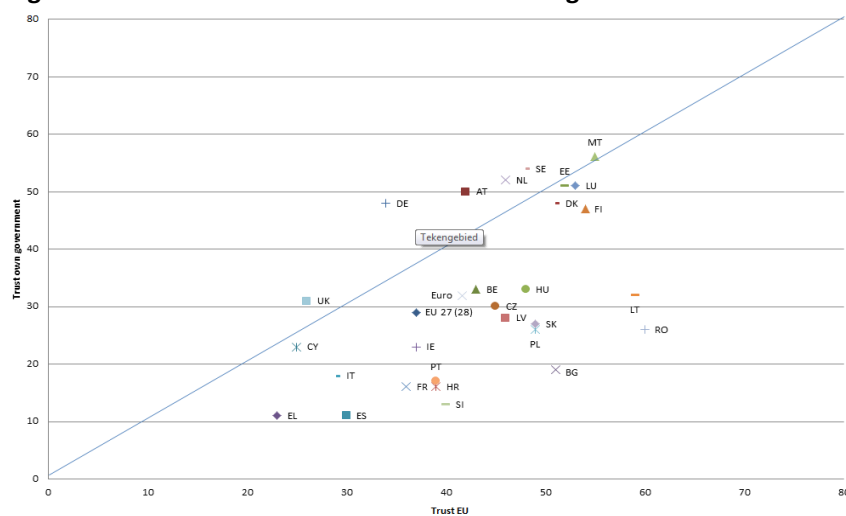
¹⁰³ Euractiv, Juncker tells Parliament Eurosceptics he is no federalist, July 2014, <http://www.euractiv.com/section/eu-priorities-2020/news/juncker-tells-parliament-eurosceptics-he-is-no-federalist/>, and Better Off Out, Juncker calls for an EU energy union while denying he's a federalist, July 2014, <http://www.betteroffout.net/juncker-calls-for-an-eu-energy-union-while-denying-hes-a-federalist/>

Different diagnoses of the EU's legitimacy deficit

The alternative solutions promoted to solve the legitimacy crisis in the EU depends, of course, on how the EU's legitimacy deficit is diagnosed. Juncker's starting point is that the citizens are losing trust in the EU. Hence, his actions primarily concern the EU. This is complemented by explicit references to the causes of the European crises and to the obstacles to solutions. Juncker stressed that the Commission, in 'strong alliance' with the European Parliament, should 'stand up against all attacks' that might come from 'the third institution' - i.e. the member states organised in the Council.¹⁰⁴ According to Juncker, 'the time has come to deepen European integration instead of re-introducing national divisions'. President of the European Central Bank, Mario Draghi, was even more outspoken in emphasising the importance of European solutions when he stated that it was the EU institutions that solved the eurocrisis while the member states were presented as the core problem of the Eurozone. According to Draghi, a rule-based approach to disciplining national governments was bound to fail.¹⁰⁵ Juncker and Draghi seem to regard member states as the core problem and see the EU institutions as solutions.

It is debatable, however, to what extent the EU's crises can be attributed to a lack of European integration. Hence, 'more Europe' might not be the appropriate answer. In contrast to Juncker's focus on European deficits and EU solutions, the Dutch Minister of Foreign Affairs, Bert Koenders, argues that a major cause of the EU's crises may lie at member state level.¹⁰⁶ As shown in Figure 1, in a large majority of member states, people have more trust in the EU than in their own national governments. It is not a lack of integration that is the cause of the problems the EU facing, but weak member states.¹⁰⁷ Whereas, while Juncker wants to increase the trust people have in the EU, Koenders suggests that lack of trust in weak member states is the real problem facing the EU. Lack of trust in national governments has also contributed to a lack of trust in each other's governments¹⁰⁸ and, hence, in the EU as a whole.

Figure 1. Trust in the EU versus trust in national governments¹⁰⁹



Based on this diagnosis, solving the legitimacy deficit in Europe cannot be achieved merely by looking at the EU's actions such as Juncker's investment fund, or measures leading towards deeper integration such as the 'spitzenkandidaten' procedure. The EU may be much less of a problem – and hence not the first place to start reforming. EU member states themselves need to change and win back the trust of their citizens. According to Koenders, 'there is a need to restore confidence in governments and institutions with practical concrete improvements for EU citizens at all levels: European and national'. While Juncker remains vague about his vision for the EU's future, Koenders adds that 'the EU should not take the place of member states'.

¹⁰⁴ Honor Mahony, Juncker: 'Time to deepen European integration', March 2016, <https://euobserver.com/political/128012>

¹⁰⁵ European Central Bank, Speech by Mario Draghi, President of the ECB at Frankfurt am Main, March 2015,

<https://www.ecb.europa.eu/press/key/date/2015/html/sp150316.en.html>

¹⁰⁶ Bert Koenders, Keynote speech of the Dutch minister of Foreign Affairs on the European Union' SIB Leiden, March 2015,

<http://www.sibleiden.nl/activiteiten/verslagen/verslagen-2014-2015/speech-minister-koenders/18>

¹⁰⁷ For more graphs and correlations between trust in the EU and the weakness of member states, see Schout 2015.

¹⁰⁸ Armingeon, K., B. Ceka (2014), The loss of trust in the European Union during the great recession since 2007, *European Union Politics*, Vol. 15(1) 82–107

¹⁰⁹ Source: Adriaan Schout (2015), 'Europa zonder lidstaten: Europa's eigen inconvenient truth', *Internationale Spectator* 2015 69\6.

Conclusion

There seems to be a big difference in the way the Juncker Commission and the Dutch government diagnose the EU legitimacy crisis. In any case, it might be helpful if Juncker would elaborate on how he sees the role of the member states in a future EU. His emphasis on proving the EU's added value with effective EU policies would probably be more convincing if it were complemented with a more in-depth diagnosis of the root causes of the various crises and with a substantial discussion of the EU's finalité. Even the impression of the creeping centralisation of the EU (perhaps unintentionally) caused by Juncker's election as the President of the Commission or steps towards more ambitious EU policies may erode trust in the EU. Moreover, if the diagnosis shows that the root causes lie at the member state level rather than at EU level, then actions should focus primarily on national reforms. With better member states, 'more Europe' might not be needed and deeper integration could be a type of 'European by default'.¹¹⁰ Juncker recognises the severity of the legitimacy deficit and has tried to solve it with his 'last chance Commission'. Although his activism is admirable, he might also risk the Commission biting its own tail. It is time Juncker is explicit about root causes and about the EU's finalité.

¹¹⁰ Schout (2015).

A tale of two referendums

Professor James Mitchell¹¹¹

There are key differences and similarities between the Scottish independence referendum and the European referendum. Internal party management was the motive for holding each referendum, at least initially of the Scottish independence referendum.

The SNP leadership initially proposed a referendum on independence in an effort to 'park' the issue as it sought to become the governing party in Holyrood, though the SNP and wider movement eventually embraced the opportunity to debate independence.¹¹² The logic was that the party would find it easier to attract support amongst those who opposed independence but might otherwise look upon the SNP favourably. David Cameron initially urged his party to 'stop banging on about' Europe but ultimately gave in to pressure and agreed to hold a referendum.¹¹³

In each case, winning an overall majority in their respective Parliaments put each leader on the path to a referendum. But there was a key difference. Alex Salmond wanted independence while David Cameron opposed withdrawal from Europe.

Each referendum offered the electorate a binary choice. Salmond had pushed hard for a third option – this gambler wanted to hedge his bet – but this was opposed by the Prime Minister. There was never any prospect of a third option on the ballot paper in the European referendum. There was no pressure for an 'ever closer union' option nor even the option of the UK relationship with the EU before Cameron's renegotiation.

Cameron took those committed to the EU for granted and sought a deal that could be presented as a compromise, aiming to appeal to soft Eurosceptics. In each case, what was being discussed were complex relationships but framed (at least on the ballot paper) in simple binary constitutional choices. Middle ground opinion would determine the outcome of each referendum and in each case that middle ground could not be taken for granted.

Expectations were that the Scottish and EU referendums would be raucous adversarial affairs, generating lots of heat but little light, conforming with Finer's adversary politics thesis, which viewed UK politics as a 'stand-up fight between two adversaries for the favour of the lookers-on'¹¹⁴ but a poor substitute for deliberative politics.

In the event, the Scottish referendum was indeed a raucous, heated affair and the debate at national level conducted in the conventional media conformed to expectations. But what surprised commentators was the extraordinary level of activity beyond the media spotlight that proved very different. Televised debates and the familiar features of electoral contests shed little new light on issues. But in village halls, streets and everyday conversations, the referendum proved an opportunity for a democratic renewal. This unintended consequence had been unplanned – indeed that was its strength – and uncontrolled. Issues were debated that were almost limitless in their scope. The question on the ballot paper was an opportunity to discuss more than Scotland's constitutional status but also the nature of Scottish society and economy. Voter registration and turnout increased. It was not simply that 85% of registered voters turned out to vote but estimates suggest that 97% of the eligible electorate were registered to vote.

By contrast, the EU referendum has been less animated, framed more narrowly and there has been less evidence of that vital activity at local level. There has been little discussion of the kind of Europe envisaged on either side. The short campaigning period has not helped. The EU debate has played second place to devolved elections, at least in Scotland. For every EU referendum piece of campaign literature and poster there have been numerous for the Scottish Parliament elections.

Language is important and the constitutionalist terms conspire to limit debate. The Scottish debate may have broken free of the limiting language on the ballot paper. 'Project Fear' was an obvious part of the campaign but the

¹¹¹ Professor James Mitchell holds the chair in Public Policy and is Co-director of Edinburgh University's Academy of Government. His most recent books include *The Scottish Question*, published by Oxford University Press in 2014 and (with Rob Johns) *Takeover: the extraordinary rise of the SNP*, published by Biteback.

¹¹² R. Johns and J. Mitchell, *Takeover: explaining the extraordinary rise of the SNP*, London, Biteback, 2016, pp.180-182.

¹¹³ P. Cowley and D. Kavanagh, *The British General Election of 2015*, Basingstoke, Palgrave Macmillan, 2016, pp.12, 49-51.

¹¹⁴ S.E. Finer (ed.) (1975), *Adversary Politics and Electoral Reform*. London, Anthony Wigram, p.3.

referendum created a space for purposeful opportunists to insert themselves into the debate in a way that has been absent in the EU debate. A notable example was the *Our Islands Our Future* initiative of Scotland's three islands councils who used the referendum to argue the case for more autonomy for the islands. This campaign forced both UK and Scottish Governments to make concessions to the islands.

Moreover, while independence may have been debated in the referendum, what this means has not remained static. The independence white paper issued by the Scottish Government outlined a vision of independence that would have been anathema to many SNP members a generation ago. As the EU referendum demonstrates, there are different understandings of independence. The SNP argued for a shared currency across the UK and envisaged cooperation across a range of matters. Indeed, supporters of Brexit (and indeed some supporters of Remain) in the EU referendum have adopted a more purely nationalist position than the SNP did during the independence referendum as far as the currency is concerned. The use of the 'I' word has been the most consistent message in the SNP's constitutional debates. Similarly, what is understood by European integration is contingent.

The two referendums have one important common feature. Neither can resolve the question definitively. Even had Scotland voted for independence or the UK votes to leave the EU, relationships at the heart of these debates will continue to evolve. The tendency to assume that independence or Brexit involves a clean break, cutting Scotland/UK loose from its neighbours has been implicit in much rhetoric by some on both sides in each referendum. Whether presented as leaving Scotland/UK isolated or offering a new clean start, such notions ignore the inevitable continuities and challenges. The reality, as many involved on both sides and in each referendum appreciate, is more complex. In each case the relationships would be fundamentally altered by a vote for change but relationships would still exist.

The one-dimensional understanding of the referendum, encouraged by the question on each ballot paper, suggested and suggests a straightforward choice: independence or union; remain or leave. Understood from a public policy perspective, however, these referendums throw up a range of issues. The absence of nuance on the ballot paper prevents a debate on which matters should be determined where.

This is evident in the relationship between the issues at stake in the two referendums. Each side in the Scottish referendum assumed that membership of the EU was in Scotland's interests and sought to portray its opponents as threatening that membership. An independent Scotland, maintained *Better Together* campaigning for the UK union, would be excluded from the EU while *Yes Scotland* maintained that the prospect of an EU referendum made EU membership uncertain.

The prospect of Brexit while Scotland votes to remain in the EU now raises the possibility of a second referendum. This highlights not only the lack of finality but also the complex relationships involved. The Scottish referendum was not only about relations between governments in London and Edinburgh and indeed even those are complex multi-faceted relations.

The EU referendum's impact on the Scottish Question has been the subject of much speculation. The most widely discussed is the likelihood of a UK vote for Brexit while Scotland voting to remain in the EU. It has been suggested that this would provoke a second referendum and indeed supporters of independence impatient for a second referendum will argue for this. The most likely result of such a scenario would be to deepen the sense of divergence between Scotland and the UK. Whether this would translate automatically into increased support for independence and if so by how much is unclear. Polls suggest this would give around a 5 per cent boost in support for independence. But there are reasons to be cautious. Answers to hypothetical questions need to be treated with care. Public opinion will depend on a number of factors that are difficult to predict at this stage. The reaction to the result will be crucial. It is conceivable that this 5 per cent increase might not materialise, might be short lived or, over the long haul, might only be the start of much greater support for independence based on a growing perception of divergence allied with a sense that Brexit has been against Scotland's interests. It is unclear how Scots might react to a choice of unions. Much will depend on what happens after a vote for Brexit.

But there is another scenario that looks possible. If the UK narrowly votes to remain in the EU, particularly on the strength of support in Scotland and London, then the issue of EU membership will remain at the forefront of UK

politics. This scenario would ensure that both the EU and Scottish questions would remain entwined and create many headaches for the government in London.

Supporters of Brexit are unlikely to be humiliated by the result of the referendum. A humiliating defeat seems the only scenario in which the issue of EU membership would be removed from the forefront of UK politics. Even then, the importance of the EU will ensure that it remains a key issue.

Cameron may have repeated the mistake made when he conceded to a Scottish referendum in assuming that the EU referendum would close the issue, and instead find that it casts a long shadow. The referendum will only strengthen the UK's reputation as an 'awkward partner', as described by Stephen George over quarter of a century ago.¹¹⁵

Another EU referendum in the not too distant future then becomes a real possibility and the prospect of the EU disappearing from the agenda of UK politics is difficult to imagine. In such a scenario, the prospect of a second Scottish independence referendum in the near future increases if Europe continues to dominate UK politics.

Whatever happens, neither the Scottish nor European questions can be resolved in a single referendum. The fundamental issues at stake have been debated over decades. Relationships evolve and they are context dependent.

In 1999, the Labour Party in Scotland argued that, 'Divorce is an expensive business. It won't be a trial separation with the SNP.' The binary notion of relationships - married or divorced - is as old fashioned in relations between polities as it is in personal life. Marriages come in a variety of forms and evolve over time just as membership of the EU is neither uniform nor static, as with Scotland's relations with the rest of the UK. Referendums, however, are not devices that encourage nuanced understandings of the complex nature of relationships.

¹¹⁵ Stephen George (1990), *An Awkward Partner: Britain in the European Community*, Oxford, Oxford University Press.

Conclusion

Adam Hug

The EU's advocates in the UK referendum debate have for the most part left the debate about its democratic legitimacy and sovereignty to its detractors, focusing instead on what Europe does rather than what it is and how it works. For the most part this is a tactical assessment of what they believe to be most salient to voters but it is also perhaps a recognition that the mechanisms of EU accountability are not easily reducible to simple bite-sized campaign messages and that there remain some fundamental challenges which are at best a work in progress, at worst likely to be intractable. Time will tell whether this is the right strategy or not in the context of the UK debate, however the issues of institutional legitimacy across the EU will not go away whether in Britain or elsewhere, particularly while citizens are feeling disenfranchised and distrustful towards the political class in general.

As James Mitchell argues, the UK's referendum on EU membership has not had the same educative impact on public understanding as its, much longer and deeper, Scottish counterpart. Indeed, as he points out in the context of Holyrood, for many of the political parties the EU debate has played second fiddle to devolved elections in Scotland, Wales, Northern Ireland and London, and to some extent to English local elections. Whatever the UK referendum campaign has delivered in terms of public education about policy issues, it has done little to educate the British public about the mechanisms of how the EU actually works and how citizens can directly influence its behaviour. This is something that has the potential to negatively impact long-term public understanding if Britain remains a member, or indeed forms a different rules-based relationship with the EU outside of membership after June 23rd 2016 or in the longer-term.

As touched upon in the introduction and contributors essays, there are a range of different concerns that are seen to impinge on the democratic accountability of the European Union. The role of the European Court of Justice (ECJ) remains a matter of increasing concern both to defenders of national sovereignty, but also to those who see the Council, Commission and the Parliament as the EU institutions that should be the primary arbiters of the scope of EU law.¹¹⁶ In the past UK governments of different persuasions have championed the court as the defender of the single market, but the mood has clearly shifted. There is clearly public, and media, sentiment against the idea of judicial overreach, be it from the ECJ or from non-EU institutions such as the European Court of Human Rights. Partially in response to this, Chalmers suggests in his essay the development at a national (UK) level of a constitutional council (perhaps with some similarities to the German Constitutional Court) that would have the ability to consider disapplying certain areas of EU law and ECJ rulings in response to input from Parliament or citizens' petitions, but with due regard to the potential impact on other member states and certain areas of fundamental rights. As well as considering such mechanisms, further work needs to be done to show how the EU's political institutions respond to contentious court interpretations that are seen to exceed the parameters initially intended by the framers of the legislation.

A fundamental tension at the heart of the Greek crisis placed the demands of the publics in creditor countries (such as Germany) for debt repayment in opposition to the clearly expressed democratic will of the people of Greece about their economic choices. As Prentoulis touches upon earlier in the publication, the imposition of neo-liberalism from the 'centre' is the result of centre-right political dominance in member states that shapes the beliefs and approaches perused by EU institutions. It provides a pretty graphic depiction of enduring problems where national majorities are in the minority at a supranational level, an issue that potentially plagues all international institutions. From the perspective of an external observer of the approach of the 'Troika' on telling Greece *how* the newly elected Syriza government should fulfil its debt obligations, enforcing neoliberal orthodoxies about what would be the best way to ensure repayment, rather than debating *whether and when* it should pay is key.¹¹⁷ The latter question is perhaps one of economic justice and policy, the former is about democratic accountability and the ability of member states to maintain democratic control of their economies.¹¹⁸ The Greek crisis highlighted the seeming consensus to impose austerity at a national and European level in response to the

¹¹⁶ The example of the Posted Workers Directive is illustrative about some of the democratic challenges the EU faces. In a series of rulings, notably Viking, Laval and Ruffert in 2007-2008, the ECJ was seen to apply Treaty law to implement limitations on the operation of the Posted Workers Directive that went beyond the scope intended in the legislation. A number of attempts have been made to address the issue, however currently the Commission's draft is facing the application of a 'yellow card' from national parliaments in Central and Eastern Europe, keen to protect their workers comparative advantage. See for example Georgi Gotev, National parliaments invoke 'yellow card' in response to revised Posted Workers Directive, EurActiv, May 2016, <http://www.euractiv.com/section/social-europe-jobs/news/national-parliaments-invoke-yellow-card-in-response-to-revised-posted-workers-directive/>

¹¹⁷ Despite an extremely patchy record of achievement elsewhere in the world this economic medicine had been administered.

¹¹⁸ Had it been outside the Eurozone, the IMF would have tried to impose similar conditions but Greece would have had greater options for a sovereign default.

euro crisis that has helped to revitalise the eurosceptic left across the continent, intermingling democratic legitimacy and economic concerns. As Prentoulis points out, part of the way this needs to be challenged is through the exercise of politics within member states, winning elections for alternative national platforms that can help build an alternative majority within the Council and reshape the frameworks within which the EU institutions operate.

Pan-European solutions to questions of democratic legitimacy, whether in the Commission or the Parliament, will not respond to such concerns for a British audience, or indeed for other countries in Europe seeing rising opposition to the EU. There are a number of positive things that can and should be done at a European level, as discussed in this publication, particularly by Wood and Henman, to improve public and stakeholder engagement in what the EU does. However, attempting to further artificially build a European demos through the transfer of powers or electoral initiatives at the 28 members level is unlikely to provide the right response to the rising mood amongst European publics.

The answer, for this editor at least, remains strengthening the national pillars within the EU. This is not because, across the EU as a whole, member state governments and parliaments are more trusted, indeed as Schout and van der Bij show, in many member states they are less trusted than EU institutions.¹¹⁹ What strengthening the role of national democratic input can do, is bring elements of decision-making to levels at which the public has a greater understanding, in broad terms, and that is key here. It is the principle of strengthening national accountability rather than deep reverence for the Westminster Parliament (or other national parliaments) or interest in the mechanics of how this is achieved, which might help give citizens more reassurance that they can exert influence on EU decision-making at the level of their own country if they so wished. If member states are able to find ways to improve public trust in their national institutions, this is likely to also have a positive impact on trust in their ability to impact EU decisions and potentially improve trust in the EU as a whole.

Chalmers' suggestion of involving national parliaments at the initial stage of the development of directives could have a positive impact on the idea of member states being able to shape the development of legislation from the outset, and also in using the educative and scrutiny function of domestic parliaments discussed in Buller's essay to raise public awareness of EU legislation within member states. Chalmers' idea of giving national parliaments a potential 'green card' to initiate legislation¹²⁰ also has merit, as indeed would more clearly showing that the Commission's current sole role in the instigation of legislation is on the basis of delivering objectives set out for the EU by elected politicians. As discussed in a recent Centre for Policy Studies paper by the Chair of the UK Treasury Select Committee Andrew Tyrie MP, there is a need to strengthen the mechanisms for monitoring and enforcing the principle of subsidiarity – that decisions are taken at the appropriate level closest to the citizen within the EU.¹²¹ Tyrie suggests a number of measures to strengthen the role of national parliaments but also the creation of an EU Subsidiarity Council, under the auspices of member states but operationally independent of governments, to rule on potential encroachments on subsidiarity. While both Tyrie's subsidiarity proposals and Chalmers' constitutional council provide potential benefits in terms of national accountability and flexibility and should be strongly considered, it should be noted that they would bring more experts into a process already seen as being overly technocratic, at a time of distrust in expert interventions, so such bodies would have to work hard to win public trust.

Different authors in this collection have differing perceptions on the importance of input and output legitimacy. In the current political environment the EU has to be able to find a way to improve both, a do 'what works' technocratic approach is increasingly seen as detached from public 'ownership' of the process and unresponsive to popular will. However, it is also because particularly on some of the bigger issues of our time, from the Eurozone to the migrant crisis, some of the solutions have not been seen 'to work' for a wide enough group of people and the traditional institutions at both national and EU level have been seen to be struggling to cope with the range of pressures. As Schout and van der Bij discuss, concerns about the Juncker Commission's focus on output legitimacy (i.e. being successful in responding to the big issues), risk becoming a framework for creeping federalisation or Europeanisation without the fully informed consent of member states and their peoples. Whether the decision to

¹¹⁹ Albeit EU trust ratings are somewhat more abstract than national level findings.

¹²⁰ Indeed such a mechanism in the UK might give Parliament (rather than the government) a greater role in initiating legislation at a European level rather than it does domestically.

¹²¹ Andrew Tyrie MP, Ending the ratchet - From ever closer union to a two way street, September 2015, <http://www.cps.org.uk/files/reports/original/150916131416-endingtheratchet.pdf>

respond to an issue at a European level is seen as a 'price worth paying' in terms of limiting the role of national democratic structures will not only be determined by the effectiveness of the outcomes (and the level of credit the EU receives for them) but also on showing that the 'inputs' are as transparent and democratically accountable as possible.

As an organisation with a huge number of different moving parts, varied interests and objectives, and competing desires about how it should develop, from and from within its member states, there will always be tensions and concerns about the EU's democratic accountability. For some, including some of those contributing to this publication, any attempt to improve EU democratic legitimacy is unlikely to fully resolve these inherent tensions and therefore member states should withdraw from the Union. Ultimately, sovereignty pooling to achieve agreed common goals will always require some limits on individual national action and immediate democratic accountability, but as long as the member state retains the ability to choose to withdraw from the club if it no longer agrees with the rules, that sovereignty is loaned not given away. This publication shows a number of ways in which the EU can continue to be reformed to become more accessible and accountable to its citizens and its constituent member states. Time will tell whether such incremental and sometimes technical reforms can make a difference against the headwinds of a global lack of trust in traditional institutions and sources of authority. However, if the EU is to have longevity, whether or not the UK is a member, it needs to do what it can to find ways to engage a wider pool of citizens directly and work with member states to develop new mechanisms for more local accountability.

Recommendations

A number of possible ideas for reform emerge from the contributions put forward in this publication.¹²² These include:

- Involving national parliaments at an early stage in the development of EU legislation, strengthening the educative and scrutiny role of national parliaments on European issues, further developing the yellow, orange and red card subsidiarity warning systems and enhancing their role in final EU decision making. Further exploring ideas such as Damian Chalmers' proposal of a 'Green Card', whereby one third of national Parliaments combined could propose new laws.
- Exploring at a national level the development of mechanisms that could potentially disapply or limit the application of certain EU laws, following input from national parliaments or the public, provided that changes do not substantially impact other member states without consent.
- Considering the creation of new mechanisms at an EU level to provide independent scrutiny of the application of subsidiarity and prevent creeping Europeanisation without the express consent of member states, such as an EU Subsidiarity Council watchdog.
- Reconsidering the emerging common 'spitzenkandidaten' process for selecting the Presidency of the Commission given its reduction in power for member states.
- Re-examining the domestic election processes for the European Parliament and adopt measures to strengthen consultative links between the European Parliament and member state Parliaments.
- Reforming and reinvigorating the EU's structures of consultation and stakeholder engagement. This could include reconstructing the European Economic & Social Committee to involve the election of representatives from within its constituencies, refreshing European Parliament Agora and Citizens consultations and better integrating the European Citizens Initiative with national petition systems. Improving the production and dissemination of simplified, issue based information (in 'plain English' and other languages) about EU consultations and initiatives could help facilitate awareness raising by campaign groups.

¹²² Not all contributors may subscribe to all the suggestions put forward here.

Europe and the people: Examining the EU's democratic legitimacy examines the concerns across Europe around the democratic legitimacy of EU institutions and the European project as whole. It looks at how the debate about EU democratic legitimacy fits within the broader context of a crisis of institutions at both the national and global levels, particularly in the wake of the 2008 economic crisis. The publication explores the mechanisms through which EU institutions seek to gain democratic legitimacy and how they seek to engage the public, comparing and contrasting with other organisations at the national and international levels. It places the debate around European democratic legitimacy within the context of the UK referendum on EU membership, as well as the fallout from the Greek debt crisis. It sets out ideas for potential improvements for how the EU operates to increase its democratic legitimacy and accountability but recognises some of the challenges that will persist irrespective of efforts to reform.

This publication contains contributions from: Dr Jim Buller, University of York; Professor Damian Chalmers, LSE; Oli Henman, Civicus; Dr Victoria Honeyman, University of Leeds; Adam Hug (ed.), Foreign Policy Centre; Professor James Mitchell, University of Edinburgh; Dr Marina Prentoulis, UEA; Adriaan Schout and Hedwich van der Bij, Clingendael; and Dr Matthew Wood, University of Sheffield.

First published in June 2016 by
The Foreign Policy Centre (FPC)
Unit 1.9, First Floor, The Foundry
17 Oval Way, Vauxhall,
London SE11 5RR
www.fpc.org.uk
events@fpc.org.uk

© Foreign Policy Centre 2016
All rights reserved
ISBN 978-1-905833-31-3
ISBN 1-905833-31-8

£7.95

The Foreign Policy Centre

