

EU Institutional Governance: Exploiting the Potential for Democratic Reform

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This contribution bites off more than it can possibly chew, by aiming to raise questions of institutional governance in the EU, and discuss the potential to inject the system with a greater measure of democracy than is in store there currently. Alexandrian Libraries could be filled with the amassed publications on this topic, so that any attempt to engage in a complete survey would be doomed to failure from the very beginning. As a starting point, it is perhaps better to take our cue from the rather common complaint that citizens have so far been insufficiently involved in the process of European integration, while the sphere of decision-making that is perceived as enjoying a maximum of popular legitimacy, the nation-state, has been steadily eroded. Allegedly, the current financial, migration and geopolitical crises created a perfect storm, placing further dents in the general support for the Union and its policies – though it should not be overlooked that commentators pointing in this respect to ‘record levels of distrust’ usually fail to mention that the numbers are rarely more positive for domestic institutions (and often even worse). Nevertheless, it seems that in several quarters the pressures have truly reached a boiling point, with referendums being staged or advocated in various countries, as if to compensate the people for the earlier diminution of power. Simultaneously, it is wondered with ever greater frequency whether the Union, in its present form, can be redeemed at all – some even arguing that one may be

vehemently pro-Europe, and then (by necessary consequence) *anti-EU*.

To be sure, quite a bit of the criticism is well-deserved, and already decades ago, the ‘democratic deficit’ became a staple of academic discourse. Certainly, only few can be expected to fathom the convoluted interplay between the Commission, the Council and the Parliament, so different from the separation of powers concept that many prefer to cling to. Moreover, the role played by the European Council, the Court of Justice, the European Central Bank and an increasing number of agencies reinforce the sentiment that traditional (national) forums are easily bypassed, sovereign governments emasculated, and civil society actors marginalised. Formally, the Treaties declare that the functioning of the Union “is founded on representative democracy” – yet in the eyes of its critics, it poses a threat to precisely the latter. Most jarringly indeed, the polymorphous character of the EU’s legislature and executive arm renders voters unable to make use of their classic prerogative to “vote the scoundrels out”. Adding insult to injury, the 751 elected representatives still hardly manage to place their stamp on the decisions made, and the overall course plotted. In essence, unaccountable officials continue to determine the overall heading, at arcane summits and in obscure back-rooms.

Even in such random, visceral accusations, there thus remains an element of truth; and contrary to what is often assumed, no amount of communication is likely to dispel the predominant negative impressions, let alone the outright hostility that has taken root. Targeted action is required instead, and tangible adaptations. Happily, a number of schemes can be identified that have recently been deployed to this purpose. With some adjustment, it is contended here that they are, in due time, bound to further the cause of democratic change.

The Spitzenkandidaten venture

As witnessed in 2014, the all-new way of installing a new European Commission entails a pre-selection by political families of suitable candidates; debate and discussion as appropriate; and then the heads of state and government of the various Member States eventually anointing the person whose party has emerged triumphantly in the European Parliament elections. The subsequent hearings with the individual candidate-members and election of the Commission as a whole have brought additional transparency, oversight and accountability that can only be applauded. This new and refreshing approach came however with the big risk of politicising the most important supranational institution – traditionally regarded as fair, neutral and independent – potentially sparking ideologically motivated resistance from national governments. So far, no such negative consequences have materialised, though with its recent controversial proposals on balancing budgets, redistribution of refugees, and reprimanding of Hungary and Poland, the Commission may have moved somewhat closer to the brink. It would therefore be advised to hark back to its predominantly technocratic role as guardian of the Treaties, avoiding the merest semblance of partiality. For that reason also, overly creative solutions and all too dashing enforcement actions are perhaps better mitigated or reconsidered, leaving the other institutions the

choice to pull the reins whenever possible.

‘Transnationalising’ elections to the European Parliament

A much older, but still more tentative proposal pertains to a reform of the European Parliament’s electoral base, enabling citizens to vote for any of the participating parties in the country where they go to the polls. If they wish, they could thus decide to back a candidate running for a seat in another Member State, a proposal which is believed useful in breaking the unhelpful nexus between national and European politics. Rather, in this setup, candidate MEPs are free to seek (and obtain) the approval of multitudes that do not reside in their constituency of choice, but will in turn be forced to broaden their agenda. On the one hand, this is likely to improve the extent to which voters believe themselves to be represented, and the sense of demos across borders. On the other, due care should be taken that this dilution of the electorate does not produce a too distorted picture of the composition of the body politic. It appears sensible then to only create the possibility for casting a vote in favour of a candidate standing in another Member State for a seat that is also allocated to that Member State.

The European Citizens’ Initiative

Since mid-2012, it has become possible to prepare, organise and submit a so-called European Citizens’ Initiative (ECI), which may eventually lead to the adoption of a new binding legal act by the EU legislature. As a result, alongside the Member States and the institutions, a specific place has now been carved out for ‘the people’ on the supranational plane. The novel instrument reveals with unprecedented clarity which ideas loom under the surface, and what positions can count on grassroots support across the Union. Moreover, it is conducive to the development of a common *espace public*. For sure, the first experiences have not been all that cheerful, with intended campaigns being shot down before launch by the Commission, or entirely failing to

persuade the latter to take follow-up action. Out of spite, the ECI been disqualified as a 'dressed-up right of petition', but such remarks overlook the fact that petitions are to be addressed to the Parliament, an institution with no right of legislative initiative. Also, an ECI attracts greater visibility, is for legal and practical reasons more difficult to suppress, and does not require the applicants to demonstrate that they themselves are directly concerned. This experiment in direct democracy therefore deserves more credit than it has received so far – though it will need to actually start delivering quite soon.

There is no denying that Rodrik's famous trilemma, originally devised for the globalised world order, applies wholly and immediately to the EU: it is impossible to pursue democracy, national sovereignty and economic integration at the same time. If the goal is to deepen integration, either national sovereignty or democracy are bound to suffer. If democracy is to be maintained, either the national sovereignty or economic integration is to be sacrificed. If sovereignty takes pride of place, a choice has to be made between democracy or further economic integration. The trade-off can never be avoided altogether – but as briefly outlined above, democracy and integration may yet go hand in hand in a polity that, already long ago, consciously decided to relegate the third value in the equation.

On that footing, in the past sixty years, EU institutions acquired tremendous governance powers. Originally, input legitimacy was weak, and intentionally so. This gradually improved, while a concomitant increase took place in output legitimacy (widely cherished benefits in terms of e.g. economic growth, consumer protection, or quality of the natural environment).

Today, the key institutional challenge might very well reside in combining genuine input with throughput legitimacy; by fomenting additional procedural pathways, stimulating an ever greater number of people to participate, guaranteeing transparency in decision-making, and convincing the participants that their voices are heard. The foregoing however remains premised on the broad acceptance of a curtailed national sovereignty. If the earlier consensus on that principle were to evaporate, the Union could ultimately find itself beyond redemption indeed.

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Further reading:

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