DEMOCRACY AND LEGITIMACY

Taking Back Control

Demoi-cracy, Differentiation and the Role of National Parliaments

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'Vista del fòrum romà', Giovanni Paolo Panini (1747). Font: The Walters Art Museum, Baltimore

The Brexit referendum was won on the slogan ‘taking back control’. The resonance of this slogan with British voters could be seen as confirming the longstanding complaint regarding the EU’s democratic deficit. Yet, shifting democratic authority away from National Parliaments to the European Parliament might likewise be seen as a loss of control so far as the various peoples or *demoi* of the member states are concerned. After all, similar reasoning has led national minorities within many of these states to voice demands for greater devolution of democratic authority and even secession. At the same time, in an interconnected world how far democracy can be realized in one country has become increasingly doubtful. The EU and its member states confront a dilemma, therefore – one that paradoxically the very formation of the EU was in part designed to resolve. On the one hand, interconnectedness renders it necessary for states to form multiple agreements with each other. Only then can their citizens, albeit through their elected governments, have any

prospect of exercising some control over their inevitable interactions. The EU simply takes this unavoidable process a step further by forming a more comprehensive set of agreements among its member states. On the other hand, this situation poses multiple questions relating to the most appropriate locus of democracy. For example, can it remain possible for the citizens of these states to remain as in control as before once these agreements are in place? Is the only solution to place the citizens of the various states in direct control of the system of agreements? Yet, if so, how can that occur without these citizens losing control as a self-governing people of a particular state?

In what follows, I shall argue that this dilemma can be resolved by seeing the EU as an association of democratic states, in which their agreements reflect the normative requirements of a two-level game. To do so, these agreements must meet the dual conditions of being both mutually negotiated and consented to by their duly elected governments and endorsed by their respective citizens. This account conforms to the arrangement that Kalypso Nicolaidis [1] has termed *demoi*-cratic. In other words, it conceives of the EU not as a *demos*-cracy in the making but as a form of co-governance by different demoi in which they exercise mutual control. Within such a system, the main problem is not that of a democratic deficit at the EU level but of what could be called a demoicratic disconnect [2] between the various national groupings of citizens and EU decision-making at the member state level. Reconnecting the national demoi to EU decision-making involves enhancing the role of national parliaments rather than the European Parliament. This may lead to a more differentiated process of integration, yet that may be both more equitable and effective than promoting uniformity at the expense of diversity.

From *Demos*-cracy to *Demoi*-cracy

The basic problem outlined above can be formulated in terms of what Dani Rodrik has called ‘the fundamental political trilemma of the world economy’ [3]: namely, the impossibility of simultaneously achieving democracy, national self-determination, and economic globalization – one of these has to give [4]. As he explains, ‘If we want to maintain and deepen democracy, we have to choose between the nation-state and international economic integration. And if we want to keep the nation-state and self-determination, we have to choose between deepening democracy and deepening globalization’ [5].

Given most (if not all) people regard national autarky as a non-starter, and unregulated free global markets unjust as well as likely to be inefficient and prone to failures, many have concluded that the only answer is to give up national self-determination and subsume national democracy and citizenship within some broader scheme for global democracy. Most federally-minded Europeans adopt this line of thinking, regarding the development of supranational democracy at the EU level as the first stage in such a process [6]. However, the concern with the EU’s democratic deficit enters at this point, with Europhiles joining in an unholy alliance with Eurosceptics to argue that in many core areas decisional authority has passed upwards to Brussels without adequate democratic oversight. By and large, proposals for addressing this alleged deficit have turned on the practicality and justifiability

of enhancing the powers of the European Parliament (EP) and electing the Commission, be it directly or indirectly, and invariably get linked to arguments for further political integration. Unsurprisingly, the main counter-arguments have mirrored this reasoning. They come from those opposing the justifiability of the integration process on democratic grounds. These critics regard the shift of political authority from national to European political structures as at best diluting the democratic influence of each individual voter, and at worst indefensibly undermining the self-determination of sovereign peoples. Such arguments suggest that the EU could never be democratically legitimate —indeed, that further empowering the EP or electing the Commission might deepen rather than lessen the democratic deficit.

These concerns are further buttressed by the fact that the EU has the promotion of economic globalization largely hard-wired into its constitutional structure [7]. Initially, at least, the integration process was also deliberately pursued in non-democratic ways, in part to avoid potential resistance from the different demoi of the member states [8]. Meanwhile, the rights that came to be associated with Union citizenship were largely tied to mobility and the exercise of the economic opportunities provided by the single market. As a result, they were exercised by less than 5% of the EU population. Of course, the exception is the right to vote for the EP, but the exercise of this right has steadily fallen since its inception and has stood at below 50% for decades, reaching a new low of 42.61% in the 2014 election. It has been a far weaker venue for the exercise of citizen preferences than that offered by EU law to economic enterprises and social groups seeking to challenge laws and regulations that have been negotiated at the national law [9].

The transfer of allegiance to the EU has been correspondingly shallow. So long as it was associated with the post-war period of peace and prosperity, it has enjoyed ‘output’ legitimacy and sustained a broad degree of ‘banal’ identification for the security and economic benefits with which it has been credited [10]. But the euro crisis and the more recent association of the EU in many countries with widespread austerity policies and the reduction of public spending, especially on social welfare, have sorely tested the ‘permissive consensus’ of European citizens with the integration process. As Brexit indicated, those opposing the EU, who account for as much as a third of the electorate or more in many countries across the EU, are typically far more vocal and passionate than its supporters tend to be.

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Again, many pro-Europeans have seen the obvious response as being the adoption by the EU of more socially integrative policies—such as an EU wide basic income [11]—that might support a transfer of democratic political authority to the EU level. Yet, such a move begs the question of whether EU citizens desire greater social integration in the first place. To

many, such a move would be yet another top-down imposition, with a very real risk of further undermining the incomplete, but nevertheless far superior, social welfare systems existing at the national level, along with the democratic systems that facilitated their emergence [12].

How might we avoid this impasse? As Rodrik notes[13], an alternative response to the global 'trilemma' involves collaboration between democratic states to collectively regulate globalization in 'smart' ways, as he believed Keynes's design of the Bretton Woods system achieved for the post-war period. From this perspective, the democratic legitimacy of the EU lies in its strengthening and legitimizing the democratic systems of the member states rather than by offering an alternative to them. However, that cannot be achieved by treating the national self-determination of one state in isolation from that of other states—either morally or practically. The democratic decisions of almost all states affect, and are themselves affected by, the democratic decisions of other states, whether they are formally associated within a structure such as the EU or not. To the extent that democratically made decisions of one state undercut those of other states, or reduce the options available to them while being in their turn partially determined by these other states, all states risk losing democratic legitimacy. Meanwhile, as I noted above, domestic democracy is further diminished by its inability to tackle problems that require cooperation between states, either because these problems are by their nature global in character—such as global warming—or involve transnational activities and processes among multinational organizations, be it financial movements, migration flows or terrorism. Therefore, a domestic democratic deficit exists from the very fact of democratic states being part of an interconnected world in which autarky no longer offers a plausible or desirable option [14].

Meeting this challenge requires some regulation of the interactions between states and a mechanism for fostering cooperation among them. To achieve that purpose while still retaining meaningful forms of self-determination for the peoples of these states, we need to reconceive the purpose of supranational bodies. Instead of being superior and independent sources of democratic authority to their constituent states, we should see them as mechanisms that allow democratic communities to co-exist on mutually agreed and equitable terms. As such, these bodies have to remain subordinate to their constituent members as a delegated authority under their joint and equal control.

As I noted above, this proposal constitutes a '*demoi*-cratic' solution to the democratic legitimacy issue, whereby, in Kalypso Nicolaidis's felicitous phrase, the peoples of the EU 'govern together but not as one' [15]. On my account, they achieve this result through a form of 'republican intergovernmentalism' [16]
, whereby decisions must conform to the normative logic of what Robert Putnam termed a 'two-level game' [17]
. According to this argument, governments need both to agree amongst each other on an equal basis at the international level, while at the same time securing the long-term democratic agreement of their citizens. As such, within their negotiations, they must respect each other as the democratically authorized and accountable representatives of their respective peoples [18].

From the Democratic Deficit to the *Demoi*-cratic Disconnect

The problem of democratic legitimacy thereby changes from being one of a democratic deficit at the supranational level to that of a *demoi*-cratic disconnect between the peoples of the constituent states and the inter- and multi-national decisions their domestic representatives make in their name, including the creation and control of supranational regulatory bodies [19].

If empowering the EP has provided the standard response to the EU's supposed democratic deficit, then empowering National Parliaments (NPs) provides the obvious route to overcoming the *demoi*-cratic disconnect. As Sandra Kröger and I have argued elsewhere [20], the aim of such empowerment is to promote a demoi-cratic reconnection of the EU through the 'domestication' of EU politics, by relating it to the everyday concerns of citizens, and 'bringing it back home', by placing EU decision-making in a context that is closer to citizens and that they understand. At the same time, EI decision-making needs to be 'normalized'. The current politicization of the EU is mainly along the axis of 'pro-' or 'anti-', 'in' or 'out'. Instead, it needs to be polarised along the 'left' or 'right' and other cleavages—'green', 'feminist', 'multicultural' etc.—which inform domestic politics. Political debate about the EU can thereby be shifted from 'should the EU exist at all?' to a more nuanced 'what is the best way for it to do the useful things it does?', and 'what should those things be?'

Steps in this direction have already been made. The Lisbon Treaty mentioned the NPs as participants in the EU's decision making for the first time. Since then, the role of NPs in EU affairs has been greatly strengthened. All NPs established European committees to scrutinize EU proposals and the actions of their own representatives in the various European Councils of heads of government or ministers where EU policy is largely made. NPs can also send 'reasoned opinions' highlighting issues to the Commission. Additionally, NPs obtained certain negative powers that allow them to challenge whether an EU measure is truly necessary or not, or might be better undertaken by the member states —the so-called Early Warning Mechanism. This is not an individual veto as at least one-third of national parliaments must raise an objection for it to be reconsidered (a 'yellow' card) or 55% to be withdrawn (an 'orange' card). Collaboration between Parliaments is facilitated through COSAC —the French acronym of the Conference of Parliamentary Committees for Union Affairs. There is also an Inter-parliamentary Committee comprising representatives of all national parliaments and the European Parliament to foster cooperation in Common Foreign, Defence, and Security Policy and in Stability, Economic Coordination and Governance.

These measures have provided an incentive for some national politicians to become more informed about EU affairs and has prompted the EP and Commission to interact more with NPs so as to be alert and responsive to potential opposition. They have also encouraged cooperation and the sharing of information among NPs – not least in Brussels itself, where almost all NPs now have an office and a representative. However, two major problems

stand in the way of their further and more positive involvement as mechanisms for the 'normalization' and 'domestication' of European politics. First, the main center-left and center-right parties have felt inhibited about politicizing EU affairs. Part of the reason lies in their belonging to the grand coalition of governmental parties within the EP. As a result, they feel they cannot criticize policies that they have played an indirect role in bringing about. Worse, they fear that to politicize the EU opens up a Pandora's box from which the anti-EU Left and Right-wing parties have more to gain than them. As a result, the main EU political debates tend to be between those in favor of the European project and those opposing it, rather than about different policy options that the EU might adopt. Second, the establishment of the Single Market and the austerity measures associated with the Euro crisis have led citizens to feel that the EU undercuts political debate and constrains policymaking at the national level, creating a domestic democratic deficit. Governments cannot act responsively with regard to their voters. Rather, they must act responsibly and simply implement the public spending cuts demanded by the guardians of the Eurozone.

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Two proposals have recently emerged that potentially address each of these problems respectively. The first proposal is for a 'Green' Card or Parliamentary Legislative Initiative whereby a third of MPs in a quarter of national parliaments may make a legislative proposal for the Commission to put forward (for details see Kröger and Bellamy 2016). This proposal seeks to address the first problem by providing incentives for political debate among all national parties to be about which policies the EU should pursue rather than simply whether it ought to exist at all. The aim here is to allow national parties to have different positive policies on the EU to argue and campaign for rather than being reduced to simply accepting or rejecting whatever is put to them. The comparatively low threshold allows opposition party groups the possibility of putting forward proposals, perhaps with the support of certain rebels from the governing party(ies). Otherwise, the danger might be that the Green card would never be used, as governments could be assumed to have already agreed with current EU policy.

The second proposal is a variation on the proposal of Hennette, Piketty, Sacriste, and Vauchez [21] for democratizing the Eurozone by developing the Interparliamentary Conference on Stability, Economic Coordination, and Governance into a Parliamentary Assembly to oversee the European Stability Mechanism. A number of commentators have argued that the only adequate way to manage the Euro and avoid a further crisis is to move towards both a fiscal and a deeper political Union, that effectively turns the EP into a European legislature and the Commission into an elected EU government with tax and spend powers. Yet, others argue that such a move would simply compound the Euro crisis with a political and economic crisis as the different demoi of the member states continued

to block redistributive policies from one state to another. Moreover, the common policies that might be adopted could risk imposing inappropriate ‘one size fits all’ regulations on the highly diverse economies of the EU in ways likely to benefit the richer more developed states at the expense of the poorer and less developed.

My version of this second proposal argues for a banking union but not a fiscal union and attempts to address the second problem by giving NPs a key role in overseeing an EU Banking Union and leaving fiscal policy a member state competence. Completing the banking union would allow fiscal policy to be returned to national governments by reducing the danger that fiscal mismanagement in one country could spread to others and potentially upset the banking system. If governments make bad decisions and over-spend they would need to restructure their debts rather than receiving a bail out from other states. A genuine European Monetary Fund would replace the ECB and European Commission as lender of last resort, able to ensure liquidity, providing for a European debt-restructuring program. The fund could be overseen by a Parliamentary Assembly based on the Interparliamentary Conference on Economic and Financial Governance of the European Union that was set up under Article 13 of the TSCG. As a result, the process of granting an emergency loan could be given ‘demoi-cratic’ legitimacy.

Stéphanie Hennette and her colleagues have suggested that the proposed Assembly to oversee the European Stability Mechanism would consist of 400 members, 320 from national parliaments based on the population of the member state and 80 from the European Parliament. As they note, any positive policies for additional funding and investment need the support of national taxpayers. As they note, any positive policies for additional funding and investment need to support of national taxpayers. The reason the EU has turned to austerity policies rests on limited solidarity between states, itself the product of a perceived lack of control. Empowering national parliaments in this area enables them to take back control.

From Unity to Differentiation

The *demoi*-cratic view of the EU naturally allows for differentiated integration within the EU, in much the same way that liberal egalitarian commitments to multinationalism and multiculturalism allow for differentiation within most democratic states [22]
, including the member states of the EU. Procedurally, that means ministers in the Council should be responsive to their respective national parliaments. Likewise, parties in the EP should be linked more strongly to their national parties, with national parliaments gaining a more direct and collaborative role in EU policymaking. Substantively, it allows for a more differentiated system of integration—one in which, on democratic grounds, states may collaborate more or less than other states, depending on the greater or lesser stake they have in pursuing collective policies at the EU level; opt-out when collective policies infringe domestic constitutional and cultural norms; and insist common rules treat them as equals by taking into account relevant differences [23]. Of course, all states have a moral obligation to participate in those collective policies necessary to secure such basic rights as are to be found in conventions such as the European Convention on Human Rights (ECHR)

[24]. Similarly, they have to guard against such clear collective harms as global environmental catastrophe and to assist what John Rawls called ‘burdened societies’ [25]—that is, societies so burdened by extreme poverty, a lack of natural resources and low human capital that basic rights cannot be secured and they lack the means to order themselves effectively in a democratic manner. Yet, the vast majority of the EU’s competences operate beyond the morally obligatory. Here, it is appropriate to seek to protect the variety of capitalisms and related welfare systems of the member states[26], while allowing cooperation to ensure greater efficiency and equity in their interrelations.

To a large degree, the EU already operates in this way [27]. After all, the EU prides itself on seeking to achieve Unity in Diversity. Indeed, it derives much of its legitimacy from this fact, rendering many of the criticisms of its democratic deficit simply misplaced [28]. The intergovernmental processes of the EU and the forms of differentiated integration it produces can and should be regarded not as pragmatic compromises but as matters of principle, whereby the EU seeks to achieve equality of concern and respect among the peoples of Europe [29]. Moreover, the free movement of persons among these peoples further legitimizes the Union by ensuring no individual is dominated by such a system through having been born in one state rather than another [30]
. It gives all citizens an equal opportunity to choose where to live and work without discrimination on the basis of nationality, while at the same time preserving the possibility for the different states of Europe to pursue and experiment with different social and economic arrangements.

Conclusion

Against the Eurosceptic proponents of Brexit, I have argued we can only exercise control through bodies such as the EU; against some Europhile proponents of political union, I have suggested we achieve control through collaboration among European democracies, not by creating an EU-level democracy. Both the Eurosceptic and federal Europhile alternatives involve losing control. By leaving the EU, the British government and those who voted for this proposal have committed a moral and political wrong against themselves and others. They have placed themselves in a situation where they will inevitably be controlled and dominated by other states and organizations and can only respond by seeking, largely vainly, to control and dominate them in turn. In terms of Rodrik’s trilemma, they have delivered a formal façade of national sovereignty, symbolized by certain immigration controls against the poor and powerless that disregard their moral obligations to assist those in dire need, combined with total openness to global economic processes over which they will have little or no democratic control. By contrast, attempts to turn the EU into a *demos*-cracy imperil the cultural and socio-economic heterogeneity of the member states. Yet such pluralism deserves protection not for purely pragmatic reasons but for normative reasons—it allows for what J S Mill called ‘experiments in living’ [31] and a variety of valuable modes of social life. The *demoi*-cratic view conceives the EU as providing a mechanism for enabling the different political and socio-economic cultures of the member states to co-exist in terms of mutual recognition and respect. The EU becomes in this way a means for them retaining rather than losing control.

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