Does the EU Suffer from a Democratic Deficit?

The rejection of the Lisbon Treaty by the Irish electorate has given new vigour to the debate on the European Union’s widely perceived democratic deficit. Does the EU indeed have a serious democracy problem? What are the options open to the European political leadership and which of these should be acted upon?

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Still in Democratic Deficit

A solution is defined in logic as that set of conditions which are individually necessary and collectively sufficient to produce a desired outcome. So what then would it take to solve the democratic deficit, or for that matter, to make any polity democratic?

First, democracy requires that citizens should be able to understand themselves as authoring their own laws through representatives. Only then can they be said to be self-governing.¹

Second, democracy requires public control. This goes beyond the previous condition to require that citizens should also be able to control the administration of laws once they are made.

Third, democracy requires political equality. Without this there would not be a straightforward “rule by the people”. Rather, there would also be an element of rule “of some of the people by others of the people”. Political equality, in turn, comprises equality of votes (one person, one vote) and equality of voice (equal access of all points of view to the political agenda).

Fourth, democracy entails a right to justification. John Dewey observed that it is hard to see how any one would accept the harsh discipline of being outvoted by others without some justification being offered;² and, before him, John Stuart Mill argued that a primary purpose of representative government should be to ensure that those “whose opinion is overruled, feel that it is heard, and set aside not by a mere act of will, but for what are thought to be superior reasons”.³

Fifth, democracy requires a people, or, in other words, a demos that is widely understood as entitled to make decisions binding on all. On top of that there must be agreement on who is to be included in voting and opinion-formation, and the citizenry must have the capabilities needed to perform its role in the democratic polity.⁴

With these conditions in mind it is no surprise that the application of democracy to the EU has been so hotly debated. On the one hand, the Union makes laws. Indeed, on some calculations it makes 75% of the new laws binding on European citizens. On the other hand, some of the conditions for democracy seem to be missing. So are European societies locked into a contradiction? Have they become committed to beliefs that presuppose democracy is the only form of legitimacy available to institutions that make publicly binding decisions⁵ at a moment in their history when their core values – and the sustainability of their social, economic and environmental systems – have come to depend on solutions to collective problems that, in turn, presuppose a shared polity that is unsuited to democracy?⁶

A False Problem?

For some, though, the notion of a democratic deficit in the European Union is a false problem, not a contradiction or even a dilemma. Consider three variants of this argument.

¹ For the full development of this argument see J. Habermas: Between Facts and Norms, Cambridge, Polity Press.
⁵ J. Habermas, op. cit.

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1. The Union does not need to be democratic. According to this view, the Union is structurally constrained to operate as a consensus system. It does not – and cannot – re-allocate values other than marginally. In the jargon, it can only function, if at all, as an instrument for “pareto-improvement, which, in the round, leaves all its member states more or less better off in terms of their own felt preferences. Even where majority voting is possible, decisions are usually taken by consensus”. Indeed majority voting is itself the product of a Treaty framework unanimously approved by member states for their own purposes, and sustained by their continuing consent. Voluntarily entered into, overwhelmingly dependent on the active cooperation of its member states on a day-to-day basis, and prone to base its decisions on the agreement of all, the Union requires little further justification, democratic or otherwise. At the end of the day it is best understood as a coordination mechanism for its member state democracies, not as a body that needs itself to be democratic. It simply does not exercise power – or require others to do what they would sooner not do – in a way that calls for democratic control of its decisions.

2. The Union is already as democratic as it needs to be. If the previous point is accepted, the only surprise is that the Union is as democratic as it is. It may make more sense to speak of a “democratic surplus” – which sometimes risks interfering with the Union’s other purposes and justifications – than of a “democratic deficit”. Not only have the normal means of controlling international bodies – through the participation of their member states in their decisions – been elaborated into a remarkable system of day-to-day supervision in the case of the EU. One need only think of the committees the Commission is obliged to consult before exercising its power of initiative or issuing implementing instructions to member states. But on top of all that, member states have accepted a range of other checks and balances. These include a directly elected European Parliament with significant legislative and budgetary codecision and a veto on the appointment of the Presidency and College of Commissioners. They also include a remarkably strong Court. Although obviously not itself a democratic body, the ECJ, together with the Ombudsman, can help to ensure that the Union holds to democratic values, including individual rights protections and the non-arbitrary use of political power.

3. A more democratic Union is undesired or undesirable, since it would presuppose a bigger role for European-level majorities of voters or representatives in making decisions binding on all. Yet publics show little enthusiasm for bonding together into the required sense of political community at European level. In so far, then, as the Union can still be meaningfully described as being in “democratic deficit” after the two previous points are taken into consideration, it is a deficit willingly entered into, made all the more tolerable by the many other ways in which Union power can be constrained, and by possibilities for a division of labour in which democracy operates at the national level, whilst Union institutions are used to achieve desirable outcomes that are not so easily delivered through democratic politics.

There is much wisdom in these arguments. But there is also a deal of complacency, as I hope now to show.

First, we should be careful of the assumption that there is nothing to legitimate ( democratically or otherwise) in the case of the European Union. Far from being value neutral, Union policies often appear to have profound ideological biases. Several studies have noted that its institutions are structurally more likely to produce negative, rather than positive, integration, and thus to favour some notions of economic and social justice and efficiency over others. Moreover, far from the coercive power of Union law being imperceptible, member states are famously prone to attribute those unpopular things that “have to be done” to “Brussels”. Thus the Union has to absorb the legitimacy deficits of its member states as well as vice versa.

Second, it is important not to confuse the member states as “problem” with the member states as “solution”. Member state governments are themselves amongst the principal beneficiaries of delegations of powers to the Union. As Joe Weiler puts it, “executive branches” of national governments “reconstitute” themselves as the “legislature” in the European arena. As such they are “agents” in need of supervision, not “principals” who provide it.

Those who believe that the Union can operate as a well-supervised delegation of powers from national democracies need to be able to show that national publics and parliaments can control the range of those