

CAN INSTITUTIONAL REFORM MEANINGFULLY REPAIR THE EUROPEAN UNION'S 'DEMOCRATIC DEFICIT'?

B R O N A G H H U G H E S

ABSTRACT

The European Union has faced significant criticism for its so-called 'Democratic Deficit', a common grievance among Eurosceptic movements across the continent. But what does it mean for a union of established democratic nations to be deficient in democracy? And is there an institutional route to repairing this deficit? The following paper addresses the 'standard' model of EU democratic deficit that emerged in the wake of the Maastricht Treaty, exploring issues such as the high levels of executive influence, the so-called 'Parliamentisation' of the EU, and the impact of the collapse of the 'Spitzenkandidat' process. It also explores the role of developing European Identities, and the formation of a European 'Demos'. Following from this is a discussion of the 'radical recast' of the Democratic Deficit put forward by Kelemen in 2017, arguing that increased democratisation and parliamentisation at EU level can shield, or even encourage, eroding standards of democracy at the national level in the member states. This is a fundamental reinterpretation of Democratic Deficit in the EU, and presents difficult questions for the future of its democratisation.

Keywords: EU; Democratic Deficit; European Parliament; Demos, Euroscepticism; Spitzenkandidat

INTRODUCTION

This essay discusses the European Union's 'democratic deficit', and questions whether institutional reform is the primary means by which it can be addressed. It considers the five features of the 'standard' version of the democratic deficit, as well as the 'no demos' theory and the characterisation of national-level authoritarianism as a deficiency of democracy within the EU. It finds that there has been significant institutional reform, particularly of the Parliament, which has had moderate success in addressing the deficit. There

are, however, elements of the democratic deficit which cannot be addressed by the EU institutions, such as the electoral behaviour of the Europarties, and the limits of 'European identity' among citizens. It can even be argued that democratising reforms of the EU can cause democratic erosion at national level, in turn, reducing overall democracy standards within the Union.

DEMOCRATIC DEFICIT

Already in 1992, the Maastricht treaty sparked mainstream discussion of democratic deficit in the EU. In this context, Weiler et al. presented a 'standard version' of the post-Maastricht democratic deficit model in an attempt to aggregate the mainstream arguments being put forward at the time by academics, practitioners, media and ordinary people. (Weiler et al., 1995). Føllesdal and Hix updated and restructured this standardisation in 2006, breaking down the normative characterisation of democratic deficit into five main claims.

The first claim is that European integration has increased the power of executives, leading to a decrease in the power of national parliaments. At the domestic level, the executive has its position by virtue of a parliament that can, at any moment, scrutinise and 'fire' them. However, the structure of the EU means executives dominate policy making, through ministers in the Council and government appointees in the Commission. When acting at the EU level, executive actors are not subject to the scrutiny of their national parliaments; on the contrary, they 'can effectively ignore their parliaments when making decisions in Brussels' (Føllesdal and Hix, 2006). In the Commission, this lack of accountability is quite clear, it is an unelected technocratic body with significant power as policy

initiator. In the Council, on the other hand, there is seemingly some national oversight, as it is composed of government ministers. However, around 80% of legislation is passed by qualified majority, so most of the time at least some ministers will find themselves in the minority (Council of the European Union, 2020). As such, when decisions of the Council are made against the wishes of an individual minister, their domestic parliament can demand no recourse or scrutiny.

EUROPEAN PARLIAMENT

The most intuitive way that this could be addressed is through a reform of the European Parliament. It might naturally be assumed that empowering this democratic, supranational body, to a level of oversight equivalent to what is expected at the national level, would repair this aspect of the democratic deficit. As of today, this is the primary means by which attempts have been made to address democratic deficit via institutional reform. However, this leads us to Føllesdal and Hix's second element of democratic deficit – namely, that the European parliament has been too weak.

It certainly seems to have begun as such. The European Parliament, in fact, originates in the Assembly of the European Coal and Steel Community, a largely toothless body with limited scrutiny capacity, composed of part time delegates of national parliaments (Hix and Høyland, 2013). This body was neither particularly democratic, nor able to provide the executive scrutiny that was not taking place at national level. However, there has been a process of gradual institutional reform since the 1970s, resulting in the relatively powerful institution that exists today. Parliamentary budgetary oversight increased throughout the 70s, and the Parliament was directly elected for the first time in 1979, forming the world's only elected supranational parliament. Its influence remained somewhat limited until the Maastricht Treaty in 1992, which saw significant institutional reform of the Parliament. In fact, Maastricht introduced, among other things, a commission investiture procedure, so a new

Commission must be approved by majority vote in the Parliament, providing further executive oversight (Hix and Høyland, 2013). Furthermore, the creation of the codecision procedure finally gave the parliament 'teeth', introducing mutual veto power in line with the Council, further formalised by the Treaty of Nice (2001). Subsequent treaties have extended codecision powers to more and more policy areas. This is a significant example of institutional reform as a means of addressing the EU's democratic deficit, which introduced important powers for the European Parliament to address the imbalance resulting from the lost scrutiny by national legislatures. The veto power over legislation, in particular, has meant that legislation cannot pass without being reconciled with a directly elected, non-executive, supranational body: arguably, this is a major advancement in the democratisation of the EU's decision making process.

However, the institutional empowerment of the Parliament post-Maastricht did little to quell mainstream concerns that it was not powerful enough to meaningfully hold executives democratically accountable. Føllesdal and Hix identify, perhaps most significantly, the lack of Parliamentary influence in the appointment of the Commission's members, noting that "in no sense is the EU's executive 'elected' by the European Parliament" (2006). Despite gaining power to veto candidates, the appointment process remained dominated by the Council, i.e. the member states, as they had exclusive power of proposal (Føllesdal and Hix, 2006). In 2008, Hix went on to write an influential book on the issues of legitimacy and democracy in the EU. He notes the immense influence of the Commission's President, likening it to that of a Prime Minister. Whilst institutional reform after the Nice Treaty had seen Barroso elected by qualified majority voting (QMV) in the Council, and approved by Parliament, Hix proposed an 'open contest' in the Parliament for the Commission's President as a means of addressing democratic deficit, allowing the creation of a rival policy agenda (Hix, 2008).

SPITZENKANDIDAT

This 'open contest' eventually did come about, through the development of the 'Spitzenkandidat process'. In this regard, the Lisbon Treaty stated that the appointment of the new President of the Commission should occur, "taking into account the elections to the European Parliament" (Lisbon Treaty, 2007). The Parliament unilaterally took an expansive interpretation of this provision, and a 2012 Resolution introduced the 'Spitzenkandidat process', whereby each Europarty would nominate a 'lead candidate' for the Commission role during Parliament elections. The ratio of this process was that the candidate endorsed by the largest party would automatically have democratic legitimacy, and the endorsement of the electorate. This was meant to 'Europeanise' the elections and, ultimately, to provide the Commission with a meaningful democratic mandate (Hobolt, 2014). This process led to the approval of the EPP's Commission candidate, Jean-Claude Juncker, in 2014. Interestingly, this process is not clearly one of institutional reform, as it was merely based on an interpretation of an ambiguous clause in the Treaty. The Council has no legal obligation to nominate the lead candidates of any party, hereby including the largest. Indeed, there was no legal institutional framework for the process, and no reform that explicitly allowed the Parliament to nominate a candidate (Hobolt, 2014). As a result, the process collapsed in 2019, when the Council rejected all of the Spitzenkandidaten, ultimately confirming its own candidate, Ursula Von Der Leyen. In sum, rather than a context of organic institutional reforms, the post-Lisbon elections took place in an institutional arena which was challenged and unstable. It can be argued that it was a failure due to weak, ambiguous institutional reforms that eventually resulted in the dismissal of the process in 2019. Heidbreder and Schade argue that the Parliament miscalculated the effectiveness of this praxis, believing that "precedent had already sufficiently institutionalised the process", when in truth successful institutionalisation had not been achieved (Heidbreder and Schade, 2020). This

contestation, together with the absence of explicit reforms, allowed the Council to contest the informal process to its own benefit, entrenching the democratic deficit and choosing a candidate that had no democratic mandate at all.

Seemingly, then, the first two elements of democratic deficit identified by Føllesdal and Hix - the low influence of national parliaments and the weakness of the European Parliament - have been meaningfully reformed through various treaties, and failures to address these issues in practice have been a result of weak institutionalisation.

EUROPEAN ELECTIONS

Føllesdal and Hix identify, as the third element of deficit, the absence of truly 'European' elections. Governments elected by citizens form the Council and nominate Commissioners, and citizens separately elect the European Parliament. However, neither is particularly considered a 'European' election: as put by the two scholars "they are not about the personalities and parties at the European level or the direction of the EU policy agenda" (Føllesdal and Hix, 2006). National elections are fought almost exclusively on domestic issues; but often European elections are not fought on European issues. In this regard, Reif and Schmitt (1980) infamously referred to European elections as "second-order national contests", treated by the electorate like a midterm election in which protest votes against government parties are common. A fourth, related, dimension of democratic deficit is that the EU is 'too distant' from citizens, not just institutionally, but psychologically. The complex, technocratic nature of the European democratic institutions is so different from domestic systems that citizens struggle to understand or identify with them (Føllesdal and Hix, 2006).

So how might these issues be addressed? As argued above, European Parliament elections often become disconnected from Europe, as they are fought by domestic political parties. Furthermore, although these parties are members of European

Parliamentary Groups, their alliances are limited by the national interests of their Members. Therefore, they lack the ability to collectively campaign for transnational issues or communicate them to voters. So, even when members of their constituent parties are elected, they fail to “connect the electoral and legislative arena” (Sozzi, 2013), and do not serve a meaningful representative function at the European level. The source of this democratic deficit, then, is not the institution of the European Parliament as such but, rather, the behaviour and procedures of its members in how they campaign and organise themselves. Thus, this is not an issue of institutional reform, but an issue of informal practices. For greater representative democratic legitimacy to come about, Europarties must establish and autonomise themselves, so that they can engage the electorate with their own legislative agendas (Sozzi, 2013).

EUROPEAN DEMOS

Regarding the psychological distance between the EU and its citizens, there is an alternative perception of democratic deficit, whereby some scholars argue that this distance cannot be repaired, as the EU lacks a ‘demos’. For these scholars, democracy has “substantial social and cultural prerequisites”, and greater state intervention requires greater reliance on these prerequisites. According to this thesis, the political, cultural, social and linguistic diversity of the EU makes it a non-viable polity, and democratic deficit is an inevitability of integration (Risse, 2014). The solution to this would be to understand the EU rather as a ‘demoicracy’ of multiple demos and consequently introduce reforms to reduce supranational influence, such as greater subsidiarity, renationalisation, and the strengthening of national parliaments (Cheneval and Schimmelfennig, 2013).

However, this conception has proven limited, as over time a plurality of identities has developed among EU citizens. By 2013, notable majorities of EU citizens indicated a sense of dual identity, having “developed Europeanized national identities”, with only the UK as an

outlier. In addition to that, even low levels of identification with Europe correlates with strong support for EU membership and integration (Risse, 2014). Empirical data also shows a greater politicisation of EU affairs, and a Europeanised public sphere (Risse, 2014). This indicates that heterogeneity is not a barrier to the formation of a polity, and that the psychological distance between the EU and citizens is gradually decreasing. This indicates that renationalising reforms are not necessary, as the gradual formation of Europeanized identities means that democratic deficit by psychological distance is reducing over time.

For those who continue to argue that the EU lacks sufficient community or ‘demos’, its sole source of legitimacy is output, i.e. what citizens get out of EU policy making, rather than what they put in. This interacts with Føllesdal and Hix’s final claim regarding democratic deficit, namely that policy outcomes at EU level deviate significantly from the preferences of citizens, generally “to the right of domestic policy status quos” (2006). Scharpf argues that this is because the EU Community Method resembles more closely the elite-driven, consociational regimes of highly divided states (e.g. Northern Ireland) than a majoritarian democracy (Scharpf, 2013). However, he notes that comparative research of such regimes does recognise, as a potential outcome, an eventual progress towards majoritarian democracy. Nonetheless, this requires significant institutional reform, and is only possible with development of mutual trust, communication of group interests, mobility and interactions etc., which does now seem to exist, at least among younger EU citizens (Scharpf, 2013).

DEMOCRATIC EROSION IN MEMBER STATES

Adding to this already complex picture, in 2017 Kelemen argued that scholars should ‘radically recast’ understanding of the EU democratic deficit, arguing that the deficit was exaggerated at EU level, but that expanding powers of the EU were also facilitating democratic erosion at the domestic level

in some member states, such as Hungary and Poland (Kelemen, 2017). This is particularly true with regards to the empowerment of the European Parliament, and its parties. In fact, as democratising institutional reforms increase partisanship and provide Europarties with greater power, their incentive to behave collectively, and thus to protect their members from criticism, increases. In turn, this incentivises shielding national level autocrats in order to pursue EU level policy objectives. In any case, competing Europarties are not developed enough intervene directly to support the democratic opposition to a local autocrat, resulting in an 'Authoritarian Equilibrium', in which there is "just enough partisan politics at the EU level to coddle local autocrats, but not enough to topple them" (Kelemen, 2017). As such, institutional reform could in fact increase the EU's democratic deficit.

A notable example of this has been Fidesz, Hungary's ruling party, which has caused serious erosions to national democracy since 2010. Its behaviours have largely been shielded from EU interventions and, as members of the EPP, the largest Europarty, they are crucial to maintaining a powerful coalition in the European Parliament. Arguably, in this case the increased power of the European Parliament has limited the criticism of democratic backsliding within this member state (Kelemen, 2017). It could even be possible for national level autocrats to strategically align themselves at EU level to prevent criticism in the future. This shows that institutional reform at EU level can actually erode democracy. However, it appears that this concern has not fully manifested, as the European Parliament ultimately voted to enact Article 7 of the Treaty, calling for action against Hungary, in 2018 (European Parliament, 2018). This indicates that empowerment of the European Parliament has not entirely prevented criticism of member states.

CONCLUSION

To conclude, major sources of democratic deficit in the EU are the limited oversight of national level parliaments, and the weakness of the European Parliament itself. These have been effectively addressed by institutional reform over various treaties. A remaining deficit, the lack of input by the Parliament to Commission appointments, especially after the demise of the 'Spitzenkandidat process', has not yet been addressed. On the other hand, the lack of 'European' elections is not a failure of the institutions, but of the behaviour of parties within it. In addition to that, whilst it is argued that the EU lacks a 'demos', and thus that reforms should be directed towards greater subsidiarity, there is empirical evidence disputing this. Furthermore, it appears from the discussion above that output legitimacy can be improved by a move towards more traditional majoritarian democracy: whilst this requires institutional reform, it can only come about after the development of group identity, trust, and mobility. Finally, there is a concerning tendency by democratising institutional reforms at the EU level to 'shield' democratic backsliding at the national level, such as in Hungary. However, the European Parliament vote to take action against Hungary in 2018 illustrates that institutional reform has not entirely prevented criticism of democratic backsliding at the national level.

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