4-1 The Inevitability of a Democratic Deficit

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Abraham Lincoln famously defined democracy as 'government of the people, by the people, for the people'. In many respects, the key debates over the EU's democratic deficit can be categorised in terms of which of these three elements they focus on. Thus, the traditional debate has centred on whether the weaknesses of government 'by' the people at the EU level reflect the absence 'of' a European people with a shared identity and interests capable of ruling itself, or the absence of appropriate institutions with suitable powers through (or 'by') which such a people might rule. This discussion has given rise in turn to a second debate alleging that for the highly technical and limited policy areas covered by the EU, government 'for' the people need not involve government 'by' the people at all. Responsible and reasonable administration suffices. So long as the EU delivers policies that benefit all in an efficient, effective and equitable way, no deficit exists. The sections that follow will explore each of these debates in turn.

Democracy `Of' and 'By' the People: 'No Demos' vs Demos Creation

The 'traditional' debate regarding the EU's democratic deficit can be characterised as being between those that deny the EU possesses a people, thereby making government 'of' the people 'by' itself an illusion at best - what Joseph Weiler has termed the 'no demos' thesis (Weiler 1995: 225), and those who believe that the presence of the requisite democratic institutions will bring a demos into being,

rendering a government 'of' the people possible through facilitating government 'by' the people' (Hix 2008). By and large, these two positions have talked past each other.

Those commentators who emphasise the lack of a pan-European demos argue that strengthening the democratic credentials of EU institutions - particularly the European Parliament - will deepen rather than lessen the democratic deficit. Unless the citizens of the various member states possess a sense of belonging to a single European people, who share certain common values and collective purposes, then a pan-European democracy will not produce a system of popular self-rule, whereby a people rules itself. Rather, it will be the means whereby certain peoples rule over other peoples (Abromeit 1998: 32). Because even the tightest knit societies contain disagreements, democracy generally involves majority rule rather than rule by unanimity. However, the legitimacy of majority rule rests on both majority and minority sharing sufficient interests and values for majority tyranny to be unlikely. To be legitimate, majority rule must not be the rule of one section of society over another, so much as what 'most of the people' in a society believe is in the general interest. When ethnic, cultural, social or other divisions prove so deep that they consistently take precedence over any sense of commonality, then majority rule and democracy break down – as Belgium's recurring difficulties in forming a government due to the deep and persistent divisions between the French and Flemish sections of the country vividly illustrates. Proponents of the 'no demos' thesis argue that in the context of the EU, democracy as rule 'by' the people likewise proves unworkable. So long as citizens feel more French, British, German and so on than European, they will regard rule by a pan-European majority as illegitimate as the French Belgians would view government by a predominantly Flemish majority.

Those inclining towards the 'no-demos' thesis favour the continuing inter-governmental features of EU policy-making and the requirement for a consensus among the member states on key issues. These processes ensure all the European peoples agree to any EU level policy. By contrast, they see the increased use of even Qualified Majority Voting (QMV) within the Council of Ministers and the enhanced powers of the European Parliament under the co-decision procedure as inappropriate uses of the democratic method. However, many advocates of improving the democratic quality of the EU's institutions contend such initiatives will bring about a European demos and improve the average citizen's attachment to the Union. They believe that popular disaffection and lack of identification with Europe stems from the European peoples' frustration at the limited opportunities available for them to have a democratic say in EU affairs as a people, not from these small steps in that direction (Hix 2008). So, what is a socio-cultural constraint on any true EU level democracy for the first group of scholars, becomes a product of the failure to create an EU democracy for the second group.

Prima facie the evidence supporting the 'no demos' thesis is undeniable and consistent over time. For example, Eurobarometer surveys consistently indicate that less than 10% of EU citizens have a strong sense of EU identity, with only around 50% feeling even a weak attachment – and that strongly secondary to their local and national ties. Although a bare majority of European citizens believe their country has benefited from membership, only 3% of citizens generally view themselves as 'Europeans' pure and simple, with a mere 7% regarding a European identity as more important than their national one. By contrast, approximately 40% describe themselves as possessing a national identity only and 47% place nationality first and Europeanness second. Indeed, though 91% of these citizens usually declare

themselves attached to their country and 86% to their locality, only 53% feel attached to the EU (Figures drawn from EB 61 May 2004 and EB 68 Autumn 2007, with few changes in this regard since the 1990s e.g. compare EB 33 1990, where 51% of those polled say they never feel European).

These comparatively low levels of identification with the EU appear confirmed by the figures for actual participation in EU politics. Average turn out in elections for the European Parliament runs at below 50% and in many countries is as low as 25%. One might expect identification with the EU to be higher among those who had moved for work or other purposes to another EU country to their own. However, the figures are even lower for EU citizens resident in another member state and exercising their right to vote in EU level elections. According to a Commission study of 2002, the proportion of non-national EU citizens even bothering to register to vote ranges from a mere 9% in Greece and Portugal to just 54.2% in Austria.

Those advocating strengthening EU level democracy counter that Europeans have more in common politically than 'no demos' arguments allow. For example, much the same left-right divide exists in all the member states, allowing ideological groupings within the European Parliament to be formed reasonably easily (Hix 2008). There is also evidence that debates about EU matters within each of the member states follow parallel lines to a considerable extent (Risse 2010). Likewise, they note that the member states share similar constitutional and democratic principles. For example, all are signatories of the European Convention of Human Rights, to which the EU itself is expected to accede, while Lisbon incorporated the Charter of Fundamental Rights of the European Union into the Treaty. Consequently, they surmise that little stands in the way of a genuinely pan-European politics based on majority rule. They suggest that identification with and participation in EU politics

would increase if the European Parliament had the positive power to elect Commissioners from among MEPs and propose EU legislation, rather than simply the negative power to vet member state nominees to the Commission, sack the Commission en masse and amend or reject Commission legislative proposals. Citizens would then feel their vote counted and elections would be fought on European issues by trans-European political parties rather than being second order domestic elections fought by national parties on predominantly national issues (Hix 2008). However, the EU has steadily increased its competences and the European Parliament its powers over the past 50 years. Yet, identification with the EU and political participation has declined in tandem with each increase in the European Parliament's power. Thus, turn out in EU elections has steadily fallen from the high of 61.99% in 1979 to the low of 43% in 2009. Meanwhile, European Parliament elections continue to be 'second order' and fought on domestic rather than European issues – usually the record of the incumbent government.

Notwithstanding the similarities in political culture, the dominant trend within all the member states has been towards a greater devolution of self-government downwards towards national minorities rather than upwards to supranational institutions. National and cultural sentiments have increased in political salience rather than diminished and been replaced by post-national or pan-European attachments. First, language matters. There is no pan-European media or public sphere, despite the growth of English as a lingua franca of the educated classes of most European countries. Even in well established multilingual states, such as Switzerland or Belgium, central government is weak with regional government strong and growing stronger and organized increasingly on linguistic lines. Second, size matters. A citizen rarely influences the outcome by his or her vote alone even in local

elections. However, within a vast electorate, where the centre of power lies hundreds of miles away, one person's vote risks being worth so little that no individual would feel engaged at all. Finally, language and size also map on to common interests and political values. The more people share in both the way policies affect them and their reasoning about them, the more legitimate and easier majoritarian decision-making becomes. There are fewer dangers of permanent or intense minorities. An equal share in the voting process is more likely to yield decisions that show citizens equal concern and respect precisely because they share common concerns and norms. Yet, the larger the state, the more socially, economically and culturally diverse it will be, with fewer common interests and values, with collective decision-making consequently harder and more prone to majority tyranny.

Even if the citizens of all the member states share certain abstract principles, such as human rights, they value them in diverse ways and weigh and implement them differently. They have different penal and welfare systems, give different priorities to education, health and defence spending and so on. There may be a number of areas where they either have an interest in supporting a common market or in promoting collective goods, such as a clean environment. But even in these areas controversial issues abound because a common policy may have a differential impact on different countries – a point that has been revealed in a dramatic way by the eurocrisis. Hence, the continued importance of national representation within the EU decision-making process. These features all stand in the way of a majoritarian system for the EU. For example, the politicians of solvent states have clearly felt they lack the domestic democratic support needed to undertake a bold and potentially redistributive EU level policy to help the debtor states within the euro zone. However,

others have argued that none of this necessarily matters – democracy can be 'for' the people without being 'of' or 'by' them. We now turn to these arguments.

Democracy 'For' the People: Regulatory and Deliberative

This 'new' debate is associated with Andrew Moravcsik (2002) and Giandomenico Majone (1998), though certain elements were introduced by Fritz Scharpf (1999). Scharpf argued that it is not always the case that popular rule, or democracy 'by' the people, generates policies that are in the public interest, or democracy 'for' the people. As liberals have long feared, tyrannous majorities and powerful minorities can distort the democratic agenda so that democracy fails to favour the people as a whole.

On the one hand, majorities may oppress minorities because of misinformed prejudice, blind passion, self interest, or myopia. Minorities may also be ignored through being too small or insufficiently concentrated for their voice to register. On the other hand, powerful minorities can gain unfair advantages by exploiting their wealth or influence. They may be important donors to political campaigns, or a major employer in a key constituency, or own a large share of the media. Some over powerful minorities may be the swing voters in a crucial marginal constituency. These two types of distortion result in passion, ignorance or selfishness undermining a reasoned and impartial appraisal of policy. The solution has been to depoliticise certain key policy areas which are deemed to be particularly important or especially susceptible to these kinds of distortion, limiting 'input' democracy 'by' the people so as to provide a more effective democratic 'output' that delivers rule 'for' the people. While counter-majoritarian mechanisms, such as constitutional courts, have been the traditional means for guarding against majority tyranny, non-majoritarian

mechanisms, such as independent expert regulatory bodies and ombudsmen, have become increasingly deployed to guard against powerful minorities.

Such mechanisms are familiar within the domestic politics of all the member states. The view of Majone and Moravcsik is that so long as the EU operates in areas where 'output' democracy offers a more effective and efficient mechanism for rule 'for' the people than rule 'by' the people, the EU's democratic deficit can be viewed as a myth. The so-called shortcomings of EU democracy simply reflect the sort of constraints on majoritarian democracy that are familiar within states. The federal arrangements typical of most large and diverse states, such as the United States, usually mix majoritarian, counter-majoritarian and non-majoritarian mechanisms - such as an elected President, a constitutional court, a senate that equally represents the constituent units regardless of their population, and a central bank – in an effort to balance unity with diversity in the making of federal policy. The EU does much the same, with the majoritarian element considerably more constrained than in most federal systems to reflect its limited competences. In particular, the EU's economic policies are regulative rather than redistributive. They seek solutions that are Pareto-optimal - that is, which make everyone better off and nobody worse off. Being both highly technical and win-win, they are of low electoral salience. Sufficient democratic accountability is provided by the dual oversight of the European Parliament, on the one side, and the Council of Ministers, on the other. The main concern is how far the EU is moving beyond policies for which such arrangements are suited. Whilst Scharpf (2009) now fears the line may have been breached, Moravcsik (2002) feels that it is simply a matter of preventing over enthusiastic Europhiles pushing the boundaries of the EU beyond what most European citizens desire – hence the rejection of the proposed Constitutional Treaty.

This thesis has attracted much criticism (Follesdal and Hix 2006, Bellamy 2010). For a start, many doubt that such matters are 'purely' technical or even if they are can be viewed as subject to an expert consensus. Even very technical questions can raise normative issues of the kind that regularly and reasonably divide political parties and electorates. They are also likely to involve a number of broad assumptions about future human behaviour and risks that are largely unknowable, and that again are matters on which citizens often legitimately disagree. We know, for example, that differing economic theories and divergent best guesses about how the world economy is going lead economic advisors to central banks often to diverge in their views on interest rate increases or decreases. Given that such decisions can have huge impacts on those subject to them, as the current Eurocrisis reveals, a good case can be mounted for allowing citizens some influence over them. In the member states, the presence of a strong public sphere and a degree of majoritarian political control over appointments to such bodies by national politicians ensures some popular accountability exists, at least to sustained national trends in public opinion. But, as we saw, no such European public sphere exists within the EU. As a result, democracy 'for' the people is far more detached from democracy 'by' the people compared to the member states.

Meanwhile, such bodies are subject to distortions of their own. Constraining access to them may make them more susceptible to regulatory capture by powerful interests, thereby heightening the risk of distortion by a minority. For example, devolving the setting of interest rates to central banks can insulate from public scrutiny the neo-monetarist content of orthodox monetary policy choices by presenting them as the product of 'sound' economic management. Yet, such choices may serve financial institutions better than the economy at large and be overly skewed

to serve their interests. Moreover, similar effects arise from the counter-majoritarian influence of the European Court of Justice. For example, the constitutionalisation of market freedoms through its judgments– often prompted by the large corporations which, given the cost of bringing cases, are the most likely to go to court – has in a number of cases steadily eroded the majoritarian decisions of national parliaments that have sought 'public interest' restrictions on the marketisation of key services. Likewise, the supermajorities de facto required by co-decision by the European Parliament and the Council of Ministers, even with the rarely used qualified majority voting (QMV), mean that decision-making controlled by that venue favours the *status quo* and established vested interests.

Some have argued that the democratic credentials of these forms of governance can be improved through direct consultation with citizens and transnational civil society groups. They have also emphasized the deliberative qualities of these depoliticised bodies (Joerges and Neyer 1997). However, such selective consultation, often with unaccountable groups that are invariably part-funded by the EU or with commercial lobbyists, tends to reinforce rather than overcome the dangers stemming from special interests to which such mechanisms are susceptible. Likewise, if the decision is not one that can be decided on technicalities alone, as is often the case, a deliberative consensus is as likely to be the product of 'group' think or skilful manipulation by the chair or others, as a reasoned convergence on the best possible position. Thus, even in the restricted competences of the EU, there can be no substitute for conventional rule 'by' the people and so the EU continues to suffer from a democratic deficit. These problems, though, are greatly amplified by the euro crisis. As former advocates of this approach have argued, monetary policy is not a purely technocratic matter and it is doubtful that a common

policy can be imposed across the very diverse economies of the euro zone unless there is some pan-European democratic support and control for redistributory rather than the solely regulatory policies currently on offer (Majone 2011). Yet, as we saw, without a European demos, it is doubtful a pan-European democracy would be sustainable or have the legitimacy to make such decisions.

Conclusion

The EU has major difficulties in providing government 'of' and 'by' the people. Although many of its policies are 'for' most of the peoples much of the time they cannot be guaranteed to be so and will invariably damage some minority interests. As such, they require democratic legitimation of a kind the EU seems unable to provide. A number of theorists have tried to rethink EU democracy as demoi-cracy – government of, by and for the various peoples of Europe (Nicolaïdis 2003). They praise the complexity of the EU – its multiple levels of government and its compound systems of representation - for bringing together the regional, national, transnational and supranational interests of citizens. However, if this complexity renders the EU system a better representative 'of' the people, it also makes government 'by' and 'for' the people less likely to obtain. The more complex a system, the easier it is for minorities to block measures that majorities favour and the harder it is to know who is responsible for what and to hold them to account - hence the difficulties in framing policies that might benefit the euro zone as a whole but involve predictable transfers from certain member states to other member states. A European democratic deficit of some kind seems inevitable, therefore, the price of the EU's many benefits – though one that presently risks becoming too costly for many citizens to be willing to pay.

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