

Democracy beyond the State?

The European Experiment



By **Richard CORBETT**

Increased interdependence means that a growing number of problems cannot be adequately dealt with by national authorities alone – they require concerted international action at various levels.

But traditional methods of international co-operation are slow, cumbersome and frequently opaque. They involve negotiations among officials and, later, ministers representing their countries. In most cases, nothing can be agreed without consensus – thus creating a bias towards weak, lowest common denominator agreements (if agreement is reached at all). When an agreement is reached, it is submitted, if at all, as a *fait accompli* to national parliaments on a take-it-or-leave-it basis. Doubts about whether every signatory will ratify plague the implementation of such agreements. Even if they do, there are constant questions about whether countries are applying them in good faith, and usually the procedures for verifying that and settling any differences are weak, if they exist at all. The quality of democracy on such issues is low. Such are the working methods of most international organisations and of the G8 and G20 and countless other structures.

The European Union (EU) is different to a significant degree:

- It is not always constrained to the lowest common denominator, as many (though by no means all) decisions can be taken by a qualified majority vote among the Member States in the Council – an ability to outvote a small minority that, even when no vote takes place, puts pressure on them to compromise rather than lose, thereby avoiding the lowest common denominator.
- There is an elected Parliament, directly representing citizens and bringing into the decision taking process a pluralistic representation of both governing and opposition parties in each country. Its approval is necessary for almost all legislation, the budget and international agreements entered into by the EU.

- EU decisions have legally binding force within the legal systems of the Member States.
- There is a common Court to settle different interpretations of what has been agreed.
- It has safeguards to ensure that it respects fundamental rights.
- Decisions on legislation are taken in public.
- Its administration comes under the authority of executive Commissioners who are politically accountable to the elected Parliament.
- It has more developed mechanisms than any other international structure for informing, and involving, national parliaments.

The EU's basic rule-book is set out in the treaties, agreed and ratified by every Member State. They lay down its field of competence, the powers of its institutions, how to elect or appoint people to those institutions, and the details of its decision-making procedures. In that sense, they constitute a *de facto* constitution. But, an attempt to re-write those treaties and formally label them as a 'constitution' was rejected in two Member States, in part because of reticence to the idea of the EU being a state-like federation. Opinions diverge as to what the nature of the EU should be and therefore also on how far its democratic accountability should flow through democratically chosen governments in each country or through the directly elected European Parliament.

The answer that has been developed to that last point is both: **it is not a question of whether national governments or the European Parliament best represent EU citizens: both do – and it is this “dual legitimacy” (with the Council and the European Parliament constituting a bicameral legislature) that sustains the EU's claim to be democratic.** That is why the Treaty on European Union says:

1. The functioning of the Union shall be founded on representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens. [parts 1 & 2 of Art 10 TEU]

So, can we therefore say that the EU not only forms a Union of democratic states, but *“also constitutes a democracy of its own”*.

There are several common criticisms of the EU in general and of its democratic credentials in particular. Some can be dismissed, some have an element of truth but are difficult to change, while others show that there is room for improvement.

First, can democracy work at all on an international basis? Some argue that democracy can only work when there is a *demos*, that is, a common feeling of belonging to the same community, speaking the same language, tuning into the same media and having a shared past and similar expectations about behaviour and values. Others argue that this view of democracy is tribalist and point out that if speaking a common language is a requirement, then Switzerland, India, Canada, South Africa and many others can never be categorised as democratic. But surely the key point is that, as some decisions are taken at European level (and need to be), it should be done in as transparent, accountable and democratic a way as possible.

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Second, the EU does not operate by simple majoritarian rule. The adoption of legislation by a qualified majority vote in the Council may indeed achieve more than the lowest common denominator consensus that applies in traditional international organisations, but it still requires a hefty majority: at least 62% (and soon 65%) of the represented population in the Council. Even in the Parliament, MEPs do not represent citizens equally, as the ratio of MEP to population is considerably lower in the smaller Member States – a point highlighted by the German Constitutional Court in its 2009 ruling on the Lisbon Treaty in which it held that, for that very reason, the EP could not be compared to a parliament representing a single people (though this is actually not unknown in national contexts either).

But above all, it is those areas in which Member States transfer competence to the EU, but still require unanimity in the Council to take any decisions, where all the old limitations of traditional international cooperation can still be found. Maybe not to the same degree – being embedded in the EU's framework has engendered habits of cooperation and it offers opportunities (and necessities) to compromise in a way that are not always found in international organisations. At the highest level – the meetings of the EU's strategic body, the European Council, there is huge pressure on all to find consensus. Nonetheless, in these areas, lowest common denominator decision-taking is far more common. Decisions are slower, subject to less input from the elected parliament and sometimes even require lengthy ratification which can lead to situations in which the least engaged Member State can dictate policy to the overwhelming majority. **Widening the field of majority voting would be helpful, but it requires unanimous national ratification. It was done with each every one of the last few treaties (SEA, Maastricht, Nice, Amsterdam, Lisbon), but the scope for a further extension looks limited at the moment.**

Third, the EP is sometimes held to be inadequate because electoral turnout is lower than for national parliamentary elections. Participation in the most recent EP elections was around 43%. By one view, it is normal that turn-out is lower than for national parliamentary elections in European countries – less is at stake. But it has also fallen – by around 20% points over a 30 year period. This decline (accentuated by the accession of new member states, several of whom have a low turnout in all elections) is actually no greater than the decline in turnout in national parliamentary elections in several countries. Declining participation is a challenge for democracy at all levels, not peculiar to the European level, even if it does have special features. And participation is about the same as for mid-term US Congress elections – whose democratic legitimacy is rarely challenged.

Even on a low turn-out, European elections do result in all the main strands of public opinion being represented in the EP. A transnational parliament highlights that most policy choices at European level have political, not national, dividing lines, with the different sides of an argument present inside every Member State. MEPs come from parties of the left and of the right and even some parties who are opposed to the very existence of the EU. **The Parliament thus enhances pluralism and ensures that the EU decisions are not taken exclusively by ministers, diplomats and bureaucrats. But above all, it highlights the fact that the true choices are political not national.**

Fourth, democratic choice of the executive is not visible in the way that citizens are used to in a national context. Neither by direct election nor through parliamentary elections does the electorate determine the political composition of the executive – or at least, it does so only in a roundabout way.

The Union's day-to-day executive is the Commission. It is not a particularly strong executive. Its field of responsibility is limited, it cannot automatically count the support of the legislature and it is somewhat overshadowed by the European Council – the EU's strategic body on which the Commission President sits alongside the heads of state or government of the Member States, and whose own President plays a crucial role.

(Some academics describe the European Council as a collective presidency in a semi-presidential system.) Nonetheless, the Commission is in charge of the EU's main administration, has the sole right to make proposals for new legislation, executes the budget, implements what has been agreed and verifies that Member States are complying with their obligations.

Of course, the view that the Commission is “unelected”, unlike national governments who are, is bit simplistic. The UK government, for example, is not elected by the people: it is appointed by the Head of State (an unelected one at that), but crucially it must enjoy the confidence of the directly elected House of Commons. Similarly, the European Commission must enjoy the confidence of the European Parliament. The EP always had the right to dismiss the Commission. It later acquired the right to approve the appointment of the Commission. The grilling that candidate Commissioners receive from EP committees at their confirmation hearings prior to their appointment goes well beyond what national ministers experience in most European countries.

Despite this, few citizens would consider the Commission to have an elected mandate. They might if the college of Commissioners were composed to reflect a majority party or, more likely, a majority coalition, in the EP. Yet a Commission thus composed is unlikely in the short to medium term: most governments still want to nominate the Commissioner from their country.

What will now change is the vote on the President of the Commission. The Lisbon Treaty provides for the ‘election’ of the President of the Commission by the Parliament. This vote is, as before, on a proposal of the European Council but the latter must ‘take into account the results of the European elections’ in making its nomination. This provision potentially makes the nomination similar to that of a Head of State choosing a candidate Prime Minister who is capable of securing a parliamentary majority .

Crucially, the main European political parties have in principle decided to nominate their candidates for Commission President ahead of the European election campaign. The choice of the Commission President should become one of the key issues of the elections.

In practice, it is unlikely that any single party will win a majority of seats in the EP. Some bargaining and coalition forming will remain the most likely scenario, with the largest party in pole position. But this kind of negotiation also occurs at national level in most Member States. The spectacularly direct link between the outcome of a parliamentary election and the designation of a Prime Minister seen (usually) in the UK is the exception rather than the norm. But the outcome even in, say, the Netherlands is that the public sees that the executive – usually consisting of a coalition of parties – that (eventually) emerges is connected to the election and reflects its pattern of votes.

If this outcome becomes established at the EU level over the next few years, it will happen only as regards the head of the EU's day-to-day executive: the Commission's President. Given the involvement of (politically different) national governments in nominating the remaining Commissioners, the Commission as a whole will continue to be a ‘coalition’ in political terms (the second Barroso Commission contained 13 EPP, 8 Liberals and 6 Socialists – the most right wing composition in living memory). But the visibility of the President's role, the mandate he/she will receive, and the internal powers within the Commission that the President now has, make the choice highly significant.



For all this to function effectively, a practical need exists for a more visible and functioning system of political parties. European parties have evolved as federations of national parties. Their development has been gradual and is still rather limited. But the main parties are adopting common policies in a growing number of areas. They organise regular congresses composed of delegates from the respective national parties and involving their EP Group. Their leaders hold 'summits' (often prior to European Council meetings) of party members in the Commission, EP and heads of government. They adopt common manifestoes for European elections.

Choosing candidates for President of the Commission will galvanise these parties still further. It will involve their own membership in the selection of a candidate. It will gain media attention. It will provide a face to complement the policy manifesto. It will make political choice at transnational level more visible.

To conclude, the EU has many of the elements necessary for democracy to function beyond the level of state. Decision taking by majority in a sufficiently wide field, a directly elected parliament and an executive that is dependent on the Parliament's confidence, the head of which is elected by parliament, are all crucial ingredients. Much of it functions already – not least the political (rather than national) dividing lines in the Parliament.

An important extra ingredient would be to make the European parliamentary elections a visible choice affecting not just the balance in the Parliament, but the head of Europe's executive branch. It needs no treaty change. A small step for a party, a big step for democracy.

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