



CENTRO STUDI SUL FEDERALISMO

research paper

JOHN ERIK FOSSUM

**DEMOCRACY AND LEGITIMACY IN THE EU:
CHALLENGES AND OPTIONS**



February 2016

© 2016 IAI-CSF

Tutti i diritti sono riservati. Parti di questa pubblicazione possono essere citate nei termini previsti dalla legge che tutela il diritto d'autore e con l'indicazione della fonte.

All rights reserved. Quotations from this document can be made according to copyright law, providing information on the source.

ABSTRACT

It is widely held that the EU suffers from a democratic deficit, but there is no agreement on the specific nature of this deficit. In this paper, I start by specifying the nature of the democratic-legitimacy problem facing the multilevel EU. Two dimensions, the institutional-constitutional, and the socio-cultural, are highlighted. Next, I discuss how the context of crisis has transformed the EU. The many crises and their handling have not only exacerbated but to a considerable degree also altered the democratic-legitimacy problems facing the EU. In order to best capture these changes, it is useful to apply several possible democratic decision-making configurations. These are presented and assessed in terms of how well they capture the present challenges facing the EU. In the last part I discuss specific reform options and what they may imply for the Union's democratic deficit.

Keywords: European Union | Democratic legitimacy | European Parliament | National parliaments

John Erik Fossum is professor at ARENA Centre for European Studies, University of Oslo.

E-mail: j.e.fossum@arena.uio.no

Paper prepared for “Governing Europe”, a joint project led by Centro Studi sul Federalismo (CSF) and Istituto Affari Internazionali (IAI) in the framework of the strategic partnership with Compagnia di San Paolo, International Affairs Programme.

Introduction - 1. What is the EU's democratic problem: Is it unfit, inadequate, or distortive? - 2. The crisis – A transformed EU? - 3. Possible democratic decision-making configurations - 4. What are the options? - Concluding comments

Introduction

There is a widely-held view to the effect that the EU suffers from a democratic deficit. By “deficit” we generally refer to a deficiency or a shortfall. When analysts, decision-makers and publics lambast the EU for its democratic deficit, they invoke the notion that there is a gap between facts and norms. The very invocation of such a gap is an acknowledgement of the fact that we can or should assess the multilevel EU against democratic legitimacy norms.

But even among the great majority of analysts that charge the EU with being democratically-deficient,¹ there is disagreement as to where the deficit lies, and what causes it. Some argue that the European integration process undermines national democracy. They claim that the European integration process is inhospitable to democracy, and its ills are in turn inflicted upon national democracies. Other analysts argue that the European integration process is necessary to make up for the inadequacies of national democracy in an increasingly interdependent world; the EU's deficit stems from the fact that it has not made up for these (generally meaning that it has not integrated enough).

The fact that there are such different views of what causes a deficit, and different views as to the level of governance that is particularly hit, underlines the need to specify more precisely the nature of the democratic legitimacy problem facing the EU. Many political systems are democratically-deficient; yet they differ considerably in the nature and the magnitude of their democratic shortfalls.

In the following, I start by specifying the nature of the democratic legitimacy problem facing the multilevel EU. After that, I spell out several possible democratic decision-making configurations. I discuss how relevant and how well they capture the present challenges facing the EU. In the last part I discuss which specific reform options (in terms of rectifying measures) they give rise to.

1. What is the EU's democratic problem: Is it unfit, inadequate, or distortive?

In this section I first briefly spell out the democratic legitimacy problem facing the EU, and thereafter focus on the problems emanating from the crisis and its handling. The reason for focusing explicitly on the crisis is that it has not only exacerbated but also to a considerable extent *altered* the democratic legitimacy problems facing the EU.

¹ Prior to the crisis, at least, some analysts disagreed that the EU harboured a democratic deficit. Andrew Moravcsik in particular has strongly opposed that, claiming that the EU is a limited-purpose organisation, so assessing it from a democratic perspective is a misguided approach. See Andrew Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union”, in *Journal of Common Market Studies*, Vol. 40, No. 4 (November 2002), p. 603-624, <https://www.princeton.edu/~amoravcs/library/deficit.pdf>.

The focus is on two central democratic legitimacy challenges. The first is institutional-constitutional, and the second is broader and more socio-cultural. The first challenge could be said to be built into the integration process itself. The point is that EU democratisation has from the EU's very inception, been a matter of "catching up" with an integration process that has been driven by executives and experts. Executive officials have long enjoyed privileged process-access through the prominent role of the Council configurations in EU decision-making (especially in the Maastricht pillars II and III), and have seen their role strengthened with the increased salience of the European Council and the build-up of competence in the Council Secretariat. Executives and experts enjoy a privileged role through the Commission's "expert role", the Comitology system, agencification, and the recent institutionalisation of the Eurozone, to mention a number of the key components of this system that are particularly designed to cater to executives and experts. Popularly-elected bodies at all three main levels (regional, national and European) have – with some success at least prior to the crisis – been trying to catch up; rein in and render the system subject to parliamentary oversight and control; obtain a decision-making presence, formally and substantively, in line with democratic precepts; render the system transparent; and find a way to explain and justify the system to citizens. EU democratisation takes place in a context of already established democracies. Thus, even if the EU is a novel type of entity the weight and credence of established democratic procedures shape the efforts at entrenching representative democracy at the EU-level.

The first challenge has direct bearings on the second, which is most forcefully articulated by the eurosceptics. They argue that the more integration proceeds, the more disconnected to the citizens the EU will be. Behind this lurks the notion that the EU is unfit for democracy. The argument is that there is no European democratic demos and no European public sphere, and the EU is not the type of entity that can help to develop such. In my view, this is not a credible assertion. The "no-demos" thesis, but also the demoicracy approach,² understate the manner in which people-forming is a political process that can be institutionally-entrenched. "No-demos" adherents tend to conflate a central problem plaguing democratic theory, namely that democracy has no *democratic* procedure for establishing who the authors of the law or the democratic demos should be, with the need for there to be a particular historical moment or instance whereby a people is formed. The theoretical problem is to establish who determines who should form part of the people. That in turn begs the question of who selects those that determine who should be part of the people. It becomes an infinite regress.³

The conflation, however, is unwarranted. As Sofia Näsström puts it: "The constitution of the people is not a historical event. It is an ongoing claim that we make."⁴ People-forming is a political act, and representation plays a fundamental constitutive role in people-forming. People-forming is a function of someone claiming to represent the people, and the people takes shape when those addressed by the claim are able and willing to redeem such a claim by seeing themselves as

² Francis Cheneval and Frank Schimmelfennig, "The Case for Demoicracy in the European Union", in *Journal of Common Market Studies*, Vol. 51, No. 2 (March 2013), p. 334-350; and Kalypso Nicolaïdis, "The Idea of European Demoicracy", in Julie Dickson and Pavlos Eleftheriadis (eds.), *Philosophical Foundations of European Union Law*, Oxford, Oxford University Press, 2012, p. 247-274.

³ Claus Offe, "'Homogeneity' and Constitutional Democracy: Coping with Identity Conflicts through Group Rights", in *The Journal of Political Philosophy*, Vol. 6, No. 2 (June 1998), p. 113-141.

⁴ Sofia Näsström, "The Legitimacy of the People", in *Political Theory*, Vol. 35, No. 5 (October 2007), p. 645.

a people and subjecting themselves to a system of rule. People-forming is an ongoing matter because those addressed as the people must consistently be able to redeem that claim.

In extension of this, there is nothing to suggest that a supranational system of governance cannot become democratic. Whether the EU in its present state is capable of making the transition to a viable democracy is another issue. A process of democratisation that professes to be democratic in the sense that it affords a central role to states as collectives, i.e. confers veto on each state, is bound to be open-ended because each state will need to consent to the measures taken. There will be obvious limits to the degree to which some states will succumb to a system of self-bind; such a process is unlikely to produce a viable democratic system. At a minimum there has to be a European-level entity that claims to be speaking to the citizens as European citizens. Then the issue will be for the system to redeem itself by showing to those addressed that the claim can be properly substantiated. It is this role that the EP has assumed in the EU. As Berthold Rittberger notes, “[t]he history of the EP is a history of a struggle for recognition and power [...] the EP employs its institutional levers and democratic credentials as the EU’s only directly elected institution to press for a stronger say in EU policy-making.”⁵

The second challenge is therefore the need for the EU system and for the integration process to connect properly to the citizens. This is an institutional matter in the sense that it requires build-up of the institutional hardware that is required for citizens to understand themselves to be members of the community and that their views and interests are adequately represented and reflected, in the EU’s symbols, procedures and policy substance. In that sense the latest EP election with *Spitzenkandidaten* is a step forward, in that EP elections become more visibly matters of political choice. Connecting to the citizens also has an important emotional-symbolic dimension: to foster a sense of attachment to the EU that will permeate civil society and the public sphere. And it is an intellectual issue as well: to provide an adequate and compelling narrative that is capable of justifying the EU, and that is put across in such a manner as to be convincing to citizens.

The EU’s need to connect with the citizens is a matter of somehow dealing with both challenges simultaneously. The democratic bodies must connect to citizens whilst at the same time trying to catch up with the integration process. In that sense the democratic bodies will find themselves simultaneously pulled in two directions which need not be mutually compatible. That presents the democratic bodies with distinct challenges, as I will show in the below.⁶

⁵ Berthold Rittberger, “Integration without Representation? The European Parliament and the Reform of Economic Governance in the EU”, in *Journal of Common Market Studies*, Vol. 52, No. 6 (November 2014), p. 1175.

⁶ Consider for instance the accountability problems associated with the fact that the European Council and the Council configurations are “institutionalised shape-shift bodies.” For this term see John Erik Fossum, “The structure of EU representation and the crisis”, in Sandra Kröger (ed.), *Political Representation in the European Union. Still Democratic in Times of Crisis?*, London and New York, Routledge, 2014, p. 52-68. They have a dual mandate: represent and be accountable to national constituencies as well as promote the European constituency. What that implies is that they can communicate different messages to the different audiences to which they relate. This opens up considerable space for manipulation; it renders transparency and accountability highly problematic in the sense of who represents whom.

2. The crisis – A transformed EU?

The crisis and its handling have weakened democratic systems of monitoring and control at all three key levels: EU, member state, and regional. National parliaments see their fiscal sovereignty being severely constrained, and the EP has not been given powers to fill the gap.⁷ In effect, it would appear that one of the main losers has been the European Parliament, which was sidelined in the crisis response. Thus, the crisis has altered the terms under which democratic bodies are able to catch up with executives and experts; the same applies to the question of connecting with the citizens. How these challenges are to be addressed requires paying attention to how power relations and patterns of democratic authorisation and accountability have been reconfigured through the crisis.

If we look at the literature, assessments differ in terms of the effects of the crisis on the EU institutional system. All underline that the crisis has weakened the EU's democratic legitimacy, but they differ in how and what the crisis has done to the EU as a system of governance. One position argues that it has strengthened the EU's supranational component, notably in the areas of macroeconomic policy and banking regulation, in which the role of the Commission and the European Central Bank (ECB) has been considerably enhanced.⁸ The changes have also ushered in a "hardening" of EU governance, in that the threshold for instituting sanctions has been greatly lowered, coupled with a much tighter system of macro-economic monitoring and control. The notion that the crisis has strengthened the supranational component appears paradoxical given that numerous analysts have underlined a second outcome, namely a considerable strengthening of the EU's intergovernmental components.⁹ The argument is that the crisis and the EU's handling of it have ushered in a shift in the locus of decision-making as the crisis has been largely dealt with through intergovernmental means, with the European Council playing a central role (the so-called Union method), through measures such as intergovernmental treaties (cf. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) and informal intergovernmental bargains (notably between Germany and France). These developments are seen as giving rise to an executive-dominated federalism that is quite impervious to parliamentary oversight and control.¹⁰ These developments cannot but be considered under the heading of de-constitutionalisation.¹¹ Concerns have been raised that the crisis has led to a general weakening of the legal basis for integration.¹²

⁷ Cristina Fasone, "European Economic Governance and Parliamentary Representation. What Place for the European Parliament?", in *European Law Journal*, Vol. 20, No. 2 (March 2014), p. 164-185.

⁸ Renaud Dehousse, *The New Supranationalism*, paper prepared for presentation at the ECPR General Conference, Montreal, 26-29 August 2015, <https://ecpr.eu/Filestore/PaperProposal/281383a5-0285-4417-a613-eed8cd5d36bd.pdf>.

⁹ Christopher J. Bickerton, Dermot Hodson, and Uwe Puetter (eds.), *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*, Oxford, Oxford University Press, 2015; Sergio Fabbrini, "Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis", in *Comparative Political Studies*, Vol. 46, No. 9 (September 2013), p. 1003-1029; Sergio Fabbrini, *Which European Union? Europe After the Euro Crisis*, Cambridge, Cambridge University Press, 2015.

¹⁰ Jürgen Habermas, *The Crisis of the European Union. A Response*, Cambridge, Polity Press, 2012; Ben Crum, "Saving the Euro at the Cost of Democracy?", in *Journal of Common Market Studies*, Vol. 51, No. 4 (July 2013), p. 614-630.

¹¹ Agustín José Menéndez, "The Existential Crisis of the European Union", in *German Law Journal*, Vol. 14, No. 5 (2013), p. 453-526, http://www.germanlawjournal.net/s/PDF_Vol_14_No_05_SpecialFull-Issue.pdf.

¹² Christian Joerges, "Law and Politics in Europe's Crisis. On the History of the Impact of an Unfortunate Configuration", in *Constellations*, Vol. 21, No. 2 (June 2014), p. 249-261.

In the aftermath of the crisis we see in Europe new forms of inequality and domination, with the main divisions being between creditor- and debtor-states (notably those having received bail-outs), and within debtor-states. This also rubs off on national parliaments, where we see strong asymmetries in their abilities to reassert themselves.¹³ Arthur Benz has shown that creditor-state parliaments (notably Germany's) de facto determine many of the operating conditions of debtor state parliaments (notably Greece, Portugal, and Ireland).¹⁴ Thus, some member state-parliaments' decision-making abilities extend well beyond their authorised bounds and procedures, whilst at the same time delimiting others', with profound implications for citizens' ability to govern themselves. Thus, forms of national parliamentary involvement that were set up to ameliorate democratic problems may have begun to create their own forms of domination.¹⁵

When we assess the implications of the crisis for democracy in the multilevel EU, it is not enough to establish whether the crisis has reconfigured power relations across levels of governing. It is also important to establish whether the process of decision-making has been reconfigured, because the EU is a multilevel system in which levels are quite tightly interwoven. The system of economic governance that has emerged from the crisis represents a combination of supranational and intergovernmental components. It is neither consistent with the Community method nor with the intergovernmental method, but incorporates elements of both. The combination manifests itself in a distinct type of decision-making-system that Mark Dawson has termed the coordinative method: "EU economic decision-making is coordinative in that it is formed as a policy cycle based on a constant 'back and forth' between the EU and national levels [...] decision-making never crystallises into a 'once and for all' agreement but is ongoing and revisable with the possibility of norms being adapted to changed factual circumstances."¹⁶ Equally important is that the institutional changes and the particular decision-making combination that are emerging are subverting the Community and the Community method of integration. It is therefore quite unlikely that the system can be restored simply by extending the Community method to the policy areas that are not already covered by it.

Post-crisis, the challenge of catching up with executives and experts has become more pressing and more intractable. The same applies to the disconnection between the EU system and the citizens. Two developments render this challenge particularly thorny, namely what we may label the rise of technocracy and the rise of extreme populism (and the manner in which the two may reinforce each other). The crisis response has reinforced technocracy, in the sense that experts have obtained a freer role and are less encumbered by legal and democratic controls. A case in

¹³ Katrin Auel and Oliver Höing, "Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?", in *Journal of Common Market Studies*, Vol. 52, No. 6 (November 2014), p. 1184-1193; Cristina Fasone, "Eurozone, non-Eurozone and 'Troubled Asymmetries' among National Parliaments in the EU. Why and to what extent this is of concern", in *Perspectives on Federalism*, Vol. 6, No. 3 (2014), p. 1-41, <http://on-federalism.eu/index.php/component/content/article/194>.

¹⁴ Arthur Benz, "An Asymmetric Two-Level Game. Parliaments in the Euro Crisis", in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 125-140.

¹⁵ John Erik Fossum, "Democracy and Differentiation in Europe", in *Journal of European Public Policy*, Vol. 22, No. 6 (2015), p. 799-815.

¹⁶ Mark Dawson, "The Euro Crisis and Its Transformation of EU Law and Politics", in *The Governance Report 2015*, Oxford, Oxford University Press, 2015, p. 53. See also Mark Dawson, "The Legal and Political Accountability Structure of 'Post-Crisis' EU Economic Governance", in *Journal of Common Market Studies*, Vol. 53, No. 5 (September 2015), p. 976-993.

point is the ECB. This need not be a matter of usurpation of power;¹⁷ it might be a matter of politicians wanting to shelter expertise from hostile populist attacks. We see the rise of a eurosceptic left- and right-wing populism that is hostile to expertise and representative democracy. There is a politicisation of the integration process, and a more comprehensive debate on the merits of European integration. But there is also the possibility of a populist-technocratic standoff wherein populists lambast the EU for being co-opted by the technocrats.

Representative government at the EU-level and in the member states may then be attacked and constrained from two angles: above and below. The problem facing representative bodies is that populists will challenge the very merit of catching up with executives and experts because they will argue that it will fail to connect to citizens. Instead, they posit themselves as the authentic expression of Europe's peoples. Experts and technocrats may also render democratic catch-up difficult. They expound world-views and professional stances that may either appear unacceptable or at least are difficult for parliaments to render understandable to general publics.

3. Possible democratic decision-making configurations

In discussing how representative democracy may catch up with executives and experts and connect with the citizens, we need to look at the nature and availability of democratic decision-making configurations, which refer to the manner in which the representative democratic dimension is institutionally configured. In the following I spell out several relevant democratic decision-making configurations.

The first democratic decision-making configuration is what we may term the standard federal approach. It is necessary to include this because it figures so centrally in the normative accounts of multilevel democracy. Since the establishment of the American federation as a major federal-democratic innovation of its time, citizens' democratic expectations have been tailored to the presence of two vertical channels of representation that link citizens and the governments at the two main levels that make up the political system. This is of course not the only way of representing citizens, but it has come to be known as the most acceptable way of doing so, normatively speaking.

The model posits that a federation provides for a representative body at the federal level, whilst at the same time the autonomy of its component parts is recognised by providing for a second channel of representation that runs through the states. Within the federal system, the two channels are incorporated in an integrated structure of representative bodies, wherein the relations among them are constitutionalised with a clear division of tasks. In that sense, the composite of representative bodies represents citizens in their federal and member-state capacities, respectively. The lines of authorisation and accountability are configured on a vertical basis: from citizens to their federal government in the subjects under federal jurisdiction, and from citizens to their respective member-state government in the subjects under member-state

¹⁷ Renaud Dehousse underlines how increased mistrust led to a demand for reforms and where in particular creditor countries demanded depoliticised mechanisms and bodies. See Renaud Dehousse, *The New Supranationalism*, cit.

jurisdiction. There is little or no horizontal coordination between representative bodies at the same level (as there is between provinces in Canada and between states in the US, for instance).

The EU system deviates in certain respects from this institutional template. In the EU it is widely recognised that the large scope of shared and overlapping competencies coupled with elaborate systems of co-decision renders multilevel parliamentary collaboration and coordination necessary. In effect, we could argue that the multilevel EU configuration fuses levels of governing rather than separates them.¹⁸ These structural features clearly set the EU apart from most state-based federations (Germany being somewhat of an exception because it is also a system with considerable fusion of levels). The important point is that the EU's fusion of levels is increasingly rubbing off on parliaments and their interaction in the multilevel EU system.

In effect, these and other features give rise to the second representative system, which has been termed a multilevel parliamentary field – a distinct configuration.¹⁹ By multilevel parliamentary field (MLPF) it is meant that parliamentary systems share certain structural similarities and are connected across states and levels of governance. Parliamentarians and parties share the same overarching function, namely that of representing their citizens. In addition, they are linked and interact across institutions and levels of governance. The notion of MLPF enables us to include what in the EU has emerged as an increasingly important horizontal (meaning same level of governance) component to the activity of parliaments. Since the Treaty of Amsterdam we see that national parliaments have become increasingly oriented towards each other through COSAC and other means of inter-parliamentary interaction. Parliaments in the EU increasingly orient themselves towards each other and copy, emulate and learn from each other.²⁰ There is also a mechanism that involves them in a collective capacity in EU-level decision-making, namely the Early Warning Mechanism (EWM).

From a democratic perspective, if we seek to discern democratic merits from a properly-functioning multilevel parliamentary field (and not what we actually see in the EU which is beset with deficiencies), we may think of the MLPF as a deliberative structure bent on learning and emulation, as providing a set of mechanisms for the transfer of best practices; providing external checks on individual parliaments to prevent deviations;²¹ and providing forums for democratic

¹⁸ Wolfgang Wessels, "An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes", in *Journal of Common Market Studies*, Vol. 35, No. 2 (June 1997), p. 267-299; Dietrich Rometsch and Wolfgang Wessels (eds.), *The European Union and Member States. Towards Institutional Fusion?*, Manchester, Manchester University Press, 1996.

¹⁹ Ben Crum and John Erik Fossum, "The Multilevel Parliamentary Field: A Framework for Theorizing Representative Democracy in the EU", in *European Political Science Review*, Vol. 1, No. 2 (July 2009), p. 249-271; Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013.

²⁰ Parliaments across Europe have copied (more or less faithfully) the models of parliamentary scrutiny systems that the Nordic states have adopted. See Aron Buzogány, "Learning from the Best? Interparliamentary Networks and the Parliamentary Scrutiny of EU Decision-Making", in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 17-32.

²¹ One aspect is moral suasion, which can take place through parliamentary investigations and debates in other countries' parliaments, and through meetings and networks such as COSAC. Leaders and parliamentarians can also be invited to other parliaments to explain and justify their policies. Another aspect pertains to the supply of critical information. When parliamentarians find that sources of important information are withheld they can sometimes obtain it from other countries' parliaments. See Dirk Peters, Wolfgang Wagner and Cosima

reflection and democratic self-improvement. We may deem such a system a “learning structure” insofar as there are explicit efforts by parliaments, parliamentarians and parties to learn from each other by adopting best practices of parliamentary scrutiny, decision-making, internal organising, relations to citizens etc. A learning structure is a pattern of interaction wherein learning is voluntary; parliaments look to each other to improve their respective legislative and scrutiny functions, but are not locked into a system of joint decision-making. In democratic accountability terms, the basic structure remains vertical in the sense that each parliament responds to its constituency (be it European, national, or regional). We may say that such a multilevel parliamentary field modifies but *does not* abrogate the conventional manner in which democratic authorisation and accountability unfold: as a basically vertical process that connects the represented and their representatives in clearly-delineated constituencies (national and European).

Inter-parliamentary interaction exposes citizens to the dynamic interaction among parliaments. Whatever additional information and whatever learning and oversight that engenders provide additional elements of accountability. A full-fledged system *may* enable parliaments to catch up with executives and experts; it is less certain, however, that it is capable of sufficiently improving the connection between the EU system and its citizens (even in such a loosely-coupled system parliaments may become too focused on each other).

Ben Crum and I formulated the notion of the multilevel parliamentary field as a heuristic device to capture the distinctive features of the multilevel EU’s representative democratic structure before the crisis struck. What we then saw in the EU was a somewhat uneven and rather loosely-composed field, marked by great diversity across parliaments in the EU and marked more by informal rather than formal horizontal mechanisms wherein political parties also played a role.²² This is a lopsided and democratically-deficient structure. The EP hardly qualifies as a full-fledged parliament. One main deviation lies in the fact that there is a discrepancy between the EP’s remit of action on the one hand, and the issues that are settled at the EU-level on the other. Another lies in the (non-elected) Commission. These factors entail that the dynamics of executive-legislative relations are not equivalent to those we find in full-fledged democracies. There are also member states with democratic-representative systems whose actual operational democratic credentials are weak indeed.

In the above I have shown that the crisis and the manner in which it has been handled in the EU are altering the EU’s decision-making structure. The increased importance of supranational bodies, the greater focus on tight coordination, and the close interaction between levels in economic governance suggest that the broader structure within which parliaments operate is undergoing significant changes.

The question is whether that must also be reflected in the structure of the democratic decision-making system. If parliaments are to re-assert themselves in such an increasingly integrated joint-

Glahn, “Parliaments at the Water’s Edge: The EU’s Naval Mission Atalanta”, in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 105-124.

²² See the various contributions in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics*, cit. Note that whereas the role of parliamentary interaction is gaining quite a lot of attention, more systematic attention is required to understand partisan interaction.

decision structure, inter-parliamentary coordination appears necessary (and is also listed in Article 13 in the TSCG). The problem is whether increased inter-parliamentary EU involvement and coordination will strengthen or weaken democracy in the multilevel EU system.

Recent developments appear to give grounds for arguing that the EU is moving from a MLPF based on learning to a multilevel system with elements of coordinated and joint decision-making, especially in connection with the European Semester and the EWM.²³ Such a manner of representative democratic catching-up would appear to be a response to the coordinative method of EU decision-making that we see emerging out of the crisis. Obviously, these elements are not sufficient to claim that a full-fledged transition has taken place, but they may be significant enough to say that a qualitative change is afoot, especially given that the EU is increasingly configured as a joint decision-system at the executive level.

If so, we may be seeing the emergence of a representative system of unique configuration, which is also configured along the lines of a multilevel parliamentary field but which is no longer simply a structure of deliberation and voluntary learning, and is developing into a system of joint decision-making. In such a configuration there would be a strong horizontal and “diagonal” logic in that parliaments on different levels interact with each other’s core activities, especially through the inclusion of lower-level parliaments in decision-making processes at the central level. Since the EU-level is increasingly coordinating economic governance, the national parliaments may be said to be included here. The EP is also being consulted and seeks a more prominent role.

From a democratic perspective, such a configuration would affect legislative-executive relations at all levels (wherein national parliaments intervene in EU decision-making processes, with bearings on legislative-executive relations at the national level). Such a configuration would no longer simply operate along vertical lines of authorisation and accountability, but would represent a direct challenge to how we conceive of democratic authorisation and accountability. The vertical orientation of democratic systems of representation and accountability that is characteristic of federal and unitary states alike would thus be directly challenged, with direct implications for the links to the citizens who may no longer know who represents them and in what respect they do so. *Can a non-centralised system in which the parliaments coordinate and cooperate in a joint-decision structure be accountable?*

The assumed greater representativeness that the bringing-together of parliamentary actors implies would come at the cost of accountability. And even if political leaders are kicked out in one parliament in the system, there is little assurance that it will lead to changes in policy (unless this occurs in a particularly strong or system-defining country such as Germany).

We see that there are several different democratic decision-making configurations in play. The first – the standard federal one – occupies a dominant role in the normative imagination of analysts and citizens; the latter two are experimental versions that are distinctive to the EU. A learning system appears compatible with democracy, a joint-decision system less so.

²³ See also John Erik Fossum, “Reflections on the Role of Subnational Parliaments in the European Multilevel Parliamentary Field”, in Gabriele Abels and Annegret Eppler (eds.), *Subnational Parliaments in the EU Multilevel Parliamentary System. Taking Stock of the Post-Lisbon Era*, Innsbruck, StudienVerlag, 2015.

4. What are the options?

In assessing the possible options, I connect the different democratic decision-making configurations with the main proposals for institutional reforms. Generally speaking, the literature appears to focus on three sets of democratic-institutional reforms:

- a) strengthening the existing system of supranational governing, especially the role of the EP;
- b) strengthening national parliamentary involvement in EU-level decision-making; and
- c) developing a Eurozone government.

I discuss the options with reference to democratic decision-making configurations for two main reasons. One is that the EU is such a complex and composite system that even a reform that represents an improvement in one measure might not amount to much in terms of the stability or legitimacy of the overall system. A proposal that appears credible with regards to a single measure might engender effects that backfire when the reform is put in a wider context. For instance, measures that increase the role of national parliaments in EU-level decision-making may weaken the credibility of the EP; they may also render lines of accountability even more intractable, as we see in the joint-decision configuration. We therefore need approaches that consider how measures interact.

The other reason is that reform option c) may be quite different from reform options a) and b). There are versions of reform option c) in which the resulting EU will be categorically different from the EU under a) and b). I therefore first assess a) and b) with reference to the democratic decision-making configurations, and thereafter spell out options under c).

Reform option a) could move the EU toward the standard federal approach. One way of doing so is to move towards a Compound Union along the lines spelled out by Sergio Fabbrini, for instance.²⁴ That also entails fashioning the Council as a legislative chamber and specifying a distinct sphere of competence for the institutions at the EU-level. The EP would then have to be reformed so as to resemble the lower house of the US Congress. Alternatively, strengthening the EP could also entail moving further towards EU-level parliamentarisation. The issue then would be the role of the Council, which might have to be reformed along the lines of the German Bundesrat. Both approaches would leave space for the consolidation of parliaments into a multilevel learning structure, but one that is not based on direct national parliamentary involvement in EU affairs. In such a system parliaments would be oriented towards each other in order to learn from each other, but their main concerns would be their citizens. Both the Parliamentary Union and the Compound Union would be quite compatible with how citizens understand democratic authorisation and accountability, namely as a vertical process, along two channels, to their respective member-state parliaments and to the EP. The problem is that either option is virtually politically impossible in today's EU.

Reform option b) would be to increase NP direct involvement in EU-level decision-making. In order to establish the democratic implications, it is necessary to consider at least three sets of considerations: the relations to the EP, the EU's competencies and how they are configured (exclusive/shared), and the implications for national-level patterns of authorisation and

²⁴ Sergio Fabbrini, *Which European Union?*, cit.

accountability. In general, we can say that the more comprehensive the role of the EP, the less important direct NP involvement is in EU-level decision-making. The present situation of the EP's weak role in foreign and security policy would seem to require a pronounced NP role; the question is whether that – even if possible – will improve authorisation and accountability.

Reform options a) and b) refer to different forms of citizen incorporation. Option a) is about the two-channel structure we are familiar with from federal systems. Option b) is more complicated because it introduces the collective of national parliaments and parliamentary interaction. Citizens are incorporated into a structure in which parliaments are involved in a system that requires that they all contribute to joint decision-making; the question is whether parliaments in this situation would and could be equally attentive to the citizens' concerns.

Reform option c) refers to the further development and entrenchment of the Eurozone, including a Eurozone government. If the standard federal decision-making configuration were to be fully adopted, the Eurozone would become a full-fledged federation and as such replace the present-day EU. That would of course require a clear delineation between members and non-members of the federation. To get there would require a major treaty change with a considerable reconfiguration of competencies across levels, through which the EU would acquire substantial direct funds through taxation, and fiscal and redistributive capacity. Thus, the present imbalance of monetary and fiscal union would be eliminated. The EU would become a federal state, with a rather standard system of (vertical) democratic authorisation and accountability. Such a development would present non-Eurozone states with a stark and categorical choice: inclusion or exclusion. Such a scenario could be facilitated by a Brexit because the strongest opponent of full-fledged federalisation would be gone.

Another, perhaps more likely, scenario would be consolidation of the Eurozone within a differentiated EU, wherein the Eurozone is the hard core and the non-Eurozone members are institutionally attached. Here we see different possible roles for the present-day EP, from a two-parliament arrangement (one for the Eurozone, the other for the rest) to various ways of involving the EP more directly in the activities of the Eurozone (for instance, through a parliamentary committee). Obviously, the more the centre of gravity were to be shifted to the Eurozone, the stronger the onus on developing a Eurozone parliament. The present-day EP could then be reconfigured to a forum of information exchange and consultations between the Eurozone “ins” and “outs” (a kind of weak public, only).

One question in such a differentiated EU with Eurozone “ins” and “outs” would be the scope of action and competencies for the EP; the other would be the role of NPs. A system based on the present configuration of monetary and fiscal policy would represent a coordinated or joint decision-making system inside the Eurozone. That in turn would require national parliamentary involvement and inter-parliamentary cooperation and coordination. Such a system would create risks of the institutions in the Eurozone system becoming overly focused on each other and their interaction – at the expense of citizens (which would also render the system susceptible to populism and technocracy). It also brings up issues of how to organise relations with the NPs of non-Eurozone member states.

Concluding comments

In this paper I have argued that even before the crisis struck, the multilevel EU had developed a distinct representative structure. That structure – before the crisis – had traits of a multilevel field with a strong learning component and was quite different from the kind of multichannel system we are familiar with from federal states.

The crisis and the way it has been handled have created a greater need for a viable multilevel parliamentary field. However, we may on the one hand argue that the crisis and its handling appear to have weakened or perhaps even undermined many of the preconditions for ensuring that. On the other hand, if the representative bodies were able to reassert themselves in this structure, that might not solve the problems. In response to the crisis, the EU has evolved from what initially looked like a “learning structure” to something more resembling a joint-decision structure, which is democratically problematic.

We might say that the EU’s pre-crisis learning structure was a democratic experiment with considerable potential. It appears unlikely that the same can be said of what is emerging out of the crisis. The EU system’s morphing into a joint decision structure raises the question of whether the experimental licence might be expended. Before the crisis struck, it appeared that democratic reforms within the ambit of the structure in place would be beneficial and represent a valuable addition to how we think of representative democracy in an increasingly interdependent world. There is little to suggest that the structure in place will yield a similarly optimistic assessment.

In my view it is necessary to consider how further reforms might bring the EU closer to a learning system based in a full-fledged EP with a tax and fiscal capacity. If that is not possible, it would seem to be important to flesh out in more detail the nature of these several models; assess their respective merits – practical and theoretical-normative; and monitor the EU’s further development with these in mind.

References

- C Katrin Auel and Oliver Höing, “Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?”, in *Journal of Common Market Studies*, Vol. 52, No. 6 (November 2014), p. 1184-1193
- Arthur Benz, “An Asymmetric Two-Level Game. Parliaments in the Euro Crisis”, in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 125-140
- Christopher J. Bickerton, Dermot Hodson, and Uwe Puetter (eds.), *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*, Oxford, Oxford University Press, 2015
- Aron Buzogány, “Learning from the Best? Interparliamentary Networks and the Parliamentary Scrutiny of EU Decision-Making”, in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 17-32
- Francis Cheneval and Frank Schimmelfennig, “The Case for Democracy in the European Union”, in *Journal of Common Market Studies*, Vol. 51, No. 2 (March 2013), p. 334-350
- Ben Crum, “Saving the Euro at the Cost of Democracy?”, in *Journal of Common Market Studies*, Vol. 51, No. 4 (July 2013), p. 614-630
- Ben Crum and John Erik Fossum, “The Multilevel Parliamentary Field: A Framework for Theorizing Representative Democracy in the EU”, in *European Political Science Review*, Vol. 1, No. 2 (July 2009), p. 249-271
- Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013
- Mark Dawson, “The Euro Crisis and Its Transformation of EU Law and Politics”, in *The Governance Report 2015*, Oxford, Oxford University Press, 2015, p. 41-68
- Mark Dawson, “The Legal and Political Accountability Structure of ‘Post-Crisis’ EU Economic Governance”, in *Journal of Common Market Studies*, Vol. 53, No. 5 (September 2015), p. 976-993
- Renaud Dehousse, *The New Supranationalism*, paper prepared for presentation at the ECPR General Conference, Montreal, 26-29 August 2015, <https://ecpr.eu/Filestore/PaperProposal/281383a5-0285-4417-a613-eed8cd5d36bd.pdf>
- Sergio Fabbrini, “Intergovernmentalism and Its Limits: Assessing the European Union’s Answer to the Euro Crisis”, in *Comparative Political Studies*, Vol. 46, No. 9 (September 2013), p. 1003-1029
- Sergio Fabbrini, *Which European Union? Europe After the Euro Crisis*, Cambridge, Cambridge University Press, 2015
- Cristina Fasone, “European Economic Governance and Parliamentary Representation. What Place for the European Parliament?”, in *European Law Journal*, Vol. 20, No. 2 (March 2014), p. 164-185
- Cristina Fasone, “Eurozone, non-Eurozone and ‘Troubled Asymmetries’ among National Parliaments in the EU. Why and to what extent this is of concern”, in *Perspectives on Federalism*, Vol. 6, No. 3 (2014), p. 1-41, <http://on-federalism.eu/index.php/component/content/article/194>

John Erik Fossum, “Democracy and Differentiation in Europe”, in *Journal of European Public Policy*, Vol. 22, No. 6 (2015), p. 799-815

John Erik Fossum, “Reflections on the Role of Subnational Parliaments in the European Multilevel Parliamentary Field”, in Gabriele Abels and Annegret Eppler (eds.), *Subnational Parliaments in the EU Multilevel Parliamentary System. Taking Stock of the Post-Lisbon Era*, Innsbruck, StudienVerlag, 2015

John Erik Fossum, “The Structure of EU Representation and the Crisis”, in Sandra Kröger (ed.), *Political Representation in the European Union. Still Democratic in Times of Crisis?*, London and New York, Routledge, 2014, p. 52-68

Jürgen Habermas, *The Crisis of the European Union. A Response*, Cambridge, Polity Press, 2012

Christian Joerges, “Law and Politics in Europe’s Crisis. On the History of the Impact of an Unfortunate Configuration”, in *Constellations*, Vol. 21, No. 2 (June 2014), p. 249-261

Agustín José Menéndez, “The Existential Crisis of the European Union”, in *German Law Journal*, Vol. 14, No. 5 (2013), p. 453-526,
http://www.germanlawjournal.net/s/PDF_Vol_14_No_05_SpecialFull-Issue.pdf

Andrew Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union”, in *Journal of Common Market Studies*, Vol. 40, No. 4 (November 2002), p. 603-624, <https://www.princeton.edu/~amoravcs/library/deficit.pdf>

Sofia Näsström, “The Legitimacy of the People”, in *Political Theory*, Vol. 35, No. 5 (October 2007), p. 624-658

Kalypso Nicolaidis, “The Idea of European Democracy”, in Julie Dickson and Pavlos Eleftheriadis (eds.), *Philosophical Foundations of European Union Law*, Oxford, Oxford University Press, 2012, p. 247-274

Claus Offe, “‘Homogeneity’ and Constitutional Democracy: Coping with Identity Conflicts through Group Rights”, in *The Journal of Political Philosophy*, Vol. 6, No. 2 (June 1998), p. 113-141

Dirk Peters, Wolfgang Wagner and Cosima Glahn, “Parliaments at the Water’s Edge: The EU’s Naval Mission Atalanta”, in Ben Crum and John Erik Fossum (eds.), *Practices of Inter-Parliamentary Coordination in International Politics. The European Union and Beyond*, Essex, ECPR Press, 2013, p. 105-124

Berthold Rittberger, “Integration without Representation? The European Parliament and the Reform of Economic Governance in the EU”, in *Journal of Common Market Studies*, Vol. 52, No. 6 (November 2014), p. 1174-1183

Dietrich Rometsch and Wolfgang Wessels (eds.), *The European Union and Member States. Towards Institutional Fusion?*, Manchester, Manchester University Press, 1996

Wolfgang Wessels, “An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes”, in *Journal of Common Market Studies*, Vol. 35, No. 2 (June 1997), p. 267-2992

CENTRO STUDI SUL FEDERALISMO

Via Real Collegio 30
10024 Moncalieri (TO)
Tel. +39 011 670 5024
Fax. +39 011 670 5081
www.csfederalismo.it
info@csfederalismo.it