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Democracy and Europe's Crisis of Legitimacy

*Stefan Collignon**

The European Union is in a state of profound crisis. The way it responds to its current situation will determine whether the European dream can survive. The failed ratification of the Constitutional Treaty first revealed the crisis. The European Council meeting in June 2005 then aggravated it, when the heads of state and government failed to agree on a financial framework for the EU budget over the next seven years. Although a compromise was stitched up in December, the European Parliament has rejected it as insufficient. Without the financial means to implement policies, the efficiency of European policy-making is seriously hampered, and without a constitution there is little hope that this will improve.

Yet, the idea of European integration is not dead. When the citizens of France and the Netherlands rejected Europe's Constitutional Treaty in their referenda, they only brought into the open the crisis of EU legitimacy that has developed for years in the shadow of the high diplomacy of European intergovernmental cooperation. However, they did not create this crisis; nor did they reject »Europe«. Opinion polls in France reveal that only one quarter of the »No«-voters were sensitive to »sovereignist« arguments about maintaining French identity (see for example Ipsos 2005). Given that the »No« won with 54 percent, the »sovereignist« share reflects approximately the electoral weight of Jean-Marie Le Pen, the extreme right wing candidate in the 2002 presidential elections. Three quarters of those who voted against the Constitution did so, not because they rejected Europe, but because they wanted a different Europe.

But what Europe do they want? The problem is that European integration has created such a wide range of common public goods, which are administered by cooperation between governments, that citizens feel political control is escaping them. Hence, they want more democracy. The sustainability of the EU is in question, with far-reaching geostrategic consequences, unless the issue of democracy is handled. I will first trace the main challenges to the European integration model and then discuss possible responses.

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What »Europe« Is All About

After World War II, 50 million dead and years of entrenched hatred between nations, reconstruction meant more than rebuilding the economy: trust and mutual respect needed to replace aggressive nationalism and open hostility. The project of European integration was the vehicle for building bridges across borders and links between individuals in different countries. Jean Monnet summarised this intention in the phrase »we are uniting men, not forming a coalition of states«. President John F. Kennedy understood the importance of this project, when he acknowledged Monnet with the words:

> »Under your inspiration, Europe has moved closer to unity in less than twenty years than it had done before in a thousand. […] You are transforming Europe by the power of a constructive idea« (cited in Duchene 1994).

No doubt, the early progress in European integration was supported by *Pax Americana*, the stability of the Bretton Woods system and the ideological front by the Western world against the Soviet Union, but Monnet's method consisted of creating practical structures for economic and political interaction. They contributed to the emergence of a culture of transnational cooperation, which replaced the traditional nationalistic competition between nation states; national governments' actions were constrained by European law, and individualistic liberal values replaced the subordination and confinement of individual interest to ethnic and national communities.

Progress was slow, gradual, and not without crises, but it has transformed Europe. The EU has become an increasingly important factor in citizens' daily lives. The domain for European policy-making has grown. The single European market has opened a vast space for firms to reap economies of scale and to increase productivity, and it has freed the creativity of companies and individuals. Consumers benefit from greatly increased choices at much lower costs. Economic integration also pushed political cooperation forward. Removing trade barriers required de-regulation in member states, but it also required re-regulation at the European level. Otherwise, fair and efficient competition could be undermined by national legislation or other actions from local authorities. A single market necessitated creating a single currency, for otherwise the efficiency of competitive firms would have been regularly distorted by volatility in foreign exchange markets. Thus, monetary policy had to be delegated to the European Central Bank (ECB). But this also required designing macroeconomic stabilisation policies at the level of the euro zone: from an economic point of view, nation states have become provinces of Euroland. Building Europe on the four freedoms of movement for goods, services, capital and labour soon necessitated increased cooperation in justice and home affairs. Making the labour market more flexible by removing obstacles to labour mobility within the EU did not only require the mutual recognition of diplomas and skills formation, but it also called for harmonised immigration policies along Europe's outside borders. This has been put in practice by the Schengen agreement and the cooperation of the juridical and law enforcement systems.

The process of adding new tasks to the EU's responsibilities for managing and governing these common goods in conjunction with the concerns of European citizens is frequently called the »deepening« of the integration process. It has progressed in parallel with a »widening« of the Union by adding new members from the initial six to now 25 member states. Both processes have had considerable impact on the EU's governance and are at the root of today's crisis of legitimacy.

European scholars have debated at length whether the dynamics of European integration are better explained by neofunctionalism or by intergovernmentalism. The first theory claims it to be the quasi-automatic consequence of transferring one function of governance to the EU, thereby creating disequilibria in nation states that require subsequently even more delegation. Intergovernmentalists argue that governments cooperate for selfish reasons as long as integration increases their own power. These theories are not mutually exclusive, but they do miss an important point: however well (or insufficiently) government elites cooperate, European unification can only progress, or even simply be sustained, only if it is supported by European citizens. Neofunctionalists expect support will come from managing common goods efficiently; intergovernmentalists believe that it is linked to the value communities that governments represent. Yet, in recent years, support has eroded. While in the early 1990s more than two thirds of Europeans thought membership in the EU was »a good thing«, in recent years this approval has fallen and is now fluctuating in the range between 48 to 52 percent (Eurobarometer 2005). So, what has gone wrong?

Challenge I: The Efficiency of Policy-Making

In the early years, the neofunctionalists were right. As Europe contributed to efficient policy results, citizens did support European integration: This has been called output legitimacy. European policy makers often proceed by designing bold projects, which then mobilise national polities and elites and in the end gain approval by ordinary people. The best-known example was the creation of the single European market, which was implemented as a program (called »Europe 1992«) of 233 directives of European law and accompanied by strong input from Europe's civil societies. Similarly, the technical introduction of the euro was prepared in close cooperation between the European Commission, the ECB and the private sector. However, the transposition of European directives into national laws is often slow and national measures may contravene EU law. In 1999, 13 percent of the single market directives issued before 1992 were still not transposed (Wallace/Wallace 2000). In response to this evident failure, successive European Council meetings have set up monitoring processes, such as the Cardiff Council in 1998, aimed to complete the single market, and the Luxemburg Process in 1997, intended to improve labour market reforms. When European monetary union started in 1999, the Cologne Process established also the macroeconomic policy dialogue between wage bargainers, governments and the ECB. Yet, all these processes have yielded disappointing results. Already the term »process« indicated that governments could not agree on substantive policies, although they hoped that a process of consultation could improve results. This coordination failure was recognised by the

Portuguese EU presidency in 2000. The »Lisbon strategy« formulated the goal to »create the most competitive economy in the world within 10 years« by »loading the empty wagons of the processes«.[1] This ambition, originally proposed by the British Prime Minister Tony Blair, has become the ridicule of European policy-making. The EU is far from this objective. The Lisbon strategy created the »open method of coordination«, another euphemism for not being able to set up more constraining mechanisms for decision-making. A study group chaired by the former Dutch Prime Minister Wim Kok found that

> »half way to 2010 the overall picture is very mixed and much needs to be done in order to prevent Lisbon from becoming a synonym for missed objectives and failed promises.« (Kok 2004: 10)

The failing policy coordination and the decreasing efficiency of policy-making in a deepening and widening Europe have real consequences for peoples' lives. Unemployment remains at persistently high levels. Economic growth has been lagging behind the US for more than a decade. Social welfare policies are under threat because they were designed for fewer people and growing economies, and the adaptation to an aging population is painful. Pressure on public finances is increasing; public investment, traditionally the basis for an industry-friendly and growth-supporting policy framework in Europe, has fallen to minimal levels. The EU budget amounts to only one percent of GDP, and still, governments find it extremely difficult to agree on it. All these developments have left European citizens with a vague feeling that the EU is no longer the guarantee for prosperity it once seemed to be. Policy makers still insist that Europe contributes to better living standards, but at the same time they blame »Brussels« for all the unpopular decisions for which they do not want to assume responsibility.

Europe's stagnation is often explained by the absence of strong leaders committed to the European cause. Indeed the generation of leaders who still had known the war is largely gone. However, this explanation does not grasp the systemic causes of Europe's coordination failure. These causes are better described by what political economists call the »collective action problem« (Olson 1971). This means that incentives for individual actors, such as European governments, are contrary to the collective interest, which would improve the overall welfare. Collective action problems therefore lead to suboptimal outcomes. With intergovernmental policy-making, they have gained in importance, because national governments are responsible for their narrow national constituency, while nobody is responsible for the collective interest of all European citizens. Although the policy domain is large, where benefits can be obtained for citizens through coordinating policies at the European level, when it comes to implementing them there are costs accruing to governments, who may therefore be tempted to free-ride or block other member states. This is true not only with respect to the Stability and Growth Pact (SGP), the European

1 The first quote was first made in the European Council conclusions from Lisbon in 2000 (http://europa.eu.int/growthandjobs/index_en.htm), the second quote was frequently used by civil servants negotiating Lisbon.

budget, and tax harmonisation, but also to immigration policies and most of the measures to be taken under the Lisbon Strategy.

Furthermore, it can be shown that collective action problems increase with the number of members in a group. Because each state has such an incentive, none will contribute to the desired result. Hence, with a growing number of member states and a deeper domain of policies, intergovernmental governance is becoming increasingly impotent and output legitimacy is in decline. The problem is that voluntary cooperation between governments is no longer effective in the EU with 25 members. At six or twelve, personal interactions between key policy makers could overcome gridlock. At 25 members states, European Council meetings have become huge bureaucratic events, involving hundreds of civil servants. The answer to the collective action problem is more delegation to EU authorities, capable of providing efficient decision-making at the European level. But delegating more power to the EU level may not only be resisted by national politicians and bureaucrats, it also poses serious problems for the legitimacy of policy-making in the EU.

Challenge II: The Democratic Deficit

The basic principle of democracy is that citizens who are affected by policy decisions have the final say about what policies are to be pursued. Governments are the agents of citizens and are charged to implement policies in accordance with their preferences. If preferences change, or governments do not implement them correctly, citizens can revoke them. This mechanism provides input legitimacy for policy-making. But the EU is not a democracy, regardless of the fact that member states have to be democracies if they wish to join. Although critics have pointed at Europe's democratic deficit for years, the EU's democratic deficit is growing year by year and plenty of scholars claim that it does not matter (see for example Moravcsik 2002). For them the EU is an international organisation, certainly a very comprehensive one, which has been charged by national governments (and not by citizens) to administer certain technical functions (trade and competition policies, monetary policy, etc.), while citizens continue to express their democratic preferences in the framework of nation states. This model was certainly appropriate in the early years of European integration. But as more and more tasks were bundled together at the European level in order to achieve the economic and political benefits of scale, policy decisions by one member state had external effects in other member states. This contributed to the gradual and increasingly more widespread erosion of the democratic principle.

First of all, if governments took decisions unilaterally, they would affect the welfare of citizens in neighbouring countries without these citizens being able to influence them. Thus, the principle of correspondence, whereby democratic government is »by the people for the people«, is infringed by externalities. This is of course true for international relations in general. Yet, while a small amount of externalities could always be handled by foreign ministers, the deepening of European integration has broadened the range of policy externalities to an extent that has started to affect the essence of democracy. Intergovernmental policy cooperation was intended to internalise these externalities. For this purpose, gov-

ernments negotiate in European legislation, which subsequently needs to be transposed into national law. National Parliaments then have to vote for this legislation, which they can no longer amend, for otherwise the intergovernmental deals unravel. Thus, the elected representatives of the people are hardly more than a rubber stamp for government bureaucracies. In many EU countries, up to two-thirds of legislation falls into this category. Second, a side effect of this mode of governance is the invariability of policy-making. Compromises between governments inhibit the adaptation to changing preferences of citizens. Intergovernmentalism does not only prevent citizens from expressing their preferences at the EU level, it also perverts democracy within the nation state. For example, French voters have consistently kicked out any incumbent government over the last quarter of a century, but policies have hardly changed. No wonder populist parties are gaining votes and influence. Europe's governance increasingly functions like a pre-democratic *ancien régime*, where the bureaucracies and governments are the aristocracy and their academic advisors the clergy. It is also sometimes argued that the EU has no democratic deficit because national governments are democratically elected. However, this argument is flawed. The purpose of democratic elections is to provide the framework for a public debate about fundamental policy options to allow citizens to make their choices and then elect a government. In the EU, the European Commission comes closest to a European government, although it is not elected by citizens but nominated by the European Council. Yet, the Council is not subject to general elections providing the opportunity for European-wide policy deliberation. Its democratic legitimacy resembles more an eternal parliament that only recruits new members through by-elections. Who would call such a system a democracy?

The most common objection to democratising policy-making in the EU is the absence of *demos* or a public sphere. It is claimed that respecting and tolerating political opponents is only possible within nation states where intense and exclusive bounds between individuals reflect the culture and identity of similar values and preferences. However, this analysis mistakes the results of a historic process for its precondition. Value and preference consensus are the *result* of common deliberation and democratic *institutions are necessary conditions* to make it possible. It is not by coincidence that ethnic strife and violent conflict is more frequent in dictatorial regimes because the lack of democratic institutions disables the process of deliberation, which thereby prevents consensus. Overcoming the fragmentation of Europe's polity would require institutions that allow European-wide policy deliberation. Yet, this is apparently not possible as long as there is no European public sphere that facilitates the same intensity of communication flows across borders as within nation states. However, this idealised image of public deliberation is rarely found in reality. Even in strong nation states, not mentioning federal states, regional or sectoral communication flows are significantly more intense. What is specific to Europe is the lack of integrated dominant agendas, a set of issues or topics that turn up simultaneously in various mass media and general political discourse (Eriksen et al. 2004). But this is precisely the consequence of the democratic deficit, not its cause. For who would be interested in debating policy issues if European policies were not subject to the popular vote? Who would bother to collect information if policies are determined by experts? Who would vote for a parliament that does not elect a government?

The answer to the legitimacy problem is that Europe needs a political constitution whereby the citizens living in the EU transfer policy-making competences to European institutions, which act as agents on their behalf in order to maximise their welfare. The Constitutional Treaty was intended »to bring Europe closer to its citizens«. It has failed because it was a halfway house between giving some power to the European Parliament, but also keeping and strengthening the power and competences of the Council. In the end it was rejected because too many citizens felt that this institutional argument condemned them to a simple market-oriented model of politics and society (the neo-liberal model, prominent in the French debate), without giving them the sovereignty to choose a different course of action if they so desired. The efficiency of Europe's governance is handicapped by the issue of legitimacy. How can Europe find a way out of this dilemma?

Output Legitimacy: Blair's Method

One way to avert the pending crisis is to improve the efficiency of policies. When the United Kingdom took over the EU presidency for the second semester of 2005, Prime Minister Tony Blair (2005), speaking to the European Parliament, made a passionate plea for Europe as a political project. After 50 years of integration, Europe had to renew. He emphasised the need for increasing Europe's credibility by pursuing »the right policies«. The list is long and not terribly original: modernise Europe's social model, reform the Common Agricultural Policy, implement the Lisbon Agenda, improve the macroeconomic framework for Europe, implement an EU action plan on counter-terrorism, enhance European defence capabilities and secure EU enlargement. No doubt output legitimacy of European policy-making would improve if this catalogue was fully implemented. But herein lies the problem. Nobody doubts that most governments know what needs to be done. But the collective action problem prevents the realisation of these policies. Take the example of the SGP. An efficient macroeconomic policy framework would require that fiscal policy is clearly defined at the aggregate level of Euroland, so that the ECB could pursue an active monetary policy aimed at maintaining price stability and a »high level of employment« (article 2 of the EU Treaty). However, the collective action problem prevents an optimal policy mix: while *each* country would benefit from low interest rates if *all* member states balanced their budget as stipulated by the SGP, each government on its own has an incentive to borrow at these low rates and therefore not to balance the budget (yet), as the financial costs are lower than the political costs of rising taxes and cutting expenses. Hence, in aggregate the European budget position is in deficit and monetary policy paralysed. The aggregate fiscal position of Euroland evolves as a random walk subject to the vagaries of national policies, while the ECB operates in an uncertain and opaque environment, therefore responding slowly to economic shocks. Not surprisingly, European growth is lagging behind the United States.

This example shows the need for efficient institutions at the European level. The solution to the failing SGP would be to define the aggregate fiscal stance at the European level. But this immediately poses problems for legitimacy. The axiom »*No taxation without*

representation« implies that setting the aggregate fiscal policy stance is impossible without European democracy. Otherwise the loss of input legitimacy would undermine the gain from output efficiency. The same is true for many other policy areas where the interests of all citizens living in the EU are affected. Hence, the conclusion must be that emphasising »right policies« and output legitimacy are not sufficient for Europe to regain its credibility as a model worthwhile to be supported by its citizens. Unless the institutional issue is tackled, Blair's new Europe will increasingly become »the synonym for missed objectives and failed promises«. Thus, unless European political leaders agree on a constitution that reflects citizens' desire for democracy, the likelihood is high that »new Europe« returns to the »prehistoric Europe« of competing nation states and economic stagnation.

Return to Values: Muddling Through

If efficient policies will not materialise due to collective actions problems, output legitimacy will suffer. Many pro-Europeans therefore seek to complement the latter by referring to common values, which provide input legitimacy. According to this approach, European governments should do the right things because they share similar values, and ignore narrow partial interests.

Most prominent representatives of this way of thinking are old-fashioned Euro-federalists. The federal idea has had enormous influence on the foundation of the European Community in the early 1950s and since then on its development to the Union of today, even if it has fallen in discredit in the UK under Margaret Thatcher. The rejection of the French and Dutch referenda has been seen by many as the confirmation that these ideas have run into a *cul-de-sac*. There is truth in this interpretation, although not necessarily in the sense anti-Europeans seem to believe. For federalists, the appeal to European values means putting forward an European identity, a shared set of common values, a European culture based on a common history that has left no nation alone. But at the same time, these values imply distinguishing the European »We«-identity from »them«, »us« from those who are different and do not share the common heritage. Thus, it is often Euro-federalists who oppose most fervently the accession of Turkey or Ukraine to the EU, and the affirmation of European identity, for example, opposition to the war in Iraq can quickly turn into anti-Americanism.

However, even more important is the fact that emphasising values and feelings of identity also brings out what separates European cultures. For examples, in a recent debate in the British House of Lords, Baroness Noakes (2005) proclaimed:

> »Europe is not a nation. It does not have citizens. The constitution perpetuated the myth of European citizenship, but citizenship is allegiance to and protection by a country. UK citizens do not owe allegiance to Europe. If anything, they look to their own country for protection against interference by the EU. […] There is no European demos. […] European democracy is a contradiction in terms. Those who use ›European citizens‹ language betray their federalist aspirations«.

The point here is that emphasizing European values brings up the defence of national values. This is a game where Europe can only lose. Most citizens living in Europe identify first with their nation state, even if they consider themselves simultaneously Europeans (48 percent). Only seven percent see themselves as foremost or exclusively European, while 37 percent think of themselves as exclusively nationals (Eurobarometer 2005).

In conclusion, value-based legitimacy for European policies is more likely to be counter-productive than capable of closing the legitimacy deficit that is dug up by the collective action problem. Another method for providing input legitimacy is needed.

Political Union Plus Democracy: The Way Forward to New Europe

When Jean Monnet first explained his idea of European unification, he compared it to hiking in the mountains, where the landscape gradually, but inevitably, changes as the hiker moves closer to the summit. 50 years of European integration have profoundly changed the political landscape (Duchene 1994). Possibly the most important transformation that has taken place is the acceptance that European law has acquired supranational normativity and is thus binding on the member states and their citizens. The entrenched rights and procedures established at the European macro-level have thereby become a source for legitimacy at the micro-level. The next step is now to close the circle by legitimising policy-making (the macro-level) through universal suffrage, thereby giving sovereignty to whom it belongs: to citizens, who are affected by those policies. Effectively this implies establishing a political union with full democracy. I have previously called this the European Republic (Collignon 2003, 2004); in substance it simply means that Europeans already live with a wide range of common goods (their *res publica*), but they now need the institutions that allow them to govern themselves efficiently.

The basic idea is simple enough. In policy areas where the logic of collective action leads to coordination failure, responsibility for governing Europe's collective goods must be delegated to an authority that acts as a European government. All other policy areas remain under national competence and may be subject to intergovernmental cooperation. A European government must be made accountable to all citizens and therefore be chosen by the European Parliament and elected through universal suffrage. This would transform the EU's polity in two important ways. First, a European government would have the salience that intergovernmental compromising in the Council could never produce. Therefore, voters would have the sense that their vote matters, as they could choose between parties and programs that compete for power. Hence, there is a gain in input legitimacy. Second, a European government acting as an agent for European citizens would be more efficient. Instead of hard-wrought compromises worked out by armies of bureaucrats and endorsed by ever-changing politicians, a single, unified administration would implement policies that reflect the majoritarian will of citizens. These policies are about interests and not about feelings of identity. A political Union with full democracy therefore increases both the supply of input and output legitimacy.

Thus, we find that the constitutional issue still is, and will remain, at the centre of European politics today. Trying to escape it, as the emphasis on »right policies« and »reforming Europe« attempts, will lead to the slow erosion of the European project. Supporters of this strategy may find it an exciting perspective to see the European Commission becoming »an OECD with teeth«, as a British colleague of mine once said, but Jean Monnet's dream of »uniting men« would be dead. Muddling through with value-patriotism is also not an option, as this is more likely to divide nations within Europe and mobilize anti-American sentiments outside. The question is then, how can the constitutional process be revived after the failed referenda in France and in the Netherlands?

The solution lies in the Union reflecting on its democracy. After mourning the failed Constitutional Treaty, governments should make a renewed attempt to match their actions to the proclaimed purpose of reconnecting Europe with its citizens. For this purpose, they should convene a new intergovernmental conference to change the existing Treaty of Nice. They would need to first establish the right to an elected constitutional assembly and then actually convoke one. Alternatively they should delegate that role to the European Parliament. This assembly would then be charged with preparing a constitution for a political union to administer the tasks agreed by member states when they ratified the earlier treaties. Also, it would be required to draw up rules for the democratic working of the Union's institutions to give European citizens collectively the ultimate choice over EU policy-making. The new Constitution would then require ratification by a pan-European referendum and it would be adopted if approved by a majority of citizens. If, however, individual countries so decided, they would be independently free to opt out of the political Union, without necessarily having to withdraw from the EU's established economic arrangements. This arrangement should actually appeal to both, those who see the need for more European integration and those who feel no attachment to a European identity.

This idea has many advantages over rescuing the rejected Constitutional Treaty by forming a limited coalition of the willing or cherry-picking aspects of the failed project. The idea of core Europe has often appeared in policy debates and has found some reality in the creation of monetary union or the application of the Schengen agreement in fewer than all of the 25 member states. However, the formation of an avant-garde group of countries is problematic. Even worse would be the *directoire* of six »large« countries, suggested by Nicolas Sarkozy. It risks splitting the Union in diverging groups for different policy areas. Although it might internalise externalities in a limited way, Europe *à la carte* prevents coherent and efficient policies and increases the democratic deficit because the diversification of tasks makes democratic choice by citizens impossible. Policy-making would be concentrated in the hands of bureaucrats. Alternatively, by delegating constitution writing to a democratically elected body and by giving citizens as individuals the opportunity to endorse the outcome rather than confining them to cultural stereotypes of »countries«, the collective interest of the Union would be respected. If, however, some nation felt unable to accept this result, they could withdraw, without necessarily putting into question the advantages of belonging to a large and efficient single market. The governance of this market would still be improved, as policy-making in this domain would then be reduced

to negotiations with a small number of out-countries and the democratically elected government of the Political Union. From this perspective, the Political Union would resemble a house in the garden of Economic Union. At the same time, this perspective would ground the debate about enlargement of the Union on a more rational foundation, as not every new accession candidate might want to join the Political Union, but may well be keen to benefit economically.

The crisis opened by the »No«-vote to the EU Constitutional Treaty may thus turn out a blessing in disguise, if it helped to relaunch the unification process by giving it a solid foundation in Europe's most fundamental political value: democracy. European unification has been the great adventure of our time. It is a historically unprecedented experiment. Today, uniting citizens across Europe means establishing a democracy that allows them to take their destiny into their own hands.

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