Democracy and Legitimacy in the European Union

Dr Julie Smith, Senior Research Fellow

Since the end of the Cold War, the European Union has developed almost out of recognition, doubling in size, creating a common currency, police and judicial co-operation and a common foreign and security policy. In many policy areas, particularly related to international trade and environmental politics, Europe has become a major international power. Yet, despite (or because of) this, over that decade and a half Europe's citizens have repeatedly challenged moves towards further European integration, contributing to a sense that Europe's elites are out of touch with their citizens. This culminated with the 'no' votes in France and the Netherlands in mid-2005, leaving the EU in a state of apparent crisis. This paper looks at the relationship between the EU and its citizens. It seeks to analyse the apparent problems of legitimacy and democracy in the EU and looks for ways to overcome them.

The Origins of the Problem

In the early years of European integration, elites shared a Kantian vision of a Europe at peace, while their citizens saw the fruits of economic prosperity engendered by ever closer co-operation. Just as the founding fathers hoped, the by-products of integration included an emerging sense of mutual trust among citizens of the founding member states. In addition to the obvious security benefits of integration, economic co-operation had a considerable impact on these war-ravaged economies, which grew rapidly in the 1950s and '60s. In the face of such apparent success, citizens were happy to accept the loss of sovereignty that Community membership entailed in return for the manifest benefits received. Their views were never formally sought on matters of integration but a 'permissive consensus'[1] emerged on European affairs whereby publics happily followed where their elites led. Thus integration seemed to have gained 'output legitimacy', popular acceptance as a result of its activities and the resultant benefits.

Citizens are now keen to discuss European affairs in a way previous generations did not and are far less willing to accept leadership from their governments, as recent referendum results have shown. What is the appropriate forum for such debate? Should EU matters be discussed within member states or at a pan-European level? Further questions have emerged as a result of various negative referendums, including the fundamental question whether the EU lacks legitimacy.

Legitimacy

In a very formal sense, the EU is legitimate: leaders of each of the member states have signed up to the various treaties according to national practice. Thus if national conventions require that parliament ratifies international treaties this is what happens. However, there has been much debate about whether the EU is legitimate in the eyes of its citizens. National leaders in several member states, including most vocally Tony Blair, argue that the Union is based on 'dual legitimacy', with the European Parliament (and by extension the European Commission) deriving legitimacy via direct elections to the European Parliament (of which more later), while the European Council and Council of Ministers bring together leading members of member state governments, who hold national mandates and are therefore legitimate, even if they were not elected on a particular platform vis-à-vis the European Union. However, despite the apparent attractions of such assertions, many would argue that the Union lacks 'social legitimacy'[2]; citizens have not bought into the process and do not accept the role and functions of the EU in the way that they accept their national institutions.

Of course, this problem is not universal across the Union. In several countries, notably Luxembourg and Belgium among the founding member states and Spain among the newer ones, there is considerable support for integration. Indeed, both Spain and Luxembourg ratified the Constitutional Treaty by referendum, demonstrating the ongoing support for integration. Elsewhere, though, the integration process is increasingly contested as citizens question changes that are taking place within the EU, whether associated with widening (especially the recent enlargement to include former Communist states from East and Central Europe and the prospect of Turkish membership) or deepening (expanding the scope of EU level policies) or simply the direction that EU policies seem to be going. This was seen most clearly in the 2005 referendums on the Constitutional Treaty in France and the Netherlands, though it is even more a feature of the debate in the new Central and East European members.

While the debates in France and the Netherlands focused closely on matters European, the main attention in each country was not on the detail of the Treaty or its likely ramifications but on a wide-range of issues associated with the current state of European integration. Thus, in France many on the Left were critical of the apparent dominance of what they perceived to be an Anglo-Saxon socio-economic model. In the Netherlands there was much criticism of EU enlargement, not just the prospect of Turkey joining but of the most recent wave of enlargement and on the financial costs of EU membership, which bear heavily on the Dutch compared with other member states. In each case the gap between voter preferences and the decisions that had already been taken by Europe's elites was stark. But why should that have been the case? Both countries are, after all, functioning democracies; both hold regular national elections and elections to the European Parliament. Is there not, then, scope for democratic input on European matters?

Democracy and European Parliament Elections

In principle, there is ample scope for 'input legitimacy', as Europe's citizens have enjoyed the right to participate in direct elections to the European Parliament since 1979. Then as now it seemed that the integration process was stagnating and by the 1970s 'eurosclerosis' had occurred, thanks to oil crises that led to economic malaise across Europe. Citizens were no longer convinced of the merits of Europe and their leaders looked for ways of bringing them back on board. Thus, after nearly a quarter of a century of debate, direct elections were finally introduced in 1979 as a way of enhancing the democratic credentials of the European enterprise and of increasing the legitimacy of the European Parliament and, by extension, the Commission, which was partially accountable to it.

The first direct elections to the European Parliament were something of a disappointment: turnout was low relative to turnout in national general elections except in countries with compulsory voting; the campaigns were essentially fought in nine different electoral arenas (i.e. separately in each of the then nine member states), with domestic issues predominating in the debates, which were typically led by national politicians rather than candidates for the EP; voters seemed to be more interested in giving their national governments a kick in the teeth than in articulating any particular views on European affairs. All in all, the assessment that these first elections were 'second order' was undoubtedly justified.[3]

Initially it was easy to brush aside any problems associated with EP elections as being transitional: voters were not accustomed to the idea of transnational elections - after all they were, and remain, unique. And, in any case, the European Community had relatively little impact on citizens at that time and the EP enjoyed few powers. Over the years the situation has altered fundamentally: the European Union, as it has become, has acquired powers across a vast array of policy areas that used to be the remit of national jurisdictions. At the same time the European Parliament has become increasingly powerful within the EU's institutional framework; it now has the power to amend or veto EU legislation in many policy areas, to agree international treaties and to confirm in office the Commission President and College of Commissioners. In many ways the EP, and certainly individual MEPs, have more influence than their national counterparts.

One might have expected these changes to lead to increased interest in EP elections as people began to recognise the impact of the EU on their daily lives. In practice, the changes appear to have been lost on the voters. Voters do not seem to see themselves as having common interests with citizens from other EU member states and the election campaigns remain resolutely national, despite the emergence of EU level political parties. Rather than reflecting an emergent EU-level polity, the lessons of 2004 highlighted just how discrete the elections in the now 25 member states remain. Moreover, several worrying features have emerged in recent EP elections. First, rather than increasing as voters became used to European elections, turnout has actually fallen at successive elections. In 2004 turnout was particularly low in Poland (20 per cent) and Slovakia (17 per cent), raising questions for some about the legitimacy conferred by the elections. Certainly they do not suggest overwhelming endorsement of the democratic process in the EU by the publics in some of the newest members. Moreover, low turnout has been accompanied by the emergence of Eurosceptic parties in many member states.

The permissive consensus traditionally ensured that there was little discussion about European issues in any of the member states. In most cases the mainstream parties all agreed on the merits of integration and so there was no real political capital to be made. When EP

elections were first held, this position still prevailed. Initially, only Denmark had a parliamentary list (the People's Movement against the Common Market) that articulated a clearly anti-European stance. Even in the UK, where leading politicians were divided on the European question, it was notoriously difficult to engender a meaningful debate on Europe because the differences were predominantly *intra*- rather than *inter*-party. Conservatives and Labour could be found on both sides of the divide, even if the smaller Liberal (and later Liberal Democrat) Party was deemed to be pro-European. The result was a broad but fairly shallow consensus in the UK for staying in the EU. Elsewhere the consensus was rather stronger but in all cases apart from Denmark the voters could not distinguish between the parties on European matters in any meaningful way and so the debates were lacklustre. Moreover, in the early years, MEPs tended to be a self-selected group of pro-Europeans who sought both to increase the powers of the European Parliament and to further the integration process.

Since the early 1990s the EP has seen the rise of a number of Eurosceptic groups among its ranks. A motley set of characters espousing Euro-sceptic stances in several member states have been successful in recent elections. In Britain, the UK Independence Party, which favours withdrawal from the Union, secured 12 MEPs in the 2004 elections, while elsewhere parties of the far right achieved success on Euro-sceptic tickets, as did the Hunting, Shooting, Fishing list in France. The upshot of the emergence of such parties is that there is now scope within the EP for a genuine debate about whether European integration should go further, should go backwards or should simply stand still. Yet, the opening of the party spectrum on Europe has not contributed to any meaningful discussion about the future of Europe either. EP elections continue to be an opportunity for citizens to vote against national leaders for domestic reasons rather than on European affairs. The campaigns do not even focus on which party can get the best deal from the EU for its country. In any case, the EP's role in treaty reform is limited, so EP elections may not be best-suited to wide-ranging debate about reform, since a subsequent failure to act on expressed preferences might increase voters' scepticism about the whole process.

Part of the problem is that although the EP wields considerable influence in the decision-making process of the EU, it has little say on the division of powers between the EU and its member states (or between member states) or on the division of the Community budget; these continue to be the remit of national politicians who are not primarily elected on a mandate for European affairs. Typically, voters in national elections are concerned about domestic issues such as education and healthcare; Europe is rarely at the forefront of debate – the most notable case being the 2005 UK general election in which all three main parties sidelined the European question almost entirely. Thus, if voters are not giving their government a specific mandate on European affairs, governments are effectively free to act as they see fit, arguing that they are representing the national interest. They may be; then again they may not. Recent events would suggest that frequently they do not. Thus, despite regular EP elections and regular general elections in each member state there is little opportunity for voters to discuss the future of Europe. One might deplore this situation but it is inconceivable that national politicians will suddenly decide to make Europe the key issue in national general elections – in countries tending towards Euroscepticism, there are too few votes to be one; too many to lose; in pro-European countries there is simply no point.

As a result, while the Union is formally democratic, not surprisingly, a number of voters feel effectively disenfranchised, a problem that EU leaders recognised in 2000 when they initiated what became the Convention on the Future of Europe, designed to help bring Europe 'closer to its citizens', who had begun to articulate their concerns over developments within the Union.

One of the aims of the Convention was to enable ordinary citizens to participate in discussion on the future of Europe. In the event, it did not wholly meet expectations – most of the participants were associated with Brussels politics either as politicians, lobbyists or in think tanks, though the decision to involve national parliamentarians did at least mean there was some national discussion of the issues, albeit not usually at the popular level. The opportunity of debating the draft Constitutional Treaty at the 2004 EP elections was lost when the Heads of State and Government failed to agree on a draft in December 2003. Thus, two chances of bringing the people into the European debate had been missed. This was particularly unfortunately in the light of proposed changes to the (s)election of the Commission President, which could have been very useful in giving voters and politicians alike a real interest in European elections. 'Who governs?' is an important question in democratic politics and election of the Commission/Commission President would help answer it.

However, a third mechanism for engaging the people in the process remains: a referendum. In theory this form of direct democracy could ensure Europe's citizens can express their preferences on proposed reforms, without being distracted by the vagaries of domestic politics, though experience suggests that the practice does not quite match the theory, hence a pan-European referendum might be a more appropriate way to overcome the log-jam in the EU and ensure Europe's citizens feel part of a democratic process.

National Referendums

While citizens in most EU states are not directly consulted about EU matters on any systematic basis and any treaty reform is agreed through the traditional parliamentary process, some member states, primarily Denmark and Ireland, have constitutional provisions requiring governments to consult the citizens ad referendum. The rejection by Danish voters of the Treaty on European Union in 1992 was the first time that any state had rejected progress towards 'ever closer union' and the Community was thrown into some confusion. In the event, the matter was solved expeditiously (at least as far as Europe's leaders were concerned); various aspects were clarified to the voters and the Danish voters said 'yes' a year later.

Questions of the legitimacy of the European Union had been raised, however, and they would not go away easily. In 2001, the hitherto stalwart Europhile Irish rejected the Treaty of Nice. Again, the decision was overturned in a second referendum a year later but serious questions had been raised - Europe's citizens were not convinced by changes that their elites were proposing. Concerned at this lack of popular support, the European Council convened the Convention on the Future of Europe, intended to stimulate a debate on European matters that went beyond the corridors of Brussels and Strasbourg.

In most countries, though, the debate was not really opened up to the average voter, who could be blissfully unaware of the

workings of the Convention and its draft Treaty establishing a Constitution for Europe. However, when national leaders adopted a revised Treaty several of them decided to put ratification to the test by referendum. Finally, there would be an opportunity for Europe's voters to have a say on their future. In some cases the referendum was standard practice, in others, like France it was a tool that had been used periodically in the past; for the Netherlands, it would be the first ever referendum on any issue. The Dutch used it to give a resounding vote of no confidence in the Treaty, or perhaps more accurately voted against many previous decisions on EU affairs that they disliked but had not before been able directly to comment upon.

When France and the Netherlands said 'no' to the Treaty Establishing a Constitution for Europe, the Union finally seemed to be in crisis. These states were founder members and assumed to be deeply Europhile; if they said 'no' what hope was there for positive outcomes in Poland, the UK or Denmark? The upshot was that other member states put their referendums on hold and the British Foreign Secretary called for a period of reflection. That period of reflection has so far been marked by silence from Europe's leaders about how they intend to proceed. The Union can carry on as it has been or it can now take the opportunity to consult with its citizens. If the latter, how should it do so?

A Pan-European Referendum

To date all major decisions about the future of Europe have been taken by elites meeting behind closed doors. Ratification of their decisions has then taken place according to national practices, usually via national parliaments, where the citizens have no chance directly to express their views. Clearly this is a legitimate approach in a legalistic sense but it does little to help persuade voters of the merits of the proposed changes. Even where voters are given the opportunity to approve proposed reforms via referendums, there is often little genuine discussion of the detail of the proposals.

Both the French and Dutch referendums highlighted very clearly the problems of holding referendums on constitutional reform in one member state at a time. Referendums, like second-order elections such as European Parliament elections, are subject to a variety of extraneous factors, including attitudes towards national governments. All too often votes are determined in large measure by voters seeking to give their governments a political rebuff rather than by considered opinions on the issue at hand. This is a particular problem when governments are unpopular (as was the case in France in 2005). While a negative referendum in one country is unfortunate, sequential referendums in several member states can pave the way for a domino effect or, as former Secretary-General of the Convention Lord Kerr has put it, a 'dance of death', making ratification nigh on impossible.

An alternative approach that would engage all of Europe's citizens would be to hold a pan-European referendum. Such a referendum could be held on the same day across the 25 member states and voters would all be asked the same question. Such a referendum could stimulate EU-wide campaigns covered by media in all member states. This would allow the same message to be conveyed to everyone, rather than filtered via national lenses. At a theoretical level the attraction of such a move is that it might contribute to the emergence of a European demos. The outcome would matter to all in a way that the results of EP elections do not. Participants in EP elections only have a say in the composition of MEPs representing their state or region; participants in a pan-European referendum would be voting for or against the same treaty/outcome as everyone else. If citizens of the member states thus perceived their interests as being directly affected by EU-level decisions, they might finally begin to recognise the importance of participating in EU-level democracy, direct or indirect. Thus, a bonus of generating widespread interest in a pan-European referendum could be that citizens gradually participate more in EP elections, as they realise their interests are affected.

Inevitably there would be some resistance to the concept of a pan-European referendum. Nationalists might reject the idea of direct democracy at the EU level as representing a further incursion into national sovereignty. Such concerns are likely to be particularly prevalent in countries such as the UK which remain most firmly wedded to the concept of national sovereignty and in states that favour the parliamentary sovereignty over popular plebiscites. There would clearly be some technical issues to consider: constitutionally Germany cannot hold referendums, so any pan-European referendum would have to be consultative rather than binding at least initially – constitutions can, after all, be amended and Germany could do so if this European initiative were deemed to be desirable; after all the ban on referenda was intended to avoid the problems of the 1920s and Germany's political system is now a stable and long-established democracy.

Perhaps more difficult would be the question how to determine a majority in any pan-European referendum. Certain Europhiles might wish to suggest that it should be one person one vote. However, experience of other federal systems should be considered and a dual majority system, requiring a majority of citizens and a majority of member states to be in favour of change, as is the case in plebiscites in Switzerland. There is no reason why the EU could not create an effective mechanism for aggregating the preferences of all its citizens if there were the political will to do so at the highest level, namely among the Heads of State and Government. This could facilitate a move towards a genuinely European form of direct democracy. This could help bring about a common sense of European identity, which might in turn help generate greater interest in EP elections if voters begin to recognise fellow Europeans as co-citizens. All of this would enhance the democratic credentials of the Union and in so doing help overcome the crisis of legitimacy that it faces. But of course before any such referendum can be held Europe's leaders will need to put forward a set of proposals that are clear, concise and accessible to the public. If they fail to do so, it is hard to see how they can expect to engage their citizens satisfactorily through this mechanism or any other.

Notes

[1] The term 'permissive consensus' was coined by Leon Lindberg and Stuart Scheingold, in 'Europe's Would-be Polity: Patterns of Change in the European Community' (Englewood Cliffs, NJ: Prentice-Hall, 1970).

[2] This is most prominently argued by Joseph Weiler, in 'The Constitution of Europe: 'Do the New Clothes have an Emperor?' and Other Essays on European Integration' (Cambridge: Cambridge University Press, 1999).

[3] An assessment made by Karlheinz Reif and Hermann Schmitt, in 'Nine Second-order National Elections: A Conceptual Framework for the Analysis of European Election Results' in European Journal of Political Research, Vol. 8, No. 1, 1980