

CHAPTER X

Democratic Standards in an Asymmetric Union

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Several reflective scholars have recently contributed new insights to the debate on the alleged legitimacy deficit of the European Union (EU): Gráinne de Búrca (De Búrca 2011), Jürgen Habermas (Habermas 2013), Giandomenico Majone (Majone 2009, 2012, and in this volume), Fritz Scharpf (Scharpf 2013 and in this volume), and J. H. H. Weiler (Weiler 2011).<sup>1</sup> Many voice concern about persistent features of the EU that hinder realistic *democratic* control, concerns whose urgency has increased dramatically with the Euro crisis and the responses to it. A remarkable feature of these contributions is how much they differ in their diagnosis and hence prescriptions. To illustrate, for Majone the ‘Community Method’ is part of the problem (2012), whilst for Habermas more of the ‘Community Method’ is part of the solution (Habermas 2012) The more fundamental concern is arguably the normative legitimacy of the EU: what reasons do various actors such as citizens and national authorities have to defer to EU decisions, when they have many reasons to act otherwise? (Raz 2006; Follesdal 2013).

From this perspective, one influential strand of proposals has been to address the alleged legitimacy deficit by increased measures of democratic deliberation and accountability. Thus optimists interpret the Lisbon Treaty as alleviating some of the alleged legitimacy deficits of

the EU. In particular, the European Parliament (EP) together with the Council has more influence on EU legislation. National parliaments, meanwhile, can employ a ‘yellow card procedure’ to protest against EU policies that they believe to violate the principle of subsidiarity.

Throughout the present Eurozone crisis, such worries about legitimacy and democracy have been particularly vocal, albeit often conflated, and not always very clear. What are we to make of such concerns, and the proposals brought forward? I shall argue that discussions about the democratic deficit often target the wrong problems, and that this is either because the alleged problems are misinterpreted, or because they are in fact not problems at all. Nevertheless, it remains the case (and notwithstanding the contestability of some of the evidence) that the EU is insufficiently democratically accountable. While some weaknesses may be temporary, others seem to be more entrenched in the constitutional structure of the EU. In particular, I shall suggest that we need to reconsider our democratic standards if the scholars who say that we must expect the EU to keep features of an asymmetrical federal order, with differentiated integration, are right.

My comments concerning the prospects of a sufficiently legitimate EU are clustered under the rubrics of Symptoms, Diagnoses, Prescriptions, and Prognosis. In particular, firstly, some symptoms of a democratic/legitimacy deficit seem open to alternative diagnoses, so that some such statements are contested and perhaps unduly critical, and some prescriptions are more questionable than would first appear. Secondly, several necessary components of a halfway defensible democracy appears to be missing in the EU – such as sufficient popular control over executive and legislative bodies; a sufficiently well-functioning set of parties competing for votes on the basis of deliberation and contestation; a lack of a shared sense of the

objectives of the Union and other aspects of a shared European identity. Thirdly, some such lacunae may diminish over time, thus some pessimism may be overdrawn. Finally, at the same time, persistent federal features of the EU will continue to hinder the institutions and culture required for standard democratic rule; in particular the *asymmetric* elements of the Union, and intra-EU mobility.

### **Symptoms – alleged and real - and Diagnosis**

Despite the changes brought about by the Lisbon treaty, it is still often said that the EU is insufficiently democratically accountable. This seems plausible, though some of the several symptoms sometimes adduced in support of this claim may be questioned.

#### ***‘Constitutional’ flaws: Institutional or political?***

Weiler claims that ‘the political colour of the European Parliament hardly gets translated into the legislative and administrative output of the Union’ (Weiler 2011: 304). Leaving aside the empirical accuracy of this claim, this statement does not obviously support a conclusion that the institutions are insufficiently democratic. We may lament the lack of democratic ‘habits’ such as parliamentary accountability (Weiler 2011: 303), but it is not clear that this is due to unsatisfactory institutional checks and balances. The lack of political impact by the majority in the European Parliament may instead be due to slow learning. For instance, it may take time for both domestic and European level political party entrepreneurs to understand how to exploit the existing levers of political influence and how to mobilize voters accordingly.

#### ***The power of the Commission and the practice of ‘Open Method of Coordination’***

Notwithstanding the proviso stated above, several scholars have noted persistent institutional features that prevent effective direct and indirect democratic control of important agents in the EU.

Giandomenico Majone's recent book *Europe as the Would-be World Power: The EU at Fifty* (Majone 2009) attempts to come to grips with an EU that has expanded far beyond what Majone had recommended. His account considers the dominant objectives of integration or centralization held by the founders and institutions, and the increased heterogeneity of Member States and of issue areas. 'One size' harmonization does not fit all in a EU with large socio-economic heterogeneity (218), and especially important therefore is Majone's later elaboration of 'differentiated integration' as a helpful mode of constitutional design (Majone 2012) He also diagnoses some of the 'fundamental structural flaws in the entire European construction', (Majone 2013, 1), especially the dominance of the Commission, and sketches ways to improve the situation.

Similarly, there is reason to be sceptical about the 'Open Method of Coordination' (OMC) as a mode of decision-making. In this process the Commission facilitates agreement among the states to 'soft' guidelines and targets (Majone 2009: 210). Some have high hopes about OMC as an alternative to hierarchical political accountability, on the grounds that it is better at promoting deliberation, problem-solving, and participation by all groups (Sabel and Cohen 2003). Indeed, some go even further, considering it to be the most innovative of the new and alternative instruments (Citi and Rhodes, 2007).

In support of Majone, I submit that the claims made in favour of OMC remain disputed. One early commentator correctly claimed that 'if the structure of the network in terms of interest representation is well balanced, the network will tend to open up policy-shaping opportunities for a variety of diverse actors without interests being realized at the cost of third parties' (Heretier 1999: 273). However, critics question whether such conditions ever hold, and if so, how they are maintained. In addition, several questions remain about the 'deliberative quality'

of the processes. Indeed, even the social partners are dissatisfied with their access to these processes (Smismans 2008; Follesdal 2011).

### ***Low voter turnout***

The EU is sometimes said to lack social legitimacy, as evidenced by abysmal voter turnout for EP elections. Perversely, turnout seems to decline as the EP gains power (Weiler 2011: 305), and according to Majone, this demonstrates that the EP has reduced its legitimacy (Majone 2009: 70, 173, 175). But this reliance on data about decreasing participation in EP elections merits further critical attention. Such conclusions require us to disentangle institutional design and voter practice, and to compare these not with the practices in unitary states but rather with voter turnout in legal orders with federal elements: legal orders, that is, where two levels of democratically accountable authorities interact. From this perspective, EP elections are second-order elections: mid-term national contests used to protest national governments in power (Reif and Schmitt 1980). This claim should not lead us to dismiss the concerns nor to ignore alternative hypotheses, but we may temper our despair by recalling that the level of voter participation varies greatly among Member States. Belgium and Luxemburg both have voter turnout to parliamentary elections *and* to EP elections of around 90 per cent, whilst in many other states, turnout to parliament elections is lower than to EP elections.

We also know little about the many motives non-voters actually have, be it apathy, contentment, or inability to see where another crop of politicians and parties would make a difference. Indeed, one might suspect – against Majone - that voters refrain from voting because they believe – in part correctly, but currently less so – that the EP has too little influence. In any case, Majone’s pessimism and his claim that the lack of government-opposition dialectic in the EP is a ‘fundamental difference’ to domestic politics (2009, 155) seems somewhat premature. There is considerable room for learning by the central actors, ,

and only then will an assessment of the actual effects of the current institutional set-up be possible.

The premises for Weiler's pessimism must also be nuanced. The decision structures of the post-Lisbon Union may actually allow for more political contestation among parties. But their leaders have yet to catch up. They may not comprehend the need nor the opportunities to compete for voters on European matters at EP elections or domestically. Such party strategies may change. We may for instance expect opposition parties domestically and in European bodies to exploit the handling of the Euro crisis by the authorities, or to challenge the Commission's partisan pursuit of its contestable if not contested conception of 'the' European interest.

### ***Lack of political community/European Identity***

Several authors lament the lack of a 'European Identity', though this is somewhat murkily defined. Some such 'identity' is apparently necessary for at least three reasons. First, ordinary citizens are sometimes asked to refrain from benefits in order to benefit other members of the citizenry out of a sense of solidarity (of an 'us') or compassion.

Second, some individuals will find themselves in the minority and will therefore lose out in majoritarian decisions of EU bodies. Nevertheless, they must still be expected to comply, and – assuming that the burdens they must carry are not too harsh – the motivation for this may stem from a belief that the system is fair, and that their turn will come in due course (cf. Barry 1991, Scharpf 2013). Such complex motivations may be referred to as a shared 'identity'. These conditions are a crucial challenge to prescriptions for massive redistribution in response to the Euro crisis, as will be discussed below.

Third, law-makers and treaty-negotiators must be trusted not only to promote their own constituency, but to also consider the interests of other Europeans. Their commitments must extend to a ‘we’ beyond state borders, to include other Europeans. The details of the requisite European identity, such as whether ‘constitutional patriotism’ would be required, and what further unique European features to add (if any), remain contested (Habermas and Derrida 2003; Follesdal 2009).

At least four cautionary notes have been raised with regard to the development of such a European identity.

Majone claims that a more legitimate EU will require nationals to *transfer* their loyalty from national to European levels (Majone 2009: 43). In response, scholars of political orders with federal elements may argue that political loyalties and identities are not obviously zero-sum. Individuals may well develop and maintain several distinct identities of the requisite kind (Simeon and Conway 2001). However, this challenge should not be underestimated.

Several scholars warn of two crucial but missing intervening variables for the emergence of such an identity in Europe: public spheres, variously defined, and political parties, who will compete for votes by making appeals to the ‘common good’ of all or almost all affected (Filippov, Ordeshook, and Shvetsova 2004). As to the prospects for the requisite public spheres, many now claim that such arenas for political debates have emerged, and may develop further over time (Risse and Van de Steeg 2014 (forthcoming)). Another important requisite for the creation of an EU identity is party mobilization. This is somewhat paradoxical, since parties will not only foster a overarching shared identity, but will also

engender party political cleavages. One such potential cleavage in today's EU is Euroscepticism concerning the polity or the regime. The Euro crisis is likely to fuel such conflicts even further (Scharpf 2013, and this volume). I will return to this below.

Finally, several authors caution that the extent and form of redistribution required in the aftermath of the Euro crisis is so extensive and complex that it will impose implausible strains on the requisite 'solidarity' (e.g. Scharpf 2013). Several of these concerns seem accurate, but they seem to be more appropriate in the shorter term than in the longer. Furthermore, the fact that these factors are unavailable for handling the present crisis does not quite amount to an objection against democratizing the EU, since the Euro crisis arguably in part emerged due to highly undemocratic and indeed unaccountable decision processes (see, e.g. Habermas 2013; Scharpf 2013; Majone 2012).

### ***Euroscepticism on the rise***

Several scholars note the emergence of 'eurosceptics' and 'euroscepticism' (Weiler 2011; Majone 2009; Habermas 2013). Thus Grande and Kriesi observe several 'Eurosceptic' domestic coalitions among otherwise quite dissimilar groups, composed of trade unions, radical right parties, and Conservative and Christian-Democratic parties, respectively (Kriesi, et al. 2008). These developments surely give ground for caution and reflection.

What are the implications with regard to legitimacy? That depends on what sort of scepticism we witness. It is important to disentangle criticism of particular policy proposals, of actual pieces of regulations, of their systemic effects, of institutional design (i.e., 'quasi-constitutional' issues), of aspirations to a constitution, of the EU as a polity consisting of certain Member States, and so forth. It is the scepticism towards the end of this list - the 'Euroscepticism' which seeks to return some competences to the Member States, or that

wishes to stop further membership – that gives the greatest cause for concern. Scholars of comparative federal studies are not surprised by this. After all, contestation about such constitutional issues is part of ‘ordinary politics’ in political orders with federal elements, especially during the ‘coming together’ phase (Linz 1999).

A tentative conclusion is that though some of the observations presented as indicative of a low quality of democratic governance in the EU may be sound, others may be questioned and revealed to be temporary, or indeed as not indicative of a lack of democratic institutions at all. Furthermore, the discussion indicates that the standards for stability and criteria of a sufficiently well-working democracy in the EU should be informed by similar discussions of stability and democracy in multilevel political orders generally. In political orders with federal elements the distinction is less clear between stable constitutional frames and the politically contentious conflicts among political parties within them. In these political orders, constitutional issues are more often on the political agenda, risking stability and unity to a greater extent.

With such provisos mentioned, we now move to consider some of the suggestions for improving such democratic deficits as there may be.

### **Prescriptions**

***“the EU ain’t undemocratic, so don’t try to fix it!”***

The first prescription worthy of mention is one argued for by some authors: let it be! Of all the problems that the EU has (so the argument runs), do not try to fix what is in fact a non-existent malfunction. Thus Majone seems to maintain that it would be a category mistake (or an ‘analogical fallacy’? Majone 2009: 156) to bring the legitimacy standard of democracy to

bear on the EU. I grant that the appropriate ways of ensuring sufficient democratic accountability, transparency, and so forth may have to be different in the EU than in standard unitary or federal states, perhaps drawing on federal experiences to secure fair influence both for individuals directly and for their Member States. However, there seem to be several reasons to agree that the EU is not sufficiently democratically accountable (see, for example, the arguments made by Weiler 2011; De Búrca 2011; Habermas 2013; Follesdal 2012).

***Reduce the EU's competences, and instead develop a 'club good' model for the EU***

Majone draws creatively on the theory of clubs to argue that the EU should have its powers shorn, and that instead it should focus on a programme of 'differentiated integration', creating collaboration among the willing states, in different combinations and in different sectors. States may form clusters who create 'club goods' or 'internalities' among themselves, and these are therefore limited to the set of states who prefer them and who are prepared to pay for them (Musgrave 1965; Olson 1969; Oates 1972, cf. Beer 1993, 182). Majone recommends further exploration and specification of the phenomena of 'variable geometry' or 'integration à la carte.' Though this is interesting as a general strategy, I would welcome further discussion and development of this approach.

Some implications seem sound: the theory of clubs elaborates the reasons as to why the Eurozone is ill-advised: centralized monetary policy is unwise in a non-optimal currency area, and in the Eurozone seems to have even deepened the recessions (Scharpf 2013).

As regards cases of plausible clubs, however, the theory as stated seems overly optimistic. Consider the practical and institutional tasks required to resolve problems by means of several clubs with various European states. While there are several benefits of such a model, how should parties go about establishing and delineating the competences of each club under conditions of complex interdependence? To some extent, this theoretical issue may not be

politically relevant, due to path dependencies in the wake of the Euro crisis. A central case in point is the ‘spillover’ from the EMU which Schimmelfennig explores in his contribution to this volume. The Eurozone members have had to adopt shared stronger fiscal and financial regulation, strongly opposed by non-Euro Member States, and possibly fuelling a core-periphery divide.

Another set of issues concerns how this approach deals with the power inequalities among states, and the differential mobility of different stakeholders. Some of these aspects were characteristic of medieval Europe (Majone 2009: 228), and have been explored somewhat within the tradition of fiscal federalism (Howse 1995; Oates 1972; Musgrave 1965). They have not, however, been resolved.

***Give the EU a global mission/ a Raison d’Être as a the shared identity***

In response to the legitimacy deficit, De Búrca advocates that the EU should exercise significant global leadership (De Búrca 2011). This seems a plausible place to look, particularly in light of the tragedies in Bosnia and Kosovo (Weiler 2011: 204-5). But the list of candidate global problems must be pruned in two ways (Follesdal 2012). Firstly, to increase its legitimacy the EU should only take on problems it is likely to help solve. EU’s recent track record regarding the Euro thus counsels caution. Secondly, modesty emerges from considerations of subsidiarity. The EU should stick to objectives to which it can plausibly claim comparative advantage over the efforts of Member States and those of other actors such as the Council of Europe. Any such objectives (concerning issues such as effective human rights and democracy protection, economic development or climate change) will require policies that disperse costs, benefits, risks, and opportunities unevenly among Europeans, meaning that successful resolution of this carefully selected set of problems will not reduce the need for democratic accountability, deliberation and contestation, but will rather require

more of the same. Indeed, some objectives require more democratic accountability rather than less, due in part to the kinds of disagreements they create. Consequently, such new objectives will not in themselves help reduce the legitimacy deficit in general, nor the democratic deficit in particular.

***Centralize more powers and reconceptualize the EU as solidarity***

Jürgen Habermas has recently argued that the EU should be reconstructed into a political Union, with less powers in the hands of the Member States and an attendant elaboration of interstate solidarity (Habermas 2013). His diagnosis and prescription of the present crisis rests on a particular structural feature of the monetary union noted by several others, but regarding which he draws very different conclusions. As each Member State can no longer devalue its own currency, in order to address problems of competitiveness they each make other fiscal, budgetary, and economic policy decisions. States fail to consider the externalities – the detrimental effects - on other Member States, which Habermas seems to hold is one (if not *the*) central problem (Habermas 2013). He thus welcomes further fiscal and economic centralization, such as in the ‘Blueprint’ proposals by the Commission and the Presidency of the Council (European Commission 2012), to coordinate these sovereign decisions, a Eurozone tax for stimulus programs in particular states, and the partial collectivization of national state debts. On this view, the new macroeconomic legislation in response to the Euro crisis is welcome (see Schimmelfennig, this volume): Habermas prescribes an expansion of the EMU to a political Union with federal features where states will not disappear, but will instead largely be tasked to implement administration and protect civil liberties. He warns that democratization of such a centralized political order cannot be postponed.

To fix ideas, consider a cyclical adjustment insurance fund at the European level, as proposed by the ‘Tommaso Padoa-Schioppa Group’ (Padoa Schippa 2012: 30-32); or a *European*

*Marshall Plan* to reduce unemployment and poverty (both of which are discussed by Scharpf 2013). One of the central challenges to such plans is the extent of transnational redistribution, which Habermas claims in turn will require a supranational democratic political union. A central objection to such scenarios is the present Euro crisis, which Habermas and others claim will require a very extensive redistributive burden to fall on some citizens of the EU. The concern is that such redistribution from the richer countries to the crisis countries will impose such high costs on foreign citizens that no shared European identity is likely to sustain it.

How, then, to respond to the concern about lack of popular will to redistribute? According to Habermas, a central motivation to engender such drastic changes is European solidarity, understood as a ‘a cooperative effort *from a shared political perspective* to promote growth and competitiveness in the euro zone as a whole’, and based on an understanding that short- and medium-term costly redistribution is in each state’s longer term self-interest.

In considering these suggestions, it is worth noting first of all that Habermas chooses to elaborate only some of several explanations of how the Euro crisis emerged: undemocratic central decisions, coupled with myopic state government responses. This is different from (though not incompatible with) the diagnoses of other analysts (e.g. that the Eurozone is a non-optimal currency area: Scharpf 2013), and Habermas uses it to argue for a supranational, political Union. Again, this is instead of elaborating alternatives such as those laid out by Majone and others: alternatives of dismantling the common currency, or of conceiving of an EU as permanently characterized by differentiated integration.

Second, other scholars doubt that redistribution of such dimensions, even if possible, is a

suitable response: Scharpf, for example, warns that given the present rules of the Monetary Union, transfers may be necessary in the short run, but may also create unfortunate permanent dependence. He argues that the more appropriate response would be to reconfigure the Monetary Union and the powers of the European Central Bank. (Scharpf 2013).

Third, while the present division of responsibilities is unclear, it still seems plausible that some domestic governments – and thus their citizens, especially those who may have avoided fair taxes – must bear some responsibility for the effects. Otherwise, the taxpaying middle classes of the donor countries would seem to have plausible complaints: they should not be the only ones to shoulder solidarity, whilst richer citizens of the crisis states free-ride. Habermas’ response may be that under his scenario, fiscal policies are to be handled by Brussels, under far better democratic control than at present, so that the burdens of solidarity are presumably distributed more fairly. Such a response may be correct, but emphasizes the need to insist that other options should not be ignored; in particular, to reconsider the case for keeping the Monetary Union. To dismantle it may be costly in many ways, both in the short-term and in the long-term (see Schimmelfennig, this volume). However, keeping the euro may also be so costly for citizens of richer states that it challenges Habermas’ long-term case for solidarity.

### ***Increase the Commission’s accountability***

Several authors propose steps to make the Commission more accountable. Weiler, for example, agrees with Majone that we should seek to change the long standing claim that the Commission will be ‘an international (supposedly) a-political transnational administration/executive’ (Weiler 2011: 307). I submit that we should instead acknowledge that ‘the European interest’ is contested, and that the Commission’s conscious or less reflective choice to pursue certain interpretations above others must be more public – and

contested (Follesdal 2003).

The objection to this may be that such contestation would hinder development of the necessary sense of shared European identity. I beg to differ. To the contrary, increased voter participation arises not from popular support for the EU's *raison d'être* alone, but from contestation about its objectives and how to best promote them. Such contestation is likely to increase the political salience of issues and foster voter engagement – which is thus endogenous to the political process (Follesdal and Hix 2006).

Of course, this is not to deny that the current decision-making system must also be improved. It has been noted that such politicization might foster even greater gridlock in European policy-making, and at a time when the future of the euro requires urgent attention (Risse and Steeg 2014 (forthcoming)). Moreover, this will not be the last time the EU finds itself in the 'joint-decision trap' (Scharpf 1988).

### ***Consider mechanisms from the federal tradition***

Improvements to the decision-making institutions of the EU should be informed by the experiences in the federal tradition. In political orders with federal elements, sovereignty (in the sense of the final say on various political issues) is *divided* between a centre and the member units. The degrees of influence or control by the member units may differ; thus the member units typically enjoy more power in various ways in confederal arrangements (Majone 2009: 59, 61; for further elaboration cf. Majone 2012; Scharpf 2013). Habermas' suggestion is thus also federal in this sense, with many but not all powers centralized. Note that this broader way of using the term 'federal', while consistent with federal political thought, may be at odds with current political debates in the EU.

In the following I use ‘federalism’ in this broad sense, whereby competences are (quasi)constitutionally split between at least two geographical levels of government. This makes it easier to draw critically on other federal experiences, for example with regard to checks and balances and second-order elections. Moreover, this backdrop may make it easier to calibrate opportunities for improvement, pessimism, and optimism. Democratic modes of running (quasi)federations may be helpful when assessing the EU (cf. Scharpf 2013), refining Weiler’s claim that ‘the correct comparison is with political elections to national parliaments where the numbers are considerably higher’ (Weiler 2011: 305).

Comparative studies of federalism warn of a higher level of ongoing *constitutional contestation* concerning the constitution and its values and interpretation than in unitary political orders (Filippov, Ordeshook, and Shvetsova 2004; Lemco 1991). Stabilizing mechanisms are even more important in these states, to prevent citizen disenchantment and the disintegration of the political order. These stabilizing mechanisms may also have to accommodate and correct great imbalances and conflicts of various kinds among the member units. Ironically, while the need for such stabilizing mechanisms is greater in federations, the grounds of shared values and goals may be especially weak, given their frequent genesis as solutions to intractable problems otherwise resolved by a unitary political order. In particular, many scholars emphasize the need to develop an ‘overarching loyalty’ to the federation as a whole, if the political order is not to disintegrate (Linz 1999, Filippov, Ordeshook, and Shvetsova 2004). A European party system which could foster such cross-cutting loyalties is underdeveloped (though cf. Hix 2008) As mentioned above, a more legitimate EU need *not* require citizens to transfer their political loyalty to the EU. However, individuals must have political loyalty toward several political orders, as in federations. The challenge is to foster such multilevel loyalty.

From this ‘federal’ perspective it seems correct, as Majone argues (Majone 2009; Majone 2012: 25-26), to seek to dismantle parts of the EU that are outside its core objectives; or at least to maintain the possibility of permanent ‘opt-outs’ in the form of differentiated integration. Which competences should remain with the EU, and which ‘clubs’ should exist within it? Majone’s own suggestions regarding club goods is a good starting point for research and public debate.

### **Prognosis**

The challenges to bring the EU into conformity with democratic theory and practice are twofold: it is not only the EU that needs to be reformed, but so also our democratic standards. The reason is that some persistent features of the EU go to the core of assumptions for democratic rule. At stake are both questions of *demos*, and questions of *impact*. Central premises for many theories of democracy are that those who are equally affected by shared institutions, should have an equal say in how they are run and modified. Several aspects of the EU challenge the relevance of these assumptions, especially if it remains differentially integrated.

### ***Asymmetric Exit Options in the Member States: All are not members for life***

Some stakeholders and veto players are able to use their relative ease of mobility and hence exit to affect the bargaining outcome. Adam Smith recognized such power of global capital:

A merchant, it has been said very properly, is not necessarily the citizen of any particular country. It is in a great measure indifferent to him from what place he carries on his trade, and a very trifling disgust will make him remove his capital, and together with it all the industry which it supports, from one country to another. (Smith

The four freedoms have increased the number of actors with such exit options in Europe, thereby exhibiting the benefits and disadvantages of fiscal federalism noted above. Mobile individuals with marketable skills can only be taxed so much before exiting for greener pastures, leaving less mobile compatriots with less market value in their wake. Thus even credible threats of such exits affects the opportunity set of governments that seek to respond to challenges wrought by the ageing population and by the mistakes of past policymakers – witness the exodus from Ireland, Italy, and Spain. At the same time, some states may seek to boost their opportunities by bidding for such mobile actors and their assets. States may thus find themselves not only pursuing conflicting policies, but engaging in contestation over how to craft the shared European rules that will regulate such competition.

### ***Exit from the EU***

A further source of potentially destabilizing constitutional contestation is Article 50 of the Treaty on European Union (TEU), which recognizes Member States' right to withdraw from the Union. Such an explicit option is unusual in political orders with federal features. Other areas of EU cooperation, such as the euro, also raise such prospects – though exit from the Eurozone is not regulated. When such exit is indeed a formal option, we may expect politicization and 'normal politics' in the EU or about euro policies to escalate even more frequently to constitutional issues, if not to constitutional crises.

### ***Asymmetric Union: Not similar impact on all affected***

A further challenge to the EU stems from its 'asymmetrical' features. In these federal arrangements member units have pooled different competences, and thus citizens and authorities of different member units will correctly hold that the objectives of the central unit

are different across the member units. This has been discussed in the study of European integration as ‘differentiated integration’, or as a ‘polycentric’ or ‘variable geometry’ feature of the EU. We see that scenario emerging vividly with regard to the Eurozone: the insiders have deepened their integration, whilst non-members avoid the common rules (Schimmelfennig, this volume).

In asymmetric federations there will always be such disagreements about the objectives of the central authorities. One implication is that the conception of ‘European’ – or ‘EU’ – identity will quite appropriately be different depending on whether or not the person is a member of Schengen Europe, of Euro-Europe, and so on. This lack of shared objectives raises concerns for attempts to identify recommendations for a more democratic EU: who should have influence on which decisions? There is currently little in the way of a shared ‘meta-ideology’ about the objectives of the EU. But if the Union continues to be asymmetric, this deep disagreement will remain. The objectives that Member States have for the EU are different depending on the division of competences between the nation-state and the Union. Thus the Union will and should continue to have a different impact on the different states – and ultimately on citizens of Europe.

This has implications for the prospects of democratic contestation. One scenario is that politicization in Europeanized public spheres will foster a sustainable democratic polity, relying on some sense of a European collective identity (Risse and Steeg 2014 (forthcoming): Chapter 6). But the content of this identity will remain different in the differentiated EU.

A European party system which could foster such cross-cutting loyalties is underdeveloped (Risse 2014*I*, 321; though cf. Hix 2008). But it seems that we may expect *polarizing*

*constitutional politicization* about the polity and the regimes of the EU for a long time to come, with no *finalite* of agreement. This has implications for the sort of meagre shared identity that may be hoped for in the multilevel political order that is the EU.

To make matters worse, as mentioned above, comparative studies of federalism suggest that federal arrangements are more subject to *constitutional contestation* than are unitary political orders (e.g. Lemco 1991; Bakvis, Baier, and Brown 2009). Such topics include which competences should be enjoyed by central authorities, how Member States should influence such decisions, and sometimes questions of which member units to include in the polity. Insofar as the EU maintains federal features, such ‘constitutional frames’ are likely to remain more contested than they are in unitary political orders.

It is not only in the EU that leaders tend to transform and reframe some policy issues into constitutional ones (Risse and Steeg 2014: Chapter 6). It is also typical in federations, which is both good news and bad news. It is good news because if it is typical of political orders with federal elements it means that this phenomenon is not so unique to the EU . The bad news for those concerned with stability and democracy is that federal orders also suffer a higher risk of instability of two kinds: they tend toward fragmentation – indeed secession - or complete centralization. Some contributors may be more favourable to a spillover development toward more centralization. Habermas seems to support such visions. This may be unobjectionable from the point of view of normative theory, but there is a risk that these conflicting economic and political pressures will continue to cause great political tension among citizens, parties, and states in the EU.

## **Conclusion**

Popular and academic discussions of how to alleviate the democratic deficit of the EU have increased in volume, not least due to the ongoing Euro crisis and the attempts to resolve it.

The present chapter has sought to clarify some of the central points made in this debate. I have argued that discussions about the democratic deficit often misinterpret the alleged problems – which are sometimes not properly regarded as problems at all. However, this is not to deny that the EU is still insufficiently democratically accountable. Several components of democratic governance go missing or are underdeveloped in the EU, especially sufficient popular control over executive and legislative bodies. Some of these may change without much in the way of constitutional reform, such as a sufficiently well-functioning set of parties and a shared sense of the objectives of the Union and other aspects of a shared European identity. However, persistent federal features of a differentially integrated – or asymmetric - EU will continue to hinder the institutions and culture required for standard democratic rule. This would seem to be true regardless of whether the EU ends up as a strongly centralized federal political order as Habermas suggests, or as a ‘Europe *a la carte*’ *a la* Majone.

*Asymmetric* elements of the Union, often discussed in this volume as ‘differentiated integration’ as exemplified by the Eurozone, require us to develop our democratic standards further, drawing from the federal tradition of political thought. We may take some comfort by comparing the EU to other political orders with federal elements, as they typically face constitutional contestation more frequently than do unitary states. But such comfort is meagre: federations also tend to be less stable, and the requisite dual loyalty often insufficient. Thus, the appropriate standards of democratic governance may have to be revised in light of the multilevel nature of the EU.

The Union may still fall short of such ideals, and reforms to improve its democratic quality may not be easily within reach, particularly in the face of urgent crisis. Nevertheless, to *not* urge reforms to make the EU more responsive to the best interests of its citizens would be even worse.

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