

DRAFT – COMMENTS WELCOME

## **Democratic Dilemmas in EU Multilevel Governance: Untangling the Gordian Knot**

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The concept of multilevel governance has emerged as the most widely accepted way of theorizing the political system of the European Union (Hix 2006; Jachtenfuchs 2006). It highlights the interplay of European and member state institutions (and sometimes also regional authorities) in EU decision making (the multilevel element), as well as the significant role that private actors play alongside public ones in the EU's relatively non-hierarchical policy processes (the governance element).

While the earliest academic contributions on multilevel governance focused on the characteristics of EU policy making (Hooghe & Marks 2001), more recent discussions have begun to question the implications of the EU's multilevel characteristics for its democratic legitimacy (Bache and Flinders 2004; Benz & Papadopoulos 2006; DeBardeleben & Hurrelmann 2007). This debate hinges on the question of whether the coexistence of various vehicles of decision-making in the EU's complex governance structure expands or limits the citizens' capacity for collective self-government. Does multilevel governance, with its multiple venues for participation, result in a political system that is 'both more efficient than, and normatively superior to, central state monopoly', as it 'can better reflect the heterogeneity of preferences among citizens' (Marks & Hooghe 2004, 16)? Or does the dispersal of governing authority, along with the resulting tendencies of non-transparent bargaining between levels and across the public-private divide, amount to 'a "Faustian bargain" in which core values of democratic government are traded for accommodation, consensus and the purported increased efficiency in governance' (Peters & Pierre 2004, 85)?

This paper seeks to answer these questions by analyzing the mechanisms of democratic participation and control that exist in the EU's political system. The first section distinguishes three main channels of democratic input: (a) the European Parliament, (b) democratic processes at the member state level that affect decision making in the Council, and (c) the inclusion of organized civil society in EU policy making, especially through the consultation procedures of the European Commission. After this initial overview, the second section defines criteria for assessing whether the democratic regime constituted by these channels is deficient in terms of democratic quality. While existing discussions of the EU's democratic deficit often focus on a selective list of normative standards, we argue that a comprehensive assessment needs to take into account each of the three elements of democracy defined by Abraham Lincoln in his Gettysburg Address: government of the people, by the people, and for the people. The third section discusses how well the EU's channels of democratic input meet these criteria; it finds that each channel is affected by specific democratic problems. How intricate these are becomes

evident if the three channels are viewed in combination, rather than in isolation, as we do in section four. This section identifies three characteristic dilemmas of EU multilevel democracy. While we are skeptical of grand reforms to resolve these dilemmas once and for all, the fifth section discusses some options for mitigating their effects. The paper concludes with some thoughts about the uniqueness of EU multilevel governance, or whether the EU holds lessons for other multilevel systems.

### **Three Channels of Democratic Input**

Like most systems that combine various territorial layers, the political system of the EU offers its citizens more than one institutionalized procedure for democratic participation. Three main channels of democratic input are to be distinguished. Each operates through specific EU bodies and is structured according to a specific logic of representation.

(a) The most obvious channel is constituted by the directly elected *European Parliament (EP)*, which is explicitly conceptualized as an institution to represent all European citizens at the EU level. This can be called the supranational channel of EU democracy. The Parliament's power in legislative procedures has grown considerably with recent treaty reforms; the Lisbon Treaty that is currently up for ratification proposes yet another significant expansion. In most fields of EU policy making, the EP can now participate through the codecision procedure in which it is a fully co-equal legislator (together with the Council of Ministers), and in which no EU legislation can be passed against its will.

There are three respects in which the EP's powers still fall short compared to those of national parliaments. First, the EP cannot formally initiate EU legislation; the 'monopoly of initiative' continues to be held by the European Commission. Second, there remain a number of policy fields in which the EP has no full legislative powers, but participates in a less influential role (e.g., according to the consultation procedure, in which it can be overruled by the Council). This is presently the case in the Common Agricultural Policy, but here the Lisbon Treaty proposes a shift to codecision. No change is proposed, on the other hand, for crucial policies such as tax harmonization, police cooperation in criminal matters, and foreign policy – in these areas, limited parliamentary influence will remain the norm. Third, the EP has only limited competencies in electing and controlling the European Commission. While its assent is required for a new Commission to take office, the Parliament cannot influence the nomination of individual Commissioners and can only vote a Commission out of office with a majority of two thirds of its members.

These limitations of parliamentary power, however, are not the main problem facing this channel of democratic input. Rather, it is primarily the character of EP elections that casts doubt on the Parliament's democratic quality. In these elections, national parties run on largely national platforms, campaigns are dominated by issues of domestic politics, and the voters – if they participate at all – tend to see the elections primarily as an opportunity to sanction unpopular national governments. This led Karlheinz Reif and Hermann Schmitt to characterize the first direct EP elections in 1979 as 'second order elections' (Reif and Schmitt 1980), a characterization that remains true today (Franklin 2006;

LeDuc 2007). The crucial implication is that Members of the European Parliament (MEPs) are elected on the basis of considerations that have little to do with their role as co-legislators at the EU level. It is questionable, against this background, whether the EP can adequately fulfill its role of representing Europe's citizens in EU decision making.

(b) The second channel of democratic input in the EU runs from *national elections, national parliaments and national governments* to the Council of Ministers, which is an even more powerful decision maker at the EU level than the EP. We can call this the intergovernmental channel of EU democracy. It could be argued that this mechanism of member-state representation secures the democratic participation of the citizens in spite of the EP's functional deficiencies.

Yet this second channel of democratic input is not without its problems either: First, EU-related topics hardly ever play a significant role in national elections, nor are they prominently discussed in the mass media. This means that national democratic processes do not provide good guidance for a government's position in the Council. Second, even in controversies that do engage the citizens, national governments retain a large room for maneuver in Council decision making. One reason for this is that national parliaments, the core institutions of member-state democracy, are often unable to keep track of EU policy-making processes; a second reason is that they often hesitate to tie their own government to an overly restrictive mandate, for fear of limiting its ability to negotiate effectively in the Council (Auel & Benz 2007; Raunio 2007). When the outcome of these negotiations does not satisfy important domestic constituencies, it is always possible to shift blame to other European governments; after all, decisions in the Council are usually made through qualified majority voting (QMV). The channel of member-state representation, therefore, is also deficient when it comes to guaranteeing that citizen preferences are respected in EU decisions.

(c) In addition to the EP and national political processes, a third channel of democratic input is constituted by *European civil society*, which is actively included in EU decision-making procedures particularly by the European Commission. This is the transnational channel of EU democracy. A number of authors see a considerable democratic potential in its procedures of policy-specific, functional representation, which seek to identify and consult relevant stakeholders in early stages of the decision-making process (Grote & Gbikpi 2002; Greenwood 2007; Steffek et al. 2007).

But as with the other channels of democratic input, doubts arise as to whether civil society participation can ultimately secure an unbiased connection between the preferences of citizens and the outcome of EU decision making. First, the stakeholder representatives consulted by the Commission are usually professional lobbyists, whose positions need not reflect the preferences that exist in society. Second, it is ultimately up to the Commission how it reacts to the positions voiced in the consultative process, and there is little the consulted groups can do to if the Commission fails to do so.

## A Democratic Deficit? Defining the Relevant Criteria

We can conclude that each of the three channels of European democracy is faced with specific problems. The question in evaluating the democratic quality of multilevel governance in the EU is whether their interaction guarantees a satisfactory measure of democracy. Obviously, the answer depends on the normative criteria by which democracy is defined. In current academic discussions, arguments *against* the thesis of a 'democratic deficit' can be found most often in two strands of democratic theory.

The first are a self-described 'realist' approaches to democratic theory, which in the case of the EU are represented most prominently by Giandomenico Majone (1998) and Andrew Moravcsik (2002). For these authors, the most crucial criterion for democracy is the existence of institutions that prevent the abuse of power by special interests. Judged by this standard, the EU can be considered democratic; after all, its consensual forms of decision making and the large number of veto players ensure that all power holders are kept in tight check.

The second group of democratic theorists who often come to positive conclusions about the EU's democratic quality are certain theorists of deliberative democracy, such as Oliver Gerstenberg and Charles Sabel (2002), Hansjörg Trenz and Klaus Eder (2004), or Gerard Delanty (2007). This might surprise at first glance, since the idea of deliberative democracy, based on the theory of Jürgen Habermas, is often considered a particularly demanding conception of democracy. However, many applications of this idea to the EU interpret deliberative democracy in a relatively undemanding way. Democracy is held to exist if there are procedures which ensure that all relevant arguments for or against a certain decision can be exchanged and assessed; by contrast, it is seen as secondary whether all citizens can actually take part in these deliberations. Viewed from this perspective, the EU is democratic because its decisions are shaped by a large number of actors – the EU bureaucracy, national governments, national and European parliaments, interest groups, etc. – which bring a variety of different perspectives to the table.

On closer inspection, both of these positions are based on relatively narrow criteria and, what is more, criteria that could in principle be fulfilled in a system of 'enlightened despotism' as well. The above positions seem to neglect the essence of democracy, the fact that the people should govern. It is clear that in large-scale political systems, the people can be directly involved only in exceptional cases, while most decisions will have to be made by representatives. But such representative procedures need to fulfill a number of conditions. Building on Abraham Lincoln's famous triad of government of the people, by the people, and for the people, these conditions can be defined as follows (see also Benz & Papadopoulos 2007, 4-7; Scharpf 1999, 6-8; 2000, 102-5):

1. *Government of the people* requires that the people who are affected by political decisions (decision takers) are at the same time decision makers in a democratic system. This condition encompasses two forms of congruence: First, the people who are affected by a political development must be identical with the electorate in the selection of representatives who can control this development (Zürn 2000,

- 188-90). Otherwise, they are ultimately ruled by powers out of their control. Second, the people who select representatives must be able to conceive of themselves as a relevant political community capable of collective will formation (Offe 2000). In other words, they must constitute an imagined community about which one is genuinely concerned, for which one is willing to become engaged, and whose other members are seen as legitimate participants in the democratic process. If this condition is not met, the selection of representatives will have little to do with the collective self-determination of the people, but is likely to be guided by particularistic concerns or considerations that have no resonance with the citizenry.
2. *Government by the people* implies that in the process of selecting representatives, as well as in influencing decisions that these might make, every member of the political community has an equal chance to make his or her preferences heard. This criterion encompasses what Robert Dahl calls ‘control of the agenda’ (no political issue should be withdrawn from popular participation), ‘effective participation’ (adequate and equal opportunities for expressing preferences), and ‘voting equality’ (everyone’s choice at the decisive stage should count as equal) (Dahl 1989, 108-18). Crucially, however, Dahl also defines the criterion of ‘enlightened understanding’: All citizens should have opportunities for discovering and validating the choice that best serves the citizens’ interests (ibid.). This underlines why, in addition to equal participation, deliberation can be seen as a criterion for government by the people: Procedures should exist that allow for an exchange of arguments, potentially leading to a refinement of the participants’ preferences.
  3. *Government for the people*, finally, refers to the fact that the quality of democratic procedures is not independent of their outcomes, measured in terms of their contribution to the citizens’ common good. As Fritz W. Scharpf points out (1999, 13-21; 2000, 104), such output-oriented forms of democratic legitimacy encompass both positive and negative standards: In a positive sense, democratic procedures should enable representative decision makers to effectively tackle common problems that affect the citizens. In a negative sense, output legitimacy also requires checks and balances, as well as the representatives’ electoral accountability: To make decisions that contribute to the common good, representatives must be subject to procedures that prevent the abuse (or incompetent use) of powers, and that give the people the opportunity to sanction powers holders for failed policies, ultimately by voting them out of office and replacing them by a different set of representatives (Bovens 2007).

	Government of the people		Government by the people		Government for the people	
	Congruence of people affected by decisions, people selecting representatives, people choosing decision-makers	Congruence of people selecting representatives and relevant imagined communities	Participation (equal chance of access for all citizens)	Deliberation (rational debate of all proposals)	Effectiveness of political decision making	Electoral accountability of decision makers
European Parliament	Yes	No (second order elections)	Yes (in EP elections)	Limited (little in EP elections, considerable in EP procedures)	Yes	No (second order elections)
National democratic processes influencing Council	No (in QMV)	Yes	Yes (in national elections)	Limited (little in national elections, mixed in national parliaments)	Yes (if Lisbon Treaty is ratified)	Very limited (especially in QMV)
Civil society participation influencing Commission	No (Commission makes ultimate decision)	Yes	No (only includes selected representatives)	Yes (provided all stakeholders have been identified)	Yes	No

**Figure 1:** Criteria of democracy applied to the EU's channels of democratic input

## **Government of the People, by the People, for the People: Assessing the Union's Democratic Procedures**

On the basis of this comprehensive set of criteria, we can now evaluate the democratic quality of the EU's multilevel system. In a first step, it makes sense to focus on each of the three channels of EU democracy in isolation (see Figure 1), knowing that in a second step, their interaction will also have to be considered.

(a) For the European Parliament – the supranational channel of EU democracy – the outcome of the evaluation is mixed. With respect to *government by the people*, the EP performs quite well if we focus on the congruence of people affected by its decisions and the electorate that installs the relevant decision-makers. Since the most recent treaty reforms, MEPs are able to decide on most (though not all) issues of an EU-wide relevancy, and the electorate to which they owe their mandate is identical with the group of people for whom their decisions are primarily relevant, namely the EU citizens. The EP fares worse, however, if we examine the congruence of the people who select MEPs with relevant imagined communities: The 'second order' characteristics of EP elections show that the electorate in EP elections does not conceive of itself as a cohesive political community, hence EP elections are widely seen as irrelevant and their outcome is often shaped by domestic factors that have little to do with EU-level politics.

This fundamental problem of EP elections also affects their performance in the other two democratic criteria. EP elections make a contribution to *government by the people* as they give all EU citizens equal chances of participation. They perform worse with respect to deliberation: While the EP's legislative procedures are characterized by a considerable amount of deliberation, the overall deliberative quality of this channel of democratic input is hampered by the fact in EP election campaigns, rational debates about the EU's political priorities tend to be crowded out by issues that are only tangentially relevant to the decisions that MEPs will later have to make. The EP's deliberations, therefore, remain an elite affair that contributes little to the 'enlightened understanding' of the citizens.

With respect to *government for the people*, the EP's effectiveness – the influence that it can exercise over EU policy-making processes – has grown considerably in recent years due to the extension of the codecision procedure (Maurer 2007). On the other hand, the electoral accountability of MEPs is limited: Since they are elected on the basis of considerations that have little to do with their role in EU decision making, MEPs are not accountable to the electorate for their performance in Strasbourg and Brussels. They have to run for re-election, but their record hardly plays any role in determining their chances of retaining their positions; nor is the electoral process likely to 'send a message' from citizens about their satisfaction with particular outputs their MEPs may or may not have supported.

(b) The second channel of democratic input in the EU is constituted by national democratic processes that influence the composition and decision making of the Council of Ministers. If we consider *government of the people*, this intergovernmental channel has

the reverse strengths and weaknesses of the supranational channel. At the member state level, it can generally be assumed that the electorate views itself as a cohesive political community; the national elections that lead to the formation of Council delegations are hence given the appropriate priority by the citizens. On the other hand, as soon as the Council moves away from unanimous decision making, the congruence between the people affected by Council decisions and the electorate choosing the decision-makers is no longer secured. If their 'own' national government is outvoted in QMV procedures, EU citizens are ultimately subjected to the rule by decision-makers different from their own representatives, and over whose selection they had no influence.

Regarding *government by the people*, there is no fundamental difference between the supranational and the intergovernmental channel of democratic input. In spite of occasional problems, the citizens' control of the agenda, effective participation and voting equality in national elections can be assumed to exist, so that the criterion of participation is fulfilled. With respect to deliberation about EU-related issues, national election campaigns fare badly, as European politics hardly plays a role. More deliberation takes place within national parliaments, even though various parliaments differ with respect to the information they receive from governments, the involvement of specialized committees, and their ability to issue mandates that tie the own government to a certain position (Auel & Benz 2007; O'Brennan & Raunio 2007; Raunio 2007).

The final aspect to consider is *government for the people*. In this respect, the first thing that needs to be noted is that the Lisbon Treaty, if it is ratified, will greatly increase the effectiveness of decision making in the Council of Ministers, lowering the thresholds for what constitutes a 'qualified majority' (though not until 2014) and extending QMV to more policy areas. While oversized majorities will still be needed for Council decision making, and some areas of unanimity remain, the Council will be less restrained in tackling problems that face Europeans. On the other hand, the electoral accountability of decision makers in the Council is limited. The most serious problem in this respect is posed by QMV procedures, which imply that the citizens of a member state might be subjected to a decision made by the governments of other member states, which they cannot hold to account. But due to the fact that national governments enjoy considerable leeway when negotiating in the Council, which national parliaments are careful to preserve, and considering that a government's position in EU decision making hardly ever plays a role when its re-election is at stake, even the electoral accountability of one's own national government for its activities in the Council is limited (Benz 2003; Auel & Benz 2007). It should be noted, though, that the Lisbon Treaty might bring some positive change in this respect, since it requires the Council to meet in public when acting in a legislative function.

(c) The third channel of democratic input, civil society participation particularly through the consultation procedures of the European Commission, differs from the other ones in that the constituencies included are not defined on a territorial, but on a policy-specific basis: The Commission seeks to consult with all stakeholders who might be affected by a policy proposal that it is considering. Evidently, this group of stakeholders varies from one proposal to the next.

The basic problem that these procedures pose with respect to *government of the people* is obvious: While civil society representatives do have a chance to influence decision making processes – empirical accounts vary when it comes to the extent to which this is indeed the case (e.g., Steffek et al. 2007) – it is clear that they are not the ultimate decision makers, since the Commission is not legally bound to include their suggestions in its proposals (and these proposals might be amended by the Council and Parliament). This channel of democratic input hence does not secure the congruence between the people affected by decisions, people selecting representatives, and the people choosing the ultimate decision-makers. It is more successful, on the other hand, with respect to the second kind of congruence: The civil society representatives who consult with EU institutions are selected by the members of their respective organizations, and these can be expected to form a distinct (if fluid) imagined community of stakeholders who see themselves as being affected by policies in a specific field.

*Government by the people* first of all requires the equal participation of all citizens in democratic procedures. Undeniably, this condition is not fulfilled in the transnational channel of democratic input. While the European Commission can be credited with genuine efforts to identify various stakeholders and to support the organizational capacities of weak interests in its consultation procedures (Greenwood 2007), consultative procedures are not open to each and every citizen, and it is highly unlikely that it will ever be possible to completely eradicate differences in the organizational capacities and power resources of various interests. In short, the principle of ‘one person, one vote’ is not respected in processes of civil society participation (Greven 2007). A more positive assessment seems warranted with respect to the deliberative qualities of such processes. While empirical studies have shown varying degrees of deliberation (see the contributions in Steffek et al. 2007), it is clear that civil society participation has the potential of contributing to a rational exchange of arguments – provided that all stakeholders have been identified, and no position is intentionally or unintentionally omitted.

Finally, *government for the people*: Existing assessments indicate that civil society participation can be remarkably effective in tapping information, correcting weaknesses in original proposals, and creating legitimacy for EU rules. One reason why it is propagated by the European Commission is precisely that it gives the Commission access to relevant information that might not otherwise be available to its relatively small bureaucracy (Greenwood 2007). But like with the other channels of democratic input, the crucial problem is accountability: Neither the civil society representatives who are consulted nor the Commission that is in charge of most consultative procedures can be voted out of office for their contribution to the EU legislative process.

## Democratic Dilemmas of Multilevel Governance: Internal Contradictions and Interactions of the Various Procedures

An overall analysis of the various individual assessments summarized in Figure 1 reveals a number of interesting patterns. Most importantly, we can see that each of the three democratic criteria, when applied to the EU, generates internal dilemmas (see also DeBardeleben & Hurrelmann 2007). This section will spell out these dilemmas and discuss how they are related. In contrast to the preceding section, this analysis will move beyond the separate discussion of the various channels of democratic input, and focus on their interaction as well.

The first criterion, government by the people, generates what can be called the *congruence dilemma*: It does not seem possible in the EU to square the demands for democratic governance, which increasingly call for Europeanized decision making, with the configuration of imagined communities, which exist primarily at the national level and tend to Europeanize, if at all, in the form of narrow 'sectoral publics'. In other words, while the political developments that affect citizens in the EU member states are increasingly European in scope, which means that they can only be controlled through democratic procedures operating at the EU level, the social conditions for democratic decisions at this level remain precarious, as can be seen in the 'second-order' characteristics of EP elections. An easy solution to this problem is not available: Renationalizing political decisions would undermine the congruence between the scope of relevant political problems (increasingly European if not global) and the electorate(s) choosing representatives to deal with them (exclusively national); shifting more powers to the EU would further accentuate the disconnect between a European electorate that remains a formal construct and relevant imagined communities that continue to exist primarily at the national level.

Given these difficulties, the solution found in the EU's multilevel system can be seen as a sensible compromise: Most decisions are dependent on the concurrent approval of the EP (representing the 'appropriate' territorial scope) *and* an oversized majority of national governments in the Council (representing the 'appropriate' grounding in political communities relevant to the citizens); in addition, sectoral communities enjoy good access through the European Commission. The problem, however, is that the *institutional linkage* between these three channels of democratic input is established through relatively non-transparent, and often informal, processes of elite negotiation (Benz 2003). All contentious pieces of EU legislation go through a series of inter-institutional consultations, conciliation procedures and 'trilogues' that remain opaque even to the most interested citizens. As we shall see, this has negative implications for the other two dilemmas of multilevel governance, rendering them more problematic than they are in other democratic systems.

At first glance, the internal contradictions generated by the second democratic criterion, government by the people, might be less obvious. After all, this criterion's two demands, for equal participation of all citizens and rational deliberation of all political proposals, do not necessarily conflict – it might well be argued that without broad participation, a

rational debate of all political proposals cannot be conceived. On the other hand, the requirement of deliberation always privileges participants with superior material and cognitive resources, brings about inequalities in participation or even the exclusion of some affected persons, and hence results in deviations from the basic representative principle of ‘one person, one vote’ (Sanders 1997; for the EU Abromeit 2002, 33-48). In practice, therefore, participation and deliberation often do conflict.

This *participation-deliberation dilemma* (or representation dilemma, as we called it in an earlier publication, DeBardeleben & Hurrelmann 2007), is in no way unique to multilevel governance, let alone to the EU. However, in the context of the EU’s democratic system, it develops an unusually troubling dynamic. This is largely an effect of the congruence dilemma, and the way it has been ‘resolved’ in the EU. Since the policy preferences generated through the supranational and the intergovernmental channel of democratic input are ultimately tied together in a system of elite negotiations, and the transnational channel operates through such elite mechanisms as well, democracy in the EU becomes essentially a two-stage affair: First a participatory, but non-deliberative process with little relevancy for policy development (EP elections, national elections, and national parliamentary procedures); then a deliberative, but non-participatory process in which policies really get made (negotiations between the EP, Council, and Commission, often including significant stakeholders from the transnational sphere). The problem is the lack of any real connection between the two stages, which implies that the citizen’s participation tends to go nowhere, without any substantive consequences for EU policy making. But all of the standard procedures to remedy this, for instance by extending the control of national parliaments over their governments’ actions in the Council or even by turning the Council into a directly elected second chamber modeled after the US Senate (Zürn 2000, 204-205), threaten to undermine the deliberative qualities of EU decision making by narrowing the room for compromise or even by bringing to the table participants who are not interested (or able) to contribute in an informed way to EU policy development.

A similar dilemma exists with respect to the last criterion of democracy, government for the people. Again, it should be stressed that a contradiction between effectiveness of decision making and the accountability of decision makers exists in various kinds of democratic system and is by no means a specific trait of the EU: If representatives have to worry about their re-election (or continued support by their constituency), they will have less room for maneuver in the decision-making process, leading to reduced efficiency. In the EU’s system of multilevel governance, however, this *effectiveness-accountability dilemma* is exacerbated by the fact that the three channels of democratic input all merge in a system of elite bargaining (a structure that is, as we have seen, a consequence of the congruence dilemma): In order to achieve any results, such a system presupposes not only a certain degree of secrecy, but also a significant flexibility of the decision makers – which at the same time undermines their accountability (Benz 2003; Auel & Benz 2007).

A look at Figure 1 suggests that accountability is indeed the most pressing problem of EU governance: Even when viewed in isolation, all three channels of democratic input

privilege effectiveness over accountability; and their combination in elite negotiations operates according to the same logic. There might hence be a good case for reforms intended to increase accountability, but it should be clear that such reforms could at the same time reduce the EU's decision-making effectiveness. (They might also, of course, alert decision-makers to undesirable consequences of their decisions and in this way make a contribution to improving outputs.) The proposal of turning the Council into a directly elected second chamber (Zürn 2000, 204-205), for instance, ignores that the EU's system of multilevel governance differs from US federalism by being based on a functional separation of powers, a system in which EU-level legislation is generally implemented by national executives and bureaucracies. This kind of system would generate dysfunctional results if separately elected national representatives, rather than national executives, participated in EU policy making. Proposals for extending the control of national parliaments over the activities of national governments in the Council appear more plausible (Maurer 2002), but they likewise cannot escape the accountability-effectiveness dilemma.

### **Untangling the Gordian Knot: Can the EU be further Democratized?**

Is there any way of escaping from the three dilemmas of multilevel governance, or at least attenuating their effects? Given that our analysis has highlighted the congruence dilemma as the most fundamental source of the EU's democratic difficulties, it might appear promising to focus remedial strategies on the lack of an imagined community of Europeans. If feelings of community and identity among the EU's citizens could be strengthened, the EP could finally emerge as a fully operational representative institution, which would make it possible to parliamentarize the Union in a more comprehensive way and do away with some of the elite negotiations that currently characterize EU multilevel governance. This in turn would mean that participation and deliberation could more easily be squared, and accountability could be guaranteed by electoral means.

This prospect explains why projects of identity politics remain salient in discussions about European democracy. Most importantly, the failed EU Constitution was inspired by this logic (Hurrelmann 2005). The very label 'constitution', the solemn declarations of the preamble, the articles about the Union's goals, values and symbols, the prominent place accorded to the Charter of Fundamental Rights – all this was intended to clarify the contours of the EU as a polity, to circumscribe the characteristics of the European people as this polity's 'demos', and to define the constitutional document itself as a reference point for a European feeling of belonging.

The constitution's failure indicates the limits of such attempts at identity building (Hurrelmann 2007). Large parts of the European population are not ready to accept an EU that displays the classic insignia of a state. In addition, there are enormous differences between national views of European integration, and the divergent expectations that follow from them. These differences make it impossible to define the characteristics and philosophical foundations of the Union in an unambiguous way, and to enshrine them in constitutional articles, without generating opposition in specific member states or groups

of the population. Constitutional value declarations therefore do not constitute promising mechanisms of European identity building.

The same is true for a strategy of identity building that focuses not on a discourse of European values and symbols, but on the increased politicization of the Union. This strategy is based on the assumption that it is possible to generate increased interest in EU politics and strengthen Europe's political community by increasing the salience of EP elections. This could be done, for instance, by making the European Commission fully accountable to the EP, and dependent on its continued support, as in parliamentary systems of government. Ultimately, this strategy expects that European democracy can be self-sustaining, by creating the political community that it presupposes (Habermas 2001). But there are ample reasons for doubt whether this approach can be successful (Moravcsik 2006). Historically, increases in the EP's powers have not generated more interest in EP elections; rather turnout has fallen in most member states (Franklin 2006). Moreover, it is difficult to see from a theoretical perspective why politicization, and the shift towards majoritarianism that it implies, should generate common identities, rather than resulting in disgruntled minorities who seem themselves overruled by majorities with whom they have nothing in common. Against this background, moving away from the consensual (though elitist) forms of decision making guaranteed by the interconnection of three channels of democratic representation might well pose a danger to the societal support that sustains the European integration project.

We can conclude that the congruence dilemma is unlikely to be solved, at least in the short- or medium term. This implies that the EU's distinct system of three interconnected channels of democratic input is here to stay. Attempts to further democratize the EU will have to work with the existing system, focusing on how the interplay of the three democratic channels can be calibrated in a way that minimizes the effects of the participation-deliberation and effectiveness-accountability dilemmas, in particular by enabling more meaningful participation in all stages of decision making and more relevant mechanisms of accountability. A number of options are worth being pursued in this respect:

- *Disentanglement:* The idea here is that many decisions to be made at the EU level might not require the involvement of *all* EU institutions, and the simultaneous activation of *all* channels of democratic input. If this is so, disentanglement could reduce the democratic problems that originate in the non-transparent and elite-based mechanism of linking the three channels. Ideally, the EU's policy competencies should be subdivided into three areas: (a) policy fields in which supranational decision making by the EP is deemed acceptable even in the absence of a European political community, since issues of identity are less likely to be involved (e.g., environmental issues); (b) policy fields in which member-state representatives have to retain control because supranational majority decisions would not be accepted by the population (e.g., social policy or foreign affairs), and (3) policy fields in which decision making requires particular expertise and should thus be delegated to independent agencies, consulting extensively with stakeholders (e.g., currency matters or issues of food safety). In practice, such a subdivision will not be possible

in an unambiguous way for the majority of areas that the EU currently deals with. It might be feasible, however, to reach similar effects by defining more clearly, in each policy field, which EU institution is responsible for standard-setting and which one for standard-implementation, and where competencies for policy initiation, deliberation, and decision-making should be located (Benz 2006, 111-112). This would imply that while all EU institutions continue to be involved, each has a more clearly circumscribed mandate. This could reduce the need for negotiations between them, which would make it possible to strengthen participation and accountability in the EU's three democratic channels.

- *Formalization of inter-channel linkages:* Even if a strategy of disentanglement is pursued, the need for joint decision making of various EU institutions, legitimized through various democratic channels, will not disappear. It therefore makes sense to think about strategies for making their interactions more formal and transparent, which would imply that interested parts of the electorate would have more information that could be used to participate in meaningful ways and hold decision makers accountable. Unfortunately, the example of federal systems, which in many cases do not have to grapple with the congruence dilemma but nevertheless often operate through opaque systems of elite accommodation, is of little encouragement in this respect. Nevertheless, it might be worthwhile opening up at least the formal conciliation committees of EP and Council that are part of the codecision procedure to public scrutiny. While this would reduce the deliberative quality and effectiveness of these committees, it seems to be a reasonable price to pay for increased participation and accountability.
  
- *Directly-democratic mechanisms:* A number of authors have suggested that direct democracy might constitute a partial remedy to the democratic dilemmas of multilevel governance (Abromeit 1998; Smith 2007). In essence, the creation of directly-democratic procedures would amount to the addition of a fourth channel of democratic input in the EU. This makes sense only if this channel is institutionalized in a way that minimizes the complexity that it would add to the EU's decision making process. One particularly promising idea to achieve this is Heidrun Abromeit's (1998) idea of a directly-democratic veto against decisions by the EU's representative institutions, modeled after the facultative referendum in Switzerland. This would not formally alter the EU's 'normal' legislative process (though it would now operate under 'the shadow of a referendum'), but give the EU citizens the option of participating directly and in an immediately meaningful way if a particular EU decision generates sustained interest in the population. And while such referenda would not have any consequences beyond the individual case to be decided, and the positions of representative decision makers at the EU level would not be threatened by their outcome, referendum results would undoubtedly be interpreted as sending a signal of support or mistrust to leading politicians, which would go some way towards reducing the accountability deficit.

It should be stressed that none of these proposals promises to 'solve' the democratic dilemmas of EU multilevel governance. All they would do is introduce some changes to

the interaction of the Union's three democratic channels, changes that would make it possible to address the most severe weaknesses of the current system: the lack of meaningful citizen participation and the lack of electoral accountability. Since it is not possible to escape from the participation-deliberation and effectiveness-accountability dilemmas, deliberation and effectiveness would necessarily suffer. But the reforms could bring about a more appropriate balance between various democratic objectives.

## **Conclusion**

Our discussion of the democratic quality of EU multilevel governance started with two distinct positions, one arguing for the normative superiority of multilevel structures compared to state monopoly, one highlighting the dangers of a shift from state-based government to multilevel governance. The first conclusion that can be drawn from our analysis is that this debate is misleading if it is read as implying that it is in fact possible to choose between a state-based and a multilevel system of democratic governance for the EU. Rather, the congruence dilemma makes multilevel structures all but inevitable in the European context.

To be sure, this does not mean that such structures are necessarily a good thing for democracy. With respect to the democratic quality of the EU, our analysis has shown that EU multilevel governance has to grapple with specific dilemmas that complicate democratization. Some of these dilemmas are grounded in contradictions between various democratic objectives that all political systems have to deal with, such as the difficulties of squaring participation and deliberation, or effectiveness and accountability. But the presence of the congruence dilemma – the fact that the scope of political problems facing EU citizens, electorates in the selection of representatives, and relevant imagined communities do not coincide – greatly increases the virulence of these dilemmas in the EU context.

This is not to deny that some federal systems also suffer from fragmented identities; the disintegration of several federations in post-communist Europe (Yugoslavia, the USSR, and Czechoslovakia), once democratization was embarked upon, illustrates the strength of these contradictions. However, in many democratic federations (the United States, Germany, and, Canada, with a caveat regarding Quebec) an adequate level of congruence between democratic institutions and socio-cultural identities keeps concerns about meaningful participation and electoral accountability within the scope of 'normal' garden-variety politics, rather than turning them into issues of fundamental democratic legitimacy.

In the EU, by contrast, the congruence dilemma necessitates a system of complex interconnections between various channels of democratic input, and as we have seen, this further accentuates the participation-deliberation and the effectiveness-accountability dilemma. There is no easy fix for this dilemmatic constellation. Rather, strategies for democratizing the EU will have to concentrate on reconfiguring the interplay of the three democratic channels, in an attempt to find a better balance between contradictory

democratic objectives. The three ideas that we have discussed – disentanglement, the formalization of inter-channel linkages, and the introduction of directly-democratic mechanisms – promise some progress in this respect, but the dilemmatic constellation as such is bound to remain.

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