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Is there a 'Democratic Deficit' in World Politics? A Framework for Analysis

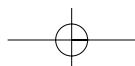
IS GLOBAL GOVERNANCE – THE STRUCTURE OF INTERNATIONAL institutions – democratically legitimate, or does it suffer from a 'democratic deficit'? This is emerging as one of the central questions – perhaps *the* central question – in contemporary world politics. Whatever their underlying motivations, critics these days ranging from the extreme right to the extreme left, and at almost every point in between, couch criticisms of globalization in democratic rhetoric.

There is a consensus answer to this question, among scholars and among commentators, politicians and the general public, namely that international organizations are normatively suspect. Those who invoke democratic ideals to assess international organizations consistently conclude that they suffer from a severe 'democratic deficit'. One is hard-pressed to think of a single application of democratic standards to an international organization – whether the European Union, the International Monetary Fund (IMF), the World Trade Organization (WTO), or even the United Nations – that does not conclude with a serious criticism of the organization. Most such judgements are so unequivocal that authors devote most of their time to proposals for solutions.¹

The reasons seem obvious. International organizations encompass large geographical domains. Robert Dahl maintains that international organizations are therefore inherently unable to support direct democratic deliberation and decision.² They characteristically

¹ For exceptions, see Fritz Scharpf, *Crisis and Choice in European Social Democracy*, Ithaca, NY Cornell University Press, 1999; Giandomenico Majone, *Regulating Europe*, London, Routledge, 1996; and Giandomenico Majone, 'Europe's Democratic Deficit', *European Law Journal*, 4: 1 (1998), pp. ■■-■■■.

² Robert Dahl, 'Can International Organizations Be Democratic? A Skeptic's View,' in Ian Shapiro and Casiano Hacker-Cordon (eds), *Democracy's Edges*, Cambridge, Cambridge University Press, 1999, pp. 19–36.



lack what fully developed institutions for direct electoral or interest group accountability as national political systems provide. Thus, as David Held argues, 'Systematizing the provision of global public goods requires not just building on existing forms of multilateral institutions, but also on extending and developing them in order to address questions of transparency, accountability and democracy.'³

My central contention in this article is that an assessment of the democratic legitimacy of a real-world international institution is as much social scientific as philosophical. If such an assessment is not to be an exercise in utopian thinking, then international institutions should not be compared to ideal democratic systems. Instead we must ask whether they approximate the 'real world' democracy generally achieved by existing advanced democracies, which face constraints of limited public information and interest, regulatory capture, the credibility of commitments, and bounded consensus. Any democratic metric derived from ideal theory must therefore be 'calibrated' in order to assess whether the current arrangements are the best that are feasible under 'real-world' circumstances. One essential standard for evaluating how a modern constitutional system should deal with these imperfections is a comparative empirical analysis of the general practice of modern advanced industrial democracies and the specific conditions prevailing in this case. Where international organizations perform about as well as the existing, generally legitimate, national systems they (partially) supplant, they should receive the benefit of the doubt. If we adopt these reasonable normative and empirical criteria for evaluating democracy, moreover, it is unclear that international institutions lack democratic legitimacy, as most analysts assume. *Some* international organizations may suffer from a 'democratic deficit', but it is by no means obvious that many do – and to demonstrate the contrary requires more and different empirical analysis than has heretofore been conducted.

By way of illustration, I consider the case of the world's most ambitious system of pooling sovereignty under an international institution, namely the European Union. It is widely considered to suffer from a 'democratic deficit', the redressing of which was the primary purpose for calling the ongoing constitutional convention and negotiation. I consider four philosophical conceptions of democracy on which such a critique of the EU has been grounded – respectively,

³ See the paper by David Held in this volume.

libertarian, pluralist, social democratic and deliberative democracy – and present empirical evidence to suggest that in each case the EU's democratic credentials are well within the norm of advanced industrial democracies. Though centralized electoral control and collective deliberation remain relatively weak and diffuse, constitutional and material restrictions on the EU's mandate, inter-institutional checks and balances, indirect democratic control via national governments, and the modest but increasing powers of the European Parliament are more than sufficient to assure that in most of what it does, EU policy-making is generally clean, transparent, effective and politically responsive to the demands of Europeans. The near consensual criticism of European integration as democratically illegitimate is thus unwarranted. I conclude by generalizing the theoretical framework in future work, but cautioning against the overhasty generalization of its optimistic empirical conclusion in the case of Europe.

ASSESSING TRANSNATIONAL DEMOCRATIC LEGITIMACY: A GENERAL FRAMEWORK

Any assessment of the democratic legitimacy of real existing institutions, and thus any proposal to improve that legitimacy, must meet two criteria, one philosophical and one pragmatic. It must be *philosophically coherent* and *pragmatically viable*. Let us consider each in turn.

Philosophical Coherence

Any criticism of real-world democratic legitimacy, or proposal for its enhancement, must be *philosophically coherent*. This means that it must be based on a fundamental normative conception of democracy that is both coherent and generally applicable. A philosophically coherent conception of democracy contributes to the justification of a particular real-world democratic form of government by recommending a mix of fundamental values – liberty, equality, solidarity – that the system is justified in promoting. Most contributions to ongoing discussions of the democratic legitimacy of international organizations draw on one or more of four traditions: libertarian, pluralist, social democratic and deliberative.

The *libertarian* conception of constitutional democracy views a democratic political order primarily as a means to protect individual liberties against the potentially arbitrary, corrupt and tyrannical power of the modern state. This is the classical liberal justification for democratic rights, dating back to John Locke and others in early modern Europe, as a means to assure 'limited government'. Of course most democratic political theorists are libertarians to the extent they accept that a ban against certain actions – such as torture, genocide, deprivation of liberty without due process, the basic laws of war, for example – ought to be enforced, even when such actions are favoured by a legitimate democratic majority and would not endanger the future stability of the political system.⁴ Agreement that majorities cannot violate basic rights is widely viewed as part of a pre-commitment prior to the launching of democratic politics, which should be enforced even against the perceived interests of a transient majority. More extreme libertarian conceptions of democracy more emphatically privilege liberty over equality. Such theorists maintain that certain individual rights, such as the 'negative' rights to property and security, should be enforced strictly, even against majoritarian demands for redistribution or claims for the recognition of a broader set of 'positive' rights like a minimum standard of welfare.⁵ They tend to distrust the motives of government officials, whom they view as arbitrary and meddlesome at best and self-interested or corrupt at worst. To judge by popular rhetoric, one or another form of this critique forms the basis for widespread complaint against international institutions and their officials, who are often portrayed as excessively, albeit technocratically, self-serving. Others criticize international institutions as insufficiently attentive to existing individual or local interests and values. The purest form of this critique is found among Anglo-American conservatives, who portray international institutions as the start of liberal and socialist regulation of the economy.⁶

⁴ Though even so persistent questions arise as to how rigidly human rights should be maintained in the face of overwhelming widely-acknowledged threats.

⁵ For a critique that these cannot be so strictly separated, see Cass Sunstein and Stephen Holmes, *The Cost of Rights: Why Liberty Depends on Taxes*, New York, Norton, 2000.

⁶ Jeremy Rabkin, *Why Sovereignty Matters*, Washington, DC, AEI Press, 1998. For a critique, see Andrew Moravcsik, 'Conservative Idealism and International Institutions', *Chicago Journal of International Law*, (2000), pp. 291-314 ■■■-■■■.

The *pluralist* conception of democracy equates it with the direct formal accountability of decision-makers to electoral incentives and sanctions. Systems are democratically legitimate to the extent that they afford active individuals a meaningful and equal opportunity to influence policy outcomes. On this ground Robert Dahl expresses pessimism about international organizations, which he views as inherently unable to support democratic politics by virtue of their large scale and distance from the electorate. Existing institutions for direct electoral or interest group accountability, in his view, are absent from international organizations.⁷ Dahl writes:

My argument is simple and straightforward. In democratic countries . . . it is notoriously difficult for citizens to exercise direct control over many key decisions on foreign affairs. What grounds do we have for thinking, then, that citizens in different countries engaged in international systems can ever attain the degree of influence and control over decisions that they now exercise within their own countries?⁸

Dahl is similarly critical of large-scale domestic systems, such as the US system of quasi-majoritarian checks and balances, particularly in regard to federalism, the electoral college, and the Supreme Court, which tend to act in a counter-majoritarian fashion.⁹

In recent years a number of conservative scholars, often called 'sovereignists', have justified American non-adherence and non-compliance with regard to international law on the ground that each democratic government ought to be able to defend its own sovereignty and independence. This, it is argued, because a single government can be and generally is more attentive to 'democratic values' and 'popular sovereignty' than are international organizations. Such views have been voiced primarily by scholars associated with think tanks like the American Enterprise Institute, such as Jeremy Rabkin and John Bolton.¹⁰ Recently Jed Rubenfeld, a more liberal constitutional lawyer at Yale, has gone one better than the 'sovereignists', arguing that the US is entitled to engage in 'exceptional' behaviour in this regard because of what he portrays as a more political and populist conception of constitutional law, as compared

⁷ Dahl, 'Can International Organization be Democratic?', op. cit.

⁸ Ibid., p. 23.

⁹ Ibid.

¹⁰ For the conservative variant of 'sovereignism' associated with AEI, see Rabkin, *Why Sovereignty Matters*, op. cit., and the special issue of *Chicago Journal of International Law* (Autumn 2000).

to more rigidly legalist and authoritarian models prevalent in Europe.¹¹ Some Europeans – with considerably more evidence on their side – might argue that European systems, with their coalition governments and broader range of social democratic options, consistently generate outcomes that are more broadly acceptable, in the sense of being closer to the median opinion in most advanced industrial societies.¹² This brings us to the next critique.

The *social democratic* conception of democracy views political institutions as a means to offset the natural power of concentrated wealth that accrues in capitalist economies.¹³ While libertarians prize liberty over equality, social democrats espouse the opposite. Following Karl Polanyi and other social democratic theorists, for example, Fritz Scharpf argues that the most important element in a democratic polity is to maintain the balance between market liberalization and social protection. In this view, international institutions lack democratic legitimacy to the extent that they bias policy-making in a neo-liberal direction and fail to promote the necessary social protection to offset the expansion of markets and the concentration of wealth.¹⁴ International institutions tend to incorporate this bias, so the argument goes, in two ways. One is simply by giving rich countries more voting power than poorer countries, as has been charged with respect to international financial institutions.¹⁵ The other is by restricting the agenda. While many domestic systems provide equal opportunities to legislate market-promoting policies and redistributive policies, international institutions (singly and collectively) do not. The strongest and most established among international institutions, in this view, tend to be focused on trade liberalization (WTO, NAFTA,

¹¹ For a liberal echo, see Jed Rubenfeld, 'The Two World Orders', *Wilson Quarterly*, 27 (2003), pp. 22–36. The notion that the US is, overall, a more 'democratic' country than most European, in the sense of being more committed to strict 'popular sovereignty' is a curious one. For a critique, see Andrew Moravcsik, 'The Paradox of US Unilateralism in Human Rights', in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights*, Princeton, Princeton University Press, forthcoming, pp. not yet available ■■■-■■■.

¹² Dahl, 'Can International Organization be Democratic?', op. cit.

¹³ Charles E. Lindblom, *Politics and Markets: The World's Political-Economic Systems*, New York, Basic Books, 1977.

¹⁴ Yet they need not be so. Many libertarians believe that policy in the EU, as well as in Europe as a whole, is biased in a social democratic direction. For example, see Rabkin, *Why Sovereignty Matters*, op. cit.

¹⁵ See the paper by David Held in this volume.

EU), creditor rights (IMF), and pro-business regulation (EU). Social welfare provision is relegated to national governments. This division of labour undermines domestic redistribution and regulatory protection, so it is argued, because it triggers a 'race to the bottom', in which the competitive market pressures of external liberalization undermine uncoordinated domestic policies. While libertarians criticize the international organizations for doing too much, social democrats criticize them for doing too little.

The *deliberative* conception of democracy views political institutions as a means not just to assure equal opportunities for participation and representation or to offset existing biases, but as a means to improve the political capacity of the citizenry. The argument here is that political institutions must not only provide opportunities for participation, but must be designed to encourage and promote meaningful and effective participation. They must help to create active, informed, tolerant, and engaged citizens – or, at least, shape such participation among the political representatives.¹⁶ For this purpose, it is essential that a democratic system have not only representative institutions, but political parties, interest groups, plentiful information and a common discourse. These things give politics meaning, engage citizens in political education, and permit the discussion and resolution of disputes not just over conflicting interests but over morality.¹⁷ Deliberative democrats tend to reject the entire trend toward insulated decision-making, whether domestic or international. In this view, however, international institutions are particularly suspect. No matter how formally democratic and inclusive they may be, political institutions with a politically passive citizenry can generate little meaningful public deliberation and thus little democratic legitimacy. The distance and lack of intermediating social and cultural institutions render international institutions arid; they encourage the trend toward technocratic decision making and a passive and perhaps disgruntled population.¹⁸

¹⁶ Amitai Etzioni, *Political Unification Revisited: On Building Supranational Communities* (Ne

¹⁷ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done about It*, Cambridge, MA, Harvard University Press, 1996.

¹⁸ Larry Siedentop, *Democracy in Europe*, London, Allen Lane, Penguin Press, 2000; Philippe Schmitter, *How to Democratize the European Union . . . And Why Bother?*, Lanham, MD, Rowman and Littlefield, 2000.

Pragmatic Viability

Most existing analyses of deliberative democracy draw on one or more of these conceptions of democracy. It is not my purpose in this article – nor am I qualified – to criticize them in detail. My concern is instead with their application to real world situations. If they are not to be utopian, I argue in this section, such concrete applications necessarily rest on a series of largely *empirical* judgments. These empirical judgements require detailed social scientific analysis, which must be placed in a comparative perspective in order to calibrate the realistic expectations of how directly democratic a system could reasonably be expected to be.

There are two related senses in which an applied evaluation of the democratic legitimacy of an international institution rests on empirical judgements. First, each of the four ideal theories discussed above rests on explicit empirical judgements about politics and society. Libertarians stress the tendency for regulators to act for narrow and arbitrary rather than for publicly-justifiable reasons, the unbounded power of international institutions, and the socialist bias of policy-making. Pluralists stress the lack of democratic constraints on policy-making in international organizations. Social democrats stress the neo-liberal bias in international policy-making and the existence of pressures triggering a ‘race to the bottom’. Deliberative democrats argue that international institutions help create a passive, unsatisfied public. Each of these empirical claims can and should be subjected to rigorous testing before we accept the normative conclusions that follow.

Second, each of the four ideal theories above remains a normative ideal of democracy. Each invites a comparison between international institutions and an ideal form of perfectly participatory, egalitarian, deliberative politics. Such ideals are frankly utopian. They are not realized anywhere today, and not even in the ancient or Westminster-style systems sometimes held up as exemplars. It is thus a trivial matter to deploy this metric to demonstrate that the EU, or any other international organization, is ‘illegitimate’. This type of ideal, isolated, and essentially utopian analysis is not very helpful for the sort of real-world constitutional construction in which the EU and other international organizations are currently engaged.

One particular difference between ideal and applied theory is particularly relevant here. Ideal democratic theories tend systematically

to ignore the transaction costs of political participation. That is, they overlook limitations on the ability and willingness of individuals to involve themselves extensively in politics, to develop expertise, to manage credible commitment problems and to overcome existing differentials in social resources. In the real world, individual citizens suffer from a limited and unequal ability to devote time and energy to learning about and engaging in politics. In the real world, citizens remain 'rationally ignorant' or non-participatory with regard to most issues, most of the time. Applied democratic theory must work with individuals as they truly are – inattentive, inexpert, uncertain about the future and unequal – not as one might wish them to be.¹⁹

One way constitutional systems cope with such imperfections is by insulating policy-makers and delegating to political authorities. Such delegation often reflects a 'second-best' solution to representing and realizing widespread interests in a system where individuals cannot be assumed to pursue consistently their own interests effectively. Three structural circumstances in which this often occurs are of particular relevance to an assessment of international organizations: social complexity, political uncertainty and differentials in social power.

- *Social complexity and the role of expertise.* Citizens delegate to assemble more efficient decision-making in areas where expertise is required. Involvement in the full range of government policies would impose costs beyond the willingness of any modern citizen to bear. Whether the area is environmental policy, medical drug authorization, or criminal law, we do not expect complex medical, legal, or technical decisions to be made by direct popular vote.
- *Political uncertainty and the role of rights.* Citizens of democratic societies generally favour policies that reduce the risk to any given individual of catastrophic loss of life or liberty in an uncertain future. Philosophically, this might be viewed as a concession to

¹⁹ Russell Hardin distinguishes the claims based on the 'street-level epistemology ... of an ordinary person' and those claims that meet 'standard epistemological criteria for justification'. Democracy must, he argues, be understood, at least in part, from the street level. As such, it is unlikely to impose more than a crude, largely negative constraint on policy-makers. Participation in majoritarian decision-making, therefore, takes place 'on the margin', rather than being the necessary characteristic of all democratic decisions. See Russell Hardin, 'Democratic Epistemology and Accountability', *Social Philosophy and Policy*, 17 (2000), pp. 110–26.

fundamental human dignity or as a reflection of a basic human preference for the reduction of catastrophic risk.²⁰ Yet it is difficult for majorities credibly to commit future majorities not to tyrannize minorities. To this end, democratic systems commonly constrain majority decision-making through established individual and group rights that protect individual liberty, welfare and culture against not only the arbitrary power of the state, but the potential demands of the majority. Such rules enforce a basic minimum level of equality in the name of justice.²¹ Often insulated authorities, such as constitutional courts, are called upon to enforce individual or minority prerogatives against majority opinion. In constitutional orders, there thus customarily arises a tension between rights and participation.²² This tendency has spread in recent years as increasing numbers of governmental functions have been recognized as basic or human rights that are judicially or administratively enforced, often at the international level, against political authorities. For precisely this

²⁰ There are many reasons why such a notion might be philosophically defensible. Some simply postulate that individuals are to be accorded minimal natural or human rights as recognition of basic 'human dignity' – as do most post-Second World War international human rights documents. (See, for example, Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leebron, *Human Rights*, New York, Foundation Press, 1999.) One might postulate a near consensual preference in favour of a reduction in the individual risk of absolute deprivation, which would then be reflected in any institutional pre-commitments into the future that individuals must necessarily make under uncertainty. (This formulation appears to be empirically more accurate, as a description of human psychology, than the assumption that individuals generally favour a narrowing of inequality.) One might think of either restriction as a reflection of the varying 'intensity' of preferences, with individual preferences that can safely be assumed to be intense (e.g., against being tortured) counting for more than preferences that can be assumed to be less so (e.g. feeling or being marginally 'safer' from crime or terrorism).

²¹ If a given decision is of vital importance to the long-term well-being of those involved, then it is questionable whether they have a necessary obligation to obey government dictates, even if the democratic decision-making procedures by which the dictates were generated were clear and fair. See Brian Barry, 'Is Democracy Special?', in Brian Barry (ed.), *Essays in Political Theory*, Cambridge, Cambridge University Press, 1999, pp. ■■–■■■.

²² Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism*, New Haven, Yale University Press, 1984; Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, New York, W. W. Norton, 2003. Not an absolute tension, however. Cf. John Ely, *Democracy and Distrust: A Theory of Judicial Review*, Cambridge, MA, Harvard University Press, 1981.

reason, many Europeans view with abhorrence the tendency, common in the US, to elect state and local judges.

- *Underlying differentials in social power and the role of linkage.* Delegating and insulating political power can help redress biases in national democratic representation that arise because diffuse majorities are consistently under-represented. The most common distortion is the capture of government policy by narrow but powerful interest groups opposed to the interests of majorities with diffuse, longer-term, less self-conscious concerns. Consider free trade: even Adam Smith and Richard Cobden realized that the broadly liberal interests of diffuse consumers and firms would often be trumped by pressure from concentrated groups of protectionist producers. Many of the same Europeans who criticize the democratic deficit also call for the US to retain 'fast track' authority to pass trade liberalization – nothing less than empowering the US executive to act with minimal legislative constraints. In this and other areas, the WTO and NAFTA might be thought of as institutional complements to 'fast track' – and, in the case of the EU, perhaps a substitute for it – in that they empower national executives to override powerful particularistic interests in the name of the national (or median) interest.

Institutional pre-commitment is, however, a policy with limits. It works insofar as social groups lack alternatives that are, on balance, more attractive than withdrawal from the organization. In the real world, however, democratic politics cannot be pushed beyond the point where powerful, potentially self-sufficient groups prefer withdrawal from collective action.²³ This latter constraint is particularly important in international politics, where the pre-existence of competent national governments, in most cases far larger and more powerful than any international organization, renders unilateralism a more viable option than it is for an individual in domestic politics. If democratic decision-making is pushed to far, the result can be the collapse of democracy, if not violent conflict.

These three structural circumstances – social complexity, political uncertainty, and underlying differentials in social power – give rise to widespread, consistent, normatively justified exceptions to direct democratic participation in decision-making. In each of these cases, under many circumstances *more insulated and delegated authority of*

²³ Hardin, 'Democratic Epistemology and Accountability', op. cit.

global governance structures might be thought of as more 'representative' of citizen concerns precisely because they are less directly 'democratic'.

The ubiquity of these non-ideal circumstances in political life, and the tendency to employ insulated or delegated power to manage their consequences, has important implications. Any assessment of the democratic legitimacy of an international organization must be based not only on a coherent philosophical analysis using ideal democratic theory, but on an empirical evaluation of the extent to which ideal democratic participation can best be approximated under the constraints imposed by the 'second-best' world of the specific case in question. This latter, empirical judgment, which translates from the ideal to the real, is essentially social scientific in nature.

This empirical translation from the ideal to real is likely to be complex and non-linear, such that the ideal policy in a 'best' world of perfect citizens (e.g., participation) often runs directly counter to the 'good' policy in a second-best world of concrete politics (e.g., delegation). While, for example, we can say with considerable confidence that an *entirely* undemocratic system – that is, a system that offers no meaningful participation in decision-making at any level – is democratically illegitimate, the same proposition does not hold *on the margin*. *NOT ITAL...* In other words, there is no reason to believe that a move from direct participation by the average citizen in majoritarian or consensus decision-making, as opposed to delegation and insulation of policy-makers, promotes outcomes that can be more easily justified in terms of normative and positive democratic theory.

One way to calibrate the standards used to assess real-world democratic systems is to employ comparative social scientific analysis. In order to assess the extent to which a given insulation or delegation of power in an international organization is democratically legitimate, we may ask whether a similar institutional adaptation is widely accepted in existing democratic systems. Such national systems, at least among the advanced industrial democracies, can be presumed to be democratically legitimate in a broad sense, and thus the practices widely employed among such countries provide a meaningful baseline for assessing the democratic legitimacy of international organizations. For example, if domestic political systems often grant constitutional courts and central banks a certain measure of political independence, this is one reason to believe that a similar grant is legitimate. The analyst can then ask whether the essential circum-

stances set forth in theories of judicial or central bank independence are met. This is an essential, yet often neglected, element in any applied evaluation of democratic legitimacy – and offers a measure of protection against utopian condemnation of existing political institutions. We turn now to an example of this sort of analysis.

APPLYING THE FRAMEWORK: THE CASE OF THE EUROPEAN UNION

Is the European Union democratically legitimate?²⁴ It is an appropriate moment to pose this question. The last decade has witnessed the emergence of a stable constitutional order in Europe after a decade of nearly continuous debate over the proper constitutional structure for Europe. In a widely praised book, Oxford don Larry Siedentop asks, 'Where are the Madisons for Europe?'²⁵ Yet the more appropriate question for those who have followed European thinking is: 'Why are there so many Madisons?'²⁶ Hundreds, perhaps even thousands, of scholars, commentators, lawyers, and politicians have analysed the problem of European constitutionalism.

These debates have focused, perhaps above all, on the question of whether the EU is democratically legitimate. Most politicians, scholarly commentators and members of the European public appear to agree that the EU suffers from a severe 'democratic deficit'. Only one branch of the EU is directly elected: the European Parliament (EP). Though stronger than it once was, the EP remains only one of three major actors in the EU legislative process. Its elections are decentralized, apathetic affairs, in which a relatively small number of voters select among national parties on the basis of national issues. Little discussion of European issues, let alone an ideal transnational deliberation, takes place. For its part, the European Commission, which enjoys a powerful role as an agenda-setter and regulatory coordinator, is widely perceived as a technocracy. The European Court of

²⁴ This section draws Andrew Moravcsik, 'Despotism in Brussels? Misreading the European Union', *Foreign Affairs*, (May/June 2001), pp. 603-624; and Andrew Moravcsik, 'Federalism in the European Union: Rhetoric and Reality', in Robert Howse and Kalyso Nicolaïdis (eds), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*, Oxford, Oxford University Press, 2002, pp. 163-187.

²⁵ Siedentop *Democracy in Europe*, op. cit.

²⁶ Moravcsik, 'Despotism in Brussels?', op. cit.

Justice, comprised of fifteen appointed judges, is unusually powerful. Most powerful of all, the Council of Ministers brings together national ministers, diplomatic representatives, and administrative officials from member states, who often deliberate in secret. While indirectly accountable to voters, the link is too tenuous and the mode of interaction too diplomatic or technocratic to satisfy many observers. These procedural qualms might be tolerable were it not for the perceived bias in the outputs of European policy-making. Many view the EU as a throw-back to the nineteenth century – a fiscally weak, neo-liberal state. For these reasons, many believe it is self-evident that the EU is not democratically legitimate.

My central contention here is that if we adopt reasonable criteria for judging democratic governance, the widespread criticism of the EU as democratically illegitimate is unsupported by the existing empirical evidence – much of it provided by critics of the ‘democratic deficit’. At the very least, their critique must be heavily qualified. *Constitutional checks and balances, indirect democratic control via national governments and the increasing powers of the European Parliament are sufficient to assure that the EU policy-making is, in nearly all cases, clean, transparent, effective, and politically responsive to the demands of European citizens.*

In successive sections below, I analyse the constraints inherent in the European Constitutional Settlement that guarantee that the EU will not become a despotic ‘superstate’, the democratic procedures that prevent the EU from becoming an arbitrary and unaccountable technocracy within its domain, the legitimate reasons for shielding certain EU decision-makers from direct democratic contestation, the underlying social reasons why political participation in the EU cannot be radically expanded and the extent to which EU policy-making suffers from an excessive neo-liberal bias. Final sections consider whether these assessments are likely to change with the enlargement of the EU, and how the analysis might be generalized.

THE LIBERTARIAN CRITIQUE: IS THE EU AN ARBITRARY ‘SUPERSTATE’?

The classical libertarian justification for democracy, we have seen, is to check and channel the arbitrary and potentially corrupt power of the state. Arbitrary rule by supranational technocrats – ‘bureaucratic des-

potism' by a 'super-state' in Brussels, as one widely heralded formulation has it – is a widespread concern in regard to contemporary EU politics.²⁷ This is the stuff of British tabloid articles, often fuelled by ignorance of what the EU actually does, but it underlies much legitimate concern, particular by those on the libertarian right of the political spectrum. This concern appears to gain plausibility from the overtly technocratic nature of much EU regulation, the open role played by non-elected officials in Brussels, and the geographical and cultural distance between those regulators and the average European 'person in the street'.

Yet the threat of a European superstate is a myth. To a first approximation, the EU does not tax, spend, implement, or coerce, and in many areas, it does not hold a legal monopoly of public authority. The EU's constitutional order imposes tight substantive, fiscal, administrative, legal and procedural constraints on EU policy-making that are embedded in treaty and legislative provisions, which have the force of constitutional law – to which we now turn. This is not simply a 'snapshot' judgement about the present, overlooking the future trajectory of integration, but an assessment of the EU's underlying institutional capacity to act in new areas and new ways.

- *Substantive constraints.* The EU's current activities are restricted by treaty and practice to a modest subset of the substantive activities pursued by modern states. The core of EU activity and its strongest constitutional prerogatives still lie almost exclusively in the area of trade in goods and services, the movement of factors of production, the production of and trade in agricultural commodities, exchange rates and monetary policy, foreign aid and trade-related environmental, consumer and competition policy. Much is thereby excluded: taxation and the setting of fiscal priorities, social welfare provision, defence and police powers, education policy, cultural policy, non-economic civil litigation, direct cultural promotion and regulation, the funding of civilian infrastructure, and most other regulatory policies unrelated to cross-border economic activity. Certainly, the EU has made modest inroads into many of these areas, but largely

²⁷ Siedentop *Democracy in Europe.*, op. cit.; cf. Moravcsik, 'Despotism in Brussels?', op. cit.

in limited areas directly related to cross-border flows.²⁸ The result is that the EU has been, overall, strongly liberal in its impact on European policy-making, which makes the virulent opposition by some right-wing libertarians somewhat puzzling.²⁹

- *Fiscal Constraints.* It is not coincidental that the policies absent from the EU's policy portfolio – notably social welfare provision, defence, education, culture and infrastructure – require high government expenditure. The ability to tax and spend is what most strikingly distinguishes the modern European state from its predecessors, yet the EU's ability to tax is capped at about 2–3 per cent of national and local government spending (1.3 per cent of GDP) and is unlikely to change soon. Fiscal constraints have decisive consequences. There is little money for discretionary funding by Brussels technocrats, which limits their arbitrary power as well as the prospect of corruption. The EU is destined to remain what Giandomenico Majone has termed a 'regulatory polity'.³⁰

- *Administrative Constraints.* Analysts often observe that the essential politics of regulation lie in implementation, yet the EU implements very few of its own regulations. How could it be otherwise, given the extraordinarily small size of the Brussels bureaucracy? The EU employs fewer people than a modest European city. They total about one-fortieth of the number of comparable civilian federal employees even in the United States, a jurisdiction of comparable size but noted in cross-national perspective for the small size of its national government workforce. Except in a few areas the task of legally or administratively implementing EU regulations falls instead to national parliaments and administrations. The EU has no police, military force, or significant investigatory capacity – and no realistic prospect of obtaining any of these.

²⁸ The scholarly literature on European integration seems to pay disproportionate attention to exceptional cases of 'spillover' in cases such as gender discrimination, the initial experience with environmental policy and structural funding, the jurisprudence of supremacy and direct effect, the Commission's use of Article 90, and the possible, but as yet undocumented, effects of the Open Method of Coordination. These are important trends, but atypical of the EU as a whole.

²⁹ One suspects a measure of ideology or opportunism. See Andrew Moravcsik, 'A Tory Referendum', *Prospect*, (July 2003) pp. 16–17.

³⁰ Majone, *Regulating Europe*, op. cit.; and Majone, 'Europe's Democratic Deficit', op. cit.

• *Procedural Constraints.* Its lack of constitutional mandate, fiscal discretion and administrative clout would be of less consequence if the EU technocracy could act unhampered by procedural constraints. Yet EU policy-making is constrained by institutional checks and balances, notably the separation of powers, a multi-level structure of decision-making, and a plural executive.³¹ The most fundamental constraint lies in the requirement of unanimity for amendment of the Treaty of Rome, followed by electoral, parliamentary, or administrative ratification – a high standard for any fundamental act of substantive redirection or institutional delegation. Even 'everyday' EU directives must be promulgated under rules that require the concurrent support of between 70 and 100 per cent of the weighted votes of territorial representatives in the Council of Ministers – a level of support higher than that required for legislation in any existing national polity or, indeed, to amend nearly any national constitution. Add to this that the Commission must propose, the Parliament must consent, if challenged, the Court must approve, national parliaments or officials must transpose into national law, and national bureaucracies must implement. EU decision-making is consensus decision-making.

These myriad institutional constraints not only not only render arbitrary and capricious action almost impossible, but assure that legislation out of Brussels is likely to represent an exceptionally broad consensus among different groups at many levels of governance. This should give us reason for confidence that it legislates in the broad public interest. And because the limitations on substantive activities are grounded in the very constitutional structure of the EU, none of this is likely to change soon.

THE PLURALIST CRITIQUE: IS THE EU AN UNACCOUNTABLE TECHNOCRACY?

The *pluralist* conception of democracy stresses the direct accountability of governing officials to public preferences, as expressed

³¹ Such institutional procedures are the conventional tool for protecting the interests of vital minorities – a design feature generally thought to be most appropriate to polities, like the EU, designed to accommodate heterogeneous cultural and substantive interests. See Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in 22 Countries*, New Haven, Yale University Press, 1990.

through elections. Dahl has criticized the EU as being an elite-driven project that does not deserve to be called 'democratic'. He notes: 'To ensure public debate, it would be necessary to create an international equivalent to national political competition by parties and individuals seeking office'.³² This is impossible in the EU because of large scope, as well as varied and diffuse national interests.

Yet the insulation of the EU from mechanisms to assure democratic accountability is easily exaggerated, particularly by those who tend to overlook the multi-level constraints embedded in the European constitutional order, arising from democratic control over national governments, as well as the powers of the EP. Where neither sort of constraint is directly imposed – as where power is delegated to a European-level constitutional court, central bank or other semi-autonomous authorities – the structure of the EU is entirely consistent with the late twentieth-century practice of most advanced industrial democracies.

Direct Democratic Accountability

For over a decade, the EP has been progressively usurping the role of the Commission as the primary agenda-setter vis-à-vis the Council in the EU legislative process. It is now the EP that, late in the legislative process, accepts, rejects or amends legislation in a manner more difficult for the Council to reject than to accept – a prerogative traditionally accorded to the Commission. The EP is directly elected, generally by proportional representation within nation-states, and often acts independently of ruling national parties. Whereas one might criticize the desultory participation and the absence of clear programmatic discourse in European elections, the EP nonetheless has an effective system of party cooperation, with votes most often splitting along party lines and in which recognizable ideological cleavages shape voting patterns. Among the most relevant difference between the European Parliament and national parliaments appears to be the tendency of the EP to reach decisions by large majorities. Yet this tendency underscores the tendency of the EU to reach decisions by consensus – unsurprising given the high level of support required in the Council of Ministers – and should

³² Dahl, 'Can International Organization be Democratic?', op. cit.

give us reason for confidence that it is legislating in the 'European' interest.³³

Indirect Democratic Accountability

If European elections were the only form of democratic accountability to which the EU were subject, scepticism might be warranted. Yet a more important channel lies in the democratically elected governments of the member states, whose direct diplomatic representatives dominate the still largely territorial and intergovernmental structure of the EU. In the European Council, which is consolidating its position as the EU's dominant institution, elected heads of state and government wield power directly.³⁴ In the Council of Ministers, which more often than not imposes the binding constraint on everyday EU legislation, permanent representatives, ministerial officials and the ministers themselves from each country act under constant instruction from national executives, just as they would at home. The bonds of accountability are tight: National representatives can be recalled or re-instructed at will, often more easily than parliamentarians in national systems. In addition, national parliaments consider and comment on many EU policies, though their *de facto* ability to influence policy fluctuates greatly by country.

The multi-stage legislative process, whereby legislation must traverse the Commission, Council, Parliament and domestic implementing authorities, encourages highly transparent policy-making. In contrast to the widespread vision of a cadre of secretive gnomes burrowing away in Brussels, supranational officials in fact work under intense public scrutiny. The legislative process works slowly, without any equivalent to ruling by executive decree or pushing legislation swiftly through a friendly parliament, and information appears as plentiful about the EU political and regulatory process, at least at the Brussels level, than about similar processes in nearly all of its member states. With 20 commissioners and their staffs, fifteen national

³³ Simon Hix, Abdul Noury and Gerard Roland, "'Normal' Parliament? Party Cohesion and Competition in the European Parliament, 1979-2001', paper presented at the Public Choice Society conference, San Diego, 21-3 March 2002.

³⁴ Peter Ludlow, *The Laeken Council*, Brussels, Intercommunity, 2002.

delegations, over 600 parliamentarians, hundreds of national ministers and thousands of national officials, *ex ante* parliamentary scrutiny in some countries and *ex post* parliamentary scrutiny in nearly all, combined with the subsequent need for domestic administrative implementation, there can be no such thing as a monopoly of information in the EU. Whereas it is true that certain aspects of the system, such as early discussions in the lower levels of COREPER, tend to take place in relative secret, the same might be said of the *de facto* preparation of legislation in national systems. Recent research seems to reveal that the EU regulatory processes are as open to input from civil society, and as constrained by the need to give reasons, as the (relatively open) systems of Switzerland and the US. Discussions within the *comitologie* appear to take due account of public interest considerations, though the precise reasons for this – socialization, insulated expert discussion, external pressure of member states, structured deliberation, anticipated non-compliance – remain unclear.³⁵

The Legitimacy of Semi-Autonomous Judges and Technocrats

It might be objected that, as compared to national systems, a greater proportion of EU decisions are made by autonomous technocrats in the Commission, constitutional court judges, or central bankers. These appointed officials resolve essentially political questions involving the apportionment of costs, benefits and risks. Yet little is in fact distinctive about the pattern of delegation we observe in the EU. The late twentieth century was a period of the 'decline of parliaments' and the rise of courts, public administrations and the 'core executive'. Accountability is imposed, increasingly not through direct participation in majoritarian decision-making but instead through complex systems of indirect representation, selection of representa-

³⁵ Christian Joerges and E. Vos (eds), *EU Committees: Social Regulation, Law and Politics*, Oxford, Hart Publishing, 1999; Majone, 'Europe's Democratic Deficit', op. cit. Thomas D. Zweifel, 'Democratic Deficits in Comparison: Best (and Worst) Practices in European, US and Swiss Merger Regulation', *Journal of Common Market Studies*, 41 (2003), pp. 541–66. Also see Pierpaolo Settembri, 'Transparency of the EU legislator', unpublished paper, University of Florence, 2003.

tives, professional socialization, *ex post* review, and balances between branches of government.³⁶

The critical point for the study of the EU is this: Within the multi-level governance system prevailing in Europe, EU officials (or insulated national representatives) enjoy the greatest autonomy in precisely those areas – central banking, constitutional adjudication, criminal and civil prosecution, technical administration and economic diplomacy – in which many advanced industrial democracies, including most member states of the EU, insulate from direct political contestation. *The apparently 'undemocratic' nature of the EU as a whole is largely a function of this selection effect.* As we have seen, insulation is not simply an empirical observation; it has normative weight. Given such justifications, the burden of proof rests on critics of the EU. We may debate whether the EU's central bank, constitutional court, or competition authorities are properly constructed, but any such criticism must first concede the legitimacy and general acceptability of a greater measure of insulation and autonomy in precisely these areas than elsewhere in political life.

THE SOCIAL DEMOCRATIC CRITIQUE: DOES THE EU IMPOSE A NEO-LIBERAL BIAS?

The *social democratic* conception of democracy stresses the role of political institutions in offsetting social inequality. Fritz Scharpf has argued that most Europeans favour maintaining current levels of welfare spending, as demonstrated by the decentralized tendency of member states to spend increasing percentages of GNP on welfare as per capita income increases.³⁷ Yet the status quo cannot be maintained today because of the tendency of decentralized market competition to generate an interstate 'race to the bottom' in regulatory protection. Trade, immigration and especially foreign investment and capital flows create strong incentives for countries to reduce

³⁶ Majone, *Regulating Europe*, op. cit.

³⁷ Scharpf, *Crisis and Choice in European Social Democracy*, op. cit. For a more detailed discussion of Scharpf, from both positive and normative perspectives, see Andrew Moravcsik and Andrea Sangiovanni, *On Democracy and Public Interest in the Europe Union*, Center for European Studies Working Paper Series, Cambridge, MA, Harvard University, forthcoming.

welfare expenditures. The EU cannot respond effectively to this tendency, despite overwhelming support for the maintenance of welfare systems, because of a neo-liberal bias in the constitutional structure of the EU, and the rhetoric that surrounds it, which favours market liberalization ('negative integration') over social protection ('positive integration').

In this view, the EU lacks democratic legitimacy not so much because it stifles political participation, but because its policies are biased against particular interests that are consensually recognized as legitimate. Such accounts tend to be social democratic, that is, they tend to argue that the EU systematically biases policy-making in a neo-liberal direction.³⁸ It does this, so the argument goes, by excluding particular issues, in particular social welfare and some public interest regulation, from the agenda, while facilitating common liberalization of trade and factor flows. The entire arrangement is locked in by the European legal order. Opposition does not form, because it is kept off the agenda by the European constitutional compromise, which leaves social welfare provision to the national governments, and by the ignorance of less fortunate individuals and groups about their own interests. Scharpf's argument is without a doubt the most empirically and theoretically nuanced social democratic criticism of the EU 'democratic deficit' that currently exists. Yet there is good reason to qualify his formulation of the argument, above all since these qualifications are acknowledged in Scharpf's own empirical analysis.

There is in fact little evidence of a race to the bottom. Scharpf himself concludes ultimately that there can be such a race in only a few areas, there is relatively little evidence that it has yet occurred, and the effects have been limited. The level of social welfare provision in Europe remains relatively stable. National welfare systems are no longer moving strongly in the direction of greater redistribution, but they are not imploding either. Recent OECD analyses report that fiscal consolidation over the past 20 years has almost always led to increases in government revenues as a percentage of GNP, and in most cases the burden of consolidation is placed primarily on revenue increases.

³⁸ Yet they need not be so. Many libertarians believe that policy in the EU, as well as in Europe as a whole, is biased in a social democratic direction. For example, see Rabkin, *Why Sovereignty Matters*, op. cit.

Much recent research, moreover, suggests that the adverse impact of globalization of standards on the major areas of social spending in Europe (pensions, medical care, and labour market policy) is easily exaggerated. The most important factors behind increasing social spending are instead domestic: the shift to a post-industrial economy, lower productivity growth, shifting demand for less skilled workers, rising costs of health care, pensions and employment, exacerbated by increasingly unfavourable demographic trends. These factors fuel welfare deficits and fiscal strains, yet any reform is opposed by entrenched constituencies (the elderly, medical-care consumers, and the full-time unemployed) well-placed to resist it. *No* responsible analyst believes that current individual social welfare entitlements can be maintained in the face of these structural shifts, regardless of how they are structured and how they interact with the global economy. In this context, the neo-liberal bias of the EU, if it exists, may well be partially justified by the social welfarist bias of current national policies, and marginal pressure towards consolidation of national welfare systems should be considered a benefit not a threat.

Certainly there is little evidence that the EU is driving social protection downwards. By contrast, the EU has often permitted high standards and supportive institutional reform, and thus has tended to re-regulate at a high level.³⁹ Anecdotal evidence suggests that the EU is responsive to public and interest group concerns in a way quite similar to national polities.⁴⁰ For reasons set out by Scharpf, there is far less reason for a social democrat to fear the piecemeal evolution of European law than might have been the case five years ago.⁴¹ Whatever consequences there may be lie largely in the future. The major difference between apparently intractable issues of EU discussion such as social and tax harmonization, and similar issues where European regulation is effective, such as worker health and safety, appears not to lie in constitutional structure but in the precise nature

³⁹ David Vogel, *Trading Up*, Cambridge, MA, Harvard University Press, 1995; Joerges and Vos, *EU Committees*, op. cit.

⁴⁰ The life-cycle of an issue like Mad Cow Disease is just as it would be in any Western democracy: Some bureaucracies are captured; a crisis emerges; and reforms are put in place that lay greater emphasis on the broader public interest. Joerges and Vos 1999.

⁴¹ Also Scharpf, *Crisis and Choice in European Social Democracy*, op. cit.

of conflicts of interest among national governments. In the case of taxation, some governments remain deeply opposed to the harmonization of taxation and social welfare, whereas there are few die-hard defenders of unilateralism in matters of worker health and safety or pollution abatement. In this sense, the EU reflects patterns of consensus and contestation within European publics.⁴²

THE DELIBERATIVE DEMOCRATIC CRITIQUE: DOES THE EU ENCOURAGE PUBLIC PASSIVITY?

Radical democrats might nonetheless be tempted to reject the entire trend toward insulated decision-making, domestic and international, because the cost in terms of political participation and civic virtue is perceived as too high.⁴³ Such critics might observe that the European Constitutional Settlement has failed to promote the transnational political parties, identities, and discourses that might help render European political participation meaningful and effective for citizens. A number of analysts propose to employ European institutions to induce social cooperation in pursuit of common interests – political parties, interest groups, a common discourse, and so on. This in turn, they expect, will generate legitimacy.

Unless entirely grounded in an ideal preference for participation, however, these criticisms rest on the questionable premise that greater participation in European political institutions will generate a deeper sense of political community in Europe or, at the very least, greater popular support for the EU. Yet there are at least three reasons to doubt that this is the case.

First, insulated institutions – constitutional courts and administrative bureaucracies, for example – are often more popular with the

⁴² From the perspective of democratic theory, finally, it is important to note that Scharpf's proposals are concerned primarily to maintain social protection in richer member states. They are quite conservative in that they favor domestic redistribution over transnational redistribution; the defense of German welfare standards takes precedence over schemes for transnational redistribution. Scharpf's justification lies in the subjective perceptions of identity of national citizens in countries like Germany, which do not support a heavy commitment to redistribution.

⁴³ For discussions of this argument, see Weiler, *The Constitution of Europe*, op. cit.; Schmitter, *How to Democratize the European Union*, op. cit.; Seidentop, *Democracy in Europe*, op. cit.

public than legislatures. Internationally, institutions like the European Court of Human Rights (ECHR) in Strasbourg command great legitimacy despite their near total lack of direct democratic legitimacy. The EU's position in the institutional division of labour involves such political functions, as we have just seen, and it is unclear whether more participation in such functions would legitimate them. Whereas a greater sense of common identity might indeed increase support for the EU, this does not bear on the case for democratic reform but on the question of how extensive European integration should be.⁴⁴

Second, EU legislative and regulatory activity is inversely correlated with the salience of issues in the minds of European voters, so any effort to expand participation is unlikely to overcome apathy. Among the most significant consequences of the limitation of the substantive scope of the EU, discussed above, is that the issues handled by the EU, and even more so second-order institutional choices about how to manage them, lack salience in the minds of European voters. Of the five most salient issues in most West European democracies – health care provision, education, law and order, pension and social security policy, and taxation – none is primarily an EU competence. Among the next ten, only a few (managing the economy, the environment, alongside the anomalous issue of Europe itself) could be considered major EU concerns, none exclusively so.⁴⁵ By contrast, the issues in which the EU specializes – trade liberalization, monetary policy, the removal of non-tariff barriers, technical regulation in the environmental and other areas, foreign aid, and general foreign policy coordination – which tend to be low-salience issues in most European polities.

Lack of salience, not lack of opportunity, may be the critical constraint on European political participation. This would explain why European citizens fail to exploit even the limited opportunities they have to participate. It follows that referendums, parliamentary elections, or constitutional conventions based on such issues encourage informationally impoverished and institutionally unstructured deliberation, which in turn encourages unstable plebiscitary politics in which individuals have no incentive to reconcile their concrete

⁴⁴ Gibson 2000 full details to come.

⁴⁵ I am indebted to Bonnie Meguid for access to her systematic data on issue salience in European countries.

interests with their immediate choices. The typical result is a debacle like the recent Irish referendum on the Nice Treaty. Not only does this demonstrate the existence of significant substantive constraints on EU policy-making, but it implies – as we shall see below – that even if a common European ‘identity’ and the full panoply of democratic procedures existed, it would be very difficult to induce meaningful citizen participation.

Of course this could change in the future. But the proposals to construct greater citizen involvement in EU politics that are most plausible in theory are patently implausible in practice. In order to give individuals a reason to care about EU politics, it is necessary to give them a stake in it – a fact that many discussions of a *demos*, ‘we-feeling’, ‘community’, and ‘constitutional patriotism’ elide.⁴⁶ The most compelling schemes for doing so rest not on the creation of new political opportunities, but the emergence of entirely new political cleavages based on interest. Philippe Schmitter argues that agricultural supports and structural funds should be replaced with a guaranteed minimum income for the poorest one-third of Europeans, national welfare systems should be rebalanced so as not to favour the elderly, and immigrants and aliens should be granted full rights.⁴⁷ With the EU acting as a massive engine of redistribution, individuals and groups would reorient their political behaviour on whether they benefit or lose from the system. PARAGRAPHThis is a coherent scheme targeted at precisely those groups most dissatisfied with European integration today – broadly speaking, the poorer, less well-educated, female, and public sector populations – but it is utterly impractical. It would run up against one of the fundamental ‘real-world’ constraints on democracy, namely the willingness of some groups to continue to participate in the project of European integration. In search of legitimacy, Schmitter breaks entirely with existing EU practices, divorcing the EU entirely from its ostensible purpose of regulating cross-border social behaviour, and would thereby undermine the legitimacy of almost everyone currently involved with it. The result would almost certainly be a higher level of political conflict, domestic and interstate, than Europe has seen in several generations – and perhaps the collapse of the organization.

⁴⁶ For an exception, see Weiler, *The Constitution of Europe*, op. cit.

⁴⁷ Schmitter, *How to Democratize the European Union*, op. cit.

IMPLICATIONS FOR GLOBAL GOVERNANCE

Any assessment of the democratic legitimacy of regional and global governance must not just be philosophical, but empirical and social scientific as well. Rather than comparing international organizations to idealized ancient, Westminster-style, or imaginary political systems, the baseline should be the real-world practices of existing governments acting imperfectly under complex constraints. Above I presented a simple framework for conducting such an analysis and applied it to the EU. In that case, a failure to view democracy realistically, as well as the failure to take into account the empirical idiosyncrasies of the European case – notably its limited mandate and the continuing strong role of national governments – has given critics the *impression* that the EU is undemocratic. In fact it is merely specializing in those aspects of modern democratic governance that typically involve less direct political participation. The apparently 'counter-majoritarian' tendency of EU political institutions insulated from direct democratic contestation arises out of factors that themselves have normative integrity, notably efforts to compensate for the ignorance and non-participation of citizens, to make credible commitments to rights enforcement, and to offset the power of special interests. These institutional adaptations are normal in the 'second best' world of advanced industrial democracies. This is not to say that there is no cause for concern. There are a few areas where the EU departs modestly from existing national practices without a compelling substantive justification. The most important is the structure of European Central Bank, which is more independent of political pressure than any known national example.⁴⁸ Yet, overall, when judged by the practices of existing nation-states and in the context of a multi-level system, there is little evidence that the EU suffers from a fundamental democratic deficit. We might of course nonetheless choose to criticize the broader trend toward professional administration, judicial enforcement of rights, and strong executive leadership, but it is unrealistic to expect the EU to bear the brunt of such a critique.

⁴⁸ Matthias J. Herdegen, 'Price Stability and Budgetary Restraints in the Economic and Monetary Union: the Law as Guardian of Economic Wisdom', *Common Market Law Review*, 35 (1998), pp. 9–32.

The framework for analysis I have presented is general, but can the relatively optimistic conclusion be generalized? I am sceptical. The favourable assessment of the EU rests on a number of assumptions that may not be universally true of international organizations. Above all, the democratic legitimacy of the EU rests on the fact that national-states remain influential, democratic and technically competent. These conditions cannot be assumed to be true of all national governments, particularly in the developing world.⁴⁹ Nonetheless, the EU establishes one endpoint in the current empirical continuum of international organizations – an endpoint that can serve as a starting point for future comparative research.

⁴⁹ See the article by David Held in this volume.