

Does the european
union have a
democratic deficit?



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Critically discuss whether the European Union suffers from a ‘ Democratic deficit’. In your answer refer to the past and present situations and to the possible future under the Treaty establishing a Constitution for Europe.

Introduction

This paper evaluates the democratic credentials of the European Union, considering the popular criticism that the Union suffers from a so-called “ democratic deficit” in its legislative processes. The past, present and possible future state of the Union is analysed so as to determine the truth behind this concern and to analyse the way in which the Union has evolved to mollify its critics in this respect. The proposed Constitutional Treaty is most unlikely to be adopted in its present draft in the short-medium term given its rejection by France and The Netherlands at national referenda in 2005. ^[1] However, this paper considers the ways in which the draft Constitutional Treaty proposes to address further the problem of the Union’s democratic deficit..

The Changing Face of Europe: One Common Concern

In 1957 the Treaty of Rome ^[2] was signed with the aim of creating a deep economic relationship between six European states: France, Germany, Italy, Belgium, The Netherlands and Luxembourg.. The architects of the European Economic Community, including Schumann and Monnet, were fearful of the threat of a devastating third war on the European continent and keen to encourage European states to associate more closely together to reduce that risk. In those early days, that was the ostensible extent of political ambition.. The Treaty of Rome was not intended to have a constitutional perspective or

scope and did not concern itself with issues appropriate to that form of measure..

However, the Single European Act ^[3] brought into effect a conscious and determined scheme to bring the member states of the EEC closer together.

The range of policies under the auspices of the EEC began to grow significantly and the European Commission, led by the famous Jacques Delors ^[4] became extremely proactive in the law making process. ^[5]

Criticisms of the way in which EEC law was made had been laid against the Community by Euro-sceptic politicians, academic commentators, journalists and the public at large for years prior to the mid 1980s, but it was at around the time of the passing of the Single European Act that those criticisms and concerns really gained force. The EEC institutions were criticised as operating under what was called a *democratic deficit*. This is shorthand for the allegation that the EEC institutional and legislative systems were allowing unelected, faceless bureaucrats to create law that would have binding effect across the Community, rather than preserving that task for national representatives elected by direct universal suffrage.

The common public and media perception that the EEC was not an effective democratic entity became quickly entrenched as the Commission began producing more and more law for application in the member states. It is submitted that the matter would not perhaps have attracted such concern if EC law took second place to national law but in fact criticisms of the democratic deficit were sharpened and polarised by the principle of the sovereignty of EC law, which dictated that law issuing from this body of

dubious democratic credentials took precedence over the highest forms of national law created by ancient democracies: see *Costa v ENEL* ^[6]

In terms of a personal critical appraisal it is asserted that there is little doubt the “ democratic deficit” criticism was originally well made and well founded.. The European Assembly was no more than a talking shop, with very few powers, until the passing of the Single European Act and the bureaucratic Commission was without question the legislative engine of the EEC. Perhaps the best evidence of the extent of the democratic deficit is to be found in observation of the considerable efforts of the Community to address the issue in more recent times.

For example, the Single European Act itself, in a subtle move, renamed the Assembly the European Parliament, presumably to give the institution a more democratically-positive and authoritative (sounding) title. The new Parliament was also allowed some marginal new powers in the law making process of the Community.

This gesture did nothing to silence those critical of the EEC lack of democracy. Commonly known as the Maastricht Treaty, the Treaty on European Union ^[7], was signed in 1992 and the EEC became the EC, which in turn became one part of the European Union. Alongside other massive changes, again the law making powers of the European Parliament were strengthened and developed, this time quite substantially so, in an attempt to re-balance the legislative processes of the Union. It was hoped that this would further mollify those critical of the Union’s democratic deficit. It is submitted that the fully elected Parliament now had a real and effective part

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to play in the EU law making regime, but criticism of a democratic deficit still persisted given the huge influence and power that the unelected Commission still retained over the process.

The Treaties of Amsterdam and Nice followed. These were largely aimed at reorganising the EU law and institutions so that the Union could operate more effectively and smoothly after its intended enlargements. This enlargement has now taken place and on 1 January 2007 the Union expanded to embrace 27 member states with the accession of Bulgaria and Romania. ^[8] It was hoped that a new EU Constitution could have been adopted prior to the recent enlargement phase in order to better equip the expanded Union for its future operation and growth.

The Constitutional Treaty

The first step towards the establishment of an EU constitution was the signing of the Treaty establishing a Constitution for Europe in October 2004.

^[9] *Inter alia*, the draft Treaty provides that seats in the European Parliament will be distributed on a degressive proportional basis and that the Commission (which lacks any democratic authority) will be reduced in size from 2014, so as to make the number of Commissioners equivalent to two-thirds of the number of member states.

Addressing the democratic deficit head on, the Constitutional Treaty's default law making procedure would be one requiring the joint adoption of measures by the Council and the European Parliament. ^[10] The Treaty would have required the Council to convene in public when making law and required that national parliaments would receive information relating to new <https://assignbuster.com/does-the-european-union-have-a-democratic-deficit/>

EU legislative proposals in sufficient time to allow them to instruct ministers as to how to cast their vote in Council.

Furthermore, the Treaty would have given national parliaments the power to return proposals to the Commission for reconsideration if they believe the matter at issue lies outside the competence of the European Union and the Treaty proposed to give the principle of subsidiarity the important status of a fundamental legal principle of the Union. In addition, the Treaty would have established a so-called *citizens' right of initiative*, which would require the Commission to consider proposals for legislation that gained the support of at least 1 million citizens of the EU. That said, it is debatable precisely what force and effect this might have had in practice, given that *consideration* may merely result in the Commission saying “No”, or rather “Non”.

In combination these reforms would have gone some way to counter persistent criticisms that the EU labours under a democratic deficit. [11]

However, it is submitted that Avbelj overstates its potential effect when he somewhat tenuously suggests:

‘The EU’s formal democratic deficit is not as big a problem as it is portrayed, and the new Constitution in its present form can remedy most, if not all of it.’

[12]

In rebuttal, Irish Party Sinn Féin has observed:

‘The Constitution does not effectively redress the democratic deficit issues identified in the Laeken Declaration. Instead it shifts the balance of power

and control yet further from the sovereign national parliaments and towards the EU.’ [13]

In particular, it is stressed that the European Commission would remain the sole initiator of legislative proposals under the draft Treaty. Other bodies, including the European Parliament, the Council and lobbying blocks of millions of citizens can merely ask the Commission to *consider* drafting a proposal. [14]

Concluding Comments

In conclusion it is submitted that the European Union does and always has suffered from a democratic deficit. This stems from the very foundations of the European Economic Community, when the European Commission was given largely unrestricted bureaucratic powers to administer what began in effect as little more than an economic club. The essential problem has been that the EEC quickly outgrew its initial parameters and objectives, soon becoming the European Community (dispensing with the word “*Economic*” because now its horizons were much broader) [15] within a greater EU, but the Commission has stayed, incongruously it is submitted, at the very heart of the law making process throughout this period of rapid growth and evolution.

In simple words, the EEC began with a massive democratic deficit but it did not become controversial until it began to develop its powers. Since the mid 1980s the democratic deficit has gradually been whittled away, largely through successive Treaty amendments which have slowly given more power

and influence to the elected European Parliament. It is true that the draft Constitutional Treaty would have continued this process, introducing further reforms to address the democratic deficit. However, the Commission, which lacks democratic credentials, will still cling tightly to the law making process even if the implementation of the Treaty proposals ultimately takes place.

In order to banish the spectre of the democratic deficit completely from the European Union and its processes it will be necessary drastically to re-assess the role of the European Commission. The Commission will need to be reduced in status to that of an ordinary national civil service, and the European Parliament must assume full responsibility for law-making, before the EU can hope to assert full democratic authority. This will be a bitter pill for the Commission to swallow: it has always jealously and vociferously guarded its role and power. However, if the EU is to mature into a deeper union this policy must at some point be implemented.

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Cases as footnoted.

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^[1] *Straw sees 'no point' in EU vote*, June 6 2005: http://news.bbc.co.uk/1/hi/uk_politics/4612021.stm

[2] Consolidated version of the Treaty establishing the European Economic Community: <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>.

[3] The SEA entered into force in July 1987.

[4] President of the European Commission 1985 - 1995.

[5] See for context Margaret Thatcher's statement to the Hanover European Council, July 30 1988: Hansard HC [136/525-35]<http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=107281>.

[6] Case 6/64.

[7] Foster, *EC Legislation (2006-2007)*, (2006) Blackstone's Statutes (London).

[8] See: http://europa.eu/pol/enlarg/index_en.htm.

[9] See for detail: http://europa.eu.int/constitution/index_en.htm.

[10] Report from the Presidency of the Convention to the President of the European Council (18. 07. 2003) see: <http://european-convention.eu.int/bienvenue.asp?lang=EN>.

[11] *The European Union: Balancing Democratic Deficit?* (2005/03/10): <http://www.eumap.org/journal/features/2005/demodef>.

[12] Avbelj M., *Can the New European Constitution Remedy the EU “Democratic Deficit”?* (2005): <http://www.eumap.org/journal/features/2005/demodef/avbelj>.

[13] *Ireland and the EU Constitution* : <http://www.sinnfein.ie/pdf/EUConstitutionPamphlet.pdf>, p10.

[14] Can it really be argued that EU laws can be described as “ national governments acting at EU level” when the European Commission has the sole right to propose those laws?

[15] See: Kent, *Law of the European Union* , (2001) Longman, p. 9.