Counteracting Democratic Deficit in the European Union through a New Multilevel “Trial” Model of Democracy

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Abstract

Due to the progressive integration of the European Union, national parliaments continued to lose legislative powers; this, however, had not been transferred to the same extent to the European Parliament, but to the Council or the Commission. This transfer of power from national legislative organ to the European executive organs is identified as democratic deficit or a lack of legitimacy. To countervail the phenomenon of the democratic deficit the Treaty of Maastricht of 1992 introduced the national parliaments as a new actor into play.

Today, the legitimacy of the Union is attributed to a large extent to the national parliaments. The Article 12 TEU intensifies even further the legitimizing function of the national parliaments in the government system of the European Union.

The present study should examine, the cross parliamentarisation of the European Union through the European Parliament – and in particular by recourse to the national parliaments. It tries to answer the question, by which alternative models the democratic legitimacy of the European Union can be ensured in the long period.

The focus of the paper will be on the dual Democracy. It will especially be analysed, whether the new role of national parliaments in the legislative process at the European level should be understood as an expansion of the rights of national parliaments, and consequently form a new third pillar of a “trial democracy”.

Keywords

I. Multilevel Democracy in the European Union

A. Introduction

The term “democracy” comes from the Greek. Democracy in Greek is: Δηµοκρατία and is derived from δήµος [dēmos], the Greek word for “people”, “masses” or “full citizenship”, and κρατία [kratía], what “rule”, “reign”, or “exercise power” means; “kratía” literally means rule by the people. In simple terms “democracy”, means “rule of the (simple) people.”

Modern democratic polities do not use a definition of democracy and regularly operate at several political levels. In the case of the European Union multilevel democracy operates at the level of the member states and the European Union itself, and in addition at federal, regional, and municipal levels.

B. Preconditions for Democracy

What is the democracy? If we answer this question to the effect that democracy is a direct, semi-direct or indirect representation of the demos, the next logical question will be, namely, what presupposes the democracy as a form of state and government. As a representative form of government, democracy requires legitimacy, the legitimacy itself participation.

Who creates the legitimacy of the government? If the majority of the voters in a society create the legitimacy of a democratic form of government, it has logically to be asked, what are the main objectives, the preconditions for such participation.

If this is the best possible representation of the people, it requires the political participation of as many as possible over much as possible.

The question, whether a majority decision is legitimate, depends on in which procedure it was taken. The procedures presuppose institutions, which guarantee the expiration of these procedures. In this respect, democracy can be seen as a cycle: Democracy as a form of government presupposes a legitimacy that requires on the one hand participation of citizens entitled to vote and on the other hand the participation of the institutions, which enable such a participation at all.

C. Democracy model of the EU Treaties

The requirement of democratic legitimacy played until the 1990's not a big role in European treaty law. The term “democracy” is not found in the text of the treaties. The case law of European Court of Justice (ECJ) recognizes one meaning to the principle of democracy only, when it comes to the involvement of the European Parliament in the legislative process. Democracy is first mentioned in the preamble and Article F paragraph 1 TEU (Treaty on European Union) as amended by the Treaty of Maastricht. For the first time Article 6 paragraph 1 of the Treaty on European Union as amended by the Treaty of Amsterdam – which was unchanged took over from the Nice Treaty – formulated that the Union was founded on the principles of democracy.

The Constitution of the European Union (Const. EU) included for the first time a separate Title VI concerning the democratic ruling in the Union under the title “The democratic life of the Union” (Article I-45 to Article I-52 Const. EU).

D. Democracy model of the Treaty of Lisbon

The provisions on democratic principles of the Union are listed in Articles 9 to 12 TEU – under the title II. Article 9 TEU regulates citizenship.
According to Article 10 paragraph 1 TEU the functioning of the Union shall be founded on “representative democracy”. The representative democracy is complemented by the elements of participatory, associative and direct democracy, in particular through a citizens’ initiative (Article 11 TEU). Thus, the Union is constituted as supranational democratic governance, which is constituted and limited on the principle of democracy.

“Dual Democracy” is codified in Article 10 paragraph 2 TEU. Article 12 TEU codifies the involvement of national parliaments in the legislative process of the EU, covering the national parliaments as well as the participation of national parliaments in the European Union.

II. Democratic deficit in the EU

Democracy deficit is described by the striking sentence: Because of not fulfilment of the criterion of “democracy”, the candidature of the Union would be rejected, would it want to join to itself.

The subject matter of “democratic deficit of the European Union” describes the fact, that the European Union – as a supranational organization – is not sufficiently democratic legitimated in its political activities. It has to be made a distinction between structural and institutional democratic deficit.

For supporters of the theory of “structural democratic deficit”, the deficit is deeply rooted, and can not be eliminated in the medium term, because it is significantly interrelated to the lack of a European demos.

The thesis of “institutional democracy deficit” on the other hand refers to the shortcomings of the political system of the European Union. According to this thesis, the deficit is based on in principle revisable decisions, especially on shortcomings of representation and participation in the Union. Accordingly, the representation and participation deficiencies have exacerbated by the transition of European integration from a purely intergovernmental organization with unanimity to a mixture of intergovernmentalism, qualified majority voting, and hierarchical control by the European Union law.

III. Dual (two pillar) Democracy

In the European Union, the principle of dual Democracy is based on two complementary pillars of legitimacy; the European Parliament on the one hand and the national parliaments on the other.

“Dual Democracy” is codified in Article 10 paragraph 2 TEU. Thereafter, “citizens are directly represented at Union level in the European Parliament”. Thus, the first sentence of Article 10 paragraph 2 of the TEU codifies the first pillar of dual legitimacy of the EU.

The first pillar of the principle of dual legitimation consists of the European Parliament, which is composed originally by the directly elected representatives of European citizens. This provides a “direct” representation of citizens, a direct legitimacy of the Union by the own citizens. In this capacity, the Union is also called as “Union of citizens”.

The second pillar of dual legitimacy is formulated in the second sentence of Article 10 paragraph 2 TEU as follows:

„Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.”

The second pillar of the principle of dual legitimacy consists of the national parliaments, which are composed by the directly elected representatives of citizens of member states of the EU.
of the control they exercise over their Heads of State or Government in the European Council and their governments in the Council, national parliaments convey an indirect legitimacy to the Union. This however provides an “indirect” representation of citizens of the EU, an indirect legitimacy of the Union by the citizens of the member states. Because of the – over national parliaments – indirectly mediated legitimacy, the Union is also called as “Union of the member states”.

IV. Trial (three pillar) Democracy

According to Article 12 TEU “national Parliaments contribute actively to the good functioning of the Union“. After this concrete regulation of the role of national parliaments in Article 12 TEU, the question arises, whether the new role of national parliaments in the legislative process at the European level is just another reinforcement or extension of the second pillar of legitimacy of the principle of dual legitimacy. Or, whether, because of its directness, independence and intensity, this new role of national parliaments should be understood as an expansion of the rights of national parliaments, and consequently form a new third pillar of the hereinafter called “principle of trial democracy”.

The trial Democracy model consists of three pillars of legitimacy. The first and second pillars of legitimacy remain the same as those for the dual legitimacy model. The third pillar of legitimacy consists of the national parliaments.

National Parliaments contribute actively to the good functioning of the Union by carrying out tasks that are enumerated in Article 12 letters a to f TEU. The performance of the duties of Article 12 TEU requires more direct involvement of national parliaments in the European legislative process than it is provided for dual democracy in Article 10 paragraph 2 sentence 2 TEU, since the rights to participate of the national parliaments in Article 12 TEU go beyond previous rights to information and include further independent rights to participate, rights to control and right to evaluation. This new, direct legitimacy of European governance through national parliaments forms a new pillar of a new three pillar Democracy.

Endnotes
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Short Biography of Hüseyin Celik

I studied Bachelor of Law at the University of Bern and Neuchâtel in Switzerland. After my BLaw I studied Masters of European and International Law at the Radboud University of Nijmegen in Netherlands and K. U. Leuven in Belgium. At the moment I am Research Fellow at the University of Zürich and University of Neuchatel; Visiting Research Fellow at the Humboldt-University of Berlin. Currently I am writing an PhD about the role of national Parliaments in the European Union. The main field of my research are: European constitutional law, Democracy and parliamentarism.