

Legitimacy and Democracy of The European Union: A Defense of the Treaty of Lisbon and a Call to Further Action

George Sivulka

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1. Introduction

1.1 Background

For the greater part of the last century, Western countries have come together, working in a spirit of interconnectedness and collaboration towards an effort of Globalisation.

In the aftermath of the Second World War, their shared interests and values underscored unity and convergence.

However, the political winds are shifting.

An immense wave of nationalist sentiment across the world is redefining the contemporary political climate. Populism, xenophobia, and highly-polarized political rhetoric have fundamentally unsettled or altered formerly enduring institutions and unwavering trends. While in certain cases this disruption has been confined within traditional governing systems, in others the momentum of this polarizing movement appears to threaten a complete upheaval of the institutions of old. With the pressing issues of Brexit, migration, and new authoritarian ethno-nationalist leaders, nowhere is this imminent upheaval as poignantly felt as it is in the divisions of contemporary Europe and its increasingly-tested Union.

Directly correlated to the paradigm shift in European politics is the public sentiment of a perceived “democratic deficit” in the European Union. Europeans feel increasingly detached from their supranational governing body--limited, constrained, or even punished by the policies it creates at a such a distance. (Follesdal 2006) Many levels of separation between EU lawmakers and their electorate couple with the convoluted nature of it’s political system to make the EU inaccessible to large swaths of the electorate. Indeed, in many ways, this political disconnect of the populus manifests in more than just this populist wave. A perceived “democratic deficit” challenges the very legitimacy this institution. (Majone 1998)

This situation poses new challenges for the European Union; the impetus to increase both the accessibility and legitimacy of the institution has never been more poignant, especially in the face of these obstacles. As such, understanding the nuances of this complex situation is imperative.

This commentary seeks to shed light on these nuances by surveying this contemporary European political climate through the lenses of these two issues of “democracy” and “legitimacy” in today’s European Union. Herein, a comprehensive analysis delving into the Treaty of Lisbon--the union’s most recent binding agreement--is imperative to highlight the adequacies and inadequacies of its latest attempts to address these issues. A juxtaposition of this examination of this decade-old effort with the nuances of the system’s shortcomings today substantiates the two following claims:

Claim 1: The efforts and innovations of the Treaty of Lisbon directly increased the European Union’s democracy and legitimacy through tangible and much-needed reforms in 2009.

Claim 2: More is needed. The democracy and legitimacy of the European Union today is still heavily constrained by a variety of systemic issues; these deficiencies are highlighted when compared to other “representative democracies”--namely, the United States Government.

2. Democracy and Legitimacy in The Treaty of Lisbon

2.1 Historical Background

In order to appropriately survey the political impacts of the Treaty of Lisbon, it’s crucial to first place the document in its historical geopolitical context. At the turn of the century, the looming accession of ten new member states highlighted the need for a push towards robust efficacy, democracy, and transparency in the union. The Laeken Declaration in 2001 formalized this

effort by establishing a Constitutional Convention, initiating negotiations that drafted and later agreed upon a unified “European Constitution.” (The Laeken European Council 2001) Though referenda in France and the Netherlands blocked ratification of the constitutional treaty in 2005, the underlying systemic innovations of the constitution lived on in ratification in the the Treaty of Lisbon almost four years later. Indeed, although almost all of the culturally unifying and state defining aspects of the constitution were removed, per the demotion of its status to a “treaty,” the wide majority of the original structural and institutional driven inventions were kept and ratified.

In fact, the very same impetus of the Laeken Declaration and founding mission of the The Treaty establishing a Constitution for Europe carried over into the underlying pursuits and undertakings in Lisbon almost a decade later. Per the Treaty’s preamble, the agreement seeks to “[enhance] the efficiency and democratic legitimacy of the Union and to improving the coherence of its action” in “completing the process started by the Treaty of Amsterdam [1997] and by the Treaty of Nice [2001].” (Treaty of Lisbon 2009) Undoubtedly, its major developments are direct attempts at enhancing both efficiency and democracy in the Union--holding true to this mission in intent, if not always in actuality.

2.2 Overview of Lisbon Developments

Thusly, it seems justified to analyze the developments of the Treaty of Lisbon and their successes in light of the ideals of “democracy” and “legitimacy”--the two political science concepts most closely tied to its founding mission.

In fact, through this analysis, it becomes readily apparent that almost every facet of the treaty and its innovations succeed in their mission of increasing democracy and legitimacy—if only marginally. From improvements in decision-making processes to clauses that allow paths for clear citizen involvement, a targeted survey of the more poignant developments clearly outlines the positive direction and relative minimality of their efforts.

2.3 Decision Processes

Two major innovations in the legalization process of EU laws--a change in the procedures for counting votes and a shift in the system with decision making power--remain possibly the clearest institutional shifts towards increased democracy and legitimacy.

The first, the Treaty’s complete overhaul of the Qualified Majority Voting (QMV) System, coupled with the expanded use of this new protocol across EU institutions and decision-making processes simultaneously removes barriers to consensus and increases population-based representation. Prior to 2009, the Treaty of Nice mandated consensus by over 72% of member

states in the Council of Ministers to pass most laws. This system, while slightly more productive than unanimity, still posed a high majority barrier, lacked widespread implementation in policy areas, and failed to account for population-weighting. Lisbon's introduction of a new QMV system allows for a vote to be passed with a double majority: agreement from 55% of member states and 65% of the EU's population--maintaining that less than four countries block it. This directly improves barriers to the passage of constructive legislation, allowing the union to function as a more legitimate and proactive law-making body while introducing a population majority requirement for the first time. Moreover, by expanding QMV's use to become the vote-counting norm across most areas of policy--and selectively maintaining unified consensus in the heavy-weighting policy areas of taxation and defense--effective action can be made readily across more of the union's more unified fronts.

For the European Union--an institution plagued by hindrances in its process of law--the increased efficiency of Lisbon's QMV, and a resulting increased efficacy in creating policy, allow for a tremendous improvement in the amount of legislation that can achieve a consensus (Novak 2010). To citizens, this increased output provides reassurance that (in fact!) the supranational body is "doing something," generating policies to--hopefully--act in their interest. Simultaneously, the fact that the new decision process of QMV verifies these policies with greater emphasis on population percentage--over distant representative actors--provides democratic legitimacy.

Not only does QMV make the union more effective, it makes it more effective in a way that better represents citizens over states.

However, this isn't the only way the Treaty of Lisbon increases representation in the lawmaking process.

The second fundamental improvement--the introduction of "co-decision" in the process of law validation for most policy areas--further lessens the organizational barriers holding the population from involvement in the law. While traditionally bills posed by the European Commission would be voted on solely by the Council of Ministers to be passed into law, Lisbon's introduction of co-decision introduces a bicameral legislature, mandating that most--but not all--bills be verified by a vote in the European Parliament in addition to the Council of Ministers. Since its first election by universal suffrage in 1979, the European Parliament has been the only EU institution through which Europeans have direct representation. However, until this policy of "co-decision" was ratified in 2009, the "legislative" powers of the parliament were largely limited to consultation procedures. (Duff 2009) It immediately follows that in increasing the powers of this institution, the Treaty of Lisbon results in increased democratic legitimacy, giving the people a greater voice through their *direct* representatives.

From direct representation stems greater citizen involvement in European affairs, offering both pronounced importance to parliamentary elections and appreciable legitimacy to the policies the institution creates.

2.4 Proposal Processes

In addition to the improvements in the decision-making processes of the European Union, Lisbon also directly improved the legitimacy and democracy of the union's law-proposal processes. Three of the treaty's proposal-oriented innovations in particular posited the most sizable steps in the *direction* of increased output and input legitimacy for the EU--yet all fell short in their *impacts* in myriad ways.

The first two--albeit minor--additions of the 'Citizens' Initiative' and the "Yellow Card" facility indeed open avenues of influence on bill proposal for the people--powers previously reserved to the elite few in the European Commission.

Via the Citizens' Initiative, Europeans can mobilize and petition for new laws--from the ground up--due to this new mandate that the commission consider any and all proposals with one million citizen signatures. While this remains a high bar for the number of petitioners needed to legitimize such proposals--a fifth of a percent of a union with over 500 million citizens--mobilization is increasingly facilitated in the interconnected world of the internet; political movements and think-tanks are increasingly gaining online traction. (European Statistical System 2011; Coleman 2009) Still, the policy areas allowing citizen-led proposals of new bills are limited, and these citizen *suggestions* are just that--propositions that only have to be "considered"--not always voted upon. (Rothenberger 2007) However, even if this initiative's progress is small, it's significant--a milestone in offering an avenue of direct and democratic law proposal for the first time.

Moreover, the "Yellow Card" facilities--more formally outlined as "subsidiarity control mechanisms"--increase the voice of the citizens through the politicians they *directly* elect--those with full-time dedication to representing their interests. (Fromage 2013) Here, in formally instantiating the review process of national parliaments, and lengthening their review periods to eight weeks, representatives gained a credible channel to offer a reasoned consensus regarding potential subsidiarity infringements. Notably, these opinions have weight; if states representing a third of the seats in the European Parliament reject a proposal, a "Yellow Card" is issued--a request that the commission review its proposal and a consignment that it offer its reasoning regarding its reviewed decision. Furthermore, if states representing over half of the seats in the European parliaments dissent, an "Orange Card" is issued, initiating a vote in the EU Council

and Parliament wherein either body can deny the proposal's consideration. Surely, these "cards" offer an improvement in representing citizens' interests in the law proposal process, opening a path to greater input-legitimacy in the commission for the first time. However, once again, a miniscule amendment is not enough. Threshold barriers to dissent is high, the "yellow card" maintains negligible actionable influence, and the policy scope where this procedure can be enacted is limited.

In a political "football match" with stakes this high, stronger penalties--perhaps even "Red Cards"--are sorely needed.

These two innovations weren't the only significant advancements in the legitimacy and democracy in the area of proposing legislation; Lisbon offered and had to abandon a proposal to change representation within the European Commission itself.

Indeed, the first edition of the Treaty of Lisbon posited a reduction in the size of the European Commission, offering an immense potential to increase the efficacy and legitimacy of the institution--had it not been denied ratification by the first Irish referendum. Decreasing the commission's size to two-thirds of its former number offered to end the status-quo of one commissioner per member state. Instead of constant representation, equal rotation among all member states moves away from the notion that each of the member states is entitled to have one spot in the commission.

While at first-glance, limiting constant representation for each member state can appear to be a questionable decision--perhaps even detrimental to legitimacy--this act of thinning the commission actually posed to offer *greater* legitimacy on two fronts.

First, in reduction of the number of commissioners at any given point, the obligation of those in power shifts from representing their home member states towards representing the whole of Europe. Rather than commissions acting in the discordant interests of their own country, the reduction would mandate unified action in the interests of all countries. In a Europe that largely sees the European Union as a means of achieving national interests--rather than the end itself--spreading and increasing the role and culpability of commissioners allows them to act and command respect as legitimate representatives of *all* Europeans. Admittedly, the possibility for commissioners still acting in favor of their own national interests seems to pose an issue. However, accountability to such misdeeds by shifting terms, permanent representation in subsequent institutions in the legislative process, and other avenues of bill generation discussed above, all act to mitigate and in many ways negate this issue. Secondly, a smaller legislative body would have facilitated the functioning and efficacy of the commission's processes,

increasing the output of the governing system. Again, increased democratic output presented another chance to command increased legitimacy in the eyes of the people.

The rejection of this one opportunity to increase democracy and legitimacy in the EU speaks volumes symbolically to the shortcomings in all of Lisbon's developments. Across the board of the treaty's reforms, limitations in the scope and power of these innovations acted to muffle their positive effects. Herein lies only a taste of true improvement; European unity starves for more.

Indeed, *compromises*--in the interest of nationalist politics--*compromised* Lisbon's opportunity for more tangible legitimacy and democracy.

3. Current Constraints of Democracy and Legitimacy

3.1 Contemporary Sentiment

Today, almost a decade later, the repercussions of these compromises are being felt.

Spanning the spectrum of European politics--especially in lieu of unprecedented challenges and crises--the union's failures to command respect in terms of democracy and legitimacy are clear. Since the European Parliament was first elected in 1979, voter turnout in EU elections has continuously fallen every election cycle. (European Parliament, 2014) The Treaty of Lisbon's minimal increase in parliamentary powers and subtle shifts in democratic directions has failed to reverse this trend. European disillusionment with the validity of this system remains abundantly clear, and today's immense rise in Euroscepticism and dissolution sentiment only corroborates the reality of this sentiment. (Kauppi 2018) However, both these issues do more than just serve as indicators of sentiment; they actively serve to continue to undermine the EU itself in a negative feedback loop.

3.2 Rationale for Comparison

Existing literature on the contemporary EU's democracy and legitimacy--notably Vivan Schmidt's contribution to *The Oxford Handbook of the European Union*--highlights these pitfalls and offers frameworks for analyzing their underlying institutional sources. (Jones et. al 2012) However, while the majority of this research evaluates Europe and its union in isolation, the EU as a real institution runs alongside myriad other governments in a diverse political world.

Political systems can be thought of as a black box, but don't exist in one. Indeed, to truly understand the democracy and legitimacy of a political body, it's important to compare it the context the other institutions with which it coexists.

While the US Government is a true federation--and its resulting primacy over state actors rightly distances it from conceptions of a unified Europe--to many people around the world, it serves as an important standard of democracy and legitimacy for governments. As such, a comparative audit of the European Union against the United States government sheds light on the nature of Europe's various difficulties in a digestible way. Mirroring Schmidt's methodology--evaluating the EU through the lens of Systems Theory--allows for comparative inspection across deficiencies in the union's input, output, and throughput legitimacy. While this comparison elucidates many constraints on democracy and legitimacy in the EU today, the factors of legislative efficacy, accountability, and cohesion weigh most heavily on the union's aspirations to these ideals.

3.3 Legislative Efficacy

Perhaps most acutely, the distribution of power that favors the EU's appointed and non-majoritarian bodies not only lessens public perception of input legitimacy--it actively suppresses it. While the Treaty of Lisbon did increase the power of the European Parliament through "co-decision" with the Council of Ministers, this "shared" influence is not enough. That ministers can still control the *entire* legislative process--from initiation to adoption--for certain policy areas, allows them to continue to override Parliamentary input when it matters. (Siebersen 2007) Even further, the very nature of its member selection process makes the Council of Ministers starkly un-democratic and un-European. Appointed--not elected--ministers defend their own national interests, not the interests of the EU or their citizens' opinions on a supranational scale.

In theory, the idea that laws at the level of the EU should be in the general interest of all Europeans doesn't seem far fetched--yet the reality of this system empowers the separate national institutions of intermediary actors over the European people.

In stark comparison, the US's bicameral legislature seems built for input legitimacy throughout every step in its legislative process. American congressmen of both the majoritarian and non-majoritarian chambers are directly elected by the people. Here, intermediary state influence is subdued by citizens voting with respect to federal--not state--politics, politics they know they can influence. (Lewis-Beck 2008) Congress also balances its institutions' power equally across *all* policy areas, ensuring that the checks and balances of the decision process don't skew any votes in either chamber favor. As such, the Senate has significantly less power than its European equivalent--The Council of Ministers--while the majoritarian House is much more effective than its counterpart--European Parliament.

Furthermore, the fact that these two institutions are also the only governmental bodies that can propose legislation ensures that the sole avenue for bill creation is through direct representatives of the people. In contrast, the European Commission's appointed state actors allow for no such representation which corresponds to no such input legitimacy. Verifiably, the Commission's role acts to actually decrease output legitimacy as well. The involvement of this additional actor--especially one that often expresses discordant and even non-European interests--hinders legislative efficacy, effectively bottlenecking the EU's process.

3.4 Accountability

However, bottlenecks to democratic legitimacy extend beyond the law-making systems of the Union; two major European disconnects--poor governmental understanding and poor political communication--directly manifest in a deficit in the EU's accountability, elucidating its present democratic pitfalls.

Poor understanding of the EU political system--stemming from its ridiculous complexity--acts to negate its accountability--and thus its throughput legitimacy. From their intricate nuances to their naming-schemes, the seven institutional bodies that comprise the European Union make it impossible for any citizen to easily understand the governing body. Even simple tasks, like differentiating between the European Council and the Council of the European Union--significantly different governmental bodies with incredibly similar names--confuses dedicated scholars and experienced politicians alike. In comparison to the three simple branches of the United States government--often taught to young citizens in middle school--this European complexity seems almost comical. Unfortunately though, this inaccessibility is anything but funny, leaving supranational actors completely unaccountable to the electorate for many of their actions. A populace that cannot hold its government accountable for decisions not only endangers the throughput and input legitimacy of an institution--it endangers its democratic legitimacy as a whole. Indeed, without accountability, a 'democratic' governments would truly answer to no-one.

Effective understanding must be coupled with effective communication of the union's developments within the European public sphere, yet here, the EU is also sorely lacking. Politicians' habitual use of the European Union as a political campaigning tool for national elections is a readily abundant example of detrimental communication. In shifting blame upon the EU for their unpopular policies or taking full-credit for its well-favoured developments, politicians continuously promote their own agendas and increase nationalistic fervor at the expense of an institution that should be more significantly distanced from squabbles on the national stage. (Jones et. al 2012) Such rhetoric immensely decredits the union's output legitimacy and defavors its primacy in the eyes of European people. Discourse in

America--where political import is placed upon the federation and state politics come second--couldn't be farther off. As the most powerful legislative body in the lives of citizens, the federal government and its developments cannot be twisted for ulterior political motives; politician's coverage of congressional developments is significantly more uniform.

Contrarily, uniform coverage of European political affairs--while something to aspire to--remains woefully beyond the European Union's current communication abilities--distancing the electorate not only from the union itself, but also from each other. Undoubtedly, uniquely European obstacles stand in the way: 23 languages officially coexist on European soil and media presence is fragmented among member states. Nevertheless, the European Union *must* more effectively tell its story. In the ever important relationship between a government and its people, the media acts as a most powerful and legitimizing intermediary. A unified narrative is vital for a unified coalition.

4. Conclusion

In the time that has transpired since the very first discussions of the Constitutional Convention at the end of 2001, Europe has undergone tremendous transformations as both a continent and a union. The final agreement born of that convention's decades old effort--The Treaty of Lisbon--certainly increased European democracy and legitimacy. However, while enough was done to resettle the union for the steadfast politics of the past, no longer is the political climate predictable.

In the wake of this immensely volatile world, no longer are these small improvements enough.

The union's broken legislative procedure demands simplification, consolidation, and democratization; decreasing the unchecked role of the European Commission, fully equating the powers of the Parliament with the Council of Ministers, and directly electing rather than appointing ministers in the council would be good places to start.

The divides that remove accountability in the union demand reparation, transparency, and connectedness; establishing improved and consolidated channels for educational outreach, offering avenues for partisan politics in European affairs, and greater audits on media and communication concerning the union would surely help.

However, most of all, the European people--rallying behind the flags and symbols of their member state countries in nationalist fervor today--could use one thing the European Constitution lost when the Council reformed to the Treaty of Lisbon. A greater cultural and

symbolic identity of European statehood would offer much needed direction and brotherhood--a flag symbolically and literally leading the way to a brighter European future.

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