

Introduction: Democratic Legitimacy and International Institutions – Cosmopolitan Statism, Republican Intergovernmentalism and the Democratic Reconnection of the EU

It's the Politics, Stupid

This book proposes an account of the democratic legitimacy of global institutions in general and of the European Union (EU) in particular. That may seem at best a thankless and at worst an impossible task at a time when such organisations have come under increasing attack for undermining democracy at the domestic level without adequately compensating for this loss at the supra- or trans-national level. Yet, the unprecedented opposition to these post-war forms of international cooperation makes a reassessment of not just their functional but also their normative justification all the more urgent.

The creators of what was then the European Community (EC) sought to legitimise integration indirectly, providing it with so-called 'output' legitimacy (Scharpf 1999: 6–13) through what the architect of this strategy, Jean Monnet, referred to as 'concrete achievements' in the form of desirable policies, notably an end to war and improved economic well-being (Müller 2011: 142). Though they hoped popular endorsement would follow from the success of European integration in securing peace and prosperity, their strategy was in many respects deliberately technocratic and non-democratic. On the one hand, it reflected a reinforced liberal distrust of democracy in the wake of the rise of fascism prior to World War II (Müller 2011: 128), with the EC seen as a mechanism for constraining demands for popular and national sovereignty that were widely blamed for the catastrophes of the first half of the twentieth century. On the other hand, while potential democratic opposition at the member state level was to be circumscribed in the short term, in the long term the hope was that increased economic cooperation would steadily create the conditions for democracy at the supranational, EC, level. However, although this strategy aimed at weakening the sovereignty of nation states and their peoples, the acceptance and success of the supranational promotion of economic liberalism depended to a large degree on the democratically created institutions of these self-same states providing social protection for the losers of enhanced inter-state market

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competition (Ruggie 1982) As Robert Gilpin (1987: 359) famously put it, ‘Smith abroad’ was rendered acceptable and even possible through being embedded within ‘Keynes at home’ (Isiksel 2016: 173). The trouble has been that far from acquiring the political capacity for Keynes across borders, the EU has strengthened a neo-liberal (mis)reading (Winch 1978) of Smith at home and abroad.

The economic downturn and domestic adoption of new right policies in the late 1970s and 80s gradually placed the post-war compromise under strain, with a free-market and libertarian view of Smith abroad being matched with, and increasingly reinforcing, a similarly neo-liberal version of Hayek at home (King 1987). Meantime, the Maastricht Treaty and the completion of the Single Market and move to Monetary Union created a step change in the EU’s fostering of economic liberalisation during the 1990s that limited the possibility for domestic intervention even further, not least due to the progressive constitutionalisation of the EU’s market regulations by a proactive European Court of Justice (Alter 2001; Grimm 2016: ch. 14, 2017; Isiksel 2016). Labour mobility from the less to the more successful economies became the main instrument of European social policy (Ferrara 2014; Isiksel 2016: 175–9; Scharpf 2010: 238; Streeck 2014: 178). It is against this background, made worse by the Euro crisis, that the problem of the EU’s democratic deficit came to the fore. The ‘output’ legitimacy of economic success backed by the rule of law could no longer substitute for the absence of ‘input’ legitimacy offered by democratic politics (Bellamy 2006, 2010).

Most discussions of the democratic shortcomings of the EU turn on exploring the prospects of the EU evolving into a directly elected democracy, in which EU level decision-makers are both representative of and responsive to EU citizens as a whole (e.g. Follesdal and Hix 2006; Habermas 2001, 2015). These analyses regard the creation of some form of global or regional democracy of either a supra- (Held 1995; Archibugi 2008) or a trans- (Pogge 1992; Bohman 2007) national kind as the logical response to the functional weakening of national-level democracy by global forces, and the only way to address its related normative shortcomings. However, such proposals fail to address the concerns of those who see such a shift of democratic authority to the supra- or trans-national level as not only impractical and unlikely, at least in the short term, but also undesirable and unnecessary. After all, if disappointment with the EU’s supposed democratic deficiencies has undoubtedly driven much contemporary criticism of the EU, so has antagonism towards the very aspiration to create an EU wide democracy (Grimm 1995; Hooghe and Marks 2009).

As the failure to get popular assent to the proposed Treaty establishing a Constitution for Europe in 2005 had already indicated, many citizens perceive such a move as creating rather than addressing the EU's democratic deficit precisely because it constrains the capacity for democratic decision-making within the member states by the different peoples of Europe. Although significant national variations in the degree of Euroscepticism exist, the centrality of the perceived costs or benefits of membership to domestic politics in determining popular attitudes to the EU is a general phenomenon (Kriesi 2016; De Vries 2018). The more citizens regard the EU as displacing and diminishing rather than supplementing and enhancing democracy at the member state level, the greater the likelihood that they will be antagonistic towards it. The domestic context of support for or opposition to the EU cannot be ignored, therefore. Those subject to the EU's authority must see it as the proper forum for resolving certain of their conflicts and promoting a particular set of their concerns. Legitimacy of this kind cannot be achieved by assertions of its functional or moral necessity if these are themselves to some degree matters of dispute. Nor can it be legitimately imposed from above by stealth. To be regarded as a legitimate locus of authority, the EU must be capable of answering to the commonly avowed reasons and shared interests of those subject to its authority in ways that reach beyond their differences and disagreements. In exploring this possibility, this book will argue that the EU can achieve the necessary general acceptance of its appropriateness at the level of states and their peoples but not, or at least not to the same degree, at the level of individuals. Moreover, there are good functional and normative reasons for this lack of fit related to the existence and preservation of the value pluralism represented by the diverse, and frequently divergent, economic and political cultures of the various member states.

The resulting account of the EU, and of global governance more generally, tries to square the circle between those who advocate democratising global or regional institutions so they are directly authorised by and accountable to individual citizens, and those who object that in so doing democracy at the level of the nation state gets unjustifiably diminished. I shall argue that this impasse rests on a false dichotomy. Rather than subverting democracy at the national level, global institutions are in many respects vital to its continuing effectiveness and acceptability in an interconnected world. Nevertheless, such institutions do require democratic input legitimacy and to be viewed as producing suitably legitimate outputs. However, they can acquire this legitimacy not by becoming themselves sources of democratic authority but through being under the democratically authorised and accountable control of the states that have established them and regulate their interactions through them. I call such

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an arrangement a republican association of sovereign states. Drawing on the republican notion of freedom as non-domination (Pettit 2012), I argue that citizens will only enjoy such freedom when the following two conditions are met (Pettit 2010a): first, domestic democratic institutions must ensure political authority within a state is under their equal influence and control; and second, the state must be part of an association of democratic states in which the rules governing their mutual relations are under the equal influence and control of the elected representatives of those states. My claim will be that an account of the EU that conforms to these two criteria will be capable of possessing input and output legitimacy of an appropriate and valuable kind commensurate with what people broadly and reasonably conceive as the legitimate role of the EU as a whole in a globalising world.

The rest of the book is concerned with advocating this international arrangement relative to those that argue for some form of supra- or transnational global or cosmopolitan democracy, and detailing its institutional requirements with reference to the EU. This introduction seeks to indicate what is at stake in this argument: why it is important, what motivates the approach I take, and how it might be best realised. It closes with some reflections on method concerning how normative theorising about political ideals needs to relate to empirical political realities, before giving an outline of the book.

Democratic Legitimacy and International Institutions

Two Challenges to National Democracy: Globalisation and Cosmopolitanism

As I detail in Chapter 1, the argument is framed in the context of two challenges to democracy at the level of the nation state: the functional challenge posed by globalisation and the moral challenge posed by cosmopolitanism. It has become a commonplace that globalisation has weakened the capacity for nation states to frame independent socio-economic and security policies. Democratic decision-making at the national level either cannot fully address, or can be partially undercut by, transnational processes, such as cross-border financial movements; international activities, such as those of criminal and terrorist organisations; and certain democratic decisions of other nations, such as the lowering of corporate taxation or the weakening of environmental controls; all of which can originate in other states yet operate across states. To differing degrees, depending on the policy and the capacity of the state involved, they need to cooperate with other states through international legal frameworks and

organisations in order to regulate many economic and social processes effectively and to provide adequate systems of defence and policing.

At the same time, most moral systems recognise a cosmopolitan requirement to treat all individuals as moral equals, regardless of where they live or come from. Of course, they differ greatly as to what that entails and when it becomes a relevant consideration. Some moral theories view this requirement in more minimal and restrictive terms than others, yet all reasonable moral codes recognise that certain moral aims, such as the protection of persons from serious and widespread violations of human rights, the alleviation of dire poverty and the avoidance of environmental catastrophe as a result of climate change, are, in Thomas Christiano's words, 'morally mandatory' at the global level (Christiano 2012: 388). Given that these aims can only be met through widespread cooperation across the world, the relevant duties to fulfil them potentially fall on all individuals whatever state they may happen to belong to. Indeed, most states have signed up to addressing a significant number of these aims through international agreements such as the Charter of the United Nations, the Millennium Declaration of the United Nations, the United Nations Framework Convention on Climate Change and the founding documents of the GATT and WTO (Christiano 2012). Nevertheless, the very division of the world into different states has been seen as itself a source of injustice from a cosmopolitan point of view. Not only are the citizens of wealthier states born with great advantages compared to those of the very poorest states – a fact many regard as difficult to justify morally, not least because this wealth often originates from past injustices perpetrated by these same states, but also these already advantaged citizens may use their democratic influence to push their governments to exploit their state's greater economic power to maintain and even increase these inequalities.

Taken together, these two challenges pose the question of how far, if at all, state-based systems of democracy can operate effectively and morally? The defenders of national sovereignty can appear to deny the need to meet either challenge, making their proposals seem unrealistic and immoral as a consequence. Indeed, many supporters of Brexit and of President Trump have been characterised in just such terms. Consequently, taking state sovereignty as a starting point, as I wish to do, might seem a doomed enterprise that can only lead to impotence in the face of the first challenge and be a source of injustice with regard to the second. At the very least, such criticisms suggest, addressing the global challenge requires state-based governance be supplemented by global or regional institutions and agreements, such as the UN, NATO, the WTO, NAFTA and the EU, capable of coordinating concerted action at the international level and providing regional or global regulatory frameworks. Meanwhile, to meet the moral

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challenge involves states being constrained by international law, particularly international human rights law such as the European Convention on Human Rights, which entrench the relevant morally mandatory norms. To the extent such bodies require democratic legitimacy, that is most straight forwardly and appropriately provided directly, so that all citizens subject to their authority – regardless of whatever state they happen to belong to – have an equal say in their operation. Either way, state sovereignty cannot avoid being diminished, and with it democracy at the national level, and rightly so.

Although I agree that meeting the two challenges requires that states supplement and constrain their actions through international institutions and law, I disagree that this necessitates, either practically or morally, any diminution of state-based sovereignty and democracy. I lay out my argument for thinking so in Part 1 of the book. What follows briefly sketches what motivates my reasoning.

The Need for Democratic Legitimacy

At the heart of my account are a set of interrelated arguments concerning the inescapable need for democratic legitimacy, the conditions that support it, and, underlying both, the plurality of values as an inherent part of the human condition that any plausible or acceptable global and cosmopolitan theory has to accommodate (Bellamy 1999: 3–13).

What John Rawls (1993: 54–8) termed the ‘fact of pluralism’ – the complexity of social life, the wide variety of interests and life experiences of different people, the range of moral claims of different kinds we may make of each other, and the limits of our practical reasoning when attempting to reconcile the conflicting perspectives to which these may all give rise – means that issues of any intricacy that require a collective decision may produce reasonable disagreements. Such disagreements are reasonable because, given the fact of pluralism and the consequent incompleteness and partiality of each person’s point of view, they can occur even when all concerned are exercising their judgement in a conscientious, rational and well-intentioned manner. The rationale for democracy rests on its offering a fair system for legitimately resolving these disagreements when collective decisions among a group of people are believed or prove to be necessary.

As will be elaborated in Chapters 1 and especially 2, the ‘circumstances of disagreement’ occasion the need for an account of legitimacy that is distinct from appeals to the common good or to justice *per se*. Technocratic claims to provide ‘good governance’, which have frequently been invoked in the EU context (e.g. Majone 1996, 1998, 2001), lack

legitimacy in this regard, even when they are justified not just on grounds of market efficiency but also on the basis of rights (Eriksen and Fossum 2004). Rather, legitimacy so conceived describes a valid source of ‘content-independent’ moral duties for a person or persons to comply with the decisions that are directed at them (Christiano 2015: 983). Democracy serves as a legitimate political mechanism of this kind (Bellamy 2006). Because the democratic process of majority rule based on one person one vote provides people’s different views and interests a fair hearing, regardless of who holds what view, without prejudging which is the right answer (May 1952), democracy enables individuals to resolve their disagreements about the common good and justice when making collectively binding decisions in ways they all can accept as legitimate and hence have an obligation to obey. It provides a form of public decision-making in which citizens can regard themselves as possessing an equal status, whereby all have a duty to recognise the right of everyone else to be treated with equal concern and respect.

The above argument indicates why an account of democratic legitimacy in the international sphere proves inescapable for addressing the two challenges. The functional pressures for some form of global governance and the cosmopolitan moral pressures to treat all individuals justly cannot of themselves determine how they might best be met. These are matters of reasonable disagreement, so that any response requires democratic legitimation. Before tackling these challenges, therefore, it is necessary to confront the prior question of what would be the most appropriate structures whereby such legitimacy might be obtained. Chapters 1 and 3 argue that state sovereignty offers a necessary context for a democratic process possessing the features needed for it to be non-dominating. In particular, it serves to turn its individual members into citizens of a demos, capable of conceiving themselves as a public with a broadly equal stake in the maintenance of certain public goods and able to deliberate about how to do so in an open and public way that treats them as equals. In different ways, I argue that supra- and trans-national schemes of democracy confront a two-fold difficulty in meeting the conditions for such a legitimate democratic process. As a result, I propose an alternative scheme of international democracy based around a democratically credible process of mutual agreement among the governmental representatives of the different demoi of sovereign states.

Two Difficulties for Supra- and Trans-National Democracy

Supranational schemes involve scaling up sovereign political authority beyond the state. By contrast, transnational schemes seek to disperse that

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authority across a variety of different political bodies operating below and across existing states in a manner that makes states redundant and avoids any political body possessing the attributes of sovereignty.¹ However, as I detail in Chapter 3, both schemes confront certain generic difficulties in constructing free and fair decision procedures that avoid domination.

First, to formulate collective decisions that treat the members of large and extremely heterogeneous populations impartially and equitably, in ways that avoid various problems of oppression either of or by minorities, will require highly complex and non-majoritarian democratic mechanisms – not least because not all individuals will have an equal stake in all global collective decisions (Christiano 2006, 2011b), a point I develop with regard to the EU in Chapter 6. Yet, this complexity can become itself a source of inefficiency, ineffectiveness and inequity, which lacks the quality of public equality that gives democracy its legitimacy (Miller 2009, 2010). It will be harder for decision-making not only to be legitimate in giving a fair hearing to all, but also, due to the epistemic difficulties confronting individuals in such a vast system, to be seen to be so by individual citizens (Dahl 1999; Christiano 2006: 104–5).

Second, the citizens of already existing democratic states often have long established and distinct histories of self-government, which have given rise to different and frequently divergent collective agreements that command broad legitimacy among those involved. Imperfectly to be sure, but to an unprecedented degree compared to previous political arrangements, democratic states have managed to promote some of the core purposes of a political community by providing their citizens not only with a minimal degree of peace and security but also a range of other benefits – from a system of justice capable of regulating and enabling social and economic life in ways that moderate coercion and unfairness, to a degree of public education and health, and so on. In many respects, this achievement can be attributed to the incentives democracy creates for rulers to promote the interests of the ruled in a broadly effective, efficient and above all equitable manner (Christiano 2011a). States differ greatly in the ways and extent to which they promote their citizens' collective interests. True, these differences are often illegitimate. As I noted in passing above, many instances of states offering far less to their citizens compared to other states result from the injustices the more developed states have inflicted on the less developed through various forms of past

¹ Note that, following Pogge (1992) and Bohman (2005), I employ 'transnational' to denote a way of organising power that stands in sharp contrast to 'international'. If the first cuts across all state borders, rendering them redundant, the second operates between state borders. As I show in Chs. 3 and 5, this distinction yields quite different characterisations of the structure of the EU and the nature of Union citizenship.

and present domination and exploitation: from war, invasion and colonisation, to the imposition of unfair trade agreements. Yet, this diversity also reflects the pluralism of human ideals and interests, and the plurality of ways people may choose to pursue them.

At this point, the two difficulties come together. The difficulty confronting any democratic system operating above or across already existing democracies at the regional or global level is not simply that of fairly representing all individuals within collective decisions in a meaningful way, but also, and at the same time, that of allowing them the space to develop a suitable variety of different forms of social, economic and cultural life that respect the plurality of both human goods and values and of the ways these might be combined and pursued. Supranational and transnational schemes find themselves on the horns of a dilemma in this regard, with supranational accounts potentially meeting the first difficulty only to fall foul of the second, and transnationalist accounts doing better with regard to the second but at the expense of the first.

Advocates of supranational democracy contend that in principle it would be feasible to address the problems posed by the first difficulty (Archibugi 2008, Koenig-Archibugi 2011, Valentini 2014). However, the potential feasibility *per se* of such schemes is not the only objection made here. Even if such arguments are correct, and I voice various doubts on that score in Chapters 3 and 4 in particular, that does not mean such a development is likely, at least in the foreseeable future (Zürn 2016), or – and more importantly – is desired or justified. For many people, the predictable and tangible costs of transition to such a system outweigh any prospective, putative benefits. No international organisation, not even the EU, provides anything like the range of public services and goods offered by contemporary democratic states. These settlements have come about over a very long period of time; invariably as a result of considerable internal political struggles to establish and improve state-based democratic systems. It is natural that citizens will fear that in transferring political authority for the structures of their community upwards, beyond their particular states, they will lose a degree of control over the scope and depth of what gets supplied to them.

The second difficulty enters here. The democratic processes of existing states have given rise to considerable diversity in their economic and social systems – too much to be adequately accommodated within common norms, rules and institutions, even at the regional level (Hall and Soskice 2001, and Chapter 6 of this book). This diversity reflects not only very different degrees and forms of social and economic development, but also different political cultures and traditions. Meanwhile, states that are socially and economically

heterogeneous and/or contain significant cultural and national minorities have generally had to grant significant self-government rights to various territorial and even some non-territorially based groups to accommodate the resulting diversity of values and preferences of their citizens on an equitable basis (Kymlicka 1995, 2001). From this perspective, reconstituting democracy at the regional, let alone the global, level cannot but be a diminishment of democracy. It clashes with the democratic desire for self-government according to norms and within political institutions citizens can identify with as theirs. After all, such processes of political transformation have hitherto involved war and coercion, not least because people have an attachment to their existing political cultures.

Transnational schemes that disperse political authority horizontally, across existing states (e.g. Cohen and Sabel 2005; Bohman 2007), potentially fare better with regard to this second difficulty of allowing for diversity. But they too entail disaggregating already existing democratic systems, thereby also threatening the provision of the goods they provide to citizens. As I show in Chapters 3 and 4, by distributing decision-making authority across a wide range of different levels and functions, this approach exacerbates the first difficulty by undermining the capacity to frame collective policies that give due weight to different views and interests or to assign responsibility to any given decision maker for the combined effects of disparate decisions. Instead, decisions get made in discrete domains without consideration for their knock-on effects for other decisions in other domains because no single sovereign authority exists for considering them as a whole.

In both respects, therefore, the standard framing of the democratic shortcomings of organisations such as the EU in terms of a lack of direct democratic accountability to individual citizens emerges as fundamentally misconceived. On the one hand, it risks replacing reasonably equitable and legitimate state-based systems of political authority with a much more complex system that is likely to be less equitable or legitimate. On the other hand, this approach ignores the legitimacy that already existing democratic systems possess for their citizens, and the value their civic cultures may have for them as products of successive generations of democratic struggle and decision-making. None of which is to deny that democratic systems may lack legitimacy through their external as much as their internal exclusions. The challenge is to see whether the problems posed by these external exclusions can be addressed in a way that avoids the disadvantages I've suggested confront schemes for supra- and trans-national democracy.