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EU Law

Introduction

There is an argument to be made that not many organisations are democratic in nature. Yet, if one were to bet on one it would be the European Union. Most if not all international organisations in the same vein as the EU have influenced past transnational borders, particularly in issues related to trade. The EU is noted to be the only organisation of the scale to have opted for directly-elected parliament representatives as opposed to being obligated by member states. Even so, the given organisation is seen to be undemocratic by many as well. The given paper aims to evaluate whether the sentiment that the EU is not a democratic institution. To fully comprehend the notion, the goals, and law-making process of the institutions will be evaluated through the lens of democracy.

Discussion

Assessment of Democratic Deficit in EU Operations

When assessing the democratic legitimacy of the European Union, there are three core areas that are noted to be highlighted in most critiques. These are noted to be representative democracy, participatory involvement, and deliberative democracy. It is important that the national parliaments are included within the democratic process, as they can help counter any deficits that might occur.¹ That is become doing so increases involvement from the “European Parliament” in vital areas such as co-decision. In addition, the legislative procedure is not considered to be sufficient in that regard. While there is a myriad of different opinions on the issue one can assess whether or not an organisation is democratic in nature. One such factor is whether or not the organisation is responsive to democratic pressure.

A core feature that democracy offers is the power to the voters to change the ruling authority. However, this feature is seen to be absent from the EU, as legislative power is divided among the “*EU Commission*,” the “*EU Council*,” and the “*British Parliament*.”² Among these three entities, only the Parliament has any aspect of democracy with its members being elected

¹ Kratochvíl, Petr, and Zdeněk Sychra. "The end of democracy in the EU? The Eurozone crisis and the EU's democratic deficit." *Journal of European Integration* 41, no. 2 (2019): 169-185.

² *Ibid.*

by the general populace. In that manner, even if there is a chance within the Parliament it will not lead to a change in overall policy.

Secondly, the issue of executive dominance has to be considered in a given context. Due to the European integration, there has been an increase in executive power thus leading to a decrease of control that the national parliament had in the matter.³ Therefore, at the European level, the Parliament is no longer able to keep an eye on executive authority. This is further evident by the fact that the “*Council of Ministers*” is not liable for their actions within the EU by their respective parliaments.⁴ Hence, the “Council of Ministers” has the ability to exercise a great deal of authority while the Parliaments cannot impose any limitations upon them. In the same vein, when further assessing the abilities awarded to the “Council of Ministers,” there is a clear lack of transparency that existed in the conduct of the Council. On the other hand, when looking at actions that involved the European Parliament and the European Commission, there is a much more transparent means of operations applied.⁵ In addition, due to the decision-making process taking place in Brussels, there is a sense of separation between the EU and the seat of government of the member nations. This procedural aspects also ensures that the elected representatives of the Parliament are not directly part of the decision making process.

Due to the expansion of the European market, the critics were left with arguments regarding there being a democratic deficit that leads to an imbalance between capital and labour. This imbalance is further intensified due to the increased freedom being experienced in the EU market. The EU is seen to weaken the overall judicial control, as there are a host of legal solutions in place that are utilised to decide whether an Act or legislation is constitutional. However, due to the transfer of competence onto the community the noted authority is greatly reduced in scope.⁶ Furthermore, a core argument against the EU being a democracy is noted to be the lack of a common community. A total of 11 official European dialects are encompassed within the union of EU where some dialects less spoken are not considered. Therefore, with an absence of a common form of communication between all the members, it is difficult to consider

³ Quintas, Claudio Castro. "Assessing the Democratic Deficit in the EU: towards a Participatory Approach." RIPS: Revista de Investigaciones Políticas y Sociológicas 14, no. 1 (2015).

⁴ Ibid.

⁵ Ibid.

⁶ Kratochvíl, Petr, and Zdeněk Sychra. "The end of democracy in the EU? The Eurozone crisis and the EU's democratic deficit." Journal of European Integration 41, no. 2 (2019): 169-185.

the organisation as a democratic organisation considering that there is an absence of even a common informative media.⁷

Another possible issue, one rather large in scale comes to light when one considers that there is no political party on the European level that can participate in a European election, solely perusing European mandates. Therefore, citizens are forced to vote for local-level candidates who have similar political policies as the people in power. The average European citizen is not offered a positive change in that regard, as in the action of electing a local candidate for a place within the European Parliament, the representative will further the interest of their particular state rather the political mandate of Europe.

The Treat on the Constitution of Europe (TCE)

The main goal of the “*Treat on the Constitution of Europe*” was so that the EU could have a common constitution.⁸ It was agreed, that the new constitution will replace all of the existing EU treaties, however at the same time will maintain the doctrines of conferral, proportionality, subsidiarity, and superiority of EU law. The treaty was set into motion in 2004 and was agreed upon by 25 representatives of member states, with 18 states agreeing upon the notion including votes that were held by the Spanish and Luxembourg government. The treaty was rejected by both the Dutch and French in 2005, it was still argued that the given treaty would have alleviated the issue of a democratic deficit within the EU.⁹

If the treaty would have come into effect there would have been a number of changes implemented in the EU. For one, the power of co-decision would have implied on all policies. In that manner, the European Parliament would become an equal partner in the EU similar to the “*Council of Ministers.*”¹⁰ In addition, the treaty proposed that the meetings of the Council should take place in public, introducing transparency into the equation. Doing so will also ensure that the regional parliaments had enough time before an EU legislative proposal was introduced to instruct ministers on how to vote at the Council.

⁷ Ibid.

⁸ Kinski, Lucy. "What role for national parliaments in EU governance? A view by members of parliament." *Journal of European Integration* (2020): 1-22.

⁹ Ibid.

¹⁰ Ibid.

In the same vein, the given treaty would have added to the existing rights of the general populace.¹¹ The right of the initiative would have been added to the list, making the Commission obligated to consider any and all proposals for the legislature that was supported by a million EU voters. However, there were downsides to the treaty as are with most political decrees. One of those being that with its application, it would reinforce the notion that EU law is superior to any national law of its member states. Furthermore, the *“European Commission”* was still the exclusive initiator of legislative proposals within the EU, while other EU bodies would have to ask the Commission for drafting their proposals.¹² Furthermore, while the local parliaments could offer recommendations concerning legislative proposals, it was the right of the European Commission to ignore these sanctions if it deemed fit. Therefore, while the application of the TCE would have introduced some democratic elements into the EU, it would have still not been a completely democratic organisation nonetheless.

The Lisbon Treaty

It is important to consider the Lisbon Treaty or the Reform Treaty under the given context, as the treaty amended two treaties upon which the EU constitution was based. It was signed in 2007, and came into force in 2009, amending the *“Treaty of the European Union”* and the *“Treaty Establishing the European Community.”*¹³ The Lisbon treaty had emerged after the previous failure to ratify the existing constitution with the “Treat on the Constitution of Europe.”

However, when considering the proposals of the treaty at hand it was highly impenetrable and confusing, to say the least.¹⁴ For a treaty that was meant to simplify the existing operations of the EU. Furthermore, the treaty consisted of a document that looked through countless pages of legal stipulations and declarations. A referendum came from Ireland, one of the only to do so thus the treaty was rejected initially.¹⁵ However, during its second attempt, the treaty was passed and introduced the following changes to the EU operations. It was held that the president of the European Council will have a term that would last for two and a half years, replacing the system of rotation every six months.

¹¹ Kinski, Lucy. "What role for national parliaments in EU governance? A view by members of parliament." *Journal of European Integration* (2020): 1-22.

¹² Ibid.

¹³ Bevir, Mark, and Ryan Phillips. "EU democracy and the Treaty of Lisbon." *Comparative European Politics* 15, no. 5 (2017): 705-728.

¹⁴ Ibid.

¹⁵ Ibid.

The treaty also introduced the “*EU High Representative for Foreign and Security Policy*,” combining the roles of the “*EU Foreign Policy Chief*” with the “*EU External Affairs Commissioner*.”¹⁶ Furthermore, the treaty made the “*EU Charter of Fundamental Rights*” legally binding.¹⁷ Due to the ECI, it was held that the Commission was under an obligation to consider a proposal that had around a million votes from a member state. Thus, introducing a new form of participation from the citizens of member states increasing the democratic elements within the EU.

Conclusion

The EU is among the most influential international organisations of its kind, and thus there has been a long debate on its status. There are both arguments for and against it being a democratic organisation, however assessment of its inner workings, as well as the superiority of the Council over the Parliament it can be concluded that while there are democratic elements within the EU, due to the introduction of the Lisbon treaty, the organisation is still one that is filled with democratic deficits making it undemocratic for the most part.

¹⁶ Quintas, Claudio Castro. "Assessing the Democratic Deficit in the EU: towards a Participatory Approach." RIPS: Revista de Investigaciones Políticas y Sociológicas 14, no. 1 (2015).

¹⁷ Ibid.

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