

# Democracy and the European Superstate

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Proponents of the European project never fail to scoff at Eurosceptics' claims that the EU has become a superstate, often dismissing such observations as the product of a 'Little Englander' mentality. Likewise, when critics decry a lack of accountability in its institutions, Europhiles will invariably point to the European Parliament as an example of democracy at work in the EU.

In response, this paper draws upon international law, official EU documents, and the comments of experts and officials in order to demonstrate unequivocally that the fundamental concerns of Eurosceptics about the nature of European integration are grounded in solid fact.

Whilst the European Parliament is indeed elected by universal suffrage, it represents the last vestige of democracy in an increasingly bureaucratised Europe, and exists only to provide the illusion of democratic process and oversight. In reality, the token Parliament wields little actual power, and by rights should not be called a parliament at all.

True power lies instead with the European Commission – the appointed executive with a monopoly on legislative initiative. Unlike the national governments of most Western countries, the Commission routinely goes unaudited and is consequently permeated by corruption on all levels of its labyrinthine internal structure.

In many areas, the EU is increasing intolerant of dissent.

Time and again, referendums are ignored and dissidents are silenced. Although they are not discussed in this paper, civil liberties are also under threat. The pending creation of the post of European Public Prosecutor in particular threatens to dispose of *habeas corpus* and the right to trial by jury for European citizens.

This paper is intended to serve as a simple *précis* of frequently denied truths about the European Union. Firstly, that it is a superstate; and secondly, that it cannot as such reasonably presume the right to call itself a democracy.

## IS THE EU A SUPERSATE?

*"Sometimes I like to compare the EU as a creation to the organisation of empire. We have the dimension of empire."*

José Manuel Barroso, President of the European Commission

Under Article One of the universally accepted 1933 Montevideo Convention on the Rights and Duties of States – affirmed by the EU Badinter Arbitration Committee in 1991 – a state is defined as possessing these four qualifications:

- a) a permanent population;
- b) a defined territory;
- c) government; and
- d) capacity to enter into relations with the other states.

Citizenship of the European Union was formally established by the Maastricht Treaty in 1993. Under its provisions, 'every person holding the nationality of a Member State shall be a citizen of the Union'. Thenceforth, all EU member-states have necessarily ceded their territory

to the 'ever closer union among the peoples of Europe', as specified in the preamble to the text. Freedom of movement, enshrined in Article 3 (c) of the 1957 Treaty of Rome, has effectively eradicated national borders within the EU.

Of the European Commission, the Treaty on the European Union states that 'it shall exercise coordinating, executive and management functions'. This has led former Belgian Prime Minister Guy Verhofstadt to reject the executive institution's title as 'ridiculous', suggesting instead the name 'European Government'. For this, Verhofstadt's book, *United States of Europe*, won the Europe Book Prize under the chairmanship of European Commission President Jacques Delors.

The final piece of the jigsaw was Article 46 A of the Lisbon Treaty – an almost verbatim replica of the EU Constitution<sup>1</sup> – whereby the European Union has been granted its own 'legal personality', giving it the right to sign and negotiate treaties with other states. The EU now has a Common Foreign and Security Policy, overseen by a High Representative (aka a foreign minister), and executed by a European External Action Service (aka a diplomatic corps). There are currently over 130 EU embassies around the world.

Under the Lisbon Treaty, the EU is now more like a federal state than ever before. Whereas most decisions in the Council of Ministers used to be made by unanimity, ensuring a consensus among national governments before EU-wide action could be taken, the Council now acts 'by a qualified

<sup>1</sup> In 2007 Valéry Giscard d'Estaing, who chaired the Convention which drew up the EU Constitution, told the European Parliament's Constitutional Affairs Committee that, 'in terms of content, the proposals remain largely unchanged, they are simply presented in a different way ... The reason is that the new text could not look too much like the constitutional treaty'.



majority except where the Treaties provide otherwise'. This negates the influence of individual EU member states, allowing the implementation of policy without the consent of national governments. Thus do EU countries become mere provinces of the European superstate.

Contrary to the assurances given by the former Labour administration, the Lisbon Treaty is constitutional in essence, to the effect that significant changes to the governance of the EU will no longer require another treaty.<sup>2</sup> Instead, these modifications will be enacted under the treaty's self-amendment clause – Article 48. Under the terms of this article, the EU may simply elect 'either to increase or to reduce the competences conferred on the Union in the Treaties'. In 2009, the Irish Joint Committee on European Affairs received legal advice warning that 'Article 48 expressly gives power to change [the Treaty] without the necessity of further recourse to the people'.

Together these treaties form the basis of European law, which is upheld by the EU's supreme court in Luxembourg, the European Court of Justice. The primacy of European law over national law is already well established by the 1990 Factortame case and others like it, which have at various times asserted that EU law 'render[s] automatically inapplicable any conflicting provision of ... national law'. The overturned 1988 Merchant Shipping Act is just one example of the application of this principle.

Additionally, the EU enjoys all the symbolic accoutrements of statehood. The European flag, motto and anthem (Beethoven's 'Ode to Joy'), although dropped from the Lisbon Treaty in an effort to disguise its

<sup>2</sup> This explains the fanatically Euro-federalist Liberal Democrats' seemingly reckless promise to hold an In/Out referendum on Britain's membership of the EU 'the next time a British government signs up for fundamental change in the relationship between the UK and the EU' (i.e. a new treaty).

constitutional status, have all found their way into official use since October 2008, when the European Parliament voted overwhelmingly for their introduction.

In its definition of what constitutes a state, the Montevideo Convention also stipulates in Article 3 that 'the political existence of the state is independent of recognition'. The EU is therefore a superstate in its own right, regardless of whether or not the international community chooses to identify it as such.

## IS THE EU A DEMOCRACY?

*"I have never understood why public opinion about European ideas should be taken into account."*

Raymond Barre, former Vice President of the European Commission

## LEGITIMACY

**CASE:** The Universal Declaration of Human Rights regards democracy as the only legitimate form of government. Article 21 (3) of the document states that 'the will of the people shall be the basis of the authority of government'. In a recent investigation into the state of democracy around the world, the *Economist* magazine's comprehensive 'Democracy Index' explains as part of its methodology that 'a high turnout [in national elections] is generally seen as evidence of the legitimacy of the current system'. Tellingly, voter turnout figures in European elections have been consistently low, failing to exceed 50% since 1999.<sup>3</sup>

<sup>3</sup> In the 2009 European Election – at which the turnout was 43% – many millions of votes across Europe were cast for political parties which advocate their nation's withdrawal from the EU. The UK Independence Party is one such example, which won 16.5% of the national vote in the United Kingdom, coming second overall. When deducing levels of public satisfaction with the system from turnout figures, votes for these parties should be discounted. When this is taken into account, public support for the EU is not 43%, but in fact much lower.

**VERDICT:** As far as the 'Democracy Index' is concerned, the EU superstate falls short of accepted democratic standards, and its government is deemed illegitimate. As far as the Universal Declaration of Human Rights is concerned, the EU is in violation of international law and has no authority upon which to exist.

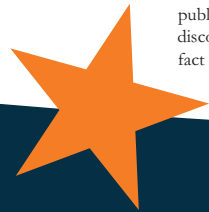
## LEGISLATION

**CASE:** The methodology of the 'Democracy Index' also asserts that, in their model, 'the clear predominance of the legislature is rated positively as there is a very strong correlation between legislative dominance and measures of overall democracy'. Under Article 155 of the Treaty of Rome, only the European Commission is able to propose legislation; not a single EU law originates in the democratically elected European Parliament. Furthermore, Article 249 B of the Lisbon Treaty gives the Commission the power to 'supplement or amend' elements of EU law without recourse to the Parliament.

**VERDICT:** Compared to the British Parliament and the US Congress (where 100% of statutory laws originate), their European counterpart is a powerless talking shop. To call it a 'parliament' is deliberately misleading, and will remain so until the Commission's monopoly on initiative is broken.

## TRANSPARENCY

**CASE:** In 1997, the Inter-Parliamentary Union issued a 'Universal Declaration on Democracy' which stated that democracy 'goes hand in hand with an effective, honest



and transparent government ... Public accountability, which is essential to democracy, applies to all those who hold public authority'. Acting in the spirit of this principle, the EU established an independent Court of Auditors to examine closely the revenue and expenditure of all EU institutions. However, every year since 1995, the Court of Auditors has refused to sign off the EU's financial accounts. In 2006, the Court reported 'weak internal controls for the majority of EU expenditure' and warned that 'overdeclarations and ineligible expenditure continue to go undetected'. When the European Commission's Chief Accountant, Marta Andreasen, blew the whistle on fraud in the EU budget, she was promptly sacked for 'failure to show sufficient loyalty and respect'.

**VERDICT:** If transparency and accountability are essential to democracy, then democracy in the European superstate is lacking in essence. Like the European Parliament, the Court of Auditors is a sham without the necessary powers to fulfil its role. Consequently, fraud and fiscal mismanagement are endemic in the European Commission.

## OPPOSITION

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**CASE:** Freedom House, an American think tank, recently published a survey titled 'Freedom in the World'. In its assessment of each state's democratic credentials, Freedom House asked its team of experts: 'Is there a significant opposition vote [in the national legislature, and] *de facto* opposition power[?]'. When, in March 2010, William Dartmouth MEP criticised the appointment of Catherine Ashton as High Commissioner, his microphone was switched off midway through his 90-seconds of allotted

speaking time. This has become common practice in the Parliament. During the ratification of the Lisbon Treaty in national parliaments, President Hans-Gert Pöttering of the European Parliament requested and was granted 'the power to call an end to ... points of order, procedural motions, explanations of vote and ... requests for separate, split or roll call votes'. When Daniel Hannan MEP challenged this decision, his microphone was also switched off.

**VERDICT:** The prerogative to arbitrarily silence the voice of opposition in the legislature is totally incompatible with the concept of representative democracy. Given that the word 'parliament' derives from the French 'parlement', meaning 'discussion', the European Parliament cannot seriously presume to call itself so. Opposition MEPs may have *de jure* presence but, in matters of importance at least, they evidently have no *de facto* influence.

## REFERENDUMS

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**CASE:** When amending old treaties or introducing new ones, the EU has promised that they shall only 'enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements'. Ireland is one member state which requires that constitutional issues be referred to the electorate in a referendum. In 2001, the Irish people were duly asked to vote on the Nice Treaty, which they rejected by 54% to 46%. The EU's response was to hold another referendum the following year, which this time approved the treaty. Events repeated themselves when, in 2008, the Irish rejected the Lisbon Treaty in a similar referendum by 53% to 47%. Martin Schultz MEP, then leader of the Party of

European Socialists, seemed to speak on behalf of the EU when he declared that 'we must not bow to populism'. By November 2009, the same treaty had been approved in a second referendum.

**VERDICT:** Referendums are the purest form of democracy and, as such, are the clearest and most reliable indication of public opinion. To ignore them, therefore, is to show complete and utter contempt for democracy. If proof of the European superstate's intolerance of the public will was ever needed, the Irish case study is exactly that.

## ACCOUNTABILITY

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**CASE:** Under the leadership of its President – whose job is to 'ensure the external representation of the Union' – the European Council is expected to 'provide the Union with the necessary impetus for its development and ... general political directions and priorities thereof' (Article 15, TEU). This echoes Charles de Gaulle's famous description of the role of the head of state as the embodiment of the 'spirit of the nation'. In a presidential system of government, the head of state is elected by popular vote. In a (republican) parliamentary system, he or she is elected by the legislature. In the EU, neither applies. Instead, the President is appointed by the European Council and is unaccountable to the elected European Parliament.

The *de facto* head of government in the EU is the President of the Commission. Candidates for this post are selected by the European Council and ratified by a vote in the European Parliament. MEPs approve the President and his Commission en bloc (they are unable to vet individual candidates) by a simple majority, but require a two-thirds



majority to remove them.<sup>4</sup> The Parliament has never managed to obtain the supermajority needed to dismiss a Commission.

**VERDICT:** Without the consent of the European people or Parliament, the EU's head of state has no mandate. The EU government is little better, with individual commissioners answerable only to the Commission President. The very first question asked by Freedom House in their 'Freedom in the World' study is: 'Is the head of state and/or head of government or other chief authority elected through free and fair elections?' In this, the EU falls at the first hurdle.

## PUBLICITY

**CASE:** Democracy, like justice, must be seen to be done. This is the implied message of the 1997 Universal Declaration on Democracy, which insists upon 'a public right to access to information about the activities of government'. Under Article 4 (3) of the European Council's Rules of Procedure, 'meetings of the European Council shall not be public'. Furthermore, while the Council of Ministers now meets in public, COREPER does not. COREPER (the appointed Committee of Permanent Representatives), which compiles in secret the agenda of the Council, has been described by one of its former members, Sir Michael Butler, as tantamount to a third 'legislature of the Community'. Indeed, most decisions are made in COREPER, only to be later rubber-

<sup>4</sup> At the time of writing, British MPs are debating the controversial plan to require a vote of no confidence to carry a 55% majority in the House of Commons. The proposal has been condemned by many as undemocratic. Yet 55% is nothing compared to the massive 67% the European Parliament must muster to sack their government.

stamped by the Council as an 'A point' without discussion or a formal vote.

**VERDICT:** The most important decisions within the EU take place behind closed doors. The right, therefore, of national parliaments and citizens to scrutinise the decision-making process is purely notional. COREPER in particular is a shadowy bureaucratic organisation which wields more legislative power than its unelected status warrants.

## CONCLUSION

In the face of the evidence presented in this paper, it is difficult not to concede that the European Union is, after all, a superstate in its own right. If this was not the intention of the politicians who pushed the Lisbon Treaty through their national parliaments, it was at least in the minds of those who resurrected the failed EU Constitution in its current guise.

Perhaps the ulterior motive of those who deny this reality is to avoid the responsibilities which come with statehood in the modern world. This denial has led to the absurd situation whereby, if the EU were to apply for membership of itself, its application would almost certainly be rejected. The democratic deficit is just too great.

This paper is not, however, an appeal for reform of the EU's institutions. Such a feat is not possible. Democracy works best as the channel through which a culturally, linguistically and historically homogeneous people express their will. In other words, democracy and the nation-state are inseparable. Try as the Euro-integrationists might, Europe is not a country, and cannot continue to be governed as such.

Since there is no European demos, the interests of EU member states will always conflict with one another. Nothing short of totalitarianism will reconcile these differences. Inside the European superstate, the British people will always be a minority. The same is true for the Germans, the French, the Italians, the Portuguese, and so on.

The only solution, therefore, is withdrawal from the European Union. By the German Federal Justice Ministry's estimate, 84% of national legislation in EU countries comes from the unelected European Commission in Brussels. This is not democracy.

Economic benefits aside, leaving the EU would re-empower European citizens to determine the way in which they are governed. As the Universal Declaration of Human Rights affirms, this is something to which all peoples should aspire.



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The Bruges Group spearheads the intellectual battle against the notion of "ever-closer Union" in Europe and, above all, against British involvement in a single European state.

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