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Legitimacy and the European Union

Introduction

It is a commonplace in discussion of the European Union that its institutions, and therefore the decisions taken by those institutions, lack the 'legitimacy' generally accorded by European voters to their own national political systems. When the Laeken European Council of December 2001 set up the European Convention, part of the Convention's remit was to suggest ways how the European institutions could be 'brought closer to the citizen.' More precisely, the Convention was to make recommendations on how the European Union could become more efficient, more transparent and more democratic. The clear hope of the European Council was that if the Union were improved in all these three respects, then the gap between European citizens and European institutions could be bridged, or at least substantially narrowed. The final recommendations of the Convention in its draft European Constitution are indeed a serious attempt to reinforce the legitimacy of the European Union. This European Policy Brief considers how effective these recommendations would be if adopted, and poses the more fundamental problem of whether institutional reform alone can suffice to underpin the political legitimacy of the European Union.

The workings and recommendations of the Convention

The European Convention was in many ways a model of openness in public debate. Its plenary debates were conducted in public, documents and speeches were freely available on its website, its membership broadly reflected the political and national diversity of EU member states and accession countries. The genuine hope of many among its members was to provoke wide and participatory public debate about the European Union's future. This hope was not realised. The Convention's work and debates attracted only marginal interest from the media, its immediate impact being confined to a minority of experts and political elites. However unfairly, the debates of the Convention did not manage seriously to dent the image of the European Union as remote and impenetrable. This image was indeed reinforced by the perception, in which there was some truth, that the real work of the Convention was carried out in private, where the personal agenda of the Convention's President and the political weight of large member states were decisive.

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EDITOR'S NOTE

This is the fourth in a series of regular *European Policy Briefs* produced by the Federal Trust. The aim of the series is to describe and analyse major controversies in the current British debate about the European Union. Forthcoming papers will consider the possibility of a 'two-speed Europe' and the European elections.

We would welcome comments on and reactions to this policy brief. It and its successors will be available on the Federal Trust's website www.fedtrust.co.uk

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Despite this failure of the Convention to generate widespread public debate and understanding of the options for the European Union's future, it did result in a number of definite recommendations which its advocates see as enhancing the legitimacy of the Union. If the process which generated these recommendations was disappointing in its public impact, that does not necessarily mean that the Convention's recommendations will fail to carry out the European Council's remit of building a Union which is more efficient, transparent and democratic. It is under these three headings, which sometimes overlap, that the Convention's relevant proposals can best be considered.

Efficiency

In the minds of many among the drafters of the Laeken Declaration, there was a definite link between the concepts of efficiency and legitimacy. The cumbersome and unpredictable workings of the European Union, so the argument ran, were a major barrier to any growing feeling of confidence and sympathy from the European voter towards the European institutions. A more efficient European Union would be one to which the European voter would feel himself more naturally drawn.

In pursuit of this goal, the European Convention proposed a number of measures designed to make the Union more efficient, not least in the light of the Union's impending enlargement. Notably, the Convention proposed a small increase in the legislative areas subject to qualified majority voting; it sought to improve the continuity of the European Council's work by instituting a semi-permanent post of Chairman of the European Council; it called for the nomination of a 'European Foreign Minister'; it recommended a reduction in the number of European Commissioners from twenty-five to fifteen. It also proposed a somewhat simpler system of voting in the Council and highlighted, although it did not resolve, the need for a streamlined system of sectoral Councils, in which national ministers would discuss the various policy areas of the European Union.

All this adds up to an apparently impressive programme for making the European Union more efficient. Closer

scrutiny, however, suggests a less favourable analysis. The Convention's proposals for the extension of qualified majority voting were very limited, and much future European legislation will continue to need unanimous support for its adoption. The respective positions of Chairman of the European Council and 'European Foreign Minister' are ill-defined, and the new voting system of the Council of Ministers, while conceptually simpler than what it replaces, may be very similar in its practical application to the arrangement adopted at Nice. The final recommendation of the Convention for the work of sectoral Councils was incoherent and it is not yet clear how far the Intergovernmental Conference will resolve this contentious problem. Perhaps most damagingly for any hopes that the new Constitution will generate a more efficient European Union, it is apparent from the negotiations so far that national governments will not be prepared to accept any reduction in the number of European Commissioners. This important proposal has fallen foul of the understandable concern of the smaller member states always to retain a position within the Commission.

It may well be that some national governments will try to recommend the new Constitution primarily as a necessary contribution to the efficient running of an enlarged Union. They will not be on strong ground in making that claim. Contrary to the arguments of some among of its critics, the proposed Constitution is not a radical or substantially innovative document. The proposals it contains which seemingly contribute to the greater efficiency of the Union are much less impressive in their reality than in their rhetoric. If the new Constitution is to make a real contribution to creating a more 'legitimate' European Union, it will not be by making it noticeably more efficient. The demands of representativity, also central to political legitimacy, seem to have outweighed those of efficiency in the Convention's overall approach.

Transparency and simplification

A major preoccupation of the Convention was to make the European Union more accessible to its citizens. One of its most

important recommendations is that the Council of Ministers should meet in public when examining and adopting legislation. It has been a source of scandal to serious political commentators that the Council has conducted so much of its discussion and voting in private, making it the only democratic legislative body to meet in secret.

The implications of this change, if implemented, could be far-reaching. Not merely will citizens be able to see the adoption by the Council of legislation, which in the course of time will become binding on them as citizens of the European Union. National governments themselves will be forced as never before to publicise and justify the positions they adopt in the Council. Until now, it has been easy for ministers to leave studiously vague to national Parliaments and national publics alike just how and why they voted as they did in the Council. This ambiguity sometimes provided the basis for an attack by the ministers in question on decisions supposedly emanating from 'Brussels,' but to the taking of which national ministers had themselves decisively contributed. Public discussion and voting in the Council of Ministers can only increase the honesty and transparency of debate on European questions. It is unambiguously to be welcomed. National governments will be forced to disavow the absurd caricature of the Brussels monolith, and educate their national public opinion about the true nature of European decision-making.

Also to be welcomed is the attempt of the Convention to simplify the series of treaties on which the European Union rests. The draft Constitution indeed simplifies the founding documents of the European Union, bringing together for the first time all preceding treaties (with the exception of the Euratom Treaty) in one single, relatively coherent and structured text. It proposes a simplification of the EU's legal terminology, in the hope of making it thereby less confusing for non-specialists. It goes some way towards clarifying the relationships between the various different elements of the EU's political structure, where confusion between the respective roles of Council, Parliament and Commission is a standing source of puzzlement and estrangement for the electorate.

Nevertheless, there are considerable limitations upon the claimed success for the Convention in its work of simplification. The Convention's text, particularly its provisions on the European institutions, clearly represents a series of compromises between different views on the nature and goals of the European Union, differences between the integrationists and the intergovernmentalists, between the big and the small countries, between Atlanticists and Europeanists. These differences are often reflected in compromises which are deliberately ambiguous, for instance in the vague remit of the Chairman of the European Council, in the uncertain role of the 'European Foreign Minister,' or in the ambiguous procedure for Parliamentary endorsement/election of the new Commission President. Specialists can profitably attempt to decipher the implications of these and other proposed changes for the future evolution of the European Union. But they fall a long way short of an intellectual or political 're-launching' of the European Union, with a compelling narrative of its present state and future prospects. It is not by chance that the proposed European Constitution is so signally lacking in even an attempt at inspiring political rhetoric. It is difficult to imagine that anything like a consensus could have been achieved behind a rallying-call which was anything more than platitudinous.

Democracy

The proposals of the Constitutional Convention for a more democratic European Union revolve around three main poles, the European Parliament, national parliaments and the voting system in the Council of Ministers.

a) The European Parliament

The great majority of those participating in the Convention believed that an important way to make the European Union more democratic was to strengthen the European Parliament's role in EU decision-making. The European Parliament is an institution with a direct link to citizens through the European Elections. The Convention's calculation was that European decisions would be made more palatable and acceptable to the European voter by

reinforcing the already significant (if often unrecognised) contribution of the Parliament to the European legislative process. A central recommendation of the Convention in consequence is that the 'co-decision' procedure, which maximises the influence of the European Parliament over the contents of legislation, should be more widely, indeed generally used.

The same thinking led the Convention to propose an extension of the European Parliament's powers outside the legislative area. Article 26(1) of the draft Constitution proposes that the President of the European Commission be elected by the European Parliament, following a nomination for the post made by the heads of state and government in the European Council. This nomination must 'take into account' the outcome of the preceding European Elections. If the candidate of the European Council is unacceptable to the Parliament, it will have the right to reject the nominee, at which point the procedure begins again.

b) National parliaments

Although few of the European Convention's members wished to establish national parliaments as being in any sense co-legislators in the European legislative system (that role is shared between the Council and the European Parliament), there is a clear desire in the draft Constitution to involve national parliaments more fully in the European legislative procedure. Rightly, national parliaments were seen by the Constitution's drafters as favoured possessors of democratic legitimacy in the EU's member states. The two Protocols of the Constitution bearing on this issue are clearly designed to establish a connection between this legitimacy of national parliaments and the European institutions.

The first Protocol provides for national parliaments to get full and prompt access to all the European Union's legislative proposals and the minutes of the Council of Ministers. This will substantially reinforce the ability of national parliaments to hold their national governments to account. The second Protocol allows national parliaments to raise objections if they believe a legislative proposal would infringe on the principle of subsidiarity, and the issue in

question should be dealt with at national level instead of the European level. If a sufficient number of national parliaments (one third) object, the Commission must review, but not necessarily withdraw, its legislative proposal. (See previous European Policy Brief 'The Role of National Parliaments in the European Union'.)

c) Voting in the Council of Ministers

The Convention also aimed at revising the system of majority voting in the Council of Ministers with a view of producing a clearer and fairer system than the system adopted in the Nice Treaty of 2000. That Treaty introduced a new element into European decision-making, whereby the population of individual member states now had to be taken into account for the establishment of majorities to adopt new European legislation. The Convention carries this democratising principle further by proposing a system whereby future European decisions will normally be taken by a simple double majority of states and population. It was on this issue that Spain and Poland, both of whom benefited from the hybrid system adopted at Nice, brought the European Council of December 2003 to an unsuccessful close.

d) Assessment

In the long term, the changes proposed to the European system by the Convention may well be seen as representing progress towards a more democratic and hence legitimate European Union. Through its elected status, the European Parliament may fairly claim to be the European institution closest to the voter, which should play a correspondingly central role in the European Union's workings. It is equally appropriate that some role should be found in the European Union's structure for the other main source of parliamentary legitimacy, namely the national parliamentarians. The voting system proposed by the Convention for the Council of Ministers is definitely simpler and arguably more democratic, through the greater weight it gives to national population, than the cumbersome and illogical system issuing from the Nice summit.

But it would be wrong to ignore the limitations of the Convention's ideas for

a more democratic European Union. Reference has already been made to recurrent ambiguities in the institutional system proposed by the Convention. This ambiguity is particularly obvious in the cases of the role attributed to national parliamentarians in the matter of subsidiarity and in the role attributed to the European Parliament in the selection of the President of the European Commission. National parliamentarians have indeed been involved for the first time directly in the European legislative process, but in a highly restricted and marginal fashion. The European Parliament will indeed have a greater say in the choice of Commission President, but again in a fashion which stresses the pre-eminence of the European Council.

More generally, to understand anything like the full significance of the complicated and sophisticated formulations of the Convention, considerable previous knowledge is necessary, whether of previous voting systems, the existing varieties of European legislation, or the present limitations on the role of the European Parliament. For reasons to some extent beyond its own control, the Convention was not able to emancipate itself from the introverted and hermetic nature of much current debate on European institutional issues. This is and remains a fundamental barrier to creating a more comprehensible and politically acceptable European Union.

This introversion in the Brussels-based European debate has another and even more important manifestation in the Convention's proposals. In so far as they touch upon the institutions of the European Union, these proposals deal primarily with the relationships between these institutions, favouring to some extent the European Parliament, restructuring some of the Council's work, proposing (probably unsuccessfully) a reduction in the Commission's numbers. But if there is in the European Union a disconnection between the European Union's institutions and the wide European electorate, it does not derive primarily from the relationships between Europe's institutions. It derives from the fractured and unsatisfactory relationship between the European Union's institutions as a whole and the European electorate. On this latter relationship, the proposals

of the European Convention will have only a limited direct impact.

Can institutional reform bring legitimacy?

The preceding analysis suggests that the proposals of the Convention will contribute little to the efficiency of the European Union. They will make an important contribution to the transparency of the Union, through their opening up to public and political scrutiny the workings of the Council of Ministers. Some, but not enough simplification has been brought into the European Treaties by the Convention's work. But the appropriate verdict to be passed on the Convention's proposals for democratising the European Union is much less clear-cut.

At the centre of these proposals is an enhanced role for the European Parliament, greatly enhanced in the case of legislation, somewhat enhanced in the case of the Presidency of the European Commission. But it may well be an over-optimistic analysis to believe that of itself an accrual of new powers to the European Parliament will persuade the European electorate to feel more sympathetically disposed towards the totality of the European institutions. Public opinion does not usually distinguish clearly between the various institutions of the European Union. The European Parliament is not always seen as part of the answer to any democratic deficiencies in the European Union. Indeed, it is not infrequently seen, however unjustly and illogically, as part of the problem. In a democracy, legitimacy is very largely in the eye of the beholder. It will require a major effort of political education for the democratising role of the European Parliament to be firmly implanted in European public opinion.

But it is precisely such an effort of political education that those best placed to carry it out, namely national political elites, have failed to deliver over recent years. No powers or responsibilities have been given to any European institutions other than with the agreement of national ministers and national parliaments. Yet these ministers and parliaments have not always in recent years been willing to explain and justify

to their electorates the reasons for this sharing of sovereignty in the European institutions. Worse, it has sometimes been convenient to suggest that the European institutions were acting illegitimately in exercising the responsibilities given them by democratically elected national politicians.

It may be that the greater transparency brought to the working of the European institutions by the public meetings of the Council of Ministers will improve public knowledge of and debate on European questions. But in all the member states of the European Union, national politicians are those who, now and for the foreseeable future, set the terms of the domestic political debate on European questions. The institutions of the European Union can do a certain amount to order their affairs in a more efficient, transparent or democratic direction, but the all-important perception of their political legitimacy must, at least in the short term, be mediated through national political classes, combating where necessary the prejudices and over-simplifications of the tabloid press. If, as seems likely, a European Constitution is adopted in late June of this year, the succeeding months leading to ratification will be a challenging time for national European politicians in the account they give to their electorates of what they have agreed and why they have agreed it. The European Elections in early June cannot but be a full dress rehearsal for this debate.

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Forthcoming titles in the *European Policy Briefs* series will include contributions on the possibility of a 'two-speed Europe' and the European elections.