

Democracy and Disintegration: Does the State of Democracy in the EU Put the Integrity of the Union at Risk?

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19.1 Introduction

'Take back control': in the lead up to a June 2016 plebiscite on whether to remain in or leave the EU, this was the rallying cry that framed the predominant narrative on the pro-Brexit side. Whatever might explain the determinants of individual voter choice in the eventual decision of the British electorate to leave by a majority of 52 per cent to 48 per cent, public debate during the campaign crystallised around the proposition that the UK should reclaim its sovereignty. The content of this cry for sovereignty was not empty. It was understood to mean the return of powers to the UK government for unilateral decision-making – powers that had been previously ceded to the EU, even though UK representatives are integral to EU decision-making processes. While the supposed material advantages of greater sovereignty outside the EU were emphasised, including the ability for the UK to adopt a more sustainable migration regime and to strike its own trade deals, a more principled case for national self-government undergirded the case to leave the EU. Reviewing the final pre-plebiscite statements of prominent publications and political figures who advocated a vote to leave the EU is telling in this regard. The editorial of a weekly conservative magazine, *The Spectator*, referred to 'the EU's fundamental lack of democracy', an EP that 'represents many nations, but with no democratic legitimacy' and 'the unelected President of the European Commission' for whom 'even the notion of democratic consent' seems a distant concern. The article concludes: 'To pass up the chance to stop our laws being overridden by Luxembourg and our democracy eroded by Brussels would be a derogation of duty ... democracy matters. Let's vote to defend it' (*The Spectator*, 2016). Boris Johnson, a prominent Conservative politician who was a leading voice in the leave campaign, wrote in his broadsheet op-ed: 'If Britain votes to Remain in the EU, then we continue to be subject to an increasingly anti-democratic system'; 'we believe in democracy ... and we are mad to throw it away' (Johnson, 2016).

This account should alert us to two things about the EU. First, the democratic credentials of the EU have the capacity to become politically salient. Second, there may be a connection between the democratic credentials of the EU and the risk of disintegration, whether that disintegration take the form of returning competences to the member states or the withdrawal of member states altogether. In this chapter, we seek to understand the extent to which the issue of democratic legitimacy

has become politically salient within the EU, and whether or not this higher salience puts the 'integrity' of the EU in a more vulnerable position.

To complete this task, we should first be clear on what we mean by the ideas of integrity and legitimacy. The integrity of a political system may be defined as *the ability to persist through time*, while the legitimacy of a political system may be defined as *the rightful claim to do so*. In other words, integrity is a way to characterise the EU itself, while legitimacy relates to a set of standards (however they may be defined) that the EU must embody and uphold if it is to have a justifiable claim to the support of its citizens. Four main types of integrity may be distinguished (Lacey, 2017a), each of which has their own relationship to the idea of legitimacy (see Box 19.1).

First, *territorial integrity* refers to the ability of a political system to maintain (or expand) an established geographic scope. Territorial legitimacy is the claim that the political system should be supported because it provides a framework for cooperation across distinct regions that in some way belong together (Lacey and Bauböck 2017).

Second, *functional integrity* relates to the capacity of the political system to carry out the tasks with which it is charged. When a political system has a high degree of functional integrity, it may be expected to generate what is known as output legitimacy. This kind of legitimacy is defined by the claim that the political system should be supported because of its capacity to deliver upon good policies for its members (Crespy, 2016). Here 'good' policies may be defined in terms of a range of values, such as effectiveness or efficiency, but also in terms of more demanding values like justice (Kochenov et al., 2015).

Third, *procedural integrity* pertains to the principles upon which the political system is based, as well as its ability to live up to these standards in practice. What these principles are or should be is of course widely contested, but it is fair to say that they rest first and foremost on the norms attached to democratic legitimacy (Piattoni, 2015). Accordingly, scholars tend to distinguish between two kinds of legitimacy: input legitimacy, reflecting whether those who are affected by decisions believe that they are given an appropriate role in shaping those decisions; and throughput legitimacy, when political institutions are perceived to be accountable and transparent in their decision-making and implementation processes (Schmidt 2013).

A final and overarching type of integrity is *existential integrity* or the extent to which citizens identify with and generally support the existence and overall trajectory of the political system. In other words, it is a product of what is sometimes referred to as social legitimacy, which itself combines the other three in complex and variable ways. The less citizens approve of the territorial scope, policy outputs and procedural values of their political system, the less likely they are to view its authority as legitimate tout court. Such low levels of existential integrity will inevitably translate into calls for radical reform of the political

system, dissent from its authority or even withdrawal from the political system where possible.

In this chapter, we explore the relationship between integrity and legitimacy in the following steps. First, we present a historical overview of the quest for legitimacy in the EU. Second, we outline some of the main normative approaches to understanding how the EU ought to develop in order to become a more legitimate political system. Third, we identify Article 50 of the TEU (one of the EU's core constitutional documents), which provides the outline of procedures for a state to leave the EU, as among the most significant constitutional developments in recent years when it comes to the question of EU legitimacy. In the penultimate section, we reflect on how the Brexit process has contributed to a resurgence of political and academic controversies over fundamental questions on the future of Europe. Finally, we conclude with some reflections on what the example of Brexit may have to teach us about the relationship between political legitimacy and integrity in the EU.

BOX 19.1 Key concepts

Existential integrity. The extent to which citizens identify with and generally support the existence and overall trajectory of the political system

Functional integrity. The capacity of the political system to carry out the tasks with which it is charged.

Procedural integrity. The principles upon which the political system is based and its ability to live up to these principles in practice.

Territorial integrity. The ability of a political system to maintain (or expand) an established geographic scope.

19.2 Historical Overview: The Quest for EU Legitimacy

As early as 1979, British political scientist David Marquand was among the first to root the idea that the then European Community suffered from what he referred to as a 'democratic deficit'. Resolving this deficit, he believed, was essential to the progress and sustainability of European integration. He summed up the situation as follows:

the Community is caught at an *impasse*. If it does not move forward, it is almost certain to slide back. But it cannot move forward – should not, indeed, be allowed to move forward – so long as the motive force has to come from an unrepresentative technocracy with no popular mandate or popular base, and so long as there is no machinery to make the Community's decision-makers accountable at Community level to the elected representatives of the people. (Marquand, 1979: 65–6)

Marquand was critical of how European integration had been progressing through the Monnet method – later referred to by Giandomenico Majone (2005) as ‘integration by stealth’ – which prescribed that integration should move incrementally and involve as little politicisation as possible (see Chapter 1). Should European integration become a political issue – subject to the electoral whims of ever-changing party governments among the member states – proponents of the Monnet method believed that the integration project would become vulnerable to obstacles caused by the short-term thinking often attributed to electoral politics. Instead, a relatively stable consensus was reached among successive governments and European officials that integration should be pursued on a purely technical or rationalistic basis, where sovereignty would be gradually pooled at the European level.

Let us take a step back to understand how the problem evolved. Like any political system, ever since its inception as the EC in the 1940s and 1950s, the European project has had two primary sources of legitimacy available to shore up its existential integrity: its ability to achieve the purposes with which it is tasked (output legitimacy) and its ability to embody the procedural standards held by member states and their citizens (input and throughput legitimacy).

Initially, the major motivation behind the integration project was to secure peace in Europe following World War II by creating mutual dependency among European nations and, crucially, to do so while safeguarding ~~against the hegemony of big states against smaller ones.~~ And to the extent that the EC functionally achieved the goal of peace, while procedurally satisfying the ideal of equality between states, it was widely viewed positively among the citizens of its member states.

Meanwhile, as the EU’s novel institutional framework developed in toe with its increasing competences, it adopted a similarly unique combination of normative principles to guide its operation: a combination of principles suited to an organisation that was neither a state nor an international organisation, and therefore representing a normative political order with which ordinary citizens were unfamiliar. Liesbet Hooghe and Gary Marks (2009) have famously characterised the first decades of the integration project as involving a ‘permissive consensus’ among the citizens of Europe. In other words, for much of integration history, citizens were largely content to give their representatives free rein in integration decisions, large and small. This relaxed attitude may be at least partly attributed to the lack of politicisation by political parties on the national stage, but also by widespread impressions that European integration was a positive, or at least benign, development that didn’t impact on the most salient issues that tend to define national political debate (e.g. tax, social welfare, healthcare, etc.). So long as the EU was achieving the purposes for which it was assigned, it could free ride on the more or less free pass given to it on the basis of its functional legitimacy. The obvious problem with such fair weather schemes is that when endogenous or exogenous shocks hit – and they always will – (major) policy failures are inevitable. In such

times, functional legitimacy runs thin. Unless a political system can draw on its procedural legitimacy to maintain the support of citizens, the sustainability of the system comes into doubt (Eriksen and Fossum, 2004; Føllesdal, 2004).

A key source of procedural legitimacy is that the process for making decisions is fair, and is seen to be fair, by those who have a stake in the political system. In modern times, democratic procedures are widely viewed as the only kind of procedures that can meet these standards. There has been much debate over the extent to which the EU is a democratic political system. And, this debate has evolved as the EU has attempted to incrementally address its purported democratic deficit. This has included the transformation of the EP from an assembly of nominated national parliamentarians into a directly elected institution in 1979 and the subsequent increase in the EP's powers so that it is now a co-legislator with the Council, with a range of other important powers, such as the ability to accept or reject the proposed Commission president and individual commissioners.

The democratisation of the EU, however, has not taken place simply through the EP. From the late 1990s onwards, the debate about the adequacy of Europe's democratic credentials intensified as major integration decisions had been taken in the previous decade, most notably by way of the SEA in 1986 and the Maastricht Treaty in 1992, both of which involved the integration of core state powers under the EU (Genschel and Jachtenfuchs, 2015). Any efforts to democratise the Union was criticised as inadequate on a variety of grounds, with primary targets being the accountability of the Commission to citizens; the disempowerment of citizens and national parliaments vis-à-vis governments, given the latter's seat at the table in European institutions; and the lack of opportunities for meaningful citizen engagement. In response, the Lisbon Treaty of 2009 introduced a litany of reforms. These included (1) making Council meetings public and thereby decision-making by national governments at the EU level more transparent to citizens and national parliaments alike; (2) introducing the Early Warning Mechanism for national parliaments, which gave them the collective power to object to a legislative proposal of the Commission on the basis that it violated the principle of subsidiarity; and (3) introducing the European Citizens' Initiative, which gives one million citizens from at least seven countries the right to petition the Commission with a view to making a legislative proposal. Despite initial optimism about these reforms, none has quite managed fulfil the hopes of their promoters in the last decade, in large part due to the significant transaction costs involved in tracking Council meetings and triggering the Early Warning Mechanism or the European Citizens' Initiative.

On one view, the EU is already sufficiently democratic since all decisions must pass through the hands of directly elected representatives (whether heads of state and government in the European Council or government ministers in the Council, and very often the EP) (Moravcsik, 2008). However, there remains a litany of critics who believe that the EU's democratic credentials are not yet commensurate with

the power that it wields. One type of critique focuses on the supranational level and another on the national level. In the first instance, the Commission remains a central target. As the only institution with the capacity to initiate legislation, and thereby substantially control the legislative agenda of the Union, it has been argued that the appointment of the Commission must be tied to the outcome of European elections.

Other critics insist upon the need to combat the second-order nature of European elections, by incentivising the creation of stronger pan-European political parties. In the ideal scenario, these parties would coordinate transnational electoral campaigns that focus on European issues, in contrast to the current norm where national parties run European elections on idiosyncratic national issues (Bardi et al., 2010). Meanwhile, a further set of critics advocate the need for referendums as a means to shore up the participation deficit in the EU. This includes referendums on treaty ratification within each nation state (Cheneval, 2007) and European-wide referendums that may be called by citizens either to propose legislation (Papadopoulos, 2006) or to block legislation that has already passed through the European institutions (Lacey, 2017b).

Those who focus their critique on the national level remain primarily concerned about the limited role of national parliaments in (1) holding governments to account for their actions at EU level and (2) participating in the EU legislative process. On the first point, the deficit is not so much attributed to the EU, but on the inadequate approach that many national parliaments have taken to monitoring and engaging with the government's European agenda (Piris, 2012). On the second point, and in addition to the negative power granted by the Early Warning Mechanism mentioned above, some critics maintain that national parliaments require formal empowerment by the EU to impact the legislative process. One such proposal would be to allow a minimum number of national parliaments, acting in concert, to initiate legislation in their own right (Bellamy and Kröger, 2014).

As the debate concerning Europe's democratic credentials has intensified over the years, and as member states and European institutions have attempted to respond to criticism, two positions have crystallised about the potential impacts of democratising the EU. On the one hand, those who advocate for its greater democratisation believe that the increased politicisation that this would bring will hold out positive long-term prospects for the integrity of the Union. According to this view, when citizens and their representatives feel that they are tangibly involved in shaping the direction of their political community, this will confer a greater sense of legitimacy upon and corresponding support for that community. Crucially, this involves accepting the turbulence and spates of sclerosis that can come from contestatory forces. As Peter Mair (2007) famously explained, political systems that do not allow for adequate means of opposition to policy concerning the future development of their community will eventually find that opposition

against the political system itself will gain momentum. An EU that offers the conditions for greater politicisation through competitive democratic processes is expected to provide a framework within which competing visions can be publicly and visibly pursued in a way that is fair, and perceived to be fair by all. In essence, by bringing its institutional structure into greater line with democratic norms familiar to and valued by citizens, democratisation is expected to deepen the EU's process integrity in a way that will also strengthen its existential integrity.

On the other hand, there are those who echo the presuppositions of the Monnet method, insisting that politicisation could put European integration at serious risk. Stefano Bartolini (2006) expresses this view with unique insight. Unlike the standard kind of democratic contestation we tend to associate with EU member states, where the territorial boundaries and constitutional basis of the states are largely taken as given, Bartolini maintains that the EU has no such territorial or constitutional settlement. For this reason, he believes that the politicisation of policy through greater democratisation will quickly run into questioning the very bases of the EU. In tension with Mair's position, where avenues of contestation should prevent deeper forms of opposition, Bartolini expects that democratisation would merely serve as a platform to amplify the voice of those who would seek to undermine the EU or radically alter its nature and purpose. This position dovetails nicely with those who argue that the EU is already sufficiently democratic, such that further politicisation would add no value.

Since the turn of the century, the EU has in fact become increasingly politicised. Institutional developments to democratise the EU, such as those mentioned above, would appear to have weakly contributed to this trend. Two other causes stand out as far more influential in this politicisation trend. One is the greatly expanded competences of the EU, and its increased ability to deliver on its policies, at least since the process of treaty reform beginning with the SEA. According to Hooghe and Marks (2009), the gradual realisation of the power and significance of the EU among the population ended the period of permissive consensus and heralded a period of 'constraining dissensus', where citizens are no longer willing to give their representatives free rein in deciding upon the future of the Union. The major event supporting this characterisation was the rejection of the Constitutional Treaty in 2005 by France and the Netherlands by popular vote, with similar rejections expected in countries where popular votes were also lined up before the treaty was abandoned in light of the French and Dutch results. These two events in turn reflected a broader and increasingly identity-based hostility towards European integration (Coman and Lacroix, 2007).

The second major cause of politicisation has been the euro crisis beginning in 2009, and the migrant crisis peaking in 2015 (see Box 19.2). Arguably, these events have contributed to setting in motion a process that has moved things beyond a constraining consensus to the point where political conflict has been restructured

along a ‘transnational cleavage’ (as opposed to just or primarily a left–right cleavage) (Hooghe and Marks, 2018). This transnational cleavage may be characterised as a tension between Euroscepticism, demanding a reassertion of the nation state on the international stage, and Europeanism, insisting upon the importance of a strong EU for the prosperity of member states. The policy failures associated with the aforementioned crises has made the EU a ripe target for the emergence of right-wing nationalist parties who identify the EU as a threat to both (economic) sovereignty and national identity (Lacey, 2018), while some left-wing parties have also denounced the hollowing out of national democracy (Crum, 2013). As a result, political parties are now forced to shape their own identity, at least partly, in terms of their stance on major issues of European integration. As we shall see in discussing the case of Brexit below, the potential impacts that the continued democratising of the EU would have on its integrity remain unclear.

BOX 19.2 Key dates

- 1979. EP becomes directly elected assembly.
- 1986. SEA (significant integration treaty).
- 1992. Maastricht Treaty (significant integration treaty).
- 2005. Rejection of the European Constitutional Treaty.
- 2009. Lisbon Treaty (treaty involving significant democratic reforms).
- 2009. European debt crisis.
- 2015. Migrant crisis.

19.3 Main Institutional Issues at Stake: A Third Way?

Here is the good news for the integrity of the EU. What we referred to in the introduction as its *existential integrity* – citizens’ identification with and support for its very existence or *raison d’être* – does not seem to be overly threatened. There is actually a decreasing proportion of what we may call existential Eurosceptics, who simply advocate leaving the EU as parties or want to vote for this as citizens. Moreover, we observe that broad majorities of EU citizens support greater cooperation across a wide array of issues, from stimulating investments and jobs to securing energy supply to protecting the environment or the equality of men and women. They see these as functions or missions that it makes sense to pursue through cooperation among states (Eurobarometer, 2018) But this then suggests two threats to EU legitimacy. Its *functional integrity*, or the perceptions that it has not demonstrated its actual capacity to carry out these tasks; and second and relatedly its *procedural integrity*, above all its democratic credentials in the ways

it does so. In other words, publics seem to worry much less about *what* the EU is doing and more about *how* it is doing it. As a result, there may be less existential Eurosceptics, but policy and institutional Euroscepticism is on the rise (De Vries, 2018). Are there ways then of adapting, reforming or even transforming the EU to respond to these developments?

Generally speaking, there have been two primary approaches to answering this question (for a longer summary see Nicolaïdis, 2004 and Bellamy and Lacey, 2018). On the first approach, variously referred to as federalism or supranationalism, an EU demos or people must be gradually brought into existence to legitimate collective decisions. According to this somewhat mimetic view (reproducing the state at the EU level), the EU should tend to look more and more like a federal state such as Germany or the US. This means, for instance, more powers for the EP including that of nominating the Commission through the *Spitzenkandidat* procedure, more voting in the Council through majoritarian procedures, a greater weight for bigger member states, increased EU competences and an enhanced capacity for EU institutions to issue binding decisions. At the extreme, those adopting a supranationalist perspective may even regret the constitutionalisation of the right for a member state to withdraw from the Union since the Lisbon Treaty came into force in 2009.

On the second approach, generally ~~referred~~ as sovereigntism, there are inherent limits to legitimate European integration, which the EU has already breached in some respects. According to this account, the ‘we-feeling’ or existential integrity characterising the national demos – supported by a common political culture, language and history – cannot be substantively replicated at the supranational level in a way that would be robust enough to allow for a democratically legitimate supranational state. As a result, proponents of this view support the strengthening of the EU’s intergovernmental institutions (like the European Council) and the possible return of competences to the national level. At the extreme, there are those who advocate the withdrawal of their state from the EU, unless the latter’s competences are reduced while member states take greater control through their veto rights over collective decision-making.

A third view, variously referred to as demociracy (Nicolaïdis, 2004; Cheneval and Schimmelfennig, 2013) or multilateral democracy (Cheneval, 2011), has recently emerged that offers an alternative approach. Whereby demociracy is defined as ‘a union of peoples, defined as states and citizens, who govern together but not as one, (Nicolaïdis, 2013). This is the view that, we believe (Nicolaïdis, 2013; Lacey, 2017b), best describes the EU as it is, while providing a normative ideal which it should seek to embody much more fully (see Box 19.3). On the demociratic account, the EU cannot be based simply on the idea of a supranational demos or a national demoi. Instead, for democirats, the EU is best understood as an association with two normative subjects: states and citizens. This view is more than one in between supranationalism and sovereigntism, since these two alternatives are

fundamentally alike in equating democracy with the rule of a single people, either at the national or European level. While democratic theory is often described as based on the 'no-demos' thesis, this need not be the case. A weaker 'many demoi' thesis recognises elements of transnational political practice in Europe while still arguing that national demoi remain the dominant political units where compulsory solidarities are institutionalised and disparate interests aggregated. Therefore, the need to democratisate the EU starts from the increased disconnect between the (pooled) locus of managerial authority and the (national) locus of political life. In short, democratic theory can be thought of as a theory of correspondence between transfers of powers and 'people power'. Normatively, this gap needs to be accommodated rather than denied.

Crucially, this can happen not primarily through vertical delegation to the centre but through greater attention paid to the horizontal dimension of democracy-across-borders. A democratic approach seeks to lay out the ways to sustain the tension between two concurrent requirements: the legitimacy of separate self-determined demoi on the one hand and their mutual openness and other-regarding impulses and institutions, as implied by the notion of liberal democratic demoi, on the other. As a result, the EU can be a single polity, but not a state (at least not in the Weberian sense of an administrative apparatus endowed with the kind of authority over its citizenry which can justify the monopoly of violence). Instead, the 'state functions' which the EU does exercise (its functional integrity) derive from the resources and authority of its member states (Genschel and Jachtenfuchs, 2015). Democratic gaps appear over time as the EU concurrently centralises more powers and fails to ground them in *both* national and supranational democratic authorisation and monitoring.

When it comes to the architecture of the EU, such a democratic approach means that the current setup represents a fragile but desirable equilibrium. Perhaps the most paradigmatic expressions of democracy in the EU, where the normative subjectivities of states and citizens are well-balanced, is the co-legislative relationship between the EP (representing European citizens) and the Council (representing member states); the QMV formula in the Council (requiring 55 per cent of member states representing 65 per cent of European citizens) and the principle of digressive proportionality in the EP (which allocates seats in such a way that citizens in the most populous member states are not overrepresented and citizens in the least populous member states are not underrepresented) (Lacey, 2017b). Typical reforms advocated by democrats include an enhanced role for national parliaments as both an expression of respect for and a contribution to the health of national democracies, as well as greater horizontal cooperation between them; greater weight for smaller member states in voting procedures and institutions including through the rotating presidency; ensuring collective authorisation by each demos for primary law (i.e. the ratification of treaties); more recourse to sunset clauses to

ensure that unanimity does not only support the status quo; and the multiplication of democratic channels between citizens and European institutions.

Proponents of all three perspectives – supranationalism, sovereigntism and democracy – are concerned with the integrity of the EU. While supranationalists tend to believe that the sustainability of the EU is dependent upon it growing to replicate the structures of some of the most successful federal states, sovereigntists worry that the EU has become overstretched such that its growing powers and lack of corresponding democratic legitimation put its very existence in jeopardy. Although critical of the EU's failings, democrats, by contrast, are typically more optimistic about the EU's constitutional equilibrium in terms of its ability to generate the conditions required for its long-term integrity.

BOX 19.3 Legal basis

Articles 10, 11 and 12 of the TEU. These articles lay out some of the primary democratic credentials of European institutions.

19.4 Main Policy Developments

From a procedural perspective, in addition to the democratic reforms previously mentioned, the introduction of a right to withdraw from the EU through Article 50 of the Lisbon Treaty was one of the most significant constitutional developments in the last decades. But how did Article 50 come about? And has this development enhanced the procedural legitimacy – and thus perhaps the existential integrity – of the EU in the eyes of its citizens?

Let us take you back to the beginning. The need to introduce a clause in the EU treaties that would spell out the right for a member state to withdraw was introduced in 2002, during a European Convention busy writing a new Constitutional Treaty for the EU (Nicolaidis, 2019). At the time what 'leaving the EU' could actually mean was up for grabs. In truth, Convention delegates were primarily concerned with how to deal with a rogue state which might have had its voting rights suspended for bad behaviour incompatible with EU rules and values but could not stay indefinitely in purgatory. It would either have to return to the fold chastened or leave voluntarily. Article 50 was to be the polite invitation: please leave voluntarily if you persist. But many Euro-federalists saw the draft exit clause as a sovereigntist ploy and opposed it vehemently, for in their minds stable polities do not have in-built clauses for secession. Introducing an exit clause in European treaties meant that the EU would never cross the Rubicon to become a state as did the United States in 1865, the crucial moment when 'secession' was redefined as

‘civil war’, and ceased to be an option for the discontented. If those delegates were to support an exit clause it would only be as an expulsion clause for misbehaving countries. Otherwise, the clause was not meant to be used.

Not everyone on the Convention floor agreed. If you believed in a democratic third way, as discussed in the Section 19.3, the idea of exit meant that the EU would not become a federal state, but would remain a union of peoples who remain together by choice and whose acceptance of common rules must be repeatedly offered. The idea is that the essence of a union is defined by the way one may or may not leave it. Indeed, in this view, the right of exit is the demonstration of the EU’s essence as a freely chosen association between like-minded and geographically proximate peoples, the ultimate proof of the idea of auto-limitation applied to the EU: if a state agrees to subordinate its sovereign powers to a higher authority, it retains the final say on its membership (Nicolaidis, 2019).

The sovereign decision of the British people to leave the EU, made by referendum on 23 June 2016, resulted in the first use of Article 50. This article requires that a withdrawal agreement and a declaration of intent on the future relationship between the EU and the departing state be negotiated. It also requires that negotiations take place between the withdrawing state and an appointed negotiator to represent the EU. The negotiating process itself demonstrated what each of these stipulations meant in practice. First, a withdrawal agreement with a departing state would have a threefold structure: (1) a financial settlement concerning the withdrawing state’s budget commitments, (2) the guarantee of European citizens’ rights who are residents in the withdrawing state prior to withdrawal and (3) reasonable accommodations to any member state whose core state interests may be at significant risk due to the withdrawing state’s decision to leave. Second, there would be no grand bargaining between the withdrawing state and the EU’s most powerful member states. The UK’s attempt to negotiate terms directly with Germany and France was rebuffed as it was made clear that the UK must negotiate directly with the EU’s appointed negotiator, Michel Barnier, himself accountable to the European Council represented by its president, Donald Tusk (see Box 19.4).

However fair Article 50 may be in principle, its legitimacy in large part depends on how fair it is seen to be. Although the EU has been accused of too much inflexibility in its negotiating strategy, all things considered the execution of the Article 50 process appears to have generated substantial normative legitimacy for the EU. First, the fact that the UK was able to trigger Article 50 after a self-organised referendum based on a simple majority sent out a powerful signal: the EU is not too sacred or state-like to be left and it is not too precious to be based on anything other than the freely affirmed will to govern together.

Second, the insistence that the rights of European citizens residing in the UK be protected sent a powerful signal to all European citizens that the guarantee of their rights was a priority and more important than securing a good trade agreement.

Third, the foregrounding of Michel Barnier as the EU's negotiator visibly demonstrated that major decisions in the EU followed procedures respecting the equality of states. Fourth, the insistence that reasonable accommodations were made to Ireland as a condition of any withdrawal agreement demonstrated that the EU prioritises the core state interests of even its smaller member states over the value of any future lucrative trade deal with a major world economy like the UK. In this particular case, the EU insisted that the Good Friday Agreement underwriting peace in Northern Ireland must be respected through stipulations that would obviate the need for a customs border dividing Ireland and Northern Ireland.

As we shall see in Section 19.5, the **normative** legitimacy generated by the Article 50 process may be at least partly to explain for a recent shoring up of the EU's existential integrity. However, it would be naïve to think that Brexit will be costless to the EU's existential integrity. At least two potential negative effects are worth highlighting. First, the EU's territorial integrity will be breached when the UK finally leaves. The EU's zone of freedom, security and justice will therefore shrink and the opportunities and privileges associated with European citizenship will diminish (Lacey, 2017a). Second, with the departure of the UK, the EU is losing one of the world's most well-established and respected democracies. Meanwhile, the EU has proven largely unable to stem democratic backsliding among some of its member states, most notably Hungary and Poland (see Chapter 18). Article 50, therefore, has not been used by states who have decided to depart from the EU's fundamental values, but by a state whose constitutional order remains entirely compatible with European values. As a result, the idea that the legitimacy of European decisions are underwritten by representatives of liberal democratic states is further compromised by the loss of a stolid democratic state in the context of democratic backsliding among other states.

BOX 19.4 Key actors

Convention on the Future of Europe (European Convention). An extraordinary conference of diverse actors called to make concrete proposals in preparation for treaty reform between 2001 and 2004.

MICHEL BARNIER. Lead Brexit negotiator for the EU, reporting to the European Council.

DONALD TUSK. President of European Council, in close liaison with lead Brexit negotiator Michel Barnier.

EUROPEAN COUNCIL. Heads of state and government must provide mandate to lead negotiator and approve the withdrawal agreement.

EP. Must approve the withdrawal agreement.

19.5 Current Political and Academic Controversies

The UK's decision to leave the EU emerged in a wider context of crises and disquiet. In particular, the European debt crisis strained relations among European states. These shocks jeopardised both the functional and procedural integrity of the EU. Functionally, the EU found it difficult to manage its banking system and wider economy in the euro crisis, while it faced difficulty in managing its external borders and the movement of people during the refugee and migrant crisis (see Chapter 1). Procedurally, standard cooperative practices between member states frayed as the EU's strategies for dealing with these crises were challenged by those states who had the most to lose from decisions taken collectively. One powerful example is resistance by the Greek government and the Greek people in 2015 to austerity measures imposed on the country by the EU and the IMF as a condition of sovereign debt bailout packages. Another example is the explicit resistance by some countries, most visibly Hungary in 2016, to accept an agreed quota of refugees (see Chapter 13). As a result of such developments, the picture of the EU as an emerging supranational Leviathan that could dictate terms to its member states gained currency and found its political expression throughout Europe in a major spurt in Euroscepticism among new and some older political parties. Those seeking to bring the UK out of the EU capitalised on the negative existential sentiments emerging from such perceived deficits in the EU's functional and procedural legitimacy. To this extent, Brexit served as a canary in the mine, calling for some sort of reckoning on the part of the rest of the EU (Nicolaïdis, 2019).

The challenges posed to European integration by Brexit and events relating to the euro crisis and migrant crisis have induced reflective stances within European institutions themselves, among scholars and in the wider public sphere. Within academia, the call has been made for developing theories of European integration so that they can also provide an explanatory framework for the processes involved in disintegration (Schmitter and Lefkofridi, 2016). Meanwhile, in 2017, on the sixtieth anniversary of the signing of the Treaty of Rome, the European Commission published a *White Paper on the Future of Europe*. In it, several very different scenarios were outlined on the possible future direction of Europe (European Commission, 2017). Should the EU remain as it is, functionally and procedurally? Should it do less and under different institutional arrangements? Should some member states with the will to do so forge ahead with deeper integration, while others may opt out of deeper integration projects? Or should integration only move as quickly as the most reluctant member state? These basic questions concerning what we want the EU to do, and how we want it to do it, have never really gone away. However, in light of the last ten turbulent years, they are resurgent in both political and academic contexts (e.g. Lacey, 2017b; Bellamy, 2019; Hennette et al., 2019; Nicolaïdis, 2019).

The increasing politicisation of the EU, in large part as a result of these turbulent times, has itself raised a number of pressing questions. Perhaps most importantly, how should we understand the dramatic increase of Euroscepticism? Is the EU now just finally becoming a mature political system that is developing its own contestatory political theatre? Or are we witnessing the development of forces that are fundamentally dangerous to EU integrity? Furthermore, should the EU attempt to meet the challenge of Euroscepticism with its traditional approach of trying to insulate EU decision-making as much as possible from electoral cycles – remaining as much as possible a polity of ‘policy without politics’ (Schmidt, 2006)? Or should the EU embrace politicisation, engage in democratic reforms and attempt to visibly undermine the populist Eurosceptical claim that it is run by unaccountable elite technocrats? A further look at the Brexit case can help to give some indications as to how these questions might be answered.

19.6 Analysis of a Paradigmatic Case Study: Brexit and the Integrity of the Union

Let us first return to Bartolini’s thesis that the politicisation of the European issue will quickly spill over into fundamental questions of European integration. The Brexit case lends substantial support to this thesis. The EP, the most public and paradigmatically democratic institution of the Union, has served as the main platform from which British Eurosceptics in the form of Nigel Farage and UKIP were able to exert pressure on the British Conservative Party to call a referendum on British membership. In one sense, Bartolini could not have dreamed up a better case for demonstrating how opening up the door for the politicisation of the EU could lead to an institution like the EP (mainly designed for debating day-to-day policy) becoming a battle platform on the territorial and even existential integrity of the Union. Indeed, the astonishing success of Farage and his party in the EP has been instructive to other Eurosceptical parties, some of which have played with the idea of pursuing a policy to leave either the EU or the euro (e.g. Le Pen in France, La Lega in Italy), notwithstanding the caveats discussed in Section 19.4. Relatedly, the EU’s negotiating stance in the Brexit negotiations is a double-edged sword. While it has demonstrated the EU’s unity in the face of an existential challenge, such unity has also been viewed by some as shoring up an overly inflexible and unfriendly attitude to the UK – leading some to call for a more self-reflexive sacrifice of Britain on the altar of EU unity (Nicolaidis, 2019).

On the other hand, despite the evident dangers of politicisation to the EU, we should not discount the possibility that such politicisation may serve to strengthen support for the Union. Rather than producing a domino effect, whereby the Brexit example encourages citizens to question the EU and detach themselves from it

existentially, indicators suggest that the reverse has been the case. Compared with a first survey in 2010, where 62 per cent of Europeans claim that they 'feel like they are a citizen of the EU', 68 per cent were willing to make the same claim in 2017 (Eurobarometer, 2018). Furthermore, in a 2019 continent-wide survey asking how citizens would vote in a hypothetical referendum on EU membership within their own country, the Czech Republic comes in as the country with the highest support for leaving the Union at 24 per cent (when the UK is excluded). While some countries, like Hungary, had a high number of citizens who were undecided on the question (32 per cent), twenty-three countries registered definite support for EU membership above 60 per cent (often well above this figure) (Eurobarometer, 2019).

None of this is to say, however, that there is as widespread satisfaction with the current setup or general direction of the EU. Witness the increased support for Eurosceptical parties in national elections over the last decade, as well as the 2014 and 2019 European elections. What these polling data do indicate, however, is that the EU's constitutional settlement may be stronger than some believe, but that its social foundations may need to be strengthened (Nicolaïdis, 2018). While constitutional questions are by no means off the table, and the restructuring of political conflict along transnational lines will ensure that these questions are asked, it would appear that the EU has achieved a degree of existential integrity that is mature enough to allow for these political conflicts to play out without imminently jeopardising its territorial integrity or radically undermining the procedural legitimacy it has achieved. There is, however, little room for complacency.

Whether further democratisation of the EU is desirable in light of recent developments is a matter for further normative and empirical analysis. However, the case of the UK offers us some clues. We have already seen that the EP was an instrumental democratic venue in generating political leverage for Brexit. But we may wonder if there is anything that could have been done to weaken the claims of those advocating exit on the basis of a democratic deficit? Would it have made a difference to British citizens' support for the EU, and thereby the Union's existential integrity, had the Commission been better democratised beyond issues of nomination, for example? Or would it have made a difference if the British Parliament, along with other national parliaments, were seen to have greater sway in the running of Europe? Or if EU institutions had been more receptive to people empowerment through such instruments as citizens' initiatives, deliberative assemblies or better participatory use of social media?

Clearly, those who advocate for the democratisation of the EU believe that such developments do have an impact on legitimacy and citizens' support for the Union. But unsurprisingly from a democratic viewpoint, evidence from the British case suggests that more democracy in the UK, rather than simply reforming the

EU, could have made a difference. Simon Hix (2014: 193) analyses public opinion towards membership in the EU among Danish and British citizens. While public opinion on this score has followed similar patterns since both countries joined the EC in 1973, these patterns began to diverge in the 1990s. Over time, Danish public opinion has become much more favourable towards the EU, with British public attitudes becoming substantially less so. A variety of factors may help to explain the difference. However, in an ironic twist, Hix speculates that the absence of referendums on major EU questions in the UK was a missed opportunity. In contrast to the UK's insistence on parliamentary sovereignty for making important integration decisions, Denmark has weighed in with a referendum on every major EU reform, with some being successful and others not. These referendums, Hix argues, have generated regular public debates about the EU in Denmark, giving the Danish people a sense of ownership over their relationship with the EU and an understanding of their place within the Union. From this perspective, the Brexit vote over *whether* to leave gives credence to the democratic motto that the EU's democratic health rests in large part on the democratic empowerment in its member states. And the Brexit saga over *how* to leave the EU further demonstrates that the contract in the UK over the balance between popular, executive and parliamentary authority over the 'European question' is far from being settled.

GROUP DISCUSSION

What factors do you believe will determine whether or not Brexit has a positive or negative impact on the EU's existential integrity?

If the EU has a democratic deficit, is it located at the European or national level?

TOPICS FOR INDIVIDUAL RESEARCH

Is politicisation of EU institutions a threat to integration?

Is Article 50 fair to withdrawing states?

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