

# Is it possible to democratise the European Union?

Written by James Sloan

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JAMES SLOAN, NOV 26 2010

### Introduction – *Unidentified Political Object* [1]

Certain dates in European history are taken to be the significant historical events which changed the course of the continent forever. 1648, and the Treaties of Westphalia; 1815, the Concert of Europe; 1945 the end of the Second World War and 1989, the fall of Communism – these are the events that are attributed to the makeup of modern Europe. But what of the years 1957, 1992, and 2009?

The Treaties of Rome, Maastricht, and Lisbon have all altered the form of Europe and the process of integration. Without the events of 1945, we would not have had the Treaty of Rome which transformed the political composition of Europe beyond recognition. The independent sovereign states of Europe still exist, yet together they play a part in an organisation where the individual states act collectively on a range of laws, regulation and economic policy which affect each constituent member. The structure of the EU, in some respects, mirrors the composition of states in relation to the institutions that make up liberal democracies, with an elected assembly, a governing executive, and a proposer of legislation. Also fundamental to the make-up of the EU, is the European Court of Justice, which crucially, has legal jurisdiction over national state law in many instances.

The Treaty of Lisbon, the result of years of consultation, rose from the ashes of the failed Constitutional Treaty after it was rejected by the voters of France and the Netherlands. This treaty was promoted as a step to inject more democratic legitimacy into the EU. It became European law on December 1<sup>st</sup> 2009; and as this dissertation is being written in the first half of 2010, it will be hard to assess the full impact of the treaty. Indeed, as of late March 2010, the German Chancellor, Angela Merkel has signalled that she wishes to reopen the Lisbon Treaty, in response to the Greek financial situation.[2]

Yet in the development of the European Union, further integration has raised doubts over the democratic legitimacy that the European 'project' has created. Indeed, during the ratification process of the Lisbon Treaty, the German Constitutional Court held back from immediately passing the new legislation due to the fact that some questioned the legitimacy of the role that the German Bundestag would have, post Lisbon.[3] The claims of a missing demos and democratic deficit have called into question what the EU actually is and what steps can be taken in order to bring it closer to the citizens of Europe. But can the EU even begin to fill the democratic recesses which exist in every part of the Union? This dissertation shall look at ways in which the democratic deficit can be, at the very least, reduced and what measures can be taken in order to compensate for the democratic vacuum that currently exists.

As the question over the democratic deficit is large, and often contains complex arguments, this dissertation shall focus upon just a few of the critiques of the deficit. Chapter One shall look at where the deficit actually lies, and why democratic theory does not lend itself easily to describing the EU. The question over where sovereignty lies and how it links itself with the demos is the central argument in Chapter Two, alongside the impact that globalisation has had upon democracy. The final chapter brings together the findings from Chapters One and Two, and provides examples of how the democratic deficit can be reduced, through practical changes. Chapter Three shall also analyse the theory of Cosmopolitan democracy, and how the shift in sovereignty would affect Europe. The conclusions this dissertation makes suggests that the Lisbon Treaty has done little in the way of democratising the ever-increasing size and scope of the Union, and that further democratic changes are necessary to ensure a more transparent and, crucially, a more

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legitimate body in the eyes of European voters, one that can provide both government and governance simultaneously.

## **Chapter One – *Sui generis***

*This chapter will look at the existence of the democratic deficit in the European Union and what difficulties there are in comparing nation-states to the EU.*

“A description of oranges with a botanical vocabulary developed for apples.”

*J. H. H. Weiler [4]*

The democratic development of states are often seen as organic movements; tussles against the established order, a

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gradual process of reform and inclusion. The EU, as an institution, was never designed to be akin to a state, or to have the same democratic checks and balances that are applied to the state. However, the ever changing union now presents itself as a rather different entity in 2010 compared to 1957. "The [1957] Treaty of Rome [was] a conscious and successful attempt to go beyond the nation state."<sup>[5]</sup> However, the growth in the number of member states alongside increasing areas of competences have created a monolithic territory of states without any serious or significant shift in the balance of where democratic legitimacy lies. A key failure in trying to conceptualise the European Union, is that the member states themselves have an unwillingness to categorise what the body is, and what the final destination for the project is to be. This difficulty arises from the simple fact that nothing like the EU, on such a wide and deep scale, exists anywhere else in the world. One analyst describes it as "...a federal constitutional or *legal* structure with a largely 'confederal' or intergovernmental *political* structure."<sup>[6]</sup> But perhaps trying to analyse what it is misses the point, and the democratic deficit focuses on what it is *not*.

The vast majority of analysis taken on democracy occurs within the sphere of individual nation-states. This therefore has the tendency to focus on the institutions of states and how an individual can participate in the election. Thus, understandably, it is difficult to apply the same checks towards an organisation that has certain characteristics of a state, yet at the same time encompasses a multiplicity of nation states, themselves with differing models of democracy. The problem is that the EU manages to combine both government *and* governance, with little distinction or clarity between the two concepts in the public mind.

## ***What is democracy?***

"...democracy...is a government of all *the* people, by all the people, for all the people..."

*Theodore Parker [7]*

The above quote highlights what democracy is, understood in the most basic of terms. The greatest difficulty, as it stands, is that the EU does not have a recognisable government which voters can empathise with and relate to, in the same way they do at a national level. The key mindset that must be overcome, when discussing democratic theory, is that democracy rests *within* the borders of individual states, and as such citizens feel a greater sense of belonging in a state structure – the key area in which democratic thought is framed. In order to understand where and why the deficits occur, an understanding of democratic theory should be outlined. Robert Dahl summarises six key areas which he believes a 'large-scale democracy' requires (it should be noted that he does not insist that these criteria necessarily fall within the nation state). Elected officials, free, fair and frequent elections, freedom of expression, alternative sources of information, associational autonomy and inclusive citizenship are all laid out as the prerequisites in order to form a stable democratic unit.<sup>[8]</sup> According to David Held, a democratic environment is one which sees "...decisions that accrue the largest number of votes prevailing [*sic*]."<sup>[9]</sup> The problem is that once citizens vote for individuals to sit in the European Parliament, these members do not form any sort of recognisable government. The MEPs, elected under national party lines, sit within larger bodies of other like-minded parties from the numerous other member states, yet not one single MEP, directly voted by European citizens has the ability to become a contender for a post in the Commission – the closest body in the EU that can be compared to a national executive.

## ***The Democratic Deficit***

Greven suggests that "...the more power [the EU] gets, the more pronounced its democratic deficit becomes."<sup>[10]</sup> But where exactly do such deficits occur? "There are few areas where the EU departs modestly from existing national practices..."<sup>[11]</sup> as Moravcsik argues and goes on to suggest that the EU is essentially just an extension of other, mainly undemocratic bodies, such as central banks and constitutional courts.<sup>[12]</sup> If this were the case, then it would substantiate the claim that the EU "...exists to complement, not to replace, the nation state."<sup>[13]</sup> Most states share power between authorities, such as central banks, judicial systems, and devolved assemblies. In spite of the variety of bodies, citizens are generally clear of where the absolute power lies – in the elected assemblies and Parliaments of nations. However, herein a problem occurs, down to the fact that the "...EU is not a system of parliamentary sovereignty but one of separation of powers."<sup>[14]</sup> Citizens are uncertain of where absolute power is situated in the

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EU. This, paradoxically, is actually favourable to democracy. With the EU not housing a single, central polity, nation-states remain at the centre, still maintaining the balance of power. Each institution has a set of powers that it can use, but in most instances, this power is shared with other institutions, through the co-decision procedure. The Council of Ministers works with nation-states own elected representatives. Thus, whilst it creates a confusing picture of where power lies, it also ensures that there exists no central power with an unchained ability to do as it wishes.

Plattner advocates that the EU as an organisation "...promises to provide governance *without* the need for government." [15] Yet this is precisely where a deficit arises. Without a recognisable government, the electors have little to connect to in terms of individuals or posts. It is perhaps the case that the EU is simply too complex for its own good, insofar, that in its aim of trying to best represent the states at a supranational level through intergovernmental and transnational methods, it actually misses the most important aspect of democracy – that of a feeling of inclusion and citizenship. The problem that the EU lacks is, as Habermas has argued, civic solidarity, something that grew out of the development of modern states, thus he believes that something similar could happen within the EU. [16] What this ignores is the fact that the EU lacks one thing common to political communities – a common language; essential for public debate to take place in order to understand what citizens want and need from their polity. That, alongside no major pan-European political movement makes the situation even more difficult to attempt to foster a citizenship that would have an overarching loyalty, not to their locality, or even their nation, but primarily to Europe. The fact remains that European elections do not produce a European government, or anything remotely resembling one. The individuals that sit in the Commission are unelected governors, appointed by nation-states, who once in position are protectors of the European Union, thus have to responsibility to act in the European, rather than national interest. Yet not a single European voter has the ability to vote them into, or out of office. A decisive feature of nation-state democracy, that is alien at EU level, is that the electors can essentially sack an unpopular government if it feels that they are no longer up to the tasks facing them. This option simply does not exist in Europe. What does exist, however, is the option for the Parliament to 'sack' a Commission, as happened in 1999, when the Parliament lost confidence in the leadership of Jacques Santer, then Commission President. [17] Whilst the ability of the Parliament to have this power does ensure some sort of legitimacy, it should not detract from the fact that citizens cannot, in all reality, hold the Commission to account through direct democracy.

## ***European Parliamentary Democracy***

The EU, on the face of it, passes the criteria that Dahl stipulates for democracy, highlighted earlier. But in order to explain the deficit, we must look in greater detail at these requirements. The foul cries that the European Union is some sort of 'Stalinist European super state, the Soviet Union of the West' is entirely wide of the mark. [18] The one outwardly democratic act of the EU is the ability for citizens to vote for members to sit in the European Parliament.

Yet "...elections are decentralized, apathetic affairs, in which a relatively small number of voters select among national parties on the basis of national issues." [19] The latest round of elections, in May 2009, had the chance for 388 million European citizens to turn out in support of the project where it could have been a "...continent-wide celebration of democracy...", yet the elections managed to muster a transnational total turnout of 43%. [20] As the "...world's only directly elected transnational parliament" the European Parliament has to forge an identity for itself, fitting neatly somewhere in between being a European government and providing European governance. [21] The fact that the European Parliament does not produce a clearly defined identifiable government following elections is a primary source of where the democratic deficit lies, and thus is the reason it is often, perhaps unfairly, decried as a mere talking shop – or worse – as "...a tea party with pretensions." [22] Yet, it could be concluded that such accusations stem from a time when the EP was merely an unelected chamber before 1979. The fact remains, that whilst MEPs may scrutinise and evaluate policy proposals, not a single member has the chance to become an executive member in charge of policy making. As Plattner argues, "...the fact remains that Europeans cannot hold their politicians directly accountable for what the EU does." [23] This deficit is a significant player in relation to how the citizens of Europe view the organisation. Within member states, issues of importance decided at EU level generally are viewed through the travails of domestic politics. Indeed, the Vice-Chair of the European Parliament, Diana Wallis MEP, felt the need to highlight the areas in which the European Parliament had a say over, by commenting that "This week alone [20<sup>th</sup> March 2010] European parliament committees have voted on legislation concerning food labeling, organ transplants across the EU and security of gas supplies..." [24] Such decisions have an impact for citizens across the continent, yet the fact of the matter remains that most will not have heard of these

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measures.

## ***A European Demos?***

An important aspect of the deficit is the socio-psychological perspective. This suggests the lack of a European wide demos with a cohesive identity.[25] The problem that the EU lacks, as Habermas has argued, is civic solidarity, something that grew out of the development of modern states, thus he believes that something similar could happen within the EU.[26] What this ignores is the fact that the EU lacks one thing common to political communities – a common language; essential for public debate to take place in order to understand what citizens want and need from their polity. That, alongside no major pan-European political movement makes the situation even more difficult to attempt to foster a citizenship that would have an overarching loyalty, not to their locality, or even their nation, but primarily to Europe. This also links into the lack of a conjoined media and party system – two factors that are crucial in ensuring fair representation and debate about issues in the political sphere. With 23 official languages, the EU has a multiplicity of diverging cultures.[27] Whilst cultural diversity is something the EU can be proud of, the nuances that make Europe rich in culture, make it virtually impossible to conduct trans-national political debate. With no single common language, citizens cannot realistically debate with each other the future policy direction the EU wishes to pursue. Thus, whilst it may be a complaint that EU issues, and particularly elections, are viewed through national interests, it is, as it stands, the logical method of doing so. A lack of common language thus means that there can be no mass media system. The satellite television channel *Euronews* which broadcasts in several European languages is a small operation, and one of the very few transnational media outlets. This deficit exists alongside another key concern – there exists no European-wide party political system. The attempt at the 2009 European elections to end this anomaly, through the *Libertas* political party, initiated in Ireland, failed to gain any momentum or seats during the campaign. Indeed, “If sport, where tribal loyalties are perhaps strongest, can become Europeanized, there is no reason why politics cannot be.”[28]

## ***A European Political Machine?***

Menon suggests that “...states dominate [the] European Union, [which] has little or no existence independent of them.”[29] Whilst true on one level, it is most certainly a falsity on another. Without the nation-states, the EU would not exist – that is not in contention. But to say that the EU has no existence independently is highly inaccurate. Whilst the Council of Ministers are made up of politicians from member states, the European Parliament, the Commission, and the vast Civil Service machine behind the whole operation are all individual entities. Indeed, the Commission has prided itself on its “independence from...member states [which] is intended to facilitate both their task of acting as impartial referees of cooperation and their involvement in making substantive policy decisions...”[30] EU ambassadors also take residence in states across the world, alongside other already established European states and their respective embassies. What is true is that the *implementation* of policies decided at a central EU level requires the actors of state to ensure they are fully applied – this is at every level of government, from central, provincial and local levels. [31] Greven argues that “The EU can be categorized as an independent source of governance because it effectively and legitimately establishes political aims and policy programs and reinforces their implementation through its own competencies, resources, and instruments.”[32] Further enforcing this belief is the fact that the European Court of Justice (ECJ) does have the power to make rulings to ensure states abide by their legal right to implement EU policies that have been decided.

Perhaps the issue which makes the EU so hard to categorise, and thus in turn to legitimise, is the fact that it is, in essence, a form of indirect democracy.[33] “...the connection between the nation and democracy is a historical accident...[and] a uniquely European identity can be forged and layered on top of older but equally artificial national ones.”[34]

The development of European states has seen the creation of multi-national states, with a unified identity, such as Great Britain or Belgium, yet within these unitary states, the national identity of the groups within them is strong. The Scots, English and Welsh populations all manage to integrate, and live beside one another in the unified state (albeit with devolved administrations); likewise with the Walloons and Flemish populations of Belgium (another caveat: every so often, each side calls for a divorce!). However, Scottish identity has not been quashed within the larger state

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of Great Britain, thus is it not possible to presuppose that larger national identities would also have the ability to flourish within a greater political EU?

**Table – Attitudes of citizens in the European Union**

	<i>Satisfaction in European democracy*</i>	<i>Satisfaction in State democracy*</i>	<i>Attachment to the EU†</i>
Belgium	67%	68%	65%
France	40%	45%	57%
Poland	62%	38%	63%
Spain	60%	71%	48%
UK	40%	60%	27%
EU25	50%	56%	-

*\*Data taken from EB65, July 2006, †Data taken from EB68, December 2007*

This table shows a compilation of data, highlighting the opinion of citizens in five key member states – old and new; each with differing political make-ups. It is perhaps not surprising that the UK polls the lowest level of attachment to the EU, the country often seen as having a ‘one foot in, one foot out’ approach to their membership. Belgium, one of the founding members, and with perhaps the weakest central polity, has the highest support for EU attachment.

Belgium is of course home to Brussels – the centre of European Union activity. Surprising figures come from Polish respondents – a considerably higher figure approve of European democracy, in comparison to state-level democracy; surprising due to Poland’s recent history having been a former Soviet-satellite, thus, even as an actor in a larger unit, the Poles seem content with the level of democracy currently offered by the EU. What the overall figures show is a lack of consistency across states, with overall support in attachment to the EU. This is a problem that will be faced when discussing Cosmopolitanism, as Chapter Three will highlight.

Moravcsik claims that the EU “...lacks the grounding in common history [and] culture...on which most individual polities can draw.”[35] This is not strictly true. It was common history that allowed the entire institution to formulate into creation. The deep scars of World War II enabled the states to put aside their differences and join together to restore economic prosperity across the continent. “...the glue that binds the EU together is not a shared identity; it is, rather, shared projects and objectives.”[36] Thus, whilst a citizen in Plymouth, Geraardsbergen or Milan may not feel they share a common identity, they may in all probability share a common aim to have a peaceful continent with shared trade links, free movement, and thus believe that a “... sense of belonging and commitment to the union is based on what they accomplish together, not what they are together.”[37] Yet, in spite of this, it could be said that “...the legacy of European nationalism appears as a major obstacle on the way towards the making of a European *demos*.”[38] Critics of the unifying project have been scathing on the actual process of integration, in spite of a lack of a common identity. Larry Sidentop claims that the project “...has increasingly acted on quasi-Marxist assumptions...” insofar that the liberal democratic traditions of European integration have presupposed that once economic integration has occurred then the politicisation of the institution would ultimately follow. [39]

## Chapter Two – *The World We Live In* [40]

*This chapter shall make the case that Globalisation has weakened democracy in the nation-state, and will in turn look at what role the EU has played in the break-up of the Westphalian international system, and whether the EU was designed to protect the sovereignty of the nation-state, rather than replace it.*

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“...nation states are fundamentally dangerous...the only way to tame the anarchy of nations is to impose hegemony on them.”

*Robert Cooper [41]*

The interconnectedness of the world has increased; borders are less well defined as commerce, law and political collaborations flow across lands; and yet “...the territorial state, [still] dominates [*sic*] both the local and the global”[42] Liberalism had the aim of separating the church and the state in the 19<sup>th</sup> Century, thus is it now the aim of the 21<sup>st</sup> Century to separate sovereignty from the state to the supranational?[43] Ulrich Beck has suggested that “...the separation of state and nation represents the appropriate response to the horrors of the 20<sup>th</sup> century.”[44] The nation-state was not the principal actor in international relations until the late 17<sup>th</sup> Century, after the Treaty of Westphalia enshrined the principle of sovereignty which, to this day, remains the standard upon which international law functions. The evolution from city-state to nation-state shows that the possibility to extend sovereignty does indeed exist. What this chapter shall focus upon is whether this separation can happen, and retain the fundamental democratic link that citizens are familiar with.

## ***Globalisation and the loss of Sovereignty***

“Globalization denotes a shift in the spatial form of human organization and activity to transcontinental or interregional patterns of activity, interaction and the exercise of power.”

*David Held [45]*

The issue of concern for this chapter to analyse is the fact that the EU has undergone its formation by member states consciously pooling sovereignty through “...the ‘willing surrender’ of aspects of sovereignty by member states...”[46] with gradual integration in significant policy areas, without actually linking the transferral of authority with the relevant democratic accountability. Such a model is conceptualised as ‘joint fragmented authority’, whereby the joint actors are the national governments, and the fragmented element is down to the fact that not every area of governmental competence is covered by the EU.[47] Thus, such pooling of sovereign resources can make the traditional nation state *appear* less powerful than perhaps they once were. The development of the EU has seen “...the exclusivity, uniformity, and centrality of political authority within the territorial, sovereign State [become] seriously eroded in the geographical space of the European Union.”[48]

State sovereignty, regarded as the ultimate status symbol of independence from outside interests is still assumed to be the key prize in gaining legitimacy in the international community. Sovereignty is the concept that defines the international order, basing itself on “...legal autonomy [*sic*], territorial, [self-contained] political entities...with clearly defined and effective borders...”[49]

## ***State Sovereignty and European Unity***

But to what extent does the issue of sovereignty affect the current model of European democracy? Held argues that a self governing community where decisions are taken that determine the future of an individual polity is in a quandary.[50] He goes on to suggest that “...sovereignty is eroded only when it is displaced by forms of ‘higher’ and/or independent authority which curtail the rightful basis of decision-making within a national framework”[51]. Thus, it is fair to suggest that the development of the EU has witnessed the displacement of sovereignty away from the individual nation state and onto a higher polity at the institutions of the EU. States have also faced sovereign erosion through other international bodies. The United Nations, the European Court of Human Rights, the International Criminal Court, alongside the principles of international law have all played a part in the erosion of state sovereignty. But the EU finds itself in a unique position, in comparison to the other mentioned bodies, insofar that the EU actually has some form of democratic control from citizens, vis-à-vis the European Parliament.

Whilst it may be a popular assumption that the EU is one single entity with a central polity, the number of institutions that make up the organisation is such, that whilst sovereignty has clearly eroded aspects of the nation state, it has

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not become super-imposed at a *single* EU entity, as there is “...no clearly defined centre of authority.”[52] Powers that the EU has ‘gained’ have been re-aligned between the institutions, particularly the Council, Commission and Parliament – though not on an equal balance of powers. One significant area where the loss of state sovereignty has indeed taken place is the ECJ. Set up without any clear jurisdiction over what areas it would have legitimacy over, through rulings and treaties, the Court has carved itself a legal basis for policing the governance of the EU. It enshrined the principle that laws decided in Europe take precedence over national law, so long as national law pre-dates European legislation. The ECJ ensured that a standard level of compliance for European legislation would be upheld in every state across the EU, thus reducing costs by individual states enquiring over the compliance levels of other EU states. Ensuring that any disputes over the implementation of legislation are dealt with in an impartial manner is also crucial to the legitimacy of the ECJ. Significantly, the ECJ does not have the ultimate power to force member states to administer the policies of the EU, however does have the power to fine states for failure to comply. The status that this body has acquired, is perhaps more questionable, in terms of how it gained the right to administer such rulings. Kagan questions that “If international law does not reign supreme, is Europe doomed to return to its past?”[53] Conclusions can therefore be drawn that the ECJ is in fact essential to the maintenance of peace and stability in the mechanism of the EU project. Indeed “...[an] achievement of the European Union...is that all its diverse members cooperate without coercion or any other mechanism except a Court of Justice whose ultimate sanction is a moral one.”[54]

Larry Sidentop succinctly argues the impact that European integration has had on the issue of sovereignty. He says that “Formally, Europe still consists of proud nation-states with political cultures largely shaped by and attached to their sovereign rights...not even the acceptance of a European jurisdiction superior to national legislation and national courts has changed that pattern as yet. It has taken the Maastricht Treaty and its aftermath...finally to bring the issue of national sovereignty to boiling point.”[55]

The only states that can fairly say that they willingly surrendered power on their own terms are the original signatories of the Treaty of Rome. Each further accession, through to the latest round of entrants in 2007 has seen each accession state adopt increasing amounts of EU legislation, all of which had been agreed by incumbent members, thus meaning the new entrants have no say over what auspices they can accede to. The single market, the primary thread of European integration, is the best example on which applicant member states fail to significantly exert sovereign will. Neither Britain, nor Denmark were founding members of the EU, yet both managed to negotiate an official opt-out from joining the common currency. Romania, on the other hand, as one of the latest entrants, joining in 2007, had no ability to negotiate any form of opt-out and thus had to adhere to every detail of previously administered EU policy, policy that had been decided by *other* sovereign states, acting unilaterally as the EU, through the pooling of their own sovereignty. Not only did the country have little say as to what portions of the EU they could consider opting in, or out of, the citizens of the accession states were only able to debate on the issue of European integration as a concept, without being able to alter any of the specific legislation that would have to be implemented.

But why is sovereignty held in such high regard? The liberal conception of a democratic, self-determining community is at the crux of the matter in which “...modern democracy and the nation-state have developed in tandem...”[56] In the EU, two key issues arise relating to the sovereign status of individual states, from two different perspectives. “The idea that consent legitimates government and the state system more generally has been central to nineteenth- and twentieth-century liberal democrats.”[57] What the idea presupposes is that liberalism has the tendency to construct identifiable boundaries, of which the democratic community is congruent with the nation-state, with clearly defined borders housing a democratic community. Yet, sovereignty itself can be split between two personas – legal and popular. To use the example of the UK, Scotland and Wales both have elements of *popular* sovereignty, this is achieved through the fact that these territories contain their own elected bodies, distinct from the Westminster Parliament; yet, crucially, neither have *legal* sovereign status, but both the Scottish Parliament and Welsh Assembly are legal institutions, with *popular* sovereign status within the framework of the constitutional status of Great Britain, it itself forming a unitary legal sovereign territory, recognised in the international community.

This chapter pertains that the increasingly globalised world has removed the sovereign integrity of the nation-state. Through the weakening of sovereign integrity comes the side-effect of the weakening of the democratic structure of the nation-state. The decision making powers that individual states once had, face the problem of being overridden



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by powers out with their control. The institutions of global significance, including the United Nations, the International Monetary Fund, and International Criminal Court all have powers that have, in effect, been ceded to them, which can remove a certain aspect of direct state democratic control.

## ***Glocalisation***

It would be inaccurate to blame the weakening of the nation-state as the fault purely of globalisation. The changes to the internal design of nation-states are as much of a response by states themselves as any other external actor.

Within states, the devolution and decentralisation of power bases to new legally constituted elements, such as elected assemblies, have also had the effect of weakening the authority of the central polity. It is fair to suggest that such decentralisation occurred as a direct response to the increasingly globalised world as an essential move to ensure the sovereignty of the nation-state remained sacrosanct; in contrast to the earlier international order where keeping the unitary state intact was imperative in providing the best possible resistance to outside actors – particularly those intent on creating ever-growing empires. Thus it would therefore be more accurate to categorise this phenomenon as ‘glocalisation’[58].

## ***Re-aligning Sovereignty***

“Decentralization does not automatically weaken the central state.”

*Geoff Mulgan* [59]

As “...a sovereign power is naturally inclined to protect its sovereignty”, it should be recognised that sovereign powers have been the central actors behind the re-alignment of power, both below and above state level. [60] Thus, it would be fair to suggest that the changing centres of power have occurred in order to keep the primacy of the state intact.

It could be said that the EU does impede upon nation-states decision making powers. Yet, in one respect this is also an exaggeration. To return to Britain as an example, should the UK decide to disaffiliate itself from the European Union, then the power of the Westminster Parliament to withdraw the United Kingdom from the EU is not in question, as the sovereign elected body of the UK, it is fully within its jurisdiction to do so. What would be in question is the prerogative of the Westminster Parliament to make laws that will be enacted throughout the UK without external interference. Should a certain area be the ‘reserved’ matter of the EU, then Westminster does not have the power or authority that a fully sovereign power, in the classical sense, would have to enact such a law, or over-ride the EU at a state level, without having opted out without prior EU agreement.

## ***A Sovereign Europe?***

“The modern state has been invented...thus its persistence cannot be taken for granted...the European Union...may point the way toward a postmodern future that will in...respects resemble the medieval past.”[61] Centuries of great Empires were built upon the foundation that a few individual states conquered smaller (sovereign) territories, in order to form larger confederations. Therefore, in one sense, looking at the development of nations in an historical sense, the EU “...looks like an empire because it tries to assert political and economic control over...peripheral actors through formal annexations or...political domination.”[62] Yet this is very much an empire of the willing, formed for the greater good of the members, not just to gain power for a central polity with “...territorial acquisitions taking [*sic*] place by invitation rather than conquest.”[63] The competences that the EU has jurisdiction over have come around, not through some vast EU machine wishing to swallow up significant portions of what make nation-states, but the nations, acting together decided that these areas would be best covered at a pan-European level rather than left for the state to deal with.[64] “It has been assumed that the state has control over its own fate...”[65] But what of the argument that globalisation, has actually rendered some aspects of state control obsolete, or at least significantly reduced, and that actually, the EU was designed in order to keep the primacy of sovereignty with the nation-state,

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cushioning states from outside interests. In theory whilst the EU has developed along the path of integration decided by member states, it is fair to suggest that the EU was, through design, particularly with a lack of democratic foresight developed to protect the identities and interests of individual members, yet concurrently promoted greater unified European goals in the world. As such "...the...nation-state had to choose the surrender of a degree of national sovereignty [to] sustain its reassertion." [66] Cooperation in areas of common policy has help shield the state from the forces of globalisation, thus backing the argument that the EU has actually cemented the state, rather than replace it.

The international order, based upon the idea of the balance of power, whereby "...states are legally equal, differing in capabilities" is, according to Robert Cooper, over. [67] Cooper argues that Europe is in fact well into the process of becoming a post-modern entity, having first begun such a move with the Treaty of Rome.[68] However, unlike David Held, who believes a cosmopolitan model of democracy is indeed possible (fully analysed in Chapter 3), Cooper is fundamentally less convinced, arguing that identity and, most importantly to this dissertation, the democratic structures, "...remain stubbornly national." [69] Thus, if this is the case, then the argument for moving towards a post-national polity is, at first glance, going to prove highly problematic. Held goes on to question whether "...sovereignty [has] remained intact while the autonomy of the state has altered, or has the modern state actually faced a loss of sovereignty?" [70] Robert Cooper certainly seems to think so as he explains that "...the acceptance of jurisdiction of international courts mean that states today are less absolute in their sovereignty and independence than before." [71]

Thus, the implication from that would presume that sovereignty is the final destination for states, and that territorial disagreements do not pertain within Europe. This is a fallacy which should be analysed. The United Kingdom and Spain are two prime EU examples where significant minorities exist which wish to see accession from their respective states. Scots and Welsh Nationalists and supporters of an independent Basque Country, Catalonia or Galicia all have the desire to secede from the UK and Spain respectively, establishing their own territorial, sovereign integrity as new independent nation-states. Thus, whilst Cooper, looking at the present map of Europe, is to an extent correct in his assumptions, it is also true that states understood in order to maintain their territorial integrity the re-alignment of power through decentralisation was essential, in order to quash any desire for accession.

So, is it possible, or indeed desirable to separate sovereignty from the state? A thorough re-alignment on power has taken place, particularly over the last two decades, with deeper European integration, coupled with the decentralisation that has occurred in many European states – particularly prevalent from the 1980s onwards. The primary vehicle in confirming the movement of sovereignty within the EU has, perhaps surprisingly to some, not been the European Parliament, but rather the ECJ. This has been the case insofar that states have lost the independent right to ignore EU laws, unless a prior opt-out is agreed. New institutions set up within states, such as the Scottish Parliament and Welsh Assembly in Britain, along with the Spanish example of federalism where "...the regions now enjoy unconstrained autonomy and virtually subcontract national government..." shows that power is now shared between institutions freely, instigating a feeling of shared sovereignty, even if, as in the British case, legal sovereignty has not shifted to such institutions, but rather have come about through popular sovereignty. [72] Thus if popular sovereignty can see the displacing of power within a state, it should, in theory be able to transfer such sovereignty across the European continent. As it stands, power has, quite willingly been supplanted to a higher authority – that of European institutions. Yet, this voluntary power sharing has arisen out of a desire to strengthen the idea of a united Europe; whilst at the same time each state insists that sovereignty has not been lost. It is in theory and practice that the displacement of sovereignty can be argued. In practice, sovereignty has indeed been willingly given to the EU; in theory, the EU only exists as the sovereignty is placed, arguably 'on loan', to ensure the better governance of all the states, through common areas of consent.

## Chapter Three – *Imagine there's no countries, it isn't hard to do...* [73]

*The arguments made in Chapters One and Two make it necessary and possible to democratise the EU, as this chapter will outline.*

The aim of this dissertation is to show that democratisation of the EU can, and needs to happen. This chapter will outline just a few, select, proposals that the EU could implement without any realignment of sovereignty or any such drastic changes in power. Alongside this, longer term measures which would require a shift of sovereignty shall also

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be analysed through the concept of Cosmopolitan democracy.

### ***Democratic Reform in the Treaty of Lisbon***

The Lisbon Treaty, originally conceived as the Reform Treaty, was the result of a consultation process looking at the faults of the EU. It was also designed to allow EU architecture to react more effectively to the growing number of new accession states as Kagan suggested that "...enlargement of the EU to twenty-seven members has given the original EU members indigestion..."[74] The original Reform Treaty, would have submerged all previous EU treaties into a new, single Constitution for Europe. After the failure of voters in France and the Netherlands to support the Constitution through national referendums, the resulting Lisbon Treaty dropped state-like attributes, such as a 'national' anthem, amongst others.

What the Lisbon Treaty has achieved, in terms of democratisation, have been scant initiatives that were processed in the hope that they would bring about greater legitimacy. In relation to the *workings* of the European institutions, the Parliament becomes "...the equal of the council in almost all EU legislation, gaining new rights over...farm subsidies, fisheries, asylum and immigration."[75] *The Economist* goes on to further suggest that tax and foreign policy will be the only areas where national parliaments have any real say over policies in comparison to the EP.[76]

The area that brought about the big headlines in the media surrounded the creation of two new posts, the President of the European Council – often dubbed in the media as President of Europe, alongside the High Representative of the Union for Foreign Affairs and Security Policy, or 'foreign minister' for short hand. Both posts were created in order to present a more 'unified' Europe, to be present at conferences and represent Europe globally, and perhaps more crucially, answer the question of who Henry Kissinger could call.[77] Herman Van Rompuy, former Prime Minister of Belgium, took up the role of President, with Lady Catherine Ashton, former leader of the House of Lords in Britain becoming the High Representative.

Neither the roles of President of the European Council and Foreign Minister carry a specific job specification in which they can adhere to, and also, crucial to democratic legitimacy the citizens cannot hold either Mr Van Rompuy or Lady Ashton to account – of course neither position is elected – directly nor indirectly, rather such appointments came about through EU 'consensus'. An anomaly of the changes that Lisbon has brought was that the rotating Council presidency, which countries held for six months, is being preserved *alongside* Herman Van Rompuy's new role. The role of the President was initially to end such rotations, in order to bring greater stability to the governance structure of the EU. Perhaps it is more accurate to describe the role of Mr Van Rompuy as President of *governance* in Europe as opposed to being a President in charge of a *government*. Indeed, "Mr Van Rompuy is a president without a country..."[78]

The Lisbon Treaty states that "National parliaments will...be allowed to protest if they think a proposed EU law unnecessary."[79] This apparent increased role for national parliaments is an interesting point. It could be said that this move does, in an abstract notion, remove a certain deficit, insofar that national politicians, who are more closely linked to the citizens, can call the EU to account. But what this move does not address is the lack of connectivity that citizens could or should have with the EU and its institutions. What the Lisbon Treaty has incorporated is the 'European Citizens Initiative', which, after one million citizens have signed it, will ask the Commission to look at a new law – however, it will not force the Commission to adopt it.[80] This move increased the possibility for European citizens to influence the decision-makers – but like so many initiatives, it may lack the popular support once in place.

If, as *Time* magazine notes "...the new EU [after Lisbon] will be run by a complex mechanism with four axes: the President and Foreign Minister; the country holding the rotating presidency; the President of the European Commission and national heads of state and government" then what is interesting to note is that the European Parliament does not feature within this as a significant player, in spite of its position as the one democratic element of the EU. [81]

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## *Democratic Reappraisal*

Two key characteristics that mark out modern European democracies are devolution of powers or a fully federated system; yet the nation-state model in Europe is one in which the constitutional and voting models of each country varies considerably. At present it is up to the individual state what system of voting they use to send MEPs. By having the vote taking place on the same day, using the same voting method – PR is probably most suitable for a trans-national election – alongside more equalised constituencies could aide a fostering of greater fairness in regards to representation at a European level. As it stands, Spain, with its highly autonomous regions, actually elects MEPs on a national basis, with no regards taken for regional voting patterns. The United Kingdom, on the other hand, does divide the state into ‘regions’. The problem here is that Scotland, alongside Wales and Northern Ireland are each treated as one ‘region’ – thus Scotland, with a population of just over 5 million, is represented at a European level by just 6 MEPs. Yet Luxembourg is also represented by 6 MEPs in spite of a population just shy of 600, 000. This irregularity in representation is one area of deficit that the EU should be able to correct. It is understandable, and practical that the European Parliament should not have over 1000 members, but looking at the present situation, it would be desirable to increase, even if only slightly, the number of representatives. This increase would be balanced out through the redrawing of boundaries, with a fairer allocation of seats dependent on population, and an understanding for certain regions of Europe, such as historical nations, and areas that exercise significant autonomy from the central nation-state. The Lisbon Treaty stipulates that there shall not be an increase in the total number of MEPs representing states in the European Parliament. What this leads to is the situation where no matter how small the state is, they shall receive a minimum of 6 MEPs, essential to ensure that smaller states are not out-voted by larger states. What is drawn into question is the potential effect enlargement will have on the one outward democratic element of the EU. New members will be able to take a minimum share of 6 members upon accession – this will affect the balance of the Parliament as existing members will have to lose seats in order to accommodate the new member.

## *Multi-Speed Europe*

Following the failed referendums held in France and the Netherlands in 2005, Ireland has been the only nation to have a vote on whether they would accede to the Lisbon Treaty. And not only did they vote once, the citizens got to vote twice, first in 2008, when the citizens roundly rejected the vote, and again in 2009, when they accepted it. This brings up two important issues in relation to the democratic deficit. The Irish constitution requires the state to hold a vote allowing citizens their say, following any new legal treaties being accorded by the EU. This is not a uniform measure across Europe, as many states merely ratified the treaty through the elites that hold power in national parliaments. But what this issue does highlight is the fact that just over 4 million voters had the future of European integration in their grasp, as the rest of the Continent waited to hear its fate. Thus, what if EU member states had the ability to opt-in and out of new treaties depending on how far they wished to integrate? Is such a position viable, and could it lead to the end of a situation where one member state can hold the entire project to ransom?

To an extent, the EU does operate a semi-multi-speed Union at present. Member states have the right to negotiate opt-outs from EU legislation. The United Kingdom is a prime example of how a multi-speed Europe could work in relation to opt-outs. During the previous Conservative administration which held power in Britain during the time of the Maastricht Treaty negotiations, John Major, then Prime Minister negotiated an opt-out from the Social Charter which precluded the UK from the need to introduce measures including a minimum wage. In 1997, following the defeat of Mr Major to Tony Blair and the new Labour government, Mr Blair ended the anomaly by signing Britain up to the full clauses of the Social Charter. Should the current Conservative leader, David Cameron, end the Labour governments thirteen year rule, then he has indicated his wish to see the opt-out from the Social Charter re-established.[82] As Chapter Two mentioned, some states have also exercised their right to opt out of the Eurozone.

Thus, in a multi-speed environment, citizens of each individual state would have the ability to vote against, or in favour, of their state acceding to new EU legislation, that would provide the EU with greater law-making powers. With the results from a referendum, the state would continue, either with or without incorporating the new treaty legislation.

There are, of course, difficulties with such a concept. Voting issues are of key concern – should member states not fully opt into new legislation then questions would be raised over what areas such ‘2<sup>nd</sup> tier’ members would be able to

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participate in. Excluding them in the proposal stage would be not be possible – as in theory, each state has the ability to choose whether they wish to accept such legislation. The main argument here is that on large-scale, constitutional alterations within the EU, then citizens should have a say. What is not being advocated is a plebiscite being held on each minor law passed – this would be both unworkable, and simply unfeasible – it does not occur in nation states, so would be unjustifiable to apply that to the EU. However “...since the European project started, a dozen referendums have gone against the almost unanimous recommendations of the political elites.”[83] By increasing the number of referenda on European issues *within* member states, there is a hope that such discussions precluding the vote would stimulate discussion over what the EU is, and what it should be doing. The longer-term hope is that such referenda could transpose borders and see transnational referenda being held – with the aim of fostering a greater connection to the EU. However, a caution must be taken here, as over 30 years of direct elections to the European Parliament have shown, very little debate takes place around European issues, rather it is often a mid-term assessment on the governing party in the nation-state.

This concept, however, should be taken with a sensible approach. Public plebiscites are not all that common in states – indeed the last (and only) referendum on Britain’s membership of the then European Economic Community happened in 1975; and since then only a handful of referenda have taken place in Britain. Perhaps such an approach to a that of a true multi-speed Europe could only be taken once any new treaties, or any serious re-working of existing treaties were proposed – the current situation where the Lisbon Treaty is being re-opened would be a good example where a referendum could take place; indeed the British Conservatives propose that Britain will not accede to any further European integration without a referendum.[84] This proposal may not be what the idealists of European integration imagined – but it is a fair solution to the current political situation in which Europe is in – at least this would prevent the idea of a single nation holding the entire Union to ransom, yet still ensures that “...decisions that accrue the largest number of votes should prevail.”[85]

### ***Direct Elections***

In regards to the Commission, an element of direct elections should be considered. The roles of President of the European Council, and President of the European Commission, currently held by Herman Van Rompuy and José Manuel Barroso respectively, are ripe for a merger.[86] A merged role would have more authority to be called the ‘President of Europe’ – and with that, an opportunity opens to hold direct elections as to who would hold such a post. In order for this post to enjoy greater democratic legitimacy then it would be desirable for it to be a directly-elected position, but under an electoral system that would ensure the most legitimate person ended up in the post. Utilising a form of STV (Single Transferable Vote) would be most appropriate; whilst the election would not be tied to national borders, rather this could be a truly transnational vote. Understandably there will more than likely be contenders from member states whose population wish to see their individual win – that may not always be the case as was the vocal opposition in Britain in some quarters to the thought of former Prime Minister, Tony Blair taking up the role now occupied by Van Rompuy.

Alongside this, is the idea that the Commission should be made up of individuals who are elected to the European Parliament. Votes would take place *within* the Parliament to ensure individuals appointed to the position would have the support and backing of those in the chamber. Nationality and parliamentary grouping would almost certainly have to be taken into account, but by doing so, the Commission would not only be answerable to the European Parliament, but also to the electors of the individuals.

### ***Cosmopolitan Democracy – the end of the State system?***

“What is the relevant constituency: national, regional or international?”

*David Held* [87]

There exists a significant stumbling block. Virtually all thinking, debate and discussion on the EU is viewed within the confines of member states and what each individual state can gain from membership, rather than what is best for the common European position. Europe’s varied history saw the development of democracy within states occur at a

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different pace, where each country developed its own, often unique democratic constitution each containing individual nuances. But what if, as some think, the EU could work better if a greater harmonisation of politics took place, and borders between states became historical anomalies, and the EU became a democracy without boundaries?[88]

“A successful effort to democratize the EU would inevitably push it in the direction of becoming a state.”

Marc F. Plattner[89]

Cosmopolitan democracy would not allow the EU to become a state, but rather, it would see the reappropriation of sovereignty between the constituent elements of the EU, “...seeking [*sic*] to entrench and develop democratic institutions at regional and global levels as a necessary complement to those at the level of the nation-state.”[90] This theory alters the position in which modern democratic theory is focused upon – that of the nation-state as the principal actor. Cosmopolitan theory believes that all democracy is, first and foremost, a local issue. Decentralisation and devolution of power is the key element in which Cosmopolitanism would thrive in. What it aims to remedy is where democratic accountability should be levelled at. This would require a fundamental rebalancing of power removing the primacy of the state as the key actor. This would see the state essentially being relegated to equal status and power with devolved regions and larger transnational groupings. Whilst this may, in principle, appear like a valiant attempt at equalising power, or at least reducing the possibility of a single political element holding the majority of power – as the current state system does, to an extent – it also removes a primary reason for the existence of nation-states within the international system; it provides a stable political unit, in which affairs of state can be dealt with, and this is understood in the concept of ‘insiders’ and ‘outsiders’. This concept, is to a certain extent, occurring within the EU, as the ability for citizens of member-states to travel and work freely between countries is possible, with the Schengen agreement.

The central state exists to maintain the geo-political nature of the state – with that no longer prevalent, it is uncertain as to whether smaller political units would wish to break out of the state, before aligning itself with a pan-European polity. Indeed, as mentioned in Chapter Two, devolution of power downwards from the central state has been a significant element of change within EU member states in recent years. Yet, it is possible to presuppose that the further weakening of the *core* nation-state could cause a more likely dissolution, as the geo-politics of the state would have weakened, through the additional powers transposed *above* the state. However, with Cosmopolitanism it is understood that in order to legitimately provide higher government above the state, localisation is essential to provide such legitimate power.

“The smaller the unit the greater the opportunity for citizens to participate in the decisions of their government, yet the less the environment they can control.”

K. Newton [91]

The multi-layering of democratic institutions with local, national, and transnational global groupings would each hold *legal* spheres of sovereignty. But the real issue Cosmopolitanism deals with here is where exactly sovereignty lies, and the increased apportion of legal consent placed upon transnational institutions. As previously highlighted, the EU does not contain a single element where power is concentrated, yet Cosmopolitanism would allow a supra-national body to take decisions above the level of the state. In theory, it “...would coexist with the system of states but which would override states in clearly defined spheres of activity where those activities have demonstrable transnational and international consequences.”[92] The concept of ‘glocalisation’ as touched upon in Chapter Two provides the best possible conditions to promote the concept of cosmopolitanism, hence why the EU is perhaps seen as being in a quasi-Cosmopolitan state at present. Unlike fully-federalised models, there would exist no central authority, rather the apportion of sovereignty, currently resting within the nation state would be re-apportioned between, the local, national, and transnational, yet would still require a more centralised European level of government – more so than at present. The current problem is that the EU is not an independent political resource, but rather one heavily dependent upon the nation-states that created it.

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What this theory presupposes is that all states, in this case the EU, would be willing to surrender power on an equal basis, in order to promote the common good. As has been mentioned previously, with opt-outs and such like, it is highly unlikely that states are willing to surrender aspects of their sovereignty without some benefit being received, and there exists no immediate desire within states to create a single European political community, subsuming their own powers to achieve such a goal. It is also presumptuous insofar that it ignores the fact that if this model were achieved, what if states wished to take power back, or local communities increase the level of their independence? This is presuming that states would be willing to act unilaterally to provide for this model of governance, as it stands at present, it is highly unlikely such a move would ever be able to occur, after all the EU is famed for its internal wrangling just to get agreement on legislation, let alone new powers for treaty reform!

So, whilst cosmopolitan democracy may have significant hurdles to overcome in order to be implemented, there are some more sensible areas that can increase accountability, or at least appear more so. "...decentralised political systems inevitably involve divisions of powers and bargaining relationships, both horizontally – between the regional tiers – and vertically – between the regional tiers and the centre." [93]

The problem at present is that the EU has large proportions of governance, and little government. Cosmopolitanism would require a shift in EU institutions to become government; something that would be hard to achieve without alterations to the current political make-up of the EU, and a greater element of democratisation. And most crucial of all – the power that the EU has at present, is 'sovereignty on loan' – it would take some considerable shift in the behaviour of nation-states to make their sovereign loan to Europe a permanent, legal one.

### Conclusion – *Democracy is Messy* [94]

"The EU's original sin may be that it was not built on a democratic foundation..."

*Kalypso Nicolaidis* [95]

The European Union is not perfect. It is unlikely ever to be. What this dissertation has argued is that the EU, in its present form, is lacking in significant democratic accountability – accountability that is essential to the legitimacy of the governance that it provides. As an actor, it is much more a provider of *governance* rather than *government*, but what it lacks is the wherewithal to legitimate the power through democratic means. The new roles of President of the European Council, and High Representative of the Union for Foreign Affairs, were meant to add cohesion and legitimacy to the political element of the project, but this is impossible when such roles have no democratic electability.

"No modern political communities have been democratic in *origin*..."

*Chris Brown* [96]

The development of the EU, alongside other international bodies has seen the sacrosanct nature of nation-state sovereignty altered to an extent that it is no longer accurate to say that the state has entire control over its own destiny. That is not to say that the EU has developed into something that the states themselves cannot tame – this is far from the truth, it is the members that have allowed the EU to become what it is. Indeed, it is fair to suggest that the EU has actually cemented the democratic sovereignty of the nation-state, with the EU preventing states from buffeting forces of globalisation. Yet "...the anarchical state system that has been characteristic in Europe since the Treaty of Westphalia in 1648 is largely an historical aberration", so whether the EU does begin to take on a more state-like form will remain to be seen. [97]

"...[the European Union] is a fractious collection of 27 members...not...a proto-superstate, or a union cohesive enough to become a giant version of France, Germany or Britain."

*The Economist* [98]

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The democratic deficit is a live matter – and is something that is unlikely to dissipate over the next few years. The Lisbon Treaty has tried to address the problems of the deficit, but the reality is that such changes it has brought about are minor, and have done little to provide greater democratic legitimacy. The problem the EU has, in relation to the democratic deficit, is that as a body it lacks a collective demos, and with that a suitable executive for the demos to connect with.

The theory of Cosmopolitan democracy is interesting as it shows what the EU *could* become. However, what Cosmopolitanism does not take into consideration is the fact that subsuming sovereign control of the nation-state into a larger institution could cause irrevocable damage to the ability of the nation-state to act as a cohesive unit in international affairs. Whilst Cosmopolitanism may seem like a step too far, or indeed, simply unachievable, some more basic changes as highlighted in Chapter Three would add at least some democratic accountability, with a greater say from the citizens of Europe in choosing who will take the most high profile positions, and the elected members of the European Parliament having the opportunity to become members of the Commission.

Democratic reform of the EU is unlikely to be an easy task. The growing number of competences it now has, alongside the ever increasing number of member states means that any changes will, as is inevitably with the EU, involve trade-offs, and compromises. What this dissertation has shown is that democratisation of the EU *can* take place, in order to connect the citizens of Europe to the governance it provides. The European Union “...is neither a union of democracies nor union as democracy...” quite simply, it is *sui generis*. [99] [100]

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[100] *Sui generis* – the EU is just that, a unique concept, unable to be pigeonholed into an existing description of governance

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## **Is it possible to democratise the European Union?**

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