

**Michael Efler/Gerald Häfner/
Roman Huber/Percy Vogel**

Europe: not without the people



**The dismal state of democracy in the
European Union and how to mend it**

Michael Efler/Gerald Häfner/Roman Huber/Percy Vogel
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Roman Huber/Percy Vogel

Europe: not without the people!

The dismal state of democracy
in the European Union und how to mend it

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Gerald Häfner

Europe – not without us!

Mehr Demokratie (More Democracy) is getting involved. We are getting involved in an absolutely crucial debate with major implications. The debate has already begun, but until now it has been conducted without the citizens. That does not bode well. Quite the reverse: locking Europe's citizens out of the debate and engaging in a one-way traffic of communication via TV and other media is a surefire way of ensuring that it will fail.

The debate is about Europe! That means it's about us, our lives, our future. And about the future of democracy – about how we can be part of the decision-making process, involved in shaping our own future and that of others in our corner of the globe. Europe is a great idea – the idea of progressively overcoming barriers and boundaries, of working more closely together and of ensuring lasting peace. We share that idea and those ideals. And we also recognise that from climate policy to protecting the seas from pollution and over-fishing there are many issues which need to be tackled and solved transnationally, in cooperation with other states.

The EU can and must make a major contribution to this. But this is only one side of the coin. The other side is at least as important to us. It's about the way the EU has been constituted up to now and how it will be constituted in the future; it's about the way EU decisions are made and how they become binding on the citizens of the member states; it's about the debate on the structure, the "constitution" and the future of the European Union. In a nutshell: it's about democracy!

Democracy is a precious possession. Generations have fought for it and over it. And yet we are carelessly throwing it away. Democratic values and ideas are on the wane in Germany, and have been for some time. And we're not the only country where this is happening. But hardly anyone is resisting. Why?

There is no single cause of the erosion of democracy; the reasons are many. Several of them lie in the political and social structures of our own country. Others lie in the current worldwide dominance of economics over politics. But the cause of what is by far the most dramatic loss of democracy lies in the way the EU is currently constituted.

Politics on the slippery slope

The political “playing-field” between Brussels and Berlin (and the other European capitals) is not level. It’s more like a slippery slope – one that slopes down towards Brussels. Like snow sliding down a roof that has no snow guards, political decision-making power is constantly slipping down the slope towards Brussels. But this is not about snow – we’re talking about substantial political competences and democratic rights.

The decision-making structures within the EU are not sufficiently democratic – or transparent; people cannot see clearly what is happening. Europe’s citizens are remote and powerless spectators to a process which is almost invisible to them. It’s clear what the problem is: laws are made in the EU; those laws are binding on states and people; but the laws themselves are not bound to what is the essential core of the principle of democracy: the sovereignty of the people. To be sure, we have “European Elections” every five years – but the Parliament which we elect does not have full law-making powers. It is not able to initiate laws. Laws are drawn up by the Commission and approved by the Council of Ministers and also – but by no means in every case – by the European Parliament. So the process is dominated by heads of government and bureaucrats who are all representatives of the executives (national and EU). This means that the current structure of the EU contravenes not only the principle of popular sovereignty, but also the other fundamental democratic principle of the separation of powers. None of this is essentially changed by either the Reform Treaty or the Lisbon Treaty, despite some minor improvements.

Does it have to stay like this? Is there an alternative? We say: YES! Even if the EU is not a state, that doesn't mean that it has to continue to be a largely democracy-free zone. There's no reason why a cooperative union of states – even such a unique one as the EU – cannot be organised democratically.

That is why we make use of a concept of democracy which transcends national boundaries. The EU is the first and most important application of this concept. Mehr Demokratie wants to contribute to the development of the concept. The proposals in this book for a significantly more democratic Union are our contribution to the debate.

Authors' Preface

This book is the result of a collaboration by members of the staff of Mehr Demokratie. Its line of reasoning is based on the particular concept of democracy which distinguishes our organisation. And yet the book as a whole does not represent the position of Mehr Demokratie, but that of its authors.

Our aim is to make a contribution to a vital debate. So we are interested in what our readers think. If you would like to respond, please write to me at: michael.efler@mehr-demokratie.de.

In a document of this size and with a subject-matter of this complexity it is highly unlikely that we have entirely avoided the occasional error. If you find any, please let us know.

We owe a debt of gratitude to several people, in particular Felix Wünsche, Daniela Beer, Claudia Löhle and Ulrich Müller. Without their help this document would not have reached the state of maturity in which you find it here.

Berlin and Munich, January 2009

Michael Efler, Gerald Häfner, Roman Huber and Percy Vogel

Introduction

European integration is the outcome of a centuries-long desire for peace in Europe. But the right moment for it to come into being did not occur until after the two terrible world wars of the first half of the 20th century. It would not have happened, however, without the determination of its founders, who made intelligent use of an historic opportunity – just as Europe was splitting itself in half again ideologically. More than half a century later we can say that the long-term “European Peace Project” has been a success.

But as we know, every solution to a problem can create new problems which also have to be tackled. One of the problems which European integration has created is the frequently identified “democratic deficit” of the EU. Though our older readers in particular may think that a deficit of democracy is less of a threat than war, this is not a problem to which we should turn a blind eye. For if it is true that peace is a precondition of democracy, it is also true that democracy seems to have made a major contribution towards peace between countries around the world.¹ Germany’s aggressive role in both world wars can be traced to the failure of the democratic revolution in the middle of the 19th century. Above all, however, it is a fact that the democratic system of government nominally embodies those central shared values of the member states of the EU – first and foremost the ideal of universal freedom – which belong in the catalogue of fundamental human rights.

Thus democracy also makes the claim to be the *vehicle* of peace, just as it should be the vehicle of *all* other policies. In the opinion of the authors, therefore, the democratisation of the EU should be viewed as a precondition for long-lasting peace in Europe.

¹ So far there have been no wars between democracies. Many academics find a causal relationship in this. For a critical view see: Rosato, S., 2003. The flawed logic of democratic peace theory. *American Political Science Review*, 97(4), p. 585-602.

But if democratic values really are shared and prized in the EU, why then does the EU suffer from a “democratic deficit”? Perhaps the answer can be formulated as follows: What seemed like a good idea in terms of the politics of peace turns out to have been a fundamentally flawed design in terms of democracy. The main aim of the first treaties was to secure peace between countries which had previously been enemies of each other – so foreign policy was likewise aimed at the same goals. Since then the European Community has been built up on treaties between states – with the result that it has remained essentially in the control of the national governing executives. What is fateful in this is the fact that in democratically-constituted states foreign policy is typically *the* area of politics which is least under democratic control. Foreign policy neither plays a significant role in the elections – which are normally focused on domestic policy – nor are the procedures for controlling or having any input into foreign policy on the part of parliaments or the electorate especially well defined.² To date, therefore, “inter-state cooperation” has in fact meant “inter-governmental cooperation” – not at all, or only to a small extent, “cooperation between parliaments and the citizens of the member states”. European integration has taken place, so to speak, in the “blind spot” of democracy – at the same time as it has acquired greater and greater direct influence on the lives of Europe’s citizens.

Where there is politics, there must also be democracy. But no proper place was given to democracy at the outset. Quite the reverse: many of the founders of the EU project were thinking of possible strategies for circumventing democratic participation and national claims to sovereignty. Others were openly striving to “overcome nationalism” – ignoring the question as to what the achievement of this goal would mean for European democracy. As treaty followed treaty, the EU began to take on more and more of the character of a state, without ever formally becoming one. The proposed new Lisbon Treaty includes the following: EU citi-

² Switzerland – and to a lesser extent Ireland and Denmark – are notable exceptions.

zenship; distinct EU judicial, executive and legislative organs with wide-ranging political powers; a directly-elected assembly based on a general right to vote; freedom of movement within the entire EU; separate EU fundamental human rights; the EU to have its own legal identity. Then there is the common foreign policy, police and judicial cooperation in criminal matters – and even the promotion of a common defence policy.

But this phase – of a process of centralisation of which the public has been largely unaware – is now over. With integration increasing from treaty to treaty, the calls for democratisation also grew louder. At the latest by the time the draft constitutional treaty was published, the demand for democratisation and for genuine democratic legitimacy for the EU could not be ignored; they have become a growing part of the public debate. The EU is no longer judged merely on the practical outcomes of its policy decisions – their effects on the lives of its citizens – but also on the way those decisions are reached. Both in the national parliaments and in civil society, people have begun to raise the issue of political power and to call into question the balance of power which has obtained until now.

The calls for democratisation did not entirely fall on deaf ears; the EU has begun to react to the new demands. But contrary to the expectations of those involved with the treaty reforms, the public response has not been uniformly positive. This is due in part to a kind of reaction which must seem ungrateful from the point of view of the EU reformers: when the EU claims to be concerned to democratise itself, its actions are measured by the public against the normative criteria of democracy with which people are familiar from their own member-state countries.

Thus a step towards democratisation, which to the reformers in the EU institutions may appear as a significant improvement, may well be seen by the citizens as far too small, or even as a withholding of more radical measures. We will show later why this “in-gratitude” on the part of the citizens is by no means unfounded: the Lisbon Treaty reveals that the EU is still “off-course” democratically.

We are not at all suggesting that it will be easy to come up with possible solutions to the problem, or that such solutions would meet with general approval. On the contrary, there is a partial dilemma about democratising the EU: more democracy at the EU level necessarily means more limited democratic room for manoeuvre in the member states. And as long as there is no agreement within Europe as to whether the EU should be a federation of states (like Germany and Switzerland), or merely an association of states based on inter-governmental cooperation, the EU will continue to develop as a mongrel construct of both types – which will make democratisation difficult. On top of this, the multi-lingual nature of the EU and other factors which tend to fragment its civilian basis impede the development of the vital communication space for public discourse and also make effective representation in the European Parliament difficult.

Being realistic, we will probably have to suffer the situation for a while longer – if we actually want to preserve this community of nations. However, the situation is tolerable *only* as a temporary or transitional state of affairs; *in principle* it is completely intolerable. Revealing the structural dilemma and its historical origin may help to explain, but in no way can it justify, the EU's democratic deficits. The EU still has to demonstrate – and preferably sooner rather than later – that it is consistent with the democratic values it itself propounds, for only from this can it derive its legitimacy.

The task of an NGO which calls itself “More Democracy” – the organisation which commissioned us to write this book – can only be that of measuring the EU against the normative criteria of democracy and of making appropriate proposals for reform. In doing so, we aim to refrain to the greatest extent possible from expressly “political” commentary – even though this is extremely difficult to achieve, since the EU is a dynamically self-evolving system whose current institutional form is closely connected with its own self-awarded political aims. Nonetheless, that remains our goal. We therefore limit our critique to the contents of the various treaties, to procedures within the institutions of the EU, and to other aspects relevant to democracy. We do so, moreover, in the full aware-

Early prophets of European Integration



In 1693, *William Penn* (1644 – 1718), founder of the colony of Pennsylvania (part of today’s USA) wrote his *Essay towards the Present and Future Peace of Europe*. His idea for European integration came to him in London during the politically insecure and tense period between 1691 and 1693. Penn explains in his essay why he had decided to campaign for the establishment and preservation of peace in Europe. He envisioned a league of states and a European Parliament.



Immanuel Kant (1724 – 1804) was a German philosopher of the Age of Enlightenment. In his essay *Perpetual Peace – a Philosophical Sketch*, published in 1795, Kant wrote that states could injure each other merely by their proximity and that it was therefore their duty to move from a “natural” condition of being merely separate states to a “law-based” condition. The observance of law between states could best be guaranteed by the creation of a confederation.



Victor Hugo (1802 – 1885) was a French novelist and poet. In 1849, as president of the second International Peace Congress, he called for the founding of the “United States of Europe”.

ness that it is very much easier to draw attention to problems and to suggest solutions “on paper” than it is to remove the former and implement the latter in the real world of politics.

The primary aims of this book are, therefore, firstly an appraisal – a kind of “stock-taking” – of the state of democracy in the European Union as a league of states; and, secondly, the presenting of some ideas as to how democratisation could be achieved. Our hoped-for “target group” is all those readers from whom we expect the strongest desire for greater democracy – above all parliamentarians and citizens who are active in civil society. There is as yet hardly any real public debate on this issue, but such a debate is vital because – as history shows – there is little reason to expect adequate democratisation to be handed down “from above”.

In line with those twin aims, the book is roughly divided into two parts: in the first part, entitled “Problems”, we attempt an evaluation – using democratic criteria – of the EU treaties, how they came about and how they have been used in practice in the EU. The evaluation is based both on the Nice Treaty currently in force and on the Lisbon Treaty which is now awaiting ratification – with the emphasis on the latter, for the obvious reason that it is considered to be the most progressive treaty in democratic terms, and *specifically* by comparison with the Nice Treaty, whose democratic deficits the new treaty is meant to remove. The Lisbon Treaty represents the goal towards which the EU is currently striving – the standard by which we can measure it. The second section of the book, entitled “Solutions”, presents our proposals for the democratisation of the EU. The primary aim of the various proposals is the effective empowering of citizens in relation to EU affairs, first and foremost the right to have the final say.

Our concept of democracy

Presenting a critical evaluation of the quality of EU democracy only makes sense if it is clear to begin with what the authors mean by democracy. As members of *Mehr Demokratie* (More Democracy),

we endorse its emphasis on the design, introduction and sensible implementation of procedures of *direct democracy*, because we believe that the quality of a democracy is fundamentally measured by the extent to which citizens have genuinely effective possibilities of influencing the political process through (legal and “constitutional” i.e. statutory) binding democratic procedures. For us, democratic control, or “checks and balances”, means that political systems and procedures are able to respond to changing majorities of citizens with an appropriate change of policy.³ In our view, such “checks and balances” must necessarily include the right of final appeal (the “last word”, including the “power to self-empower”) i.e. the possibility for citizens to vote not only on procedural and constitutional matters, but also on proposed laws. Whether and to what extent the overall aim of effective control (checks and balances) is achieved, depends on a number of specific criteria:

Political appointments must 1. result from free, equal, general elections which are based on a genuine choice between politically significant alternatives (parties or candidates); 2. have short chains of legitimation (few electoral steps between the voters and the office), in which the degree of political significance of the office should be in relation to the degree of legitimation; 3. be subject to recall in line with changing majorities in the electorate; 4. be responsible exclusively for the specific area to which the elections apply (national representatives from general elections, MEPs from European elections etc.); 5. the actions of the office-holder must be transparent and open to evaluation; 6. the positions must be independent.

Substantive political decisions should be 1. made by political mandate holders elected according to the above provisions; or by the citizens themselves; 2. able to be challenged by voters in a referendum; 3. not mortgage the future and be reversible; 4.

³ This definition suggests a strong overlap with the allied concept of “responsivity”. Democratic control is not to be confused with what in a state governed by the rule of law are the equally important checks on compliance with laws and standards, for which the judiciary, the administration and the police bear responsibility.

be selected from a range of genuine alternatives; 5. be based on transparent and documented democratic procedures; 6. not be pre-structured in respect of content by any non-transparent extra-parliamentary interests – for example, as a result of certain forms of lobbying; 7. not lead to disempowerment of citizens; 8. within federal structures be reached at the correct level i.e. the level which has been allotted competence in the relevant treaty or constitution.

One may agree or not with these criteria. However, listing them like this should make it easier for our readers both to understand how and why we make our judgements, and to form their own opinion. What is important in any event, before making a critical analysis, is to set out in advance the criteria on which the assessment of the quality of democracy is to be based. Only in this way is it possible to make clear the difference between the ideal and the reality. And only in this way can we really take to heart Beate Kohler-Koch's admonition "that we should not *lower* our normative standards to make them fit the EU reality".⁴

⁴ From: Kohler-Koch, B., 1999. Europe in Search of Legitimate Governance. ARENA Working Papers, WP 99/27, Available at: http://www.arena.uio.no/publications/wp99_27.htm.

The bottom line: a federal and democratic European Union

In this section we wish to summarise the main solutions to the current crisis of democracy in the European Union. We propose that a directly elected Convention should be established to work out the future structure of the EU – the way it should be constituted in future. The Convention’s final proposals would be submitted for approval by all the citizens of the EU in referendums. This procedure ensures that the future shape of the EU is outlined by the directly elected representatives of the peoples of Europe and is given the necessary final seal of approval by the people themselves. It would significantly strengthen people’s sense of identification with the European Union, and such an early and far-reaching token of popular sovereignty would increase the likelihood of the proposals receiving majority approval.

In our scheme, a federal division of powers would be of vital importance for a reformed EU. There must be absolute clarity as to which competences are exercised at the EU level and which remain within the control of the member states. This would be for the Convention to determine, as a core part of its task of deciding the future “constitution” of the EU (i.e. its structure and the relationship between its “parts”). In our view, it makes sense – and it would also be important – to arrange for a significant decentralisation of powers and to clearly define the boundaries of the EU. This would ensure – in line with the principle of subsidiarity – that competences are always owned by the smallest practicable units; federal levels also within states would be granted more far-reaching powers. Competences would be divided according to the different policy areas.

In those areas for which the EU was responsible, decisions would be made by the European Parliament jointly with the Chamber of States, the body representing the member states. Both institutions would have the right to propose new law – giving the representatives of both the citizens of the EU and the national parliaments a share in setting the political agenda. The two bodies

would also provide checks and balances on each other. The voters would also have the right to propose new law (initiative right) and have the final say in a referendum (decision-making right). In our scheme they would also have a potential right of veto – through the facultative referendum – on laws passed by the Parliament and the Chamber of States. Future changes to the foundation treaty of the EU would be subject to mandatory referendums.

Appeals against existing law could be made to the European Court of Justice, which would function as a constitutional court and issue rulings on questions of subsidiarity – guaranteeing effective control of the EU’s legislative organs. Breaches of treaty rules could also be referred to the ECJ. We propose that the European Council continue to exist in an advisory capacity, but with the exception of the right of initiative to propose new law it would have no further influence on legislation. A democratised European Commission elected by the European Parliament would serve as the executive – but primarily in an administrative capacity and with the responsibility for implementing agreed EU measures. The Commission would also be responsible for the external representation of the EU.

Democratic control of the institutions is the key factor in our scheme. It would be achieved in three main ways. Firstly, the separation of powers – a basic precondition for any democracy – would be systematically implemented. The transfer of legislative powers from the European Council to the EP and the Chamber of States would dismantle the current “executive legislature”, whose powers would pass into the hands of directly and indirectly elected representatives.

The move to a system of elected judges for the ECJ would be a radical innovation, taking the power to influence the judiciary away from the national governments. An independent, elected judiciary would be a further key component of the separation of powers. The Commission, as the executive organ of a reformed EU, would no longer have a monopoly on legislative initiative, handing its legislative competences to elected representatives of the people.

Secondly, the European institutions would monitor and control each other. Within the legislative branch this would be the European Parliament and the Chamber of States, which would both be subject to rulings by the ECJ. An elected ECJ would likewise be subject to democratic control, as would a reformed European Commission staffed by officials selected by the European Parliament. In our scheme, consistent application of the principle of “checks and balances” would in future prevent such an accumulation of power as is currently to be found in the European Council.

Ultimately, the citizens of the European Union would control its institutions through elections and elements of direct democracy. Legitimacy is the core principle of democracy: the political decisions of the EU must reflect the wishes of the voters. Anything other than this runs counter to the fundamental principles of democracy.

Mehr Demokratie



Mehr Demokratie was founded in Bonn in 1988 by a group of activists. Today we have 12 regional (federal state) associations and around 5,000 members and sponsors – making *Mehr Demokratie* the largest non-party citizens' organisation for direct democracy in the European Union. We campaign for:

- the introduction of national referendums in Germany (they exist so far only at the state [Bundesland] and local levels)
- fair rules for citizens' initiatives in the federal states and local authorities
- other democratic and parliamentary reforms, including up-to-date electoral procedures
- freedom of information
- the democratisation of the European Union

Our vision: a vibrant democracy. We want to see a political culture which promotes dialogue and participation. Citizens' initiatives and referendums, and other forms of participation, encourage citizens to become involved in shaping political policy. *Mehr Demokratie* remains politically neutral i.e. we express a view only on procedural questions of democracy – not on specific policies. Our overriding goal is to try to ensure that it is the citizens themselves who make the decisions on the major issues.

We campaign in a variety of different ways for direct democracy at all political levels. Our work is carried out by a core team of professionals backed up by hundreds of volunteers. Our Board of Trustees – which has a complement of more than 50 people from a wide range of backgrounds in academia, the arts, the economy and politics – provides advisory support for the organisation in its work.

Our work is financed through donations and membership fees. We receive no public funding. This guarantees our independence.

Since 2003, *Mehr Demokratie* has been active also at the EU level, initially campaigning for direct democracy in general and for referendums on the Constitutional Treaty in particular. Our campaigning work played a significant role in ensuring that the European Citizens' Initiative was included in the Constitutional Treaty, and that a referendum on the Treaty was held in Holland. In 2005, *Mehr Demokratie* became a founding member of the EU-wide campaign network *Democracy International*, which had democratic treaty reform (including a directly elected Convention) as one of its goals.

Our goal is a European Union whose democratic form is shaped and controlled to a much greater degree by the citizens than is presently the case.

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