

DIRITTI COMPARATI

Comparare i diritti fondamentali in Europa

THE EUROPEAN UNION TO THE DEMOCRACY TEST*

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This is a timely call for reflecting on “the best institutional framework for the Eurozone, in order for it to function in the most efficient, transparent and democratic way,” and, in a broader sense, on the prospective of a “political (federal) Union.” In times of crisis of the European integration project, ever more exposed to the distrust especially of young generations faced with dramatically high unemployment rates, and contrasted by anti-European political movements, any such reflection brings about the problem of popular consensus, required in order to carry out that project. Therefore, my approach will go along the line of the relationship between European citizenship and democracy, pointing out the need for a politically meaningful interaction between Parliament and Commission, in the light of the democratic principles laid down in the Lisbon Treaty.

The May's 2014 elections: towards a "new" European Parliament

According to a simplified and simplistic analysis, the upcoming elections for the renewal of the European Parliament (EP) are presented, in front of the pressure of a mounting anti-Europeanism, more like a referendum for or against Europe. While their "political" importance lies in the fact that they shall bring to life the first Parliament elected to represent – no longer the "citizens of the member states" – but directly the "citizens of the Union." Such as established by the EU Treaty, which states the principle that "Citizens are directly represented at Union level in the European Parliament" (art. 10, 2), and "The European Parliament shall be composed of representatives of the

Union's citizens" (art. 14, 2). The next EP will thus take on the character of a "supranational" parliament, and one with increased powers (as co-legislator, also having equal competences with the Council as budgetary authority). In addition to new powers, such as the power to "elect" the President of the European Commission "by a majority of its component members" (art. 17, 7), while the Commission as a body shall be appointed subject to a vote of consent by the EP, and be responsible to the Parliament itself (art. 17, 8). In this sense, the May's 2014 European parliament

elections have to be looked at as a truly historical event that can lead to a change of pace and, hopefully, to a step further on the road to a "deeper political integration" of Europe. In other words, they will be able to open the "parliamentary way" to political union of Europe based on a European government of its own.

In contrast with a current narrative, heralded by the "fiscal compact" emergency approach to the euro crisis, pointing to the European Council as the center of the executive power in Europe, this would mean to build up a more democratic way to United States of Europe, where the main subject, Europe, will be represented as such by its common institutions, the Parliament and the Commission, inter-acting in their political capacity of being representative of the Union's citizens.

The issue of the democratic government's deficit in Europe

Indeed, the economic and financial crisis still looming on the euro zone

showed a deficit at the European level, which affects not only the question of how Europe functions, from the point of view of the decision-making process, but also the problem of policy choices, namely the issue of European government of phenomena and dynamics with high social impact in regard to the interests and needs of the people at large living under the Union's flag. In essence, the issue of the "decision-making power," together with the political agenda and its democratic setting at European level.

Who is governing in Europe? Such issue, about the European authority to whom confer decision-making power, it hardly finds a center of gravity upon which to settle down. It continues to oscillate between formulas sometimes rather vague or rhetorical of "multi-level governance," on one side, and, on the other, the requirements for the definition and protection of a truly common interest, clearly identified, in a transparent way and, above all, on the basis of a fully democratic decision-making method. One may object that it is like the case of a dog chasing its tail. There is no (federal) European government simply because there is not any federation yet. To this regard it is

observed: "The basic problem is that the EU is not a true union but more a collection of states that have not in any real sense ceded decision-making power to a central authority. The result is chaos fed by conflicting national objectives" (D.C. Unger 2013). But, as shown in general by the history of the integration process (starting since the early 1970s), and in particular by the financial (sovereign debt and banking) crisis, this is partially true, and probably totally untrue in the case of the euro zone. Each time a "deficit of government" at European level has occurred, under the pressure of

circumstances, it has been filled in, one way or another, with the initiative of the European Council, acting as a kind of "gouvernement européen provisoire"; as already envisaged by Jean Monnet, in his *Mémoires*, clearly pointing out the advantages as well as the inconveniences of the intergovernmental method.

This "Europe's other deficit" (Schmidt, 2013) raises questions of legitimacy and credibility of politics in Europe, concerning both European institutions

and national governments, as well. Hence the disorientation of public opinion put in front of a scenario where various players are acting: European Council, Commission, Eurogroup, European Central Bank, heads of national government (as in the case of the so-called duo “Merkozy”). Not to mention, furthermore, international authorities (the International Monetary Fund, as part of the “troika”). As it has been observed, with regard to euro zone member countries which have asked for assistance, nationals of such countries, though being European citizens, have felt the burden of decisions imposed at European level by “an ill-defined authority,” and in a context where “responsibilities are diluted in a politico-technocratic magma, deprived of legitimacy which the ‘troika’ has come to represent” (Eiffel Group, 2014).

Taking seriously the principle of representative democracy

The resulting opacity, however due to the undoubted complexity of the European political-institutional architecture, yet preclude to see and deal with in a clear way some fundamental issues. Two main issues come to the fore. Needless to say, the more so in the case of the euro zone institutional and decisional setting.

First, the issue of “government,” as a form of European statehood, to which assign transfers of sovereignty, within a framework that respects the fundamental principles of any democracy: the principle of separation of powers (who decides what), and the principle of political accountability (who responds of what and before whom).

Second, the issue of a “European political space,” where it becomes of crucial importance the relationship between sovereignty and citizenship, in terms of transparent and democratic manner of deliberation, as well as in terms of protection of individual rights, to the extent that any exercise of decision-making power at European level affects directly the living conditions of nationals as European citizens too.

Both issues are closely intertwined with the Union’s legitimacy question, in terms of the democratic unitary foundation linked to the sovereignty of EU citizens. To what extent the EU Treaty’s statement, according to which the “functioning of the Union shall be founded on representative democracy,” is to be taken seriously?

As I have already tried to argue elsewhere (Moccia, 2012), it is a question of great practical consequences, in order to push ahead with political integration of Europe, via a EP “composed of representatives of the Union’s citizens.” In consideration of the possibility of the election by a majority of the Parliament itself, to the presidency of the Commission, of a candidate who has been nominated to that office by a political group participating in the electoral contest for the renewal of the EP. A candidate who will be thus elected, though upon designation of the European Council, in force of the electoral results, and in his representative capacity as political leader of a parliamentary majority (albeit of a coalition of political groups). In the present institutional framework, it is evident the significance of a strong determination by the EP, being the first and foremost voice of the EU citizens, to fully play its role to share responsibility with — rather than simply complement — the European Council, in giving the investiture to the new president of the Commission and the Commission as a whole, on the basis of the electoral results, thus conferring a political dimension on such institution precisely in its relationship with Parliament. That voice will have to be heard as the voice of the majority or the opposition, as may be the case, to uphold or withhold confidence in the Commission, and to exercise political control over its action. In this regard it is proposed that “the Commission’s accountability to Parliament should be strengthened through the Union’s annual and multiannual programming as well as by creating symmetry between the majorities required for the election of the President of the Commission and for the motion of censure” (EP 2013/2130(INI)).

If the new EP and the new Commission want to move together with determination towards a truly political Europe, as the times require, this means that decision-making power must lie with a government of Europe itself, under parliamentary control (Godino and Verdier, 2014). Accordingly, the majority and opposition voices within the EP and, by and large, the interaction between Parliament and Commission will naturally give shape, especially in terms of difference of views with the heads of state and government or ministries, to a political space of debate

and confrontation, in order to make citizens more sensitive, informed and keen to form their opinion on major European affairs. To let further grow this space it seems desirable that the candidate for president of the Commission will present his political program to Parliament, and that Parliament's powers will be reinforced (in the perspective also of treaties revision). This change of pace is needed in order to counteract the trend that, so far, has seen the European Council reserving to itself the role as a principal agent of the Union's government and an agenda setter in policy priorities and legislative choices. A trend that has deeply affected and changed the nature and role of the Commission, by reducing it to a kind of "secretariat" of the Council, in charge of carrying out its decisions. With the consequent perception, at least by the public, that accentuates the predominantly "technical" (and "technocratic") character of the Commission powers, acting in a way suited more to its bureaucratic function of ensuring the application of the Treaties, rather than its political function of promoting the Union's general interest. It is no longer time of an alleged "neutrality" of the Commission, with regard to the definition and implementation of public policies directly affecting people's living conditions, in view of an abstract and disembodied Union's general interest, which is in reality a result of a compromise negotiated in the European Council between national governments, if not imposed inside and outside Council's closed doors by the prevailing bargaining power of some government over others.

Indeed, a Union's general interest in order to be truly such, can only be the result of choices proposed by an Union's executive power representing at European level the general interest of the Union's citizens, and acting in the pursuit of political objectives and programs tested through an electoral competition and approved by a parliamentary majority vote. These choices will have, of course, to be consented by both Parliament and Council, through co-decision or ordinary legislative procedure, based on the principle, enshrined in the Treaty but which is to be fully implemented yet, that in legislative matters, Parliament and Council are acting on an equal footing. In

addition, moreover, to other parliamentary checks at national level, as regards the principle of subsidiarity, according to the new formula put forward by EU Treaty, about the positive role that should be played by national parliaments in order “to contribute actively to the good functioning of the Union.” A formula that seeks to give an even greater weight to the principle of subsidiarity, seen as “a means of engaging in ‘political dialogue’ with the European institutions than as a formal legal means of blocking legislation” (2013/2185(INI)).

Final considerations

All this brings us to some final remarks, summing up the above.

There seems to be no way out of the crisis still looming on the euro zone and the future of Europe, under existing treaties (included the so-called “fiscal compact”) or in the light of the revision of such treaties, that could really work without curing the main cause of the growing distrust of the people in the European project, by reconciling and reconnecting citizens with this project, enabling them to cast their votes for a European government accountable to their directly elected representatives in the European Parliament. This is so, not simply because it would be out of the question, as it has been suggested, building “any separate institutional setting exclusive for the euro area apart from the common existing institutions” (Vitorino, 2013), but because what is at stake is

precisely the democratic government of Europe as such, through institutions common to a constitutional order of its own, of which the Union’s citizenship is the foundation, inside and outside the euro zone, in an larger area of freedom, security and justice, where the individual is placed “at the heart” of the Union’s activities (as stated in the Preamble of EU Charter of Fundamental Rights).

Any economic (and monetary) governance cannot but be founded on principles of democratic government of public policies, including fiscal ones, of course.

The enhancing of the Union’s democratic legitimacy, to begin with the procedure leading to the parliamentary election of the president of the

Commission and the investiture of the Commission as a whole, will bring about a new political dimension on the European inter-institutional agenda.

To this regard, the true meaning of the EU Treaty's provisions contained in Articles 10 to 12 lies in the fact that they give shape to a basic core of "constitutional principles," according to and in compliance with which Europe is to be governed in the name and interest of its citizens. A proper reading of such provisions is in contrast with the role taken by the European Council as "governing body" of the Union, with an almost exclusive decision-making power, though formally kept out from the decisionmaking process (by the Treaty's provision excluding it from the exercise of legislative functions). This contrast and the resulting contradiction clearly point at the need of a rebalancing of power, in line with the core principles of representative democracy at the basis of the Union's functioning. Such need will have to be ranked high in the politico-institutional agenda of the new Parliament and Commission, alike.

The community method of decision must be reviewed to make it more like a democratic method of governing Europe. It must be made, while supported and strengthened with means of participatory democracy (consultation and dialogue with social partners and civil society), more suited to gain from the people a consent which can no longer be only "passive," such as the one that since the beginning of the integration process and along its development has characterized the perception of Europe as an entity far away and essentially irrelevant, if not insignificant, compared to the living conditions of the people. In this respect, to put the issue of a democratic government of Europe at the top of the agenda of political groups and parties and more generally to bring it to the attention of the media as well as in all places of cultural debate for the formation of a public opinion, pending the European elections, it will really mean to put at the center of the European public space the question of how to get an active and informed consent on the part of the people, the citizens, in terms of readability, accountability and political credibility of the decisions

taken, as one say, "in Brussels."

In view of election results that most likely will show the advancement of political forces (parties/movements) of anti-European character, engaged with their elected representatives in the new Parliament to destabilize, rather than to reform, the institutions and policies of the Union, it appears all the more necessary to prepare the ground for a democratic debate and confrontation with these forces. Not only to resist the anti-European drift, but much more to revive, albeit from critical and not less proactive positions and proposals, the project of a political Union, as a prerequisite to promote, according to EU Treaty, the peace, its values and the well-being of people, and to offer to Union's citizens an area of freedom, security and justice without internal frontiers, where to implement economic growth objectives of full employment, progress and social justice. All this in an institutional and decisional framework of democratic government of the Union, based on the sovereignty of its citizens directly represented at European level by the Parliament in relation to the Commission as a body responsible to the Parliament itself. Indeed, the battle for a political Union, democratically founded, is to be fought at grass-root level, on territories and among people. But it must be won at the top of the Union's institutional/decisional framework. Where Commission and Parliament will have to fully play each one its own role, being inspired by the visionary spirit of their respective noble fathers: Monnet and Spinelli, back again, but together!

Key words: EU citizenship - EU parliamentary democracy - EU government - European Parliament and European Commission relationship

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