The EU ain't broke

BY ANDREW MORAVCSIK

The European constitutional convention aims to tackle the EU's democratic deficit. It won't succeed because the deficit is largely a myth. The EU's power is highly constrained, it interferes little in the salient issues of national politics and it already has as much democratic oversight as is practical

THE PAST DECADE has witnessed the emergence of a constitutional settlement for the European Union that is likely to govern its affairs for the foreseeable future. The treaties of Amsterdam and Nice failed to alter its structure significantly. Despite its highly charged rhetoric, the constitutional convention due to report later this year is unlikely to achieve much more. The most ambitious proposals still under discussion—modest expansion of qualified majority voting, creating a forum for national parliamentarians, restructuring the European council—merely consolidate decade-long trends. Integration is likely to advance incrementally, as the stock of viable *grands projets* is depleted. Moves to deepen foreign policy, justice, and monetary policy co-operation require only modest institutional reforms, and few other issues of significance are on the horizon. Moreover, current activities are quite close to what European publics say that they want.

If major reform is unlikely, why then a constitutional convention? Most politicians, commentators and some vocal groups of European voters argue that the EU suffers from a severe "democratic deficit." In the communiqué of the EU Summit which launched the convention, European leaders designated the EU's lack of democratic legitimacy as "the first challenge facing Europe." To be sure, some reasons for the perception of a democratic deficit are beyond remedy. A multinational organisation of continental scope is bound to appear rather distant from the individual citizen. Multilateral bodies lack the grounding in a common history, culture and symbolism upon which most individual polities can draw. Yet many believe that the EU suffers from a more concrete lack of accountability and legitimacy, and it is to redress this problem that the convention was called.

It is not hard to see why EU institutions *seem* democratically illegitimate. Only one branch of the EU is directly elected: the European Parliament (EP). The EP is far weaker than national counterparts, and its elections are decentralised, apathetic affairs, in which a small number of voters select among national parties on the basis of national rather than EU issues. The European Commission is widely perceived as a remote technocracy. The European Court of Justice, with 15 appointed judges, is unusually powerful by European standards. Most powerful amongst Brussels institutions, the Council of Ministers assembles national ministers, diplomats and officials, who often deliberate in secret. On the right of politics, some believe the EU is infringing on personal liberty. On the left, many view the EU as a throwback to the fiscally weak, neo-liberal state of the 19th century—EU directives promote wider and deeper markets, with a limited range of balancing social policies.

Nevertheless, if we adopt *reasonable criteria* for judging democratic governance then the claim that the EU is democratically illegitimate is not supported by the evidence. Constitutional checks and balances, indirect democratic control via national governments, and the growing powers of the European Parliament are enough to ensure that EU policy-making is, in nearly all cases, clean, transparent, effective and responsive to the demands of European citizens. Most critics overlook this relatively optimistic conclusion because comparisons are made between the EU and a utopian form of deliberative democracy.

It is unfair to judge the EU by standards that *no* modern government can meet. National governments routinely delegate to bodies such as constitutional courts, central banks, regulatory agencies and criminal prosecutors. Moreover, most analysts fail to

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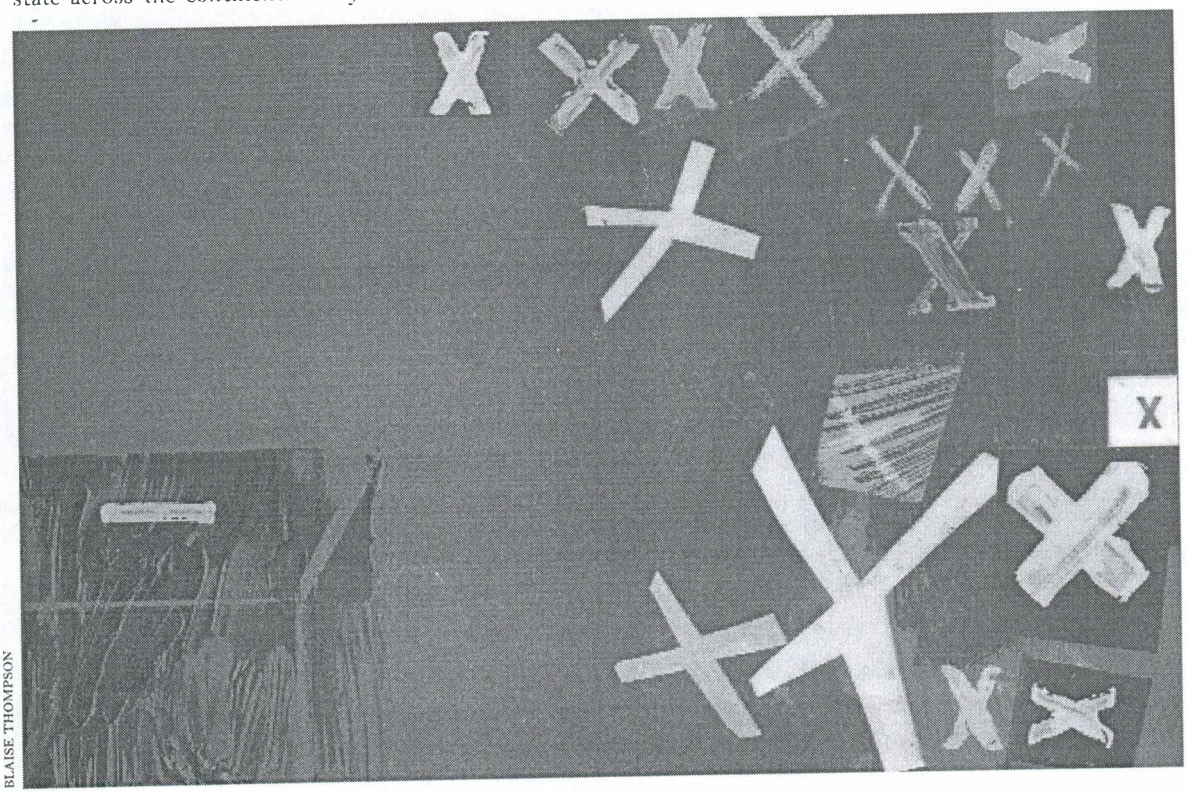
appreciate the symbiotic relationship between national and EU policy-making—a division of labour in which commonly delegated functions tend to be carried out by the EU, while those functions that inspire popular participation remain largely national. We might, of course, want to criticise the broader trend toward delegation of power, judicial enforcement of rights, and strong executive leadership, but why should the EU bear the brunt of such a critique?

ONE OF the oldest justifications for democracy, dating back to John Locke and others in early modern Europe, is that it assures limited government by checking the arbitrary and potentially corrupt power of the state. The concern that the EU performs badly by this standard gains some plausibility from the technocratic nature of much EU regulation, the big role played by non-elected officials, and the geographical and cultural distance between those regulators and the average EU citizen. It is no surprise, then, that arbitrary rule by national and supranational technocrats—"bureaucratic despotism" by a "superstate" in Brussels, as Oxford academic Larry Siedentop puts it in *Democracy in Europe*—is a widespread concern. In a curiously anachronistic reading of EU history, Siedentop sees the EU as a scheme imposed by France—in the manner of Louis XIV and Napoleon—to propagate the French administrative state across the continent. Many libertarians and free marketeers, not least in Britain, share this view.

Yet the spectre of a European superstate is an illusion. The constitutional settlement embedded in the EU's treaty basis imposes exceedingly tight constraints on policy. It combines elements of the consensus democracy of the Netherlands, the federalism of Canada, the checks and balances of the US, and the reduced fiscal capacity of Switzerland. The result is an institution that, broadly speaking, does not tax, spend, implement or coerce and, in many areas, does not even hold a legal monopoly on public authority.

The provision of security through the monopoly of legitimate force is the oldest and most fundamental activity of the modern state. Yet the EU has no police, no army, no significant intelligence capacity—and no realistic prospect of obtaining any of these. Even if the most ambitious plans currently on the table in European defence were fully realised, the EU would control only 2 per cent of European Nato forces—and these forces could be employed only for a narrow range of peace-keeping tasks. Fiscal constraints will mean some rationalisation of defence procurement, yet the EU does not envisage thereby gaining control over military spending. Although the EU helps to co-ordinate efforts to combat international crime, the structure of national police, criminal justice, and punishment systems remains essentially unchanged—save for some information sharing.

The ability to tax, spend, and redistribute wealth is



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the pre-eminent activity of the modern state, yet the EU does little of this. Its ability to tax is capped at about 1.3 per cent of the combined GNP of its members—representing only about 2 per cent of the public spending by European national and local governments. These funds are transfers from national governments, not direct taxation; and their disbursement is directed to a small range of policies like the common agricultural policy (CAP), regional funds and development aid—leaving little room for discretionary spending by Brussels technocrats. Even in areas of the EU's greatest fiscal activity, most public funding remains national. France is the biggest CAP beneficiary, but national sources provide two thirds of French farm spending—enough to counteract EU influence where desired. None of this can change without the unanimous consent of the member states. If "taxation without representation is tyranny," as James Otis and other Americans argued more than 200 years ago, then European institutions with such paltry fiscal means hardly qualify. The EU is condemned in perpetuity to be what Giandomenico Majone calls a "regulatory polity"—a system with instruments of regulation, but little fiscal discretion.

In a regulatory polity, to be sure, great power lies in the ability to oversee detailed implementation. But who implements most EU regulations? Not the Brussels bureaucracy. For the EU's employees, which number less than 30,000—of which 4-5,000 are real decision-makers—constitute a workforce no larger that that of a medium-sized European city. They number about *one-fortieth* of the civilian federal workforce in the US, a country noted for the small size of federal civilian employment. So the task of implementing EU regulations falls to *national* parliaments and officials. Thus, while it is hard for such governments to avoid compliance permanently, they can shade it to benefit this or that domestic group, and delay it for years.

The EU's ability to act, even in those areas where it enjoys clear competence, is further constrained by the checks and balances among Brussels institutions. The EU is not a system of parliamentary sovereignty but one of separation of powers, with power divided vertically amongst the commission, council, parliament and court, and horizontally amongst local, national and transnational levels. The commission must propose, the Council of Ministers must decide, a supermajority of European parliamentarians must assent and, if the result is challenged, the European court must approve. National parliaments or officials must then transpose directives into national law, and national bureaucracies must implement them. And even *within* each branch and level of EU governance, we encounter a high level of pluralism. The commission, council and parliament are all colonised by myriad national and functional interests.

Almost any significant EU policy must be launched by unanimous consent followed, in the case of any amendment to the Treaty of Rome, by national ratification (electoral, parliamentary or administrative)—a threshold for constitutional revision matched only by Switzerland. The EU has developed over the past two decades only by focusing on core areas of broad consensus, using money to persuade the recalcitrant. Once unanimous consent from the commission has been given, even everyday EU directives require the support of 70 to 100 per cent of the weighted votes of national representatives in the Council of Ministers—higher than required in any existing national polity and higher than required to amend almost any written constitution in the world.

If, even so, EU legislation is unacceptable to some governments, they have alternatives to strict compliance. In the core areas of trade and the single market, EU rules remain relatively strict. Yet there are many areas, even in economic affairs, where states can act autonomously. Governments often work through other international bodies (such as the UN), or work with a "coalition of the willing" and move ahead inside EU institutions ("enhanced co-operation" in social, monetary, defence and immigration policies). Opt-outs and transition periods are also common. Even within the EU's core trade activities, governments can maintain higher regulatory protection, as in environmental policy, and act unilaterally where the EU has not effectively legislated.

Broadly speaking, the EU does not tax, spend, implement or coerce—it has neither army nor police force

With the exceptions of the single market, central bank, competition authority, constitutional adjudication and, perhaps, the conduct of external trade negotiations—the powers of the EU to administer and implement are quite weak. And where in recent years regulatory controls have gone beyond basic market regulation, as in nascent immigration and foreign policies, they are increasingly handled in the intergovernmental manner of classic international organisations, with unanimous voting required.

Existing constraints on the EU not only render arbitrary and capricious action almost impossible, but assure that legislation out of Brussels is likely to represent a very broad consensus. This should give us reason for confidence that it legislates in the broad public interest. And because the constraints are grounded in the very constitutional structure of the EU, none of this is likely to change soon.

Moreover, by limiting the EU's fiscal, administrative or coercive resources, the member states have imposed permanent limits on nearly all the policies

most politically salient to European voters. Less than 20 per cent of legislation in major European countries originates with the EU. And consider what is almost entirely excluded: taxation and the setting of fiscal priorities, social welfare, defence and police powers, education and non-economic civil and criminal law—to name a few. Almost the only salient policies on which the EU has a big impact are certain aspects of environmental and macroeconomic policy.

WHILE INSTITUTIONAL constraints ensure that the EU is not becoming a "bureaucratic despotism," they do not resolve all concerns about its democratic deficit. There remain essential areas—notably of market regulation, monetary policy, trade negotiation, anti-trust and anti-subsidy policy, agricultural policy, industrial standardisation and environment policy—in which regulatory activity in Brussels, Luxembourg or Frankfurt dominates European policy-making. In some of these matters, moreover, semi-autonomous supranational authorities such as the European Court of Justice, the European Central Bank, and the commission's directorate-general for competition, wield considerable autonomy and discretion. Even in the great majority of cases where regulation requires the super-majoritarian consent of national governments, it might be objected that the EU policy process favours national *bureaucrats* and *ministers* at the expense of *parliaments* and *publics*. These considerations lead many to believe that the lack of direct democratic participation means that the EU is an insulated cartel of supranational and national technocrats bent on regulating citizens free from public scrutiny.

As a description of EU policy-making, there is some truth in this. But what is the implication for democratic legitimacy? Given the vehemence of the criticism levelled against it, one might assume that the EU lacks any form of democratic accountability. In fact, the EU employs two robust mechanisms: *direct* accountability via the EP and *indirect* accountability via elected national officials in the council.

Over the last two decades, the EP has been supplanting the commission as the primary interlocutor vis-à-vis the council in the EU legislative process. The EP now enjoys the right, late in the legislative process, to accept, reject or amend legislation in a manner difficult for the member states to reject. The EP is directly elected by proportional representation within nation states, and often acts independently of ruling national parties. The EP, which tends to reach decisions by large majorities, is most active in precisely those areas where public preferences are strong, such as environmental policy, oversight of the commission, and social policy.

Still, if European parliamentary elections were the only form of democratic accountability to which the EU were subject, scepticism would be warranted. Yet

a more important, albeit indirect, channel for democratic control exists in the elected governments of the member states. In the European council, which is consolidating its position as the EU's dominant institution, elected national leaders wield power directly—setting the agenda for the EU as a whole. In the Council of Ministers, which imposes the most important constraint on everyday EU legislation, permanent representatives, officials and ministers act under constant instruction from national executives, just as they would at home. In countries that have made it a priority, such as Denmark, national parliaments consider many EU policies before they are legislated. All countries are free to do the same.

In contrast to the impression of a cadre of secretive Brussels gnomes, EU officials in fact work under public scrutiny more intense than that found in almost any of its member states. With 20 commissioners and their staffs, 15 national delegations, over 600 parliamentarians, 100s of national ministers and 1,000s of national officials, *ex ante* parliamentary scrutiny in some countries and *ex post* parliamentary scrutiny in nearly all, and the ultimate need for domestic implementation, there can be no such thing as a monopoly of information in the EU. Information is more plentiful about the EU political and regulatory process, at least at the Brussels level, than about similar processes in nearly all member states. The EU legislative process works slowly, with no equivalent to ruling by executive decree or pushing legislation swiftly through a friendly parliament. While some aspects of the system, such as early discussions amongst national representatives, tend to take place in relative secret, the same is true of the preparation of legislation in national systems. Recent research reveals that EU regulatory processes are as open to input from civil society, and as constrained by the need to give reasons, as the (relatively open) systems of Switzerland and the US. The EU system may be unfamiliar to its citizens, but it is hardly closed.

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Constant scrutiny from 15 different governments also renders the EU more transparent and less corrupt than almost any national government in Europe. "Sunshine laws" reveal documents, newspapers widely report deliberations, and the near total absence of discretionary spending or bureaucratic adjudication almost eliminates common incentives for corruption. Most administrative problems in the commission stem from its *lack* of staff, which requires many tasks to be outsourced to semi-public groups. Recent scandals, often cited to demonstrate the extent of EU corruption, are exceptions that prove the rule. When appointed a commissioner some years back, for example, Edith Cresson—a former French prime minister with a record for sleaze—was unceremoniously removed from office when she could not withstand Brussels's transnational glare.

Some might object that the EU relies too much on technocrats and judges to resolve essentially political questions involving the sensitive apportionment of cost, benefit and risk. And it is true that some of the most important EU institutions, such as the central bank and constitutional court, are of this type. Yet there is little that is distinctively "European" about this pattern of delegation. It is generally accepted amongst political commentators that the late 20th century has been a period of the "decline of parliaments" and the rise of courts, public administrations and the "core executive"—not least in Britain. Democratic accountability in such bodies is imposed not simply through indirect control through majoritarian institutions, but also through complex systems of indirect representation, selection of representatives, procedural norms, and precise balances among branches of government. The key point for understanding European integration is this: EU judges and technocrats enjoy the greatest autonomy in precisely those areas—central banking, constitutional adjudication, criminal and civil prosecution, technical administration and economic diplomacy—in which many advanced democracies, including EU states, also insulate themselves from direct political contestation.

This insulation is no historical accident. Most such "counter-majoritarian" institutions have been created in the EU and elsewhere for compelling reasons. Three goals are best achieved in this way:

1. *To provide greater efficiency and expertise in areas where most citizens remain "rationally ignorant" or non-participatory.* Involvement in the full range of government policies would impose costs beyond the willingness of any modern citizen to bear. Whether the area is environmental policy or medical drug authorisation, we do not expect complex medical, legal, or technical decisions to be made by direct popular vote.

2. *To dispense impartial and equitable justice, rights, and entitlements for individuals and minority groups.* Insulated authorities, such as constitutional courts, enforce individual or minority prerogatives against the immediate "tyranny of the majority." This tendency has spread in recent years as increasing numbers of governmental functions have been recognised as human rights that are judicially or administratively enforced, often at the international level. For this reason, many Europeans view with abhorrence the US tendency to elect state and local judges.

3. *To afford majorities fair and unbiased representation.* Insulated institutions can help redress biases in national democratic representation. The most common

distortion is the capture of government policy by narrow but powerful interest groups who oppose the interests of majorities with diffuse, longer-term, less self-conscious concerns. Consider free trade. Even Adam Smith and Richard Cobden realised that the broadly liberal interests of diffuse consumers and firms would often be trumped by pressure from concentrated groups of protectionist producers. Many of the same Europeans who criticise the democratic deficit also call for the US to retain "fast track" authority to pass trade liberalisation—nothing less than empowering the US executive to act with minimal legislative constraints. In this and other areas, the EU might be thought of as an institutional equivalent to "fast track" for Europe. In such cases, the EU is more representative of public preferences precisely because it is *less* directly democratic.

THE USE of non-majoritarian institutions to make important policy decisions alerts us to yet another source of democratic discontent, namely the perception that the EU is a neo-liberal conspiracy. Here the concern is not that the EU is too strong, as libertarians fear, but that it is too weak. The EU lacks democratic legitimacy because its policies are biased against particular popular interests. This social democratic critique—drawing on a tradition that dates back to Joseph Schumpeter and Karl Polanyi—begins by noting that most Europeans favour maintaining current levels of welfare spending, as demonstrated by the tendency of member states to spend increasing percentages of GNP on welfare as per capita income increases. This ideal cannot be realised today, it is alleged, because of the tendency of market competition to generate a "race to the bottom" in regulatory protection between countries. Such fears of "social dumping" underlie much anti-EU sentiment, especially in the social democratic polities of Scandinavia and northern Europe.

This criticism is more plausible than the libertarian fear that the EU is a regulatory superstate squelching markets and growth. Yet it is still exaggerated. Where the EU is active, there is little evidence of a regulatory race to the bottom. Instead it has tended to set standards for environmental and consumer protection at a high level. Even where the EU is not active, the best analyses of this question, such as that of German social scientist (and social democrat) Fritz Scharpf, conclude that there can be such a race to the bottom in only a few areas, that there is little evidence that it has yet occurred, and where it may have, the effects are limited. Overall, the level of welfare provision in Europe remains relatively stable. National welfare systems are no longer moving strongly in the direction of greater redistribution, but neither are they imploding.

Perhaps most importantly for the social democratic critique, the bulk of recent research suggests that

the adverse impact of globalisation on social spending in Europe (pensions, medical care and labour market policy) is not great. Far tighter constraints on social spending are imposed by domestic economic, demographic and fiscal trends: the shift to a post-industrial economy, lower productivity growth, declining demand for less skilled workers, and rising costs of health care and pensions.

THERE EXISTS one final avenue of criticism of the EU's democratic deficit—the most radical of all. Some critics concede the existence of limited government and democratic accountability but none the less observe that the European constitutional settlement has failed to promote the transnational political parties, identities and discourses that might help render European political participation meaningful. It is widely assumed among current EU policy-makers that only greater active participation can counter increasingly negative public perceptions of the EU. This view is related to widespread support among political philosophers for more "deliberative" or "strong" democracy in the belief that it will reconnect to the political process an apathetic and passive citizenry. In this view, the EU is only a more extreme manifestation of trends that have long been sapping civic virtue and dampening active participation in western democracies.

This view rests on the curious premise that the creation of more opportunities for direct participation and deliberation would automatically generate a deeper sense of political community in Europe or, at the least, muster greater popular support for EU institutions. There is good reason to doubt that this is the case. In modern democracies, there is in fact no correlation between participation and popularity. "Insulated" institutions—constitutional courts, some regulators, police forces—are often the most trusted and popular with the public. Legislatures are generally disliked, to put it charitably.

Even if increased participation were desirable it is highly unlikely to happen. European voters do not fully exploit their current opportunities to participate in existing European elections. Nor have they shown much interest in efforts to include "civil society" in the workings of the constitutional convention. Research shows that this is not because they believe that their participation is ineffective or that institutions like the EP are unimportant. It is because they do not care.

Why are they apathetic? The most plausible reason for apathy is that, as we have seen, EU regulatory activity tends to be inversely correlated with the importance of those issues in the minds of European voters. Of the five most salient issues in Britain today—health care, education, law and order, pension and social security policy, and tax—none is primarily an EU competence. Amongst the next ten issues in the minds of the public, only a few (managing the economy, the environment, and the issue of "Europe" itself) could be considered major EU concerns. In contrast, the affairs of the EU—trade liberalisation, agriculture, removal of non-tariff barriers, technical regulation in environmental and other areas, foreign aid and foreign policy co-ordination—tend to be of low priority in most European polities. Monetary policy lies somewhere in the middle.

In a world without salient issues, new institutional avenues for participation, such as referendums and constitutional conventions, do not necessarily encourage rich deliberation by an engaged population. Instead they lead to unstable plebiscitary politics in which individuals have no incentive to reconcile their concrete interests with their political choices. This is the lesson of the 2001 Irish referendum on the Nice Treaty—in which public opinion shifted by dozens of percentage points in response to offhand statements by the commission president, driving citizens in one of the countries that benefits most per capita from EU membership to vote against the innocuous Treaty of Nice. Ignorance was so great that the slogan "If you don't know, vote no" carried the day. This is no way to inspire a perception of legitimacy.

> Of the big issues in British politics—health, education, tax, pensions, law and order—none are mainly EU matters

It is sometimes argued that to give individuals a reason to care enough about EU politics to deliberate intelligently, they must have a stake. The most compelling schemes for creating such a stake rest on new political cleavages based on self-interest—as occurred historically in past episodes of democratisation. Amongst the most plausible proposals of this kind is that by Philippe Schmitter of the European University Institute, who proposes that agricultural support and structural funds should be replaced with a guaranteed minimum income for the poorest third of EU citizens. With the EU acting as a massive engine of redistribution from rich to poor, old to young, and national citizens to immigrants, Schmitter reasons, individuals and groups would reorient their political behaviour on whether they benefit or lose from the system, thereby generating political legitimacy.

This is a coherent scheme for reinvigorating European democracy targeted at the groups most dissatisfied with European integration today—the poorer, less well-educated, female, and public sector populations. Yet Schmitter's proposals have a Swiftian quality about them. (No wonder he coyly calls them "modest proposals.") They would break with the

EU's constitutional settlement and its guarantee of limited government, and would thereby divorce the EU from its primary purpose of regulating cross-border economic behaviour. The impracticality of such schemes demonstrates the lack of a realistic alternative to current, indirect forms of democratic accountability. Proposals of this kind would achieve prominence but at the likely cost of the EU itself.

WHETHER YOU are a libertarian, pluralist, social democrat, or deliberative democrat, the facts do not support the notion of an EU democratic deficit. A complex system of checks and balances, as we have seen, keep the system under tight control. The European constitutional settlement places market regulation largely at the EU level, leaves educational, social, fiscal and infrastructural policies largely at the national level; and suspends foreign policy in intergovernmental institutions straddling the two. Insofar as reasonable concerns about legitimacy exist, they need not challenge the basic constitutional structure of the EU. Amongst the areas where the existing institutions might usefully receive more critical scrutiny is where the EU departs modestly from existing national practices with no compelling justification. The most important is the structure of the European Central Bank, which is more independent of political pressure than any national example. One need not draw an analogy with the 1930s to view overly independent central banks with caution. But these are matters for sober, incremental reform—much of which is underway.

So, if the EU's democratic deficit does not exist, why then is there such public and scholarly concern about it? And why is a constitutional convention underway to redress it? Political opportunism, a lack of foresight and good old-fashioned nationalism play some role. But, above all, sincere concern about the democratic deficit results from a deep tendency to privilege abstract political ideals over concrete political realities. Most critics compare the EU to an ideal plebiscitary or parliamentary democracy and unsurprisingly find it wanting. Yet any useful and realistic assessment of the EU's democratic performance must be based on a comparison with the actual functioning of national democracies. The assessment must take into account the tight constitutional constraints imposed on the EU by its lack of fiscal, administrative, procedural and coercive resources. It must compare EU policies to the management of similar issues nationally, not the handling of electorally more pertinent issues of social welfare, defence and education. And it must take full account of the primary position of national governments in most EU decision-making. When this is done, we find that EU decisions closely approximate the general practice of most modern democracies. The EU's democratic deficit is a myth. ■