

Presentation of M. Cartabia - N. Lupo - A. Simoncini (ed.),
Democracy and Subsidiarity in the EU

By Filippo Donati

The book edited by M. Cartabia - N. Lupo - A. Simoncini addresses the topic of parliamentary democracy in light of the legitimacy crisis which is currently affecting the European Union (EU).

This crisis is clearly connected to that unresolved “democratic deficit”, which has been regarded by many scholars as the “original sin” of the European construction. In fact, no doubt that democracy and subsidiarity are founding principles of the European legal order. However, their scope of application and their implementation in the concrete functioning of the European system, are still highly controversial.

The weakness of the European Parliament (EP) within the institutional framework of the Union has been considered for many years as the main cause of the EU’s democratic deficit. Therefore, Europe tried to follow the model of national constitutionalism, whereby democratic legitimacy is based on parliamentary representation.

The many revisions of the founding Treaties have adopted a strategy of “democratization through parliamentarization” (Victor Cuesta Lopez). Since the first direct election of June 1979, the powers of the EP in the law-making process and its political control over the European Commission have been enhanced very much.

The Treaty of Lisbon has further increased the powers of the EP with respect to legislation (extension of the co-decision procedure to new policy areas), EU budget and international agreements. The Treaty has solemnly declared that the functioning of the EU is based on the principle of representative democracy (art. 10 TUE). However, as pointed out by Cesare Pinelli in his contribution to this Book, the progresses made in term of parliamentary democracy are still not sufficient to overcome the EU legitimacy crisis.

As a matter of fact, the decreasing turnout at the European election indicates a widespread disaffection with respect to the EP, the main European institution, the one which is intended to directly represent the European citizens.

In this perspective, the Treaty of Lisbon has tried to compensate the shortcomings of representative democracy in Europe through a reinforcement of the subsidiarity principle, by introducing new instruments of “participative democracy”. Andrea Simoncini, Luigi Petrillo and Marta Ferrara have analyzed this new strategy aimed at reinforcing the European democracy. The new role assigned to the civil society, however, is not sufficient to replace representative democracy. Even the involvement of national parliaments in the European law-making process, so well analyzed by Nicola Lupo, Barbara Guastafarro, Cristina Fasone and Elena Maioli Castriota Scanderbec, is not sufficient to compensate the absence of a strong and true legitimacy at the European level. The same applies for the participation of Regions in the EU affairs, although Marco Olivetti and Karolina Boronska-Hryniewiecka have well argued on its importance. In addition, the articles of Werner Vandenbruwaene, Luca Di Donato and Katarzyna Granat have indicated the limits of judicial enforcement with respect to the subsidiarity principles.

The sovereign debt crisis that has recently shaken the EU has clearly confirmed the existence of an unresolved legitimacy issue.

The euro crisis required the urgent adoption of huge financial assistance measures for Member States threatened by insolvency. The Heads of State and Government of Member States decided to adopt most of such measures outside the Union’s legal framework, for two main reasons: (i) the insufficiency of the funds available under the budget of the Union, and (ii) the need to overcome the resistance of some States, in particular the United Kingdom, that were against this kind of intervention. The measures adopted outside the EU umbrella include the loan agreements in favor of Greece, the institution of the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM). In all these cases, the decisions on the entity and the conditions of financial assistance granted from time to time to Member States are based on the inter-governmental method.

As a matter of fact, the adoption of an inter-governmental approach cuts the EP out of the decision making process, and

therefore affects democracy. Ratification by national parliaments is not sufficient to restore democracy, because when exceptional circumstances requiring emergency action are at stake, usually parliamentary chambers at national level may only ratify choices that have already been decided elsewhere.

An important role in supporting the States most seriously hit by the crisis has also been played by the European Central Bank (ECB). To this extent, ECB has approved a mechanism, the Outright Monetary Transactions (OMT), which allows an unlimited purchase on the secondary market of sovereign debt instruments of euro area States. The role of the ECB is therefore substantially changed, because it can now de facto operate as lender of last resort for Member States.

Alongside interventions of financial assistance, new rules have been introduced in order to reinforce the UE economic governance. Many of those rules have been decided outside the Treaty framework. This is the case, in particular, for the "Fiscal Compact", that imposed on the euro-zone States the obligation to incorporate into national law, preferably at a constitutional level, the principle of a balanced or surplus budget.

In such a scenario, it is easy to understand why, during the crisis, the attention of European citizens was focused not on the proposals of the EU institutions, but mainly on the behaviour Frau Merkel and other heads of States and Governments. The public opinion had the impression that EU institutions were not able to address the euro crisis and that any decision on this respect would depend on the interests of national governments.

In fact, European citizens have witnessed the incapacity of the EU political process to solve the crisis. The management of crisis has been assigned to institutions which operate either according to the inter-governmental method, such as the ESM, or in a position of total independence and un-accountability from democratically representative bodies, such as the ECB.

In addition, the euro crisis also caused a solidarity crisis. No doubt that the roots of the sovereign debt crisis lie in the unsound fiscal policies of certain Member States. However, the heavy austerity measures and spending cuts imposed on such States as a condition for the loans obviously had a heavy impact on fundamental social rights. This caused strong protests in the public opinion of the countries concerned, especially Greece. On

the other hand, a great part of the public opinion of rich countries was clearly against spending public money to cure the mismanagement of certain Member States. The reluctance of northern countries to help southern Member States is contrary to the principle of solidarity, one of the founding principles of the EU (art. 2 TUE). The absence of a sufficient solidarity among Member States increases the overall legitimacy crisis currently affecting the EU.

In the past, the absence of a true democratic legitimacy at the level of the EU decision process has been compensated by the so called “output legitimacy”, a kind of legitimacy based on the results delivered by the European policy.

The solutions adopted to face the euro-zone crisis, however, have been largely criticised by the European public opinion. The diffusion of euro-skepticism among national parties is an evident sign that the results delivered by the EU are considered not sufficient any more to compensate the absence of a sound democratic legitimacy in the EU decision-making process. In Italy, for example, many are the voices in the political debate in favor of the abandonment of the euro currency, considered one of the main causes of the internal economic crisis.

Does this scenario indicate that the European integration process has come to an end?

The answer, in my opinion, is no. Joseph Weiler has recently noted that the rule “too big to fail” applies also to Europe. It is the “European idea” – as he noticed – that “is too big to fail”.

That said, how can we cure Europe? How can we overcome the absence of a real legitimacy for the European construction?

The euro crisis offers an opportunity to address the legitimacy crisis of the EU. The crisis indicates the need of a stronger EU political authority, capable to govern the euro-area. However, as the European Council acknowledged in its conclusions of march 2013, “any new steps towards strengthening economic governance will need to be accompanied by further steps towards stronger legitimacy and accountability”.

Many scholars argue that the EU legitimacy crisis is fundamentally a political crisis. According to this view, Europe needs to be politicized, by “transforming” the elections to the European Parliament into an electoral competition for the government of Europe. This transformation would render the

European government stronger and more accountable in front of the European representative institutions, allowing the European citizens to really influence the EU policy.

In conclusion, the debate on the democratic legitimacy crisis that is now threaten the future of the European integration is open. This book offers an important contribution to such debate.