

Democracy and Accountability in the Enlarged European Union

Marcus Höreth: Comments on Theo Schiller and *Carlos Closa*

Comments on *Theo Schiller's* presentation:

Theo Schiller claims in his paper – right at the beginning – that in the light of democratic principles a direct vote of all citizens would provide the highest legitimation to political decisions. I wonder what democratic principles exactly Theo Schiller has in mind. And what means “highest legitimation” in this context? On the one hand it seems to me that legitimacy, or the process of legitimation, in this sense requires direct democratic legitimacy alone, but, on the other hand, right in the next sentence, Theo Schiller emphasises that effectiveness and efficiency also belong to the principles of democracy. The conclusion, then, logically, has to be that without efficiency and effectiveness decision-making could never have the highest legitimacy – no matter how direct or indirect democratic decision-making is organised. Even the highest democratic legitimation you can theoretically imagine (the input dimension) is not worth anything if the results, the decisions are of bad quality (output legitimacy). And there are many other requirements I do not even dare to speak of to reach “highest legitimation”. In other words: Democracy, seen primarily as a framework which guarantees citizens’ participation, their inclusiveness in the polity, is not a guarantee for legitimacy, it never was, but it is a necessary pre-condition of legitimate governance of course. However, I am a little bit confused now. I think it is necessary to define exactly what is meant by democracy and legitimacy: Is democracy necessary to achieve legitimacy, or is legitimacy a necessary pre-condition to achieve a real democracy? Perhaps Theo Schiller could have made this point clearer.

Nevertheless, what he then indeed makes clear, is, that direct democracy (which alone, in Schiller’s words, provides highest legitimation) can only play a supplementary role for the EU. After introducing into the three basic characteristics of direct democracy and his four types of direct-democratic procedures, he demonstrated the pre-conditions for direct democracy: real direct decision-making capacities of the citizens, and other citizens who will try to influence their decision. An intense issue-focused communicative process starts. At the end, this communication process helps to political and social integration. So far so good. So far the theory. But sometimes reality is so unfair that our nice theories do not work empirically.

Against this background, is Schiller’s optimism really justified? Isn’t it perhaps more plausible to expect the opposite, namely desintegration as a result of direct democracy? The democratic theorist Giovanni Sartori once said that direct democracy could have also a conflict-maximising impact if the question of the referenda is a very contested one (perhaps because the question is distributive in nature or values conflict with each other). Moreover, direct democracy can lead to dangerous results when the population is divided into different and sometimes even antagonistic interests, political cultures, constitutional philosophies and, last but not least, a collective identity is also missing. Indeed, the Union is very pluralistic, fragmented, heterogeneous, more than any other polity in the world. And a collective identity is not in sight. Given these conditions, why should a minority accept the outcome of a European referendum without being compensated (and – vice versa – why a majority should compensate the minority if they do not have much in common with this minority because they do not share a certain we-feeling)? Because of the foregoing communication process and its rationality? Surprisingly enough, for Theo Schiller these are the facts he uses to make the plea

for referenda! He himself promised in the title of his paper to speak also of risks of direct democracy, but I hardly found some risks in his text and presentation. However, I will present some risks, some counter arguments which speak against any direct democratic procedures no matter how skilful these procedures are organised:

1. the democratic deficit exists, if it exists at all, because there is a lack of political accountability in the system. Even we experts do not know exactly who is responsible for what, what role each actor plays in the EU decision-making process in every of its stages and at every level of Union governance. What we know is: At the end, no one wants to be blamed for unpopular outcomes, and everyone is of course responsible for positive outcomes. The two sides of the coin named “benevolent diffusion of responsibility” are called credit claiming and scape goating and these games prevent political accountability. But what happens if everyone is responsible for a certain outcome of a referendum because everyone has a direct vote? No one is responsible and no one can be hold accountable at the end. To put it very simply: The problem of political accountability can’t be solved by preventing political accountability through direct democracy, I fear it becomes even a bigger problem.
2. The communication process before the referendum takes place will not be “deliberative” in nature, to use this wonderful keyword again. All kinds of interest groups will try to manipulate people, sometimes they even will try to use referenda for their egoistic interests which have nothing to do with the question of the referendum. See both Irish referenda on the Nice Treaty as empirical examples of my assumption.
3. If Theo Schiller is right, and European citizens are not very well informed about EU matters why the same citizens should find a possible best solution for a given problem? Do they know better than the experts or elected politicians? Are they better informed because of the communication process? And, how efficient is the organisation of referenda with unknown results compared to the ordinary community method?
4. The reasons why there is a lack of broadly based democratic activity of political articulation towards EU institutions is not that there are no direct democratic procedures, but simply that the citizens are not interested in participating and the issues are too complicated for them. In a democracy citizens have the constitutional *right to non-participation*. And constitutional engineers as Theo Schiller have to accept this fact instead of trying to educate people to be more active in politics.

Perhaps I didn’t understand everything but I really do not have a clue why referenda can contribute to a more legitimate Union. It is not a real option. Unsurprisingly, it is never been discussed by the Conventioneers. To conclude, even such a sophisticated model Theo Schiller presented us here contains more risks than advantages. My doubts are principal in nature. Therefore, I would suggest, it is better to think about solutions of the problem of political accountability than to think about direct democracy wonderland.

Comments on Carlos Closa:

Carlos Closa presented a totally different paper, and a very interesting one. I agree with him in the following points he made, at least in principle:

- with the Convention method the democratic quality of constitutional politics has been increased. But some doubts remain, I come back to this later.
- Efficiency considerations were a very important motive for the governments to institutionalise the Convention (for the preparation phase!)
- Deliberation does not by itself produce democracy. How true!

- The combination of the mandate and the status granted to the outcome determine the legitimacy requirements of the Convention (therefore, it is indeed a preparatory assembly and not a Constitutional Assembly!)

So far I agree with Carlos.

I do not agree with the following two statements he made:

- Carlos said that the deliberative style within the Convention contrasts sharply with the IGC style. I think, this is only the case as long as relatively non-controversial issues are to be discussed. Up to a certain point it comes to bargaining again, perhaps not among member state governments as in IGCs but among institutional interests which are represented in the Convention. What is the difference regarding the quality of the outcome we can expect? Perhaps not very huge, if I can trust Andreas Maurer's expertise he gave yesterday during dinner.
- To back his argument of democratic shortcomings of the Convention method Carlos mentioned that we may end up with a consensual text that resulted from deliberation and has been accepted by the IGC but than risks the danger of being rejected by citizens. This is not an argument against the Convention method! There is always the risk that citizens reject constitutional choices. Theoretically, even the results of the famous founding brothers of the Philadelphia Convention could have been rejected by the American citizens. This can happen with every constitutional text no matter how democratic or deliberative it has been produced. Constitutional politics is always a very risky business.

At the end, I just want to add a point regarding the process legitimation of the Convention. Is this process legitimation really higher than in IGCs? And, does the preparation of IGCs even require democratic legitimation? I have to admit, that within the Convention all institutions are represented, but for most citizens everything that counts are their governments and their actions. These are the political actors they elected, these are the political scoundrels they are able to throw out when the next elections take place. When it comes to real constitutional choices, when governments act in the European arena – in the European Council, in IGCs – the media is there with thousands of journalists and keeps the European public relatively well informed. European politics becomes visible! When at home again governments have to explain what they negotiated in the European Council, they have to justify their actions in the public, directly to their constituencies. This is democratic legitimation in practice, not very satisfying I know, but at least it works more or less.

To conclude, in the outcome dimension (output legitimacy) we cannot expect something which is much better than the products of ordinary IGCs and reflection groups. Even Andreas admits that. In the process dimension (input dimension) we can only expect that the more institutional interests are involved the more ideas are put on the table and are discussed. But does this provide more democratic legitimacy? No way, as the representatives of the Convention are responsible vis-à-vis their institutions they represent, and they are hold accountable by their institutions for their behaviour in the Convention but they are not responsible vis-à-vis the citizens. They simply do not represent a European people or European citizens and they can simply not be held accountable for their “deliberations” and their results. My critical last question, then, is where is the legitimacy surplus of the Convention method?