Double asymmetry and its alternatives

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Most of today’s European politicians are convinced that the accession of the Baltic and Central European states to the Union will make up for the failure of three previous attempts at building a peaceful order. The first of these attempts was sought by the victorious Entente powers in 1919. The second and third were tried by the still more triumphant Nazi and Soviet forces during the fifty years between 1939 and 1989.

In the view of Europe’s leaders today, none of these three earlier attempts offered any sustainable solution to the problem of how to reconcile suprastatism and national self-determination. The first was based on the one-people-one-state doctrine in order to make the world safe for democracy. The second and third were the form of suprastatal rule developed by Nazi Germany and the Soviet Union. All three of them failed. At present, a new settlement – along a fourth path – appears to be within reach. How is this new attempt to be made sustainable in the perspective of these failures?

Making the fourth attempt succeed

In today’s European Union the provision of civil, political, and social rights are distributed in a vertically asymmetric way. The union provides some of the civil rights, mainly the commercially relevant ones. The family-related civil rights as well as the political and social rights are provided by the member states.

All rights are not ensured at the same level. The public might, at a pinch, accept this asymmetric provision even in the long perspective. So runs, at any rate, the view that has come to predominate on this question. By means of this structure, it is believed, a definitive end has been put to five hundred years of war within and between the European states.

In the Declaration on the future of the union, adopted by the Nice summit in December 2000, the problem of how to justify the fourth attempt was faintly outlined. The declaration charges the governments of the member states with taking, in the course of their preparations for negotiations on revision of the treaties, the initiative for a debate on how suprastatism and national self-determination can better be reconciled.

According to the prime ministers and heads of state, the following issues were the most central ones, in the perspective how to secure the success of the fourth main attempt of reconciling suprastatism and national self-determination in the 21st century union. How do we best establish and monitor a more precise delimitation of powers between the European Union and the member states, reflecting the principle of subsidiarity? What should be the status of the charter of fundamental rights at the European level? How do we achieve a simplification of the treaties with a view to making them clearer and better understood without changing their meaning? And what should be the role of national parliaments in the European constitutional architecture?
These issues present themselves against the background of how easily the fascists overthrew the 1919 order, as well as how easily Nazi Germany and the Soviet Union established themselves as hegemons in the period between 1939 and 1989.

Or, to put it otherwise: when looking towards the future, today’s European politicians are facing a dilemma. They do not believe in the sustainability of the clear-cut interwar solution of one people, one state. Nor do they believe in the type of suprastatism administered by the Nazi Germany and the Soviet Union. They clearly favour the now established fourth attempt. At the same time, however, they are worried about the prospects of its asymmetrical structure. How are we to justify this fourth attempt at reconciling suprastatism and national self-determination?

In addressing the above-mentioned issues, the Nice summit officially recognised "the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions in order to bring them closer to the citizens of the Member states." One year later, in December 2001, the Laeken summit sought to address this need. Taking the Nice declaration as its point of departure, it appointed a convention consisting of representatives of the member states as well as the European parliament, the commission and the candidate countries.

The purpose of the convention is to pave way for the 2004 inter-governmental negotiations on amending or replacing the established treaties. The recommendations of the convention are expected in the summer of 2003, after which time the inter-governmental negotiations will follow. Then, in 2005 and 2006, the Member states are scheduled to ratify the amendments to the old treaties – or a completely new treaty – agreed to in said negotiations.

The problem of how to best justify the established asymmetry was outlined also in the conclusions of the Laeken summit. Little new was offered in this respect, as compared with the conclusions of the Nice summit one year earlier. The core question – how to improve the legitimacy of the fourth attempt – was described in the Laeken declaration as follows:

The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration. More generally, the question arises as to what initiatives we can take to develop a European public area.

As in the case of the Nice declaration, no clear distinction is made between democracy and legitimacy. In both documents, these two words are used as if they referred to the same phenomenon, and bore the same relation to each other, as do communicating vessels. Both declarations boil down to a request that the convention suggest procedural and substantive improvements, in order to make the Union more legitimate. Greater legitimacy can be achieved, it is believed, if procedures and policies are changed. Nothing is said, however, about which is to be preferred in the event of conflict. Is democracy more important than legitimacy? Or is legitimacy rather the primary goal, while democracy is merely a possible means for achieving a structure meeting with greater social acceptance?
If clarity is our primary aim we should not blur the distinction between democracy and legitimacy. We should not portray these two concepts as communicating vessels. If such a picture were right, namely, it would be possible to compensate for the lack of democracy by increasing the degree of legitimacy, as well as vice-versa.

A constitutional arrangement may qualify as democratic – in the sense that universal suffrage obtains and the majority can achieve a shift in government and policies by institutionalised means – without being legitimate. Conversely, a political order may be legitimate without being democratic. A high degree of legitimacy does not compensate for a lack of democracy. Nor does the converse obtain. In the name of clarity, rational argumentation and liberal values we want a political order that is both democratic and legitimate.

The idea of democracy and legitimacy as communicating vessels is too abstract and general. Instead of being illuminating, it serves to hide what is important from the point of view of our wish to maximise both values independently of each other. It may indeed be that, as an empirical matter, democracy and legitimacy are mutually reinforcing. However, this fact is of little real world normative interest. A constitutional engineer should focus upon the existing institutional set-up in order to see what can and should be done about it.

My criticism of the Nice and Laeken declarations is fundamental. Both avoid the most fruitful formulation of the issue. Saying that democracy and legitimacy are like communicating vessels is of little help when it comes to evaluating the sustainability of the fourth attempt as compared to its alternatives.

**Double asymmetry**

In the Nice and Laeken formulations of the core issue there are no criteria, according to which you can tell if one balance between democracy and legitimacy is more acceptable than another one. In order to grasp the real world normative problem better, we should instead emphasise that the asymmetry between rights at different levels is double and mutually reinforcing in a way which is biased in favour of market liberalism.

Truly federal structures – like those in the United States, Canada, and Germany – are symmetrical both in terms of terms of procedure and in terms of public policy content. The same can be said of truly confederal structures, such as the World Trade Organisation. These too are symmetrical, in the sense that their rulings are not binding until they are ratified by each of the member states. All policies are decided at the level of the member state.

The European Union is neither a confederation nor a full-fledged federation. In two critical respects, the Union is asymmetrical. Democracy is not centralised to the same extent as the power to decide upon markets and their exchange and interest rate ramifications. In addition to that, market and welfare state issues are not decided at the same level.

This double lack of regular and balanced constitutional proportions is the most striking feature of our union. Recognising said asymmetry and its in-built bias furnishes a far
better conceptual focal point than does the concept of democracy and legitimacy as communicating vessels – at any rate if our purpose is to focus upon what is normatively controversial in the present arrangements, or in the various alternatives thereto.

- **Procedural asymmetry**

Another name for the first of the two basic asymmetries is the democratic deficit. This expression has entered general usage, serving as an umbrella term for critical viewpoints of all kinds. However, the heart of the matter is easily discerned. The critical property is that of procedural asymmetry. The degree of suprastatism – measured against the criteria of majority vote, direct effect, and precedence for federal decisions – is not matched by a corresponding suprastatism in respect of electoral accountability.

This lack of procedural balance – powers are centralised to a greater degree than is the ability of citizens to hold the wielders of said powers accountable – emerges with particular clarity if we compare with federal states like the United States, Canada, Switzerland, Germany, and Austria. These polities contain a large suprastatal element too. Their federal authorities make decisions – on a majority basis – against which their member states have no right of veto.

In federal states of the normal kind, federal law has direct effect within the states, and enjoys precedence over state law. A distinct form for accountability corresponds to the degree of legal development in the direction of suprastatism. The peoples of the United States, Canada, Switzerland, Germany, and Austria enjoy the last word in deciding the political course taken on the federal level. They do this by voting in elections. Thus the electorate can hold the federal leadership accountable. The leadership must stand down, when the voters so desire.

By contrast, voting out the leadership of the European Union is impossible. In this organisation, it is not the European parliament, but rather the Council of ministers that exercises the final power. This power is applied through the legitimate exercise of authority by the governments of each member country. There is, in other words, no collective mechanism through which the ruling majority can be held accountable. As a citizen you can vote out your own government, but not the Council of ministers as a whole.

The strength of this construction is thought precisely to lie in the absence of a European electorate as the final arbiter vis-à-vis the central organs. Moreover, even if the sphere of co-decision has expanded somewhat during the last ten years, the European Parliament and European elections must be regarded as a façade. The real power lies with the other three European-level organs, the authority of which does not derive from European elections, but rather from the governments and heads of state of the member states.

To sum up the meaning of the first asymmetry: the heart of the matter is not the lack of electoral accountability in the member states. The point is rather that a democratic power base is lacking at the European level. This notwithstanding European law is decided upon by majority vote in the Council of ministers, has
Asymmetry of public policies

The second of the two asymmetries refers to an imbalance in the sum total of public policies. In modern federations, a unified market and unified monetary system are accompanied by a corresponding federal mechanism for redistributing a considerable part of the gross national product across the federal territory.

This obtains in both regulatory and fiscal terms. Roughly speaking, one fifth of the gross national product is re-distributed via Washington, Ottawa, or Berlin in order to compensate for the social and economic rigidity caused by the equalisation of exchange and interest rates across their territories. Policies are not centralised just in the market and monetary regulatory respects. In addition, there are strong elements of social, regional, cultural, and labour-market regulation and revenue sharing in the centralised and federalised portions of public policies.

In the European Union, by contrast, most social – and hence democratically sensitive – regulation is controlled by the Member states. Where the use of the tax base is concerned, only somewhat more than one hundredth of the gross product of the Union is re-distributed – i.e., through the cohesion funds, the common agricultural policy, and the research programs managed by the suprastatal authorities.

All other federal constructs of this kind are monetary unions with a corresponding fiscal union. The European Union, however, is designed to work without the suprastate having the right to tax ‘its’ citizens, and without it possessing any effective powers in respect of social policy and democratically sensitive regulation.

The in-built bias

Market and monetary policies can be decided upon according to a suprastate-without-democracy principle. By contrast, social policy has to be adopted in accordance with universal suffrage and electoral accountability within each Member state. Needless to say, negative integration of markets is far easier to achieve in such a system than is a positive integration of social and political rights. The basic decisional rule is biased. Double asymmetry works for market liberalism and against the welfare state at the European level.

In the absence of constitutional statehood and suprastatal electoral accountability, family-related legislation and fiscal powers cannot be made part of the suprastatal structure in the same way as decisions concerning market and currency. A centralisation of family-related legislation and of tax bases would mean taking a definite step in the direction of statehood and democratisation. In that case, the source of political authority would have to be found in a sovereign people of Europe, rather than in the peoples of the member states.

In the official view, the answer to the question of the desirability and sustainability of double asymmetry is contained in the 1997 stability pact, and in the supporting ideas of interlocked core executive governance and strengthening the Euro-Zone by policy convergence. In the stability pact, member state governments promise each other not to
assist one another any more than they are presently doing within the framework of the small union budget, which is based on the principle of a membership fee (Gustavsson 2002: 94 ff.).

Or, to put it otherwise: national hardships in social and fiscal policies, caused by the suprastatal decision-making in the market and monetary policies, provoke an extra precaution in the national public opinions. When it comes to centralising the social and fiscal powers as well, this is politically very important. And conversely, the logic of election campaigns and public opinion in the member state contexts make governments more inclined to decide upon markets, currencies and interest rates outside the reach of electoral accountability.

In noting this mutual reinforcement of the two asymmetries and their the in-built constitutional bias, I have said nothing about whether this characteristic trait of the union is good or bad. That is a matter for an overall political evaluation. The important thing, in this context, is that double asymmetry is a fruitful concept for describing what is worth discussing in relation to the established construct and its possible alternatives. This is so because the concept addresses fundamental empirical aspects of procedure and public policy in combination.

**Regulatory or democratic suprastate as federal vision?**

To begin with, the European Union was understood as a compact of states, "a legal agreement entered into by sovereign powers to secure certain ends, and for the purpose of which states accepted certain constraints". The "community", of which the Rome Treaty spoke, was "a horizontal community of states, not of individuals" (Caporaso 2003: 14.).

Over the years, the notion of the community as a community of states and not of individuals has gradually changed. The process whereby this was achieved is commonly referred to as the constitutionalisation of the treaties. This expression refers to the process by which, as a result of European court of justice rulings, the treaties have successively evolved. They have gone from a set of legal arrangements binding on sovereign states, into a vertically integrated regime conferring juridically enforceable rights and obligations on all legal persons and entities, public and private, within the territory of the union. The constitutional construct was thereby transformed from a traditional international organisation into "a multi-tiered system of governance founded on higher law constitutionalism" (Stone Sweet & Caporaso 1998:102.).

The constitutionalisation of the treaties had an important consequence – whether intended or not – for democratic development, interpreted as the extension of rights. Citizenship, as made up by rights, is commonly thought of as a layer of protection against arbitrary governance, and a buffer against movements of public opinion.

Rights … identify the proper kinds of participation in markets and the state. They may be generous and entrenched, or thin and non-entrenched. The notion that rights are narrowly attached to market-creation and perfection is the thin citizenship view. The alternative, that rights are robust and have breadth beyond what would be required to market exchanges, implies thick citizenship. (Caporaso 2003:14, my emphasis).

What was made suprastatal during the 1970s, 1980s, and 1990s was exclusively the thin
citizenship related to market creation. The thick aspects – political rights in terms of democracy, and civil and social rights in the form of a welfare state – remain under the jurisdiction of the member states. The built-in bias has meant that thin and thick citizenship has not become centralised to the same extent. Or, to put it otherwise: negative and positive integration is not being decided by the same decision rule (Scharpf 1996 b: 109ff.). Thick and thin citizenship has thus been unevenly centralised – or if you prefer to put it that way – unevenly de-nationalised (Zürn 1998: 64ff.). That is the fundamental empirical fact upon which I think the future-oriented European debate should focus.

The normative implications of this uneven centralisation or de-nationalisation are far from self-evident. Whether double asymmetry should be considered something worth preserving, or whether instead it ought to be abolished, can and should be explored from the point of view of our federal vision. Is our fourth attempt designed in the best possible fashion? That depends on the constitutional objective towards which European Union politics is supposed to be striving. Are we heading for a democratic suprastate, or for a regulatory such?

If our federal vision is a democratic suprastate, then the uneven centralisation of thick and thin citizenship is not a good idea. If democracy is our primary norm, we should regret the fact that market and monetary regulation is unaccountable, in the sense that the citizens of the union as a whole cannot enforce a shift in policies and in office-holders. Implicitly, then, we are wont to compare the European suprastate with the kind of suprastate operating in such member states as Germany, Austria, or Spain. Politicians in these countries decide at the federal level by majority vote, and the laws thereby promulgated have direct effect, as well as precedence over decisions taken at the state level. Correspondingly, the citizens of said countries are able to enforce a shift in policies and in office-holders, by means of majority voting and universal suffrage.

If we shift our basic norm, however, and view the suprastate not as a parliamentary democracy but as a regulatory suprastate, it becomes considerably easier to accept the asymmetry between thick and thin citizenship. A regulatory state would then be seen as a mechanism for controlling and managing non-political externalities. Considered in this light, the powers of the European Union are rightly limited. It can do only what the Member states allow it to do: devise regulatory structures for the management of distinctively international problems. All of the really important powers – aiming at security, tax bases, and fiscal redistribution – are to be kept strictly under democratic rule within each single member state. Only commercially important aspects of national power having to do with the market and the currency are to be delegated to the Union – and in accordance with the principle of independence, rather than that of accountability.

The central normative problem of the regulatory suprastate, according to the Italian political scientist Giandomenico Majone, is "how to control and validate the exercise of legislative powers by administrative agencies that do not enjoy the democratic legitimacy provided by the electoral process" (Majone 2001: 271.). The debate along this second line of thought elaborates on the criteria of expertise, proceduralisation, and subsidiarity. Why should citizens trust independent regulators? The answer is that the delegation of powers to objective and independent agencies is viewed as an important means whereby governments can commit themselves to regulatory strategies that would not, in the absence of such delegation, be credible.
From the point of view of a regulatory rather than a democratic suprastate, the concept of delegation is normatively problematic. On the one hand, delegation from the member states’ parliaments legitimises the independence and non-accountability of the regulatory suprastate. On the other, the objectivity and even-handedness of the suprastate’s operations may nevertheless become perverted through that very thin link to public opinion and the electorates of the member states. As long as the Commission is an elected and collegial body, it can easily produce "flawed and politically motivated decisions" (Majone 2001: 271).

A still more serious threat to the credibility of European regulatory policies, Majone argues, is the threatening parliamentarisation of the Commission. The strengthening of the European parliament is positive for the overall legitimacy of the integration process. "From the point of view of regulatory policy-making, however, the new powers of the EP raise issues of commitment and consistency that are very similar to those … in the national context" (Majone 2001: 272).

Thus the dual problem of independence and accountability should be tackled at national and European levels simultaneously. According to Majone’s view, the sustainability of the fourth attempt depends crucially on the ability to "find coordinated, rather than vertically distinct, solutions. The emergence of transnational regulatory networks is an important step in that direction, and may prefigure the shape of transatlantic regulatory co-operation in the coming years." (Majone 2001: 272). The problem will be solved to the extent that scientific expertise at a truly global level is making up for electoral accountability in nation-states as the basic constitutional principle.

**Four alternative recommendations**

Thus far I have tried to clarify the empirical meaning and normative implications of double asymmetry and its resulting in-built bias. I have asked myself what the historically established European Union looks like and how its construction might be evaluated. Now I will lay out four alternative recommendations in the current future-oriented debate.

Which of them is the best one? My overall norm is that of sustainability and precaution in the historical striving for peace and democracy in this part of the world. How do we best proceed in order to avoid that the 21st century will turn out to become as belligerent and conflict-ridden as the 20th one?

Two of these four discernible alternatives have as their key idea to abolish the double asymmetry and thus making the established order constitutionally symmetric. The other two, correspondingly, are trying to find the best possible arguments to preserve double asymmetry in the belief that it is essential to the historical sustainability of the fourth attempt to establish an internally peaceful Europe.
- Abolition through re-nationalising established suprastatal powers

If we stick to the notion that symmetry is preferable to asymmetry, we find that re-nationalising the regulatory suprastatal powers offers an obvious solution to the problem. The structure would then be entirely confederal. National decision-making and non-binding co-operation would be the guiding principle throughout. Democratic requirements are easily fulfilled in this option.

However, when we consider another basic normative requirement as well – that, as democrats, we ought to take a piecemeal rather than a utopian (Popper 1945: 138ff) approach – we arrive at a somewhat different conclusion. If our purpose is to take responsibility not just for the results at which we aim, but also for the actual consequences of our actions in pursuit thereof, we may find that a contrary position seems more reasonable. For the economic turbulence following on a dismantling of the single market would probably be of such a magnitude as greatly to outweigh any satisfaction we might feel about aiming – in our utopian vision – at a perfectly symmetrical political and constitutional construct.

- Abolition through further centralisation of civil, political and social rights

Symmetry might also be achieved by turning the notion of re-nationalisation on its head. Instead of abolishing the asymmetry through re-nationalisation, we could smooth out the uneven parts by democratising the powers which has already been centralised and open up for centralisation of the provision these social, political and civil rights, which are effected by the centralised market and monetary policies.

If the European suprastate were transformed into something resembling the American, Canadian, German, or Austrian suprastates, there would be an democratically accountable executive and legislature at the very heart of the Union. The Union would become a democratic suprastate, in the sense that all European elections would play a
decisive role in shifting suprastatal policies, bringing them within reach of a truly European electorate and public debate.

From a piecemeal-engineering point of view, however, this second – and constitutionally very elegant – solution to the problem of the constitutional outcome is as questionable as the first discernible alternative. That is because the politicians must – in this case too – take the actual consequences of their democratising ambitions into account.

The important thing, if we choose to democratise the suprastate, is that policies based on the majority outcomes of European elections be considered legitimate. I find it hard to believe that, in such a case, the present concentration on market and monetary policy could be upheld. There is an obvious and very great risk – or possibility if you prefer – that parts the European public will look upon the union and not the member states as the primary source and active promoter of social and economic security of its citizens. The problem would then be that such security must come as a right contained in a comprehensive European citizenship, from which the provisional of national rights are being delegated.

The point is that not all parts of an imagined European citizenry will suddenly accept majority rule in social and family-related policies. Some of them will indeed want the suprastate to develop into a welfare state and to defend a thick citizenship. Those parts of the European citizenry who will be paying the bill for such a welfare-oriented suprastate will remain sceptical; they will balk at federal taxation, they will be reluctant to foot the bill incurred by an all-European majority vote.

"Europeans have lot in common, including a history that inspired them with some very rational reluctance to give up the stateness on which the coherence of their societies critically depends", as the German political scientist Claus Offe remarks. However, European states are too old, in the sense of "burdened with too much history and endowed with their own specific accomplishments achieved in the course of that history, to be plausible candidates for some outright fusion" (Offe 2003: 86.).

It is unlikely that we will see, for example, any fusion of the sort that took place in the German re-unification of 1990. In the latter case, after all, there was more than just a process of negative market and monetary integration; there was also an outright positive integration of all civil, political and social rights at the same time. In practise, this meant that majority rule was accepted in Germany as a whole. As to Europe as a whole, a corresponding fusion of different societies and overall rights provision seems improbable in the foreseeable future. It would seem excessively venturesome to establish majority rule before a European political society has come into being. And, to organise the union as an overall regulatory welfare state without electoral accountability seems even more venturesome, if we want the fourth attempt to succeed and not deteriorate into fascism or communism.

A chicken-and-egg counter-argument would seem appropriate here. Might not a political society, a demos, arise as a consequence of an imposed further centralisation of civil, political and social rights? For much the same reason as Claus Offe, I doubt whether this would eventuate under modern and democratic conditions in the member states. We should not forget that only states which are already democratic are eligible to
join the European Union. The core problem lies, then, in the absence of any inspiring idea capable of driving efforts to establish majority rule at a level higher than that seen in existing democratic nation-states.

There is one categorical dis-analogy between the historical process of nation-building and the hypothetical future process of building a European regime-cum-demos. Historically, nation-states have come into being along two alternative trajectories, the fusion of small units into bigger ones through national unification, or the splintering off of peripheries of empires (including colonial empires) in a process of national liberation and independence through separation. Unity and liberty are the two the two driving forces and guiding values alternative pathways to national statehood. (Offe 2003: 76).

Two rhetorical questions make my criticism of the alternative of further centralisation clear: what is the unifying idea in the fourth attempt? From what preceding forms of political oppression do citizens in European democracies seek their liberation? The implicit analogy with the nineteenth- and twentieth-century unification and liberation movements in countries like Germany, Italy, and Poland does not seem altogether convincing. That experiences from the more recent 20th century attempts at re-organising Europe are closer at hand has also to be taken into account.

- *Keeping suprastatal regulatory powers under the visibility threshold*

More is not to be said about the two abolitionist alternatives. They are theoretically very interesting. In practice, however, they are not very frequent in the debate. Most politicians and commentators are not arguing for a re-nationalisation of centralised regulatory powers. Nor do they argue for a further centralisation of national powers in order to smooth out the established double asymmetry.

Most of the active politicians and commentators are instead looking for a solution along the lines set out in the German constitutional court’s decision in 1993 (Winckelmann 1994: 751-799.). According to that verdict the ratification by the Bundestag of the Maastricht treaty was declared compatible with the democratic principles laid down in the German constitution.

In coming to that decision, the court stressed three criteria: marginality, predictability, and revocability. As long as sovereignty remains with the Bundestag and the German citizenry, reasoned the court, the suprastatal regulatory powers may be considered provisional. Thus the democratic requirements laid down by the constitution may be said – at a pinch – to have been reasonably well-satisfied. That is because most legislative and fiscal powers remain in the hands of the Bundestag, while the portions of sovereignty which have been "pooled" are being used in a foreseeable fashion. Finally – and most decisively – this pooling of sovereignty can still be revoked by the Bundestag, at least in principle.

The decision of the German Constitutional Court furnishes a reasonably elegant defence of double asymmetry. In my view (Gustavsson 1997, 1998 and 2000), this is still the best available route out of the dilemma. As the debate has developed over the last few years, the argument for trying to avoid the constitutional policy relevance of the lack of suprastatal democracy now comes in two variants: the one more defensive and cautious; the other more aggressive, ingenious, and constitutionally venturesome.
The more defensive and cautious argument supporting double asymmetry is given by political scientists like Robert Dahl and Fritz Scharpf. To them it is self-evident that "international organisations are not and are not likely to be democratic" and that "this is not to say that they are undesirable" (Dahl 1999: 32). However, since the chains of delegation are so long, and suprastatal decision-making does not take place even in theory in the shadow of elections. And since the suprastate is not likely to become democratic, we should be cautious in expanding its authority.

"In weighing the desirability of bureaucratic bargaining systems in international organisations", Robert Dahl writes, "the costs to democracy should be clearly indicated and taken into account. Even if we concluded that the gains, or expected gains, outweigh these costs, that is no reason to ignore them entirely" (Dahl 1999: 34). In Scharpf’s view, the interest expressed by citizens in democratic accountability varies, in accordance with the differential manner in which taxes, fees, and legal provisions are felt and are politically visible at the household level (Scharpf 1999: 30f.).

Legal provisions bearing on conditions within families or affecting the status of employees at work are more easily ‘seen’, as are policies applied in connection with taxes and expenditures. Policies of this type are therefore harder to institute if those responsible for making them cannot be held democratically accountable. That portion of the norm-giving power that bears on the mobility of capital, goods, and services, on the other hand, is not so clearly visible at the household level. The regulation of the common market has not, therefore, called forth any drive for democratisation (Gustavsson 2002: 87 ff.).

The cautious normative implication of the so-called visibility threshold, or – more pregnantly in German – Wahrnehmungsschwelle (Scharpf 1999: 30), is that suprastatal policy-making procedures should not be expanded beyond the areas of market and monetary policies. The redistributive and cultural effects of public policies of the latter type are not easily discerned at our kitchen tables. At a pinch, therefore, suprastatism without democracy might be tolerated in such areas – since the alternatives are worse.

However, as soon as suprastatism is expanded into the areas of foreign, police, asylum, and welfare policies – well above the visibility threshold, in other words – suprastatism without democracy seems neither realistic nor desirable. From the standpoint of conventional wisdom – democracy interpreted as universal suffrage, thick citizenship, and realistic prospects for shifting policies and holding office-holders accountable – it is hard to accept more suprastatism without more democracy.

When it comes to the bulk of national sovereignty and competencies, it is far better to co-ordinate and co-operate than to pool delegated powers. In the latter case, after all, an enhanced problem-solving capacity can be had without also getting – besides – public policies which are not formally binding, and which disempower the national democracy.

- Redefining the concept of democracy

A more aggressive, ingenious, and constitutionally venturesome line of argument is the one aiming at a redefinition of the very concept of democracy. The approach redefines the policy relevance of the lack of electoral accountability at the suprastatal level. The European Union should not, these theorists argue, be considered a democratic, but
rather as a regulatory and transparent, state in-the-making.

The key to this new and interestingly polemical strand of normative democratic theory is the assertion – in the formulation of Robert Keohane and Joseph Nye – that accountability can take multiple forms. Direct electoral representation is not the only relevant form for contemporary international governance. Accountability can be created through actions ‘in the shadow of the elections’. It can also be created by rules, monitored by independent organisations and by courts. Accountability can also be accomplished through markets, and as a result of publicity. We seek … to consider how various forms of accountability – not merely electoral accountability – could be instituted, in ways that give publics more influence on policy and that enhance the legitimacy of international governance …

… Accountable actions are explainable and sanctionable. Principals can require agents to give reasons so that they can make judgments about agents’ actions and can also directly or indirectly sanction their agents if displeased with their actions …

Notice, however, that accountability does not necessarily imply democratic accountability. A minister can be accountable to a king or a dictator. Private firms are accountable to investors in the equity markets … or to other elites with sources of power not derived from electoral strength. For an agent to be accountable, the agent must face adverse consequences if his or her actions are inconsistent with the values and preferences of the principals. Since principals require information to hold agents accountable, measures to assure accountability require mechanisms for transmission of information as well as enforcement. (Keohane & Nye 2003: 2f).

Taking their point of departure in this idea of broadening – and thus actively redefining – the meaning of democracy in relation to the European union and its member states, Keohane and Nye end up in a schema with five categories:

- electoral accountability
- hierarchical accountability
- legal accountability
- reputational accountability
- market accountability

In my view this is certainly a step forward, in the sense that we get a broader view of linguistic usage and conceptual possibility. I am not so sure, however, that this represents a step forward when it comes to solving the problem of how to reconcile suprastatism and electoral accountability in a system of double asymmetry. Is this enumeration of different meanings really as helpful as Keohane and Nye seem to believe? The problem does not necessarily disappear as a challenging issue simply because comparable problems are indicated in the society and economy at large.

By pointing to a broader range of issues illuminated by the various meanings of the key word, Keohane and Nye certainly broaden our understanding. But what is their message for the current treaty revision process? Is it the same good old precautionary principle – applied to the problem of double asymmetry – as that advocated by Dahl and Scharpf? Or is their argument – when push comes to shove – actually something else, something bolder?
The most interesting and challenging of the five interpretations, in that regard, is the notion of legal accountability. How could this be made into a fruitful criterion for defining the practice of a regulatory suprastate – one bereft of electoral accountability – in fields beyond competition law and monetary policy?

James Caporaso stresses that the regulated areas are complex, and do not easily lend themselves to ex ante legislation. "Instead a logic of delegation is implied in which specialised agencies are granted broad mandates to make and implement rules" (Caporaso 2003: 13). This constitutes a real dilemma:

On the one hand, independence is necessary for agencies to be credible. If the Competition Directorate of the Commission were strongly politicized, so as to make policy outcomes the resultant of group pressures, cartel policy would not be socially optimal. On the other hand, removal of agencies’ work from direct political control runs another type of risk, that agencies will become fiefs of their own not responsive to any principal, or develop a cozy relationship with those whom they are to regulate (Caporaso 2003: 13.).

Caporaso’s insistence that there be a democratic principal which has instructed its agents – the Court, the Commission, and the Central Bank – leaves us no radical way out of the dilemma. Available methods include "clear statutory objectives, judicial review, transparency, budgetary discipline and monitoring by interest groups" (Caporaso 2003: 13). In practice, this means stressing the importance of transparency and the continual publication of documents. Public access must become the rule. Secrecy and confidentiality should be the exception – and they must be justified in due order.

In seeking definitively to redefine the policy relevance of the suprastate’s lack of electoral accountability, Giandomenico Majone has come one step further in his thinking. In his latest book chapter (Majone 2001: 270ff.), he points to the weak point in the strategy of redefinition. That is the Achilles’ heel of delegation.

As long as the independent regulatory bodies – at their outset, as well as every now and then – derive their powers from any sort of principal, they can easily produce "flawed and politically motivated decisions" (Majone 2001: 271). Majone argues, in other words, that what needs attacking is the very notion of there being a "principal" instructing an "agent". What must be set aside is the modern notion that sovereign states – whether founded in princes or in peoples – delegate their authority. The market and the exchange of ideas, then, ought to be considered entirely self-regulating. Thus can a final solution to the problem of double asymmetry be found.

**When push comes to shove**

During the last hundred years three main attempts at reconciling the need for suprastatal rule with the striving for national self-determination have failed completely. Now we are in the midst of a fourth attempt. Heading for a success in that respect does not only mean that we want popular government to be as extensive, intensive and effective (Ross 1946: 175 ff) as possible. Another important norm is that of piecemeal instead of utopian social engineering (Popper 1945: 138 ff).

This supplementary great debate adds something to the question of whether the notion
of double asymmetry should be abandoned and – if not abandoned – how it should best be justified. When deciding which of the four discernible alternatives to strive for, we should not disregard the question of feasibility and possible side effects. This means that we should consider the problem in a Popperian perspective as well. In brief: what should be our decisive criterion when push comes to shove?

In the Popperian view, we should be alert to the unintended consequences of our policies and programs, and be prepared to modify or abandon a course of action if events falsify our expectations. Public policies should aim not at maximising happiness but at minimising avoidable suffering. Public policies should be formed in small, clearly stated stages so that the falsifiable premises of policy can be tested.

Striving uncritically for the pure ideal of either type of suprastate – democratic or regulatory – would appear to be expressive of what Karl Popper described as utopian social engineering. According to a utopian approach,

we must determine our ultimate political aim, or the Ideal state, before taking any practical action. Only when this ultimate aim is determined, or a rough outline at least, only when we are in the possession of something like a blueprint of the society at which we aim, only then can we begin to consider the best ways and means for its realisation, and to draw up a plan for practical action. (Popper 1945: 138).

This is opposed to another kind of political thinking, which may go by the name of piecemeal social engineering. According to the piecemeal approach, by contrast, we should

be aware that perfection, if at all attainable, is far distant, and that every generation of men, and therefore also the living, have a claim; perhaps not so much a claim to be made happy, for there are no institutional means of making a man happy, but a claim not to be made unhappy, where it can be avoided. They have a claim to be given all possible help, if they suffer. The piecemeal engineer will, accordingly, adopt the method of searching for, and fighting against, the greatest and most urgent evils of society, rather than searching for, and fighting for, its greatest ultimate good. This difference is far from being merely verbal. In fact, it is most important. It is the difference between a reasonable method of improving the lot of man, and a method which can be applied at any moment, and a method whose advocacy may easily lead to an intolerable increase in human suffering (Popper 1945: 139.).

If we are guided by the criterion of utopian social engineering double asymmetry does not appear in a good light at all. As a matter of piecemeal practise, however, it might be preferable to its alternatives. This is the position taken by Robert Dahl and Fritz Scharpf, in their defence of the fourth attempt at solving the problem of how to reconcile the need for a reasonable amount of suprastatism with that of national self-determination.

Economic interdependence, Scharpf argues, is nowadays so far-reaching that it would be irresponsible to adopt a strategy of abandonment. The re-introduction of Member state self-determination into the negatively integrated single market – the
confederal solution – would not just violate the treaty. "[E]scalating national protectionisms would not just mean the end of the Union, it would also plunge the European economy into catastrophic straits" (Scharpf 1996a: 149.).

Nor, Scharpf avers, should the suprastatal order be democratised. The legitimacy of the suprastate is admittedly weak. In practise, however, a strategy of democratising suprastatism – in accordance with the federal solution – would lead to unacceptable results. For it would mean that, during a transitional period of uncertain length, the more legitimate law would be superseded by the less – all in order to achieve a better state of affairs in a distant future. This would mean, in practise, that Member state democracies would decline without an offsetting improvement in the democratic quality of the suprastate.

Much is therefore at stake if politics at the European level cannot act while politics at national level has lost its effectiveness. The only means of avoiding this horror scenario is to employ the limited opportunities of action at both levels, national and European, in such a way that the existing but limited opportunities for effective policy at both levels are exploited and predictable frustrations side-stepped. This has important implications for the relationship between European and national policy. (Scharpf 1996a: 150).

The thrust of the argument is that we must – when comparing discernible options – identify, specify, and attempt to falsify our premises. This is also my view.

It bears stressing, however, that a piecemeal approach implies no a priori defence of what has been historically established as the fourth attempt. The point is that the premises underlying each and every step in the development of our new historical attempt must be rendered clear and falsifiable. Premises supporting double asymmetry are as important to clarify and to corroborate as premises underlying its alternatives.

In the piecemeal view, neither more asymmetry nor less should be considered, by definition, to be either better or worse. Preferred outcomes must be argued for in terms of falsifiable propositions concerning the anticipated consequences of accepting double asymmetry vs. not accepting it. The question is which option is preferable to the available alternatives at any particular time.

What is considered better and worse must be allowed, moreover, to change over time and in accordance with experiences gained. A step in the direction of more – or less – double symmetry is not by definition any better or any worse. Double asymmetry is no goal in itself but rather a means for something else. It can only be justified to the extent that it contributes to making the fourth attempt a more successful attempt at securing peace and democracy than the three previous ones.

References


