

Europe's new aristocracy

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It has become commonplace on both left and right to point to a democracy deficit in the institutions of the European Union. European decision-making is shifting from the national level to the European Union level, and not just for EU member countries. Even for non-members like Norway and Switzerland, economic realities dictate that national laws are often crafted to meet EU requirements.

Yet many European (and global) intellectuals seem not to be bothered by the lack of democracy at the European level. They see the EU as a force for good in the world, even in the EU's member countries.

Many look to the European Union and other transnational institutions to protect a host of individual rights, ranging from refugees' rights to claim asylum, homosexuals' rights to marry, and everything in between.

The universalization of human rights is surely one of the great accomplishments of the nascent 21st century. But it is increasingly bumping up against one of the great accomplishments of the 20th century: the universalization of electoral democracy.

It would be very convenient for global enlightenment if substantial national majorities in countries around the world consistently supported the continuous expansion of individual rights. But what happens when they don't? When push comes to shove, which universal should take precedence: 20th century democracy or 21st century rights?

Old democracies, new rights

The conflict between the individual and the state was supposed to be solved by democracy. People accept the rule and rules of the democratic state because the democratic state is ultimately accountable to the people. But of course there is a difference between "the people" and "the person," and that difference can cause problems.

In some of the most extreme manifestations of this tension, states draft individual persons into military service and imprison individual persons for crimes. But states also restrict individual freedoms in myriad other ways, some liberal (prohibiting employment discrimination) and some illiberal (prohibiting recreational drug use). There is no government without governance, and governance means restrictions on individuals.

Liberal governance is the heart of the 21st century zeitgeist. The list of individual rights that are widely proclaimed as basic human rights is rapidly expanding. But proclaiming a universal human right and enacting a specific individual right are two different things.

Universal human rights tend to be proclaimed at international conferences by experts and activists, while specific individual rights must be enacted by national politicians who are accountable to democratic electorates. Unsurprisingly, these two groups often don't see eye-to-eye. When they don't, human rights activists tend to turn to the courts rather than turn to the people.

And that's a problem. Rights granted by the people ultimately come to be accepted by the people as legitimate. Rights granted by courts are always of dubious democratic legitimacy, and may ultimately be overturned by democratic action.

The recent Brexit referendum over the United Kingdom's membership of the European Union was fundamentally about democracy versus rights. The rhetoric of those who wanted to leave the EU was a rhetoric of national democratic sovereignty. The rhetoric of those who wanted to stay was a rhetoric of individual freedom of movement.

When the votes were counted, Britain's intellectual elites were shocked to discover that the British people had rejected their exhortations to vote stay. The leave camp won with a decisive democratic majority. In theory, that should have been the end of the issue. The people had spoken.

But stay camp activists dominated the mainstream media, floating a multitude of mechanisms through which the voice of the people could be overturned: Parliament could refuse to enact the required legislation, the Scottish regional government could try to veto a leave law, a second referendum could be held to repudiate the first.

Many in Britain and abroad even called on the other European Union members to impose harsh economic penalties on the United Kingdom to punish it for leaving.

The Brexit debate and post-Brexit hysteria made it hard to escape the conclusion that an internationalized, Europeanized intellectual elite both inside and outside the UK values its freedom to live and work across European borders more than it values democracy itself.

Majority rule

Belief in democracy means accepting, however reluctantly, the rule of the majority. It may be that at times there are higher values than democracy. In extreme circumstances it may even be heroic to fight against the will of the people. But though people who fight against the will of the people may sometimes be heroes, they cannot be called democrats.

Today many of Europe's elites lay claim to the mantle of democracy while actively seeking to undermine the will of the people. They have usually done so in the name of human rights and the rule of law, and they often argue that without human rights and rule of law there can be no democracy.

That is true enough. But do Brexit, the PiS government in Poland, the Fidesz government in Hungary, and anti-immigration parties in Austria, France, and the Netherlands really constitute threats to human rights and the rule of law? Or are they merely anti-EU and thus "undesirable" elements as seen from the standpoint of Europeanized intellectual elites?

The current left-nationalist government of Poland has been labeled a failing democracy by Politico and a democracy at risk by Foreign Affairs. The contrastingly right-nationalist government of Hungary is routinely characterized as a democracy in crisis by political pundits. Both were elected by large majorities in undisputedly free and fair elections.

When Austria narrowly elected a green party president in May, the BBC reported that his "far right" opponent had been thwarted in his efforts to secure the office. The defeated nationalist candidate disputed the result because of irregularities in the vote counting process. Austria's constitutional court agreed with him and has ordered a new election.

Nationalist parties across Europe are vilified in the international press for their supposed (and often very real) illiberal tendencies. But liberalism and democracy are not the same thing. Did the United States only become a democracy in 2015, when the Supreme Court affirmed the right of homosexual couples to marry? Is Ireland still not a democracy because it suppresses women's rights to seek abortions?

Ironically, the self-declared Scottish National Party and the nationalist parties of Catalonia are very popular among European and international intellectuals, presumably because they embrace liberal values and EU membership for their nations-in-formation.

International intellectuals seem to find liberal nationalism acceptable, reserving the use of "nationalist" as a negative epithet only for illiberal parties that oppose further EU integration.

Self-evident

In 1776 the founders of the United States of America declared that it was "self-evident, that all men [sic] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Certain universal human rights may indeed be self-evident. But most specific individual rights are subject to democratic debate.

Most of the time, individual rights go hand-in-hand with democracy. After all, democracy means the rule of the people, and the people generally prefer to have rights. Most people most of the time vote to expand individual rights, not to restrict them.

It may be appropriate to challenge the will of the people when democracy trammels on human rights that most of the world's experts consider absolutely basic and universal. But if democracy is to survive, such challenges should face a high bar.

It is irresponsible to advocate the overthrow of democracy in a situation like the Brexit vote where life and liberty are not at stake. The pursuit of happiness is a wonderful thing, but sometimes we all have to accept limits on our pursuit of happiness. Limits on the right to work in other countries should not be equated with religious persecution or genocide.

This is neither a legal nor a scientific argument. It is a moral argument, an argument about what is self-evidently true and what is open to debate.

In past centuries it seemed self-evident to many people that slavery was an acceptable and indeed "natural" arrangement. No more.

Today it seems self-evident to nearly everyone that discrimination based on gender is unacceptable, and it seems to be increasingly self-evident to many people that discrimination based on sexual orientation is unacceptable. Such trends are to be applauded. But as these changes illustrate, self-evidence is a moving target. In democratic societies we gauge self-evidence via majority rule.

Too many intellectuals are prepared to gauge self-evidence by their own standards. This is dangerous, both for intellectuals and for democracy. It is dangerous for democracy because it legitimates anti-democratic stances of all kinds, not just rights-based stances.

But it is also dangerous for intellectuals. Most intellectuals depend directly on the generosity of the public for their very livelihood. Bureaucrats, Eurocrats, politicians, and professors are mostly public employees. They — we — need the support of the public in order to continue our work.

Intellectuals are vitally important for the health of democracy. They play an indispensable role in framing democratic debates. But when intellectuals stop presenting options and start demanding outcomes, their democratic function has come to an end. Maybe that's why so many intellectuals retreat to academia, a self-referential world that is isolated from the rough and tumble of practical politics.

The tyranny of a meritocratic intellectual class, Aristotle's tyranny of the best, is a tyranny all the same. Aristotle called it aristocracy, and he thought it was the best form of government. But then, Aristotle was no democrat.