

REFLEX

Democracy and Expert Rule: In Search of Reflexive Legitimacy

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Project description

The point of departure for this project is the observation that modern democracies increasingly make use of expertise and independent expert bodies in political decision processes. The more crises strike, the more risks and uncertainty appear; the more there is a tendency to delegate competences to expert bodies. Modern governments delegate competences to independent, expert-based institutions such as agencies, central banks, and international organizations. Many of these bodies make decisions with consequences for citizens' well-being and freedom and they operate within large zones of discretion. Some of the depoliticized bodies do not merely attend to means-end calculation but also to political ends. Instead of policy formation on the basis of citizens' opinion there is a risk that it takes place on the background of experts' judgements. Some claim that such delegation undermines citizens' trust and confidence in representative democracy and leads to an upsurge in populist parties across Europe.

The main task is to establish what kind of democratic problem we are witnessing. That requires paying attention to the role and status of depoliticized bodies in democratic theory. Can they be justified in democratic terms? It is clear that modern complex democracy requires expert knowledge but the issue is still how that can be reconciled with democratic participation. Is the problem particularly acute under complex interdependence and transnational integration?

Decentralized agencies have become an established part of the way the EU operates. Decentralized agencies perform a wide range of important tasks, using a significant amount of resources: they contribute to the implementation of important Union policies, thus helping all the institutions, in particular the Commission, to concentrate on core policy-making tasks. Agencies also have a role in supporting the decision-making process by pooling the technical or specialist expertise available at European and national level and thereby help enhance the cooperation between Member States and the EU in important policy areas. This is a question of no less interest for Norway that has ceded sovereignty to EU agencies without being an EU member. The EU has set up over 40 separate legal entities to perform specific tasks under EU law and Norway participates in 26 of them.

What are the main drivers of de-politicization; how can the increased delegation of political power to depoliticized bodies be accounted for? Governments delegate competences to

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independent, expert-based institutions and endow them with *discretionary decision-making power*. This practice may be in breach with the separation of powers in a constitutional state and theories of delegation, and it challenges the conventional theory of democratic legitimacy premised on citizens' consent. Why then do governments continue to delegate power to 'non-majoritarian institutions' with specialized authority, neither directly elected, nor directly managed by elected officials?

REFLEX' idea is that depoliticized bodies are legitimate not only when they comply with the evidence-based knowledge and can be controlled by the legislature. Depoliticized bodies cannot simply defer to the legislator's command or to verified knowledge as they have a wider democratic vocation. The project pursues the idea of reflexive legitimacy, which designates that actors when exposed to justificatory reasons may come to accept cogent resolutions even when not being granted access to the decision-making process. The critical question is how expert bodies are embedded in the democratic chain of power.

In order to examine the legitimacy of the use of expertise, REFLEX conducts in-depth studies of a selection of depoliticized bodies in the European Union, involving different types of knowledge and expertise, as well as different formal arrangements. REFLEX analyses the status and function of depoliticized bodies in the EU multilevel legislative chain within fields such as financial regulation, medicine, border protection, law enforcement and defence procurement. It compares depoliticized bodies under different formal arrangements – intergovernmental and supranational – in order to establish whether better ways of organizing the relationship between expertise and politics exist.

By analysing the institutional and public linkages of several depoliticized bodies, REFLEX will be able to examine actual differences in influence of expertise and the possibility of their democratic check. These studies provide a broad empirical basis from which to establish a normative model of depoliticized bodies – an institutional design that meets democratic criteria. At the same time they will lead to new empirical knowledge of whether or not the power of expertise is wielded legitimately or not.