EUROPE HITS HOME – THE DOMESTIC DEFICITS OF REPRESENTATIVE DEMOCRACY IN EU AFFAIRS

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November 2011
Paper prepared for the workshop “Strengthening Democracy in the EU: Alternative Forms of Representation”, Jean Monnet Centre, University of Bremen, 14 -15 July 2011

This research was supported by a Marie Curie Intra European Fellowship within the 7th European Community Framework Programme (call reference FP7-PEOPLE-2010-IEF) that Sandra Kröger currently receives.

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democracy in EU affairs

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1. Introduction

Ever since the problematic ratification of the Maastricht Treaty and the accompanying debate about a democratic deficit of the EU, politicians – rather more than scholars – have sought to strengthen the role of national Parliaments (NPs) in EU policy-making. Accordingly, a legally binding ‘Protocol on the role of National Parliaments in the European Union’ (PNP) was added to the Amsterdam Treaty. The PNP accorded NPs the right to receive information on EU affairs, demanded that there be a six week period between issuing a legislative proposal and its adoption by the Council, and introduced rules for the cooperation between NPs and the European Parliament (EP), not least in the context of COSAC\(^1\). How far, and in what ways, parliaments took advantage of these new rights and provisions was largely left up to them. The Lisbon Treaty (LT) marks a step change in this respect. Not only is it the first EU Treaty even to mention NPs in the main text, but also it gives them a potentially significant legal status in the democratic governance of the EU. In making this change, Member States have indicated that NPs possess certain key democratic competences which should and possibly could not be assumed by the EP. For example, it has been the 17 NPs of the euro zone rather than the EP that have been the crucial sources of democratic legitimacy for the response of Member States to the Euro crisis. This paper explores whether these domestic representative institutions are capable of living up to the normative role assigned to them and argues that to a degree that capacity has been eroded by the very process of European integration they are now supposed to control.

The LT affirms the EU to be founded on representative democracy, as laid out in Title II on ‘Provisions on Democratic Principles’, while Article 9 highlights political equality as the normative core for democracy in and of the EU. Thus, representative democracy and political equality provide the self-proclaimed democratic ‘meta-standards’ (Lord and Pollak 2010: 126) of the EU. Article 10 (2) links these standards directly to parliamentary government, affirming that ‘Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens.’ Article 12 lists the basic rights and functions of national parliaments. The main novelty of the LT in this regard is the ‘early warning system’. Introduced in response to longstanding concerns about the domestic democratic deficit, this mechanism assigns national legislatures the right to monitor whether proposed EU decisions and initiatives comply with the principle of subsidiarity.

\(^1\) Conférence des Organes Spécialisés dans les Affaires Communautaires. COSAC is a Conference of the committees of the national Parliaments of the European Union Member States dealing with European affairs as well as representatives of the European Parliament.
These constitutional changes mark a shift in the understanding of democracy in the EU. In particular, national representative institutions are back in the game, albeit still without any constructive legislative competences. Hitherto, NPs have barely figured in scholarly debates about the democratic deficit of the EU. On the one hand, such a domestic deficit either passed unnoticed or the possibilities of remediying it were conceived as being beyond the boundaries of the nation-state, through enhancing the competences of the EP (Hix 2008). We leave that latter possibility to one side for the purposes of this article, though we have disputed its feasibility and desirability elsewhere (Bellamy 2006). For the LT invites a theoretical and practical assessment of the distinctive part NPs are called on to perform in the democratic governance of the EU. On the other hand, it has been argued that the need for democratic oversight of EU policy-making in general, and the role NPs might play in it in particular, is marginal at best. Scholars taking this line have maintained that competences can be neatly divided between the EU and its Member States (Majone 2001; Moravscik 2002). For its part, the EU is responsible for the creation of the internal market and can be justifiably isolated from partisan politicization and electoral competition to achieve this objective. In their view, the Member States only need to legitimise this project by consulting domestically and negotiating the national interest at the EU-level. However, this perspective rests on a thin notion of the EU’s legitimacy which assumes that as long as market creation is efficiently and effectively organized and realized and has been legitimised by national elites as in the national interest, the agent of that project will itself be legitimate. We could not disagree more. Not only is the EU in need of its own legitimacy given it exercises power over states and citizens, but also the progressive realization of the internal market is increasingly constraining Member States in their range of available policy options. It is this latter issue we focus on here. For, as the LT partly recognises, it raises the stakes for the domestic legitimation of the EU. It renders it especially important to ensure both that national elites are ‘themselves democratically accountable either to their NPs, or to their citizens’ for what they decide at the EU level, and that ‘the principle of subsidiarity is respected’ so that domestic policy making is not unduly curtailed.

The continued importance of domestic representative institutions – parliaments and parties – in EU matters is undeniable, therefore. The key question is how far they are still capable of performing the roles ascribed to them by the normative theory of representative democracy implicit in the LT. As a number of scholars have noted, there is growing disaffection with the traditional institutions of representative democracy to represent their citizens – witness the near universal decline in voter turnout at elections. Worse, some argue that the EU may even be contributing to this state of affairs by weakening parliamentary control of the executive, including by delegating important regulatory roles to non-majoritarian bodies, such as the
European Court of Justice (ECJ) and European Central Bank, which are not even subject to
democratic oversight at the European level by the European Parliament (EP). As a result, far
from supporting representative democracy – at least at the national level – the EU may be
promoting a shift not just to ‘politics without policies’ (Schmidt 2006) but even to ‘polities
without politics’, a form of ‘audience democracy’ (Manin 1997), ‘post democracy’ (Crouch
2004) or ‘post-parliamentary governance’ (Andersen and Burns 1996).

Not all analysts consider these developments to have gone so far, or – to the extent they
have occurred - to be unjustified (Moravcsik 2002). They see the international constraints on
national democracies as paralleling the domestic constraints adopted by most constitutional
democracies (Keohane, Macedo and Moravcsik 2009). Government for the people need not
require government by the people – indeed the second can on occasion subvert the first, and
the EU operates primarily in areas where this proves to be the case (Scharpf 1999).
However, others are not so sanguine about the EU’s undermining of domestic ‘input’
democracy and dispute the degree to which it has delivered `output' democracy (Mair 2011;
Scharpf 2011). This paper explores how far the EU has indeed undermined representative
democracy at the national level; the extent to which such moves might in any case be
justified, and whether the new provisions for national parliaments in the LT offer a means for
mitigating such a change.

We shall proceed as follows. In the second section, we shall briefly lay out how political
equality connects to representative democracy, and how parliaments and parties can be
regarded as providing satisfactory institutions for its realization. We identify two core
elements behind the justification for representative democracy in terms of political equality –
reasonable disagreement about how far any given policy might promote all citizens interests
in ways that show them equal concern and respect, and the resulting need for citizens to
exercise equal control and influence over politicians and indirectly over the programmes they
pursue. We also consider the circumstances when political equality might require that
representative democracy be constrained or overridden. The third section looks at how far
national parliaments and political parties can still provide a forum for either reasonable
disagreement or indirect influence and control over issues of European governance, and
whether they should do so. The fourth section concludes by summarizing the analysis.
2. Political Equality and Representative Democracy

As we noted, the LT links representative democracy to political equality rather than, as some democratic theorists propose (Habermas 1996; Held 2006), either individual or collective autonomy. This section explores the nature of this linkage. We shall argue that the justification for equal participation in a democratic process stems not from political equality alone but also involves the additional condition of reasonable disagreement over what is being decided (Waldron 1999: 107-13; Weale 2007: 12-18). Meanwhile, representative democracy substitutes an equal degree of electoral control and influence over decision-making for direct participation in making decisions. These two values of political equality and reasonable disagreement, and electoral control and influence as the mechanism for realizing these values, have been realistically embodied in parliamentary systems involving regular elections between competing parties (Strøm et al. 2003). Yet, all these systems are limited by certain constitutional constraints and involve non electoral bodies, such as central banks, in technical or other areas where it is held reasonable disagreement does not exist and/or the electoral control they provide are thought either not to embody or to undermine political equality (Pettit 2004). This account then sets the scene for our consideration of how far European integration has undermined these democratic processes at the national level, and whether this undermining can be justified in terms of political equality.

According to those thinkers who treat political equality as the central democratic value (Christiano 1996; Weale 2007), the core idea of democracy is that collective policies and institutions ought to treat the citizens who they serve with equal concern and respect. Equal concern entails that the interests of all citizens ought to be equally promoted. Equal respect involves according equal weight to their opinions and beliefs. Underlying both elements is the thought that no person or class of persons should be thought of as being the inherent superior of another, entitled to use others as a means to their own ends and rule over them in an arbitrary way.

These democratic criteria may be applied to either the process of decision-making or the substance and impact of the decisions themselves. The democratic process may be valued either instrumentally for its conduciveness to produce democratic outputs, or intrinsically as valuable in and of itself. Those theorists inclined to stress the intrinsic virtues of democracy do so in part because they contend that decisions regarding the nature of democratic outcomes are a matter of reasonable disagreement and prone to personal bias and fallibility

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2 For the purposes of this article we shall assume a citizen to be someone who has a sufficiently long term stake in the relevant political community to be accorded full membership rights.
(Christiano 1996; Weale 2007). Modern societies are pluralist, complex and open. Their members hold diverse and often conflicting views and interests, and will be naturally partial towards their own opinions and welfare, be it due to self-interest or the inevitable limitations and differences of their knowledge and experience. Such societies develop in unexpected and unpredictable ways, due to the human capacity for conceptual innovation and changing needs and preferences. All these circumstances create reasonable disagreements about the public interest given that people will be likely to assess evidence and weigh moral and political values differently. Most public policies are subject to numerous unknown and often unforeseeable variables that make their effects a matter of informed guess work at best, thereby allowing for considerable empirical disagreement even among experts – as when economists dispute the pros and cons of raising or lowering interest rates at any given time. Likewise, there can be differences over the normative evaluation of empirical evidence, both because of the complicated nature of the empirical data itself and the variety of normative considerations likely to be involved, each with a different force (Rawls 1993: 55-7).

Thus, without denying either the importance of fundamental rights or the validity of scientific and technical knowledge, citizens may reasonably disagree about those policies best suited to showing them all equal concern and respect. By giving all an equal say in shaping the common rules, goods and decisions that frame their social interactions and opportunities, democracy offers a fair and impartial mechanism for handling such disagreements. Even though particular individuals may continue to disagree with the collective decision, the very fact that they have been able to defend their interests and opinions on the same basis as everyone else gives them a reason to accept it. Indeed, this circumstance offers good - if not perfect - grounds for regarding such a process as instrumentally democratic as well. For if the process of decision-making has been conducive to showing citizens equal concern and respect, then, in the absence of objective criteria, it offers the only heuristic available for ensuring the interests of all citizens are advanced equally.

A representative system combining one person, one vote and majority rule in free and regular elections between parties competing to send representatives to a legislature and form a government, emerged in the late eighteenth century as the most plausible practical instantiation of the ideals of a democratic process for a mass electorate (Hobson 2008: 451). As we remarked, this arrangement replaces direct and equal participation in decision-making with an indirect yet equal influence and control over decisions through the election of decision-makers. Regular elections indicate that power is conditional and its abuse can be sanctioned, rendering politicians responsive and accountable to the electorate. Parties provide the means to organize voters and link them to politicians and policies. Electoral
campaigns force parties to compete in recruiting the support of a majority by putting forward a manifesto that aggregates voters’ preferences into a prospective programme of government with maximum electoral appeal (Auel and Benz 2005: 375). Within parliament, the vast majority of representatives then vote along party lines, with the executive being drawn from the leadership of the party or coalition of parties that command the majority of seats in the legislature.

Thus, representative democracy involves parties as well as parliaments in more or less equal measure – a point acknowledged by the LT at the European level at least in Article 8a 4, where they are recognised as contributing ‘to forming European political awareness and to expressing the will of citizens of the Union.’ As we saw, they perform a parallel function at the national level. The result is a long chain of indirect delegation whereby voters delegate the manifesto’s formulation to parties and its implementation to the elected party representatives in parliament, members of parliament delegate in their turn to parliamentary majorities, parliamentary majorities to a prime minister, and the prime minister to cabinet and cabinet ministers to civil servants (Neto and Strøm 2006: 632). In this way, decision-makers are provided with information from millions of citizens, who indirectly influence and control their policy choices and offer feedback on and have the possibility of contesting the resulting policies, prompting politicians to respond to their disparate and changing preferences and circumstances.

Parliamentary systems employ popular political control and influence to achieve equality of respect and concern not only in the process of decision-making but also to a degree in the outcomes, in conditions that assume and partly institutionalize reasonable disagreement about policies and an acknowledgement of their potential fallibility. As May (1952) has shown, majority rule on the basis of one person one vote offers a fair process that treats votes impartially. It accords voters equal respect through being anonymous, all views counting equally regardless of whom one is, and equal concern in being neutral between choices and positively responsive to changes in voters’ preferences. The results of parliamentary elections also have good claims to produce outcomes that equally advance voters interests. When parties compete within a one dimensional electoral space, such as the Left-Right divide that traditionally has provided the main cleavage within most Member States, they have an incentive to converge on the median voter, whose preferences match those of the Condorcet winner (Ordeshook 1986: 245-57). A Condorcet winner is that package of policy proposals that is preferred by the most people when placed in a pair-wise comparison with all the alternatives. Parties construct such a package by balancing the
interests of their supporters and arranging trade-offs and compromises between them so as to maximise the greatest preference satisfaction over all.

As such, parliamentary elections can be regarded as offering a reasonable reflection of the balance of preferences within the electorate. Moreover, they also afford protection for minorities, at least in pluralist societies. Because an electoral majority is built from minorities and prone to cycling coalitions, a ruling group will do well not to rely on a minimal winning coalition and to exclude other groups entirely. Consequently, either a currently excluded minority has a good chance of being part of a future winning coalition, or – for that very reason – is likely not to be excluded entirely by any winning coalition keen to retain its long-term power (McGann 2004: 56, 71). Finally, electoral competition recognises reasonable disagreement, reflecting the various cleavages dividing the electorate that might lead them to evaluate policies and their impacts in different ways. It also allows for the possibility that policies may fail, have unintended and unwanted consequences or not to be implemented correctly, or no longer be acceptable to the electorate due to changes in their preferences. The fact that governments must always face an opposition with an electoral incentive to point to the empirical and normative weaknesses and failings of its programme, promotes democratic debate and makes it necessary for them to ‘hear’ and ‘harken to’ ‘the other side’ about any policy.

However, no electoral system is infallible. There may be defects in both the process and the outputs that lead them to depart from political equality. All domestic democratic systems constrain the power of national parliaments and parties to some degree. Some commentators argue that the EU simply extends and perfects these constraints (Keohane, Macedo and Moravcsik 2009). For example, a dispersed and hard to organize minority may consistently fail to have any impact at all on policy. By contrast, an electorally salient yet unrepresentative minority in a marginal seat may have a disproportionate influence as may certain well placed special interests. Or a majority might for reasons of prejudice actively oppress a minority. Likewise, ignorance or myopia might lead the electorate to sacrifice its own or the political community’s long term interests for short term gain. These potential problems have led most parliamentary systems to adopt a variety of constitutional constraints on the democratic process, such as the judicial review of legislation to protect minority rights, and to isolate certain technical policies from electoral pressures where these are thought to produce perverse results, such as having interest rates set by central banks to avoid governments being tempted to manipulate them to create a boom at election time with adverse long term consequences for the economy. Though common, such measures are themselves contentious. They may be justified as generating more democratic outputs than a
standard democratic process could, yet if as we suggested no clear epistemological warrant for this claim exists other than such a process, then such justifications will prove hard to substantiate in an unequivocal way and remain subject to dispute. Nevertheless, in recent times there has been an increasing use of such non-majoritarian mechanisms, setting up a potential conflict between ‘responsive’ and ‘responsible’ government (Mair 2009).

At the same time, the capacity of parties and hence parliaments adequately to represent their populations has also come under pressure. Within Europe, the growth of non-majoritarian mechanisms on the one side, and the erosion of responsive government on the other have been associated with the impact of the EU. While some have regarded this development as little more than an extension of domestic constitutional measures to accommodate global pressures (Majone 2001; Moravcsik 2002), others regard this international extension of liberal constraints on national republican democratic decision-making as unwarranted and preventing domestic democratic systems from airing legitimate reasonable disagreements and exercising an appropriate degree of control over their governments (Scharpf 2009; Bellamy 2010). In what follows, we assess the latter thesis and its consequences for the role now accorded national parliaments and parties within the system of European governance.

3. The weakening of domestic representative institutions

As we noted in the last section, parliaments have a public mandate from voters to legislate and to control the executive. De facto, their institutional core consists of the government (which controls the agenda and formulates policy proposals), the parliamentary majority (which accepts or rejects these proposals), and the parliamentary opposition (assuring public deliberation, the generation of political alternatives and control). Democratic legitimacy is created through the competition between the different parties who form the majority and the opposition, publicly offering different programs to the electorate and being accountable for their actions. Needless to say, in practice, parliamentary democracy varies institutionally from one state to another and yet these core features can be found throughout the EU.

In the context of the EU, though, the domestically rather clear role-distribution gets blurred. Neither the Parliament nor the government have direct influence over the European agenda. It might be objected that national governments do enjoy a high level of agenda control over what happens at the Union level, and that they are, in turn, electorally accountable for how they exercise that control. After all, nothing much can happen at the Union level without that being sanctioned by the Treaties or periodic meetings of the European Council which now
has responsibility for the strategic direction of the EU. However, governments hardly ever have an electoral mandate for specific Union policies nor can they or the parliaments initiate legislation. Meanwhile, the controlling powers of the opposition as well as of Parliament more generally are weakened, as we will show in more detail below. Not surprisingly then, we witnessed the emergence of a ‘deparliamentarisation’ thesis in the 1990s (Raunio and Hix 2000). The thesis seeks to capture the transfer of policy-making powers to the EU and the resulting loss of power and influence of domestic parliaments – and with them those of the electorate which exercises these functions indirectly through its representatives – as well as the strengthening of executives in EU policy-making which results in informational asymmetries between the legislature and the executive (Auel and Benz 2005: 373; Raunio and Hix 2000: 145). As a result, NPs have no direct control over European policy-making and ‘suffer from a lack of authoritative power over transnational policymaking’ (Schmidt 1999: 25). Instead, executives have become the ‘gatekeepers’ in EU policy-making. NPs have, therefore, often been called the main ‘losers’ of European integration (Maurer and Wessels 2001). In the process, the space for reasonable disagreement about policies has also narrowed. While this diagnosis certainly needs differentiation in regard to specific NPs, the strength or weakness of which are importantly influenced by deeper ideological and cultural understandings of what makes for legitimate institutions, there seems to be consensus around the evaluation that parliaments have been weakened in EU policy-making. This decline in parliamentary power has a number of sources, many of them domestic. However, several of the underlying causes behind the erosion of representative institutions can be rather clearly associated with the EU.

What about parties? As Schattschneider famously remarked (1942: 1), ‘modern democracy is unthinkable save in terms of political parties’. Yet, there exists considerable dissatisfaction in European democracies with the current practices and processes of political representation, and particularly with political parties. Across Europe, albeit to differing degrees, there has been a steady, decades long decline in electoral turnout, falling party membership and identification, greater volatility in voter preferences and, hence electoral outcomes, greater difficulty in obtaining and sustaining majority support for governments, a decrease in trust in politicians, parties and political institutions in general, a diminution in the centrality of parliament, and increased devolution of authority to administrative bodies (Schmitter 2009). Are any of these phenomena related to the European integration process? The literature tells us: not directly, but indirectly (Ladrech 2009; Mair 2007). Not directly, as there are no European directives or guidelines to which parties have to adapt. Also, in contrast to civil society organizations, the EU is not an attractive opportunity structure as there are no
resources or potential partisan allies to be gained. Indirectly, however, parties are affected in various ways by the multi-level game as we will see.

Seven factors have proved particularly important in constraining political disagreement and control. The following three factors have reduced the scope for disagreement:

(1) First, the transfer of competences to the EU, particularly in fields such as trade or agricultural policy, leaves parliaments, governments and parties little to decide in these areas. This depoliticisation of the EU at the domestic level occurs through harmonization, which determines which policy fields can still be dealt with nationally and which competences are transferred to the EU. Member states have to adopt the acquis communautaire, and they have to comply with ECJ law, leaving parties and governments little leeway to define which issues they would like to address. True, in most cases a political decision was taken at some stage to transfer competences to the EU (though not in all cases given the increased importance of qualified majority voting (QMV) in the Council). However, once a competence has been transferred to the EU, it is there to stay and taken out of the Member States’ – and their parties’ – primary sphere. In this respect, the EU has played a major role in limiting the available ‘policy space’ for competing parties (Mair 2007) and governments.

(2) Second, the constitutional bias in the Treaties gives priority to the completion and realization of the internal market (Scharpf 1999: 54-58). Consequently, the ‘policy repertoire’ available to parties – and governments – has been diminished, thereby reducing the possibilities for them to disagree and propose alternatives (Mair 2007). The EU thereby also restricts the range of policy options that are possible within those fields that can still be influenced by domestic politics. Given that the acquis prioritizes the realization of the internal market, parties and especially governments, can only reasonably develop those policies which can be shown to be in line with the four freedoms of the internal market unless they want to risk being taken to Court either by the Commission or by private interests. The ways the primacy of EU law can clash with domestic democratic and / or welfare traditions became clear in the context of the Viking and Laval cases (Joerges 2010). The restriction of the available policy alternatives obviously harms the norm of political equality by not allowing all relevant preferences to be treated with equal concern and respect because of a restriction in the area of reasonable disagreement. As a result, parliaments, governments and parties are being transformed into mere agents of the state and its treaty obligations, obliged to engage in responsible administration rather than developing and implementing their own priorities as set in response to the voters.
(3) Both the above constraints have been further reinforced by the supremacy and direct effect of EU law as interpreted and upheld by the ECJ and by its claims to ‘competence-competence’ in deciding whether it may legitimately override national constitutional objections or not. As a result, parliamentary attempts to disagree with the integration process risk becoming de jure unreasonable. They have no choice but to adapt to and implement EU law, even in those cases where ECJ interpretations may be thought to extend EU competences in ways that appear to run counter to the directives approved by national governments, as has sometimes happened in areas related to EU citizenship or freedom of movement (Scharpf 2009).

The net effect of these three factors is that governments and parties can offer ever fewer political alternatives to voters which in turn decreases party competition. As a result, elections become less decisive, and their value decreases. In turn, parties, vote-seeking as they are, attempt to avoid the politicisation or debate of EU affairs given that under the conditions we have sketched it is hardly an attractive electoral issue. The damage for representative democracy is obvious.

Meanwhile, control has been reduced by four factors that enhance the independence of national executives:

(4) The increased use of QMV in the Council and bargaining in the Council and the European Council make it difficult for national parliaments to force governments to enter into detailed ex ante commitments before taking decisions at the European level (Raunio 2009: 327; Ladrech 2009). Parliamentary control of the executive gets proportionately diminished. NPs generally enjoy the right to draft non-binding resolutions on EU affairs (except Denmark and Austria where they are binding). However, in EU affairs their traditional veto power, has passed to ministers in the Council and is therefore nonexistent.

(5) National governments represent their countries in EU negotiations, resulting in informational asymmetries between the executive branch and the legislature that likewise constrain parliamentary control and influence.

(6) Parliaments – and particularly the opposition – do not debate government actions in EU-related affairs to the same degree as in conventional domestic politics. To date, there is hardly any research on parliamentary deliberation of EU affairs, making it difficult to evaluate its quality. What is known is that plenary debates of EU-related issues is low (Raunio 2009: 320). The latter tend to be delegated to the European Affairs Committees,
rendering it impossible for the electorate to follow the debates given they are not accessible to the public.

Generally, ‘cooperation takes place behind closed doors’ (Auel und Benz 2005: 390), not least due to the structural dilemmas of parties and governments, which we will sketch in more detail below. This cooperation behind closed doors, which scholars of regulatory or committee governance tend to favour, contributes to the blurring of responsibilities between opposition and majority parties. In order to strengthen the national negotiation position, consensus is sought behind closed doors, implying that political alternatives are not offered to the public anymore (Auel and Benz 2005 379). Opposition parties, in turn, are unlikely to demand plenary debates about the EU given that they either have similar preferences to those of the government or lack more coherent approaches to the EU (Raunio 2009: 320).

Institutionally, studies show that involvement in EU policy-making is ambiguous for each of the three institutional actors within parliaments. The more parties – in particular the opposition – attempt to influence and control the government, thereby seeking to connect them to the electorate, the more they may actually be accused of undermining the ‘national interest’ by supposedly weakening the government’s negotiating position. However, if parties opt for less scrutiny so as to favour effective governance, they may be blamed by the electorate for not representing their constituencies or the ‘national interest’ while parliamentary involvement ‘is reduced to a mere symbolic use of power which in the end undermines the legitimacy of European policy-making’ (Auel and Benz 2005: 373). Governments face a similar dilemma. On the one hand, they need to find European solutions in the Council and the European Council. On the other hand, they ought not to alienate their domestic majority and constituency. Besides these more structural dilemmas that parliamentary actors face in EU policy-making, the mere lack of resources necessary to control governments and offer political alternatives also makes it difficult for NPs to live up to their normative role.

(7) Last but not least, there is a reduction in the policy instruments that national governments – and thereby parliaments and parties – can employ, or, put in other words, an increased use of instruments and actors over which they possess less control than they enjoy over traditional domestic policy instruments. These include governance modes such the Open Method of Coordination (OMC), in which the European Commission, but potentially also non-elected third parties (experts, civil society organizations) play an important role. In soft law instruments, such as the OMC, NPs play no legislative role.
They are, despite their official description, typically intergovernmental and rather informal in nature. Research indicates that, by and large, they escape national parliamentary scrutiny, and that lines of accountability become increasingly blurred due to unclear chains of delegation and a lack of transparency (Dawson 2009; Kröger 2007). And they include non-majoritarian institutions such as the European Central Bank, Frontex (border control), EFSA (food safety) or any other regulatory agency. Politics, hence parliaments and parties, are deliberately excluded from the governance of these institutions. The space for partisanship and alternative policy options is thereby drastically reduced, as is the possibility for those concerned to hold the respective institutions to account.

How have parliaments and parties reacted to these challenges stemming from the EU? NPs have sought to institutionally counter their weakened role in the context of EU policy-making. Since the 1990s, the goal of parliaments was threefold: to obtain comprehensive information about EU policy processes by their governments, to enhance their own institutional capacity to handle the information (resulting in the setting up of European Affairs Committees and the introduction of scrutiny procedures in all Member States), and to establish participation rights in EU affairs vis-à-vis the government, the mandating effect of which differs substantially between Member States (Auel 2005: 308). The most visible adaptation to date has been the establishment of European Affairs Committees in all the Member States’ parliaments. Their main function is to coordinate parliamentary scrutiny of the government in EU matters. While this seemingly strengthens the control function of parliaments, helping parliaments and parties to reduce information asymmetries (Benz 2005: 515) and thereby to control governments better, it weakens its debating function and hence the expression of disagreements as debates tend to be held in the specialised committees rather than in plenary sessions.

More recently, political concern within the Member States about de-parliamentarization and the legitimacy of further integration more generally, promoted the introduction of the ‘early warning system’ into the Lisbon Treaty. The so-called ‘yellow card’ entails that if a third of national parliaments object to a legislative proposal of the Commission, then it must reconsider the proposal. Furthermore, they may issue an ‘orange card’ and stop a legislative proposal if a majority of national parliaments oppose it and either the Council or the EP agrees under the co-decision procedure. However, it has been doubted if either power is likely to enhance parliamentary debate and control. According to Tapio Raunio, it ignores the fusion of the executive and legislative branches in parliamentary democracies, which makes it very unlikely that the parliament would adopt a different position than the
government. Secondly, violations of the subsidiarity principle are by most accounts very rare, with national governments and parliaments until now hardly ever voicing complaints about the EU institutions overstepping the limits of their formal competencies. Related to that is the improbability that the sufficient number of national parliaments would agree on the same legislative proposal violating the subsidiarity principle. And, finally, the process is an entirely voluntary one, and it is very likely that parliaments will use it with varying degrees of interest (Raunio 2009: 325).

It is less clear how parties have reacted to the influences stemming from the EU. Due to European Treaty obligations and the reduction of the policy repertoire, parties have tended to converge on centrist policies, contributing to the increasing dilution of the traditional left-ride divide. As a result, they offer the voters fewer electoral alternatives, which in turn contributes to increasing voter volatility and to decreasing voter turnout. Reasonable disagreement is foreclosed as is responsiveness as parties feel required to pursue the ‘responsible’ policies that follow from their European commitments, as was recently witnessed in parliamentary debates and decisions in Greece and other Member States in dealing with the Euro-crisis (Mair 2009, 2011). How can the conflicting positions that exist over Europe be articulated if parties – or at least those mostly represented in parliaments – decide that the EU should not be contested? It is unclear how parties can still represent voters if they develop ever more into either governing institutions, or potential future governing institutions, while becoming ever more distanced from those they aspire to represent (Mair 2006). Finally, how can parties still represent if despite the obvious increase in EU policy competences and influence parties have not engaged in internal changes that would allow them to better deal with the democratic challenges stemming from multi-level governance in the EU (Ladrech 2007)? Parties seem ill- or un- prepared to deal with these questions at present.

Some analysts have objected that none of this matters. For example, Andrew Moravcsik has questioned the extent of EU decision-making, arguing that it only affects 10-20% of domestic legislation, mostly in areas with low electoral salience (2001, 2008). Moreover, he insists that there is ‘tight national oversight’ not just of treaty amendments, but also due to the need to secure approval from a weighted 2/3 majority in the Council of Ministers and ‘transposition into national law by national bureaucracies or parliaments’ (Moravcsik 2008: 334). Our analysis suggests that this national oversight is looser and has fewer democratic credentials than he maintains. It might still be argued, though, as Majone (2001) and – in recent work – Moravcsik (in Keohane, Macedo and Moravcsik 2009) too has claimed, that in the main policy areas covered by the EU there are good reasons for sidelining government ‘by’ the people so as to improve government ‘for’ the people in the context of a global economy. For
example, Keohane et al. contend that the upholding of free trade agreements against the protests of producer groups seeking to preserve various protectionist policies – be they from labour or capital – has been generally beneficial to national economies and domestic consumers (Keohane, Macedo and Moravcsik 2009: 14). Such moves reflect the traditional constitutional constraints that operate in most democratic states to prevent the rent-seeking behaviour of special interests and factions from producing outcomes that subvert both the public interest and political equality (Keohane, Macedo and Moravcsik 2009: 6-7, 9-10). Yet, as they also grant (Keohane, Macedo and Moravcsik 2009: 16), it will be an empirical and, it should be added, a normative issue when such arguments apply, that to some degree can only be decided on a case by case basis. For example, the costs and benefits over the long-term of local agreements to protect wage levels, working conditions and job security, of the kind at issue in _Laval_, are difficult matters to assess – not least because there may not be an agreed metric of what the ‘best’ policy outcome would be. Constraining political debate of such matters may not only be unjustified, removing from political control issues that are subject to reasonable disagreement, but also create the very distortions it seeks to avoid if the effect of the constraint is to reduce equality of access in ways that privilege certain well-placed yet unrepresentative groups. Unsurprisingly, for instance, the lobbying and legal avenues offered by the EU have been exploited disproportionately by corporate bodies to strengthen the position of those companies likely to benefit from deregulation at the national level (Coen and Thatcher 2005; Harding 1992). In which case, the need for ‘tight national oversight’ remains vital and it’s undermining a matter of concern.

4. Conclusion

In this paper, we have argued that national representative institutions are vital for the democratic legitimacy of the EU, a proposition that finds support in the LT’s understanding of representative democracy. We established how political equality links with reasonable disagreement and public control to provide the three core ideas underpinning representative democracy and noted how national parliaments and parties realise these three criteria. However, our analysis reveals that in a number of respects European decision-making structures have empowered both national executives and EU level decision-makers, such as the ECJ and the Commission, in ways that diminish opportunities for either parliaments or parties to express reasonable disagreement and exercise control over EU level policies. On the one hand, EU decisions become either _de facto_ or _de jure_ beyond disagreement or debate. Parliaments and parties may lack relevant information, be wary of undermining the bargaining position of governments, or worry they may open up intra-party rifts and so keep
European issues off the electoral and parliamentary agenda. Meanwhile, the constitutionalization of the Treaties by the ECJ has effectively removed certain aspects of the *acquis* off the political agenda. National governments, parliaments and courts must simply implement EU legislation as interpreted by the ECJ. On the other hand, and partly as a result of the diminished scope for reasonable debate about Europe, effective control has also become increasingly problematic. Not only have certain policy areas effectively migrated upwards to the European level, but it has become increasingly hard to hold national actors accountable for what they do at the EU level. Either their precise involvement remains unknown, or their own power has been limited by such changes as the move to QMV. Parties, finally, are for different reasons not ready or not willing to engage in a politicization of European integration, thereby hampering the voicing of reasonable disagreements and the effective exercise of public control.

The consequence is that the preferences of citizens in EU affairs cannot be properly represented. This is particularly worrying in regard to the expression of opposition to EU policies. If citizens cannot hold their government and representatives to account for EU policies because they have been removed from political debate and depoliticized, if citizens cannot organize opposition within the political system, foremost via parties, but to a lesser degree also via civil society organisations, then policy opposition is likely to turn increasingly into polity opposition (Mair 2007) as can easily be seen by the growing electoral successes of extreme-right, euro sceptical parties. In other words, in the absence of channels for reasonable disagreement on EU matters, one risks getting unreasonable disagreement.

We have doubted that the current powers allotted to NPs by the LT can make much of a difference to this state of affairs. They attempt to give parliaments a more informed role in debating EU affairs by providing more information and encouraging the development of parliamentary European Affairs committees and cooperation between them. They also seek to empower parliaments by giving them a collective competence over the EU's own competences. Yet both powers are too weak and the threshold for the yellow and red cards is impossibly high. Moreover, the rights and responsibilities that the LT assigns to NPs mostly deal with government-related functions of parliaments. Parliaments are assigned the role of gatekeepers of European integration, rather than conferring on them their traditional function of shaping policies through legislative acts. Thus, they imply a new type of democracy in the EU. The incentives the LT gives NPs do not point to a ‘re-enhancement of national democracy, but a sustainable transformation of national democracy’ (Sprungk 2011: 2).
Is one effect of increasing EU competences and influence in policy-making that European citizens learn to live with an absence of input-oriented democracy? Are we moving, as some authors contend, to an ‘audience democracy’? We doubt it. The mass protests in Greece, Ireland and Spain against the public sector cuts resulting from the Eurozone crisis suggest a large number of citizens remain unwilling to accept that governments and parties simply should adjust to whatever the EU requires of them and that states become ‘polities without politics’. If parties and governments continue to ignore the desire of citizens to engage in political processes, we are likely to continue to witness a de-structuring of the party system at the national level (Bartolini 2005), and an increasing disaffection with representation through parties rather than with democracy itself. True, some have argued that we are moving towards new forms of post-party and post-parliamentary politics, yet others regard such a development as dangerously close to ‘post-democracy’ (Crouch 2004). Hitherto, as we saw and the LT affirms, parties and parliaments have proved structurally necessary to realising political equality within mass representative democracies. So far, no realistic alternative has emerged to ensure all views are as fairly represented, their differences as reasonably debated to obtain the advantages of democratic deliberation, and governments as effectively controlled through being made indirectly and directly accountable to citizens on a basis likely to accord them equal concern and respect. Any weakening of this system, therefore, remains worrisome for democracy in the EU.

Whether the answer might lie in strengthening EU democracy and with it political union lies outside the scope of this paper. Even if it could, which remains contentious, current circumstances seem unpropitious for any such attempt to be made. Rightly or wrongly, moves in such a direction are likely to be perceived as deepening rather than alleviating the domestic democratic deficit. By contrast, the shift made by the LT towards placing greater emphasis on the role of national parliaments seems both necessary to strengthen representative democracy within and because of the EU, and have greater prospects of appearing legitimate in the eyes of European citizens.
References


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