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Title: ‘The European and National Parliaments after the European Convention: Allies or Adversaries?’

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The European and National Parliaments after the European Convention: Allies or Adversaries?

Abstract

Despite the Constitution's uncertain future, the European Convention signalled a trend towards upgrading the role of national Parliaments in the European Union's decision-making process, by giving them extensive information rights and a role in the implementation of the principle of subsidiarity through the 'early warning system'. The question addressed in this paper will be the following: how would an enhanced role for the national parliaments be likely to affect the relationship between national and European Parliaments and what would be the consequences for (a) the exercise of parliamentary accountability in the EU as a whole and (b) the process of European integration? It will be argued that while the new information rights for national Parliaments would contribute to strengthening the exercise of accountability overall in the EU and encourage further European integration, the 'early warning system' could weaken democratic accountability and reinforce intergovernmentalism.

Introduction

The European Union's legitimacy question remains both uncomfortably open and intensely debated. Not unrelated is the embarrassing halt to which the process of European integration has come after the failure to ratify the Constitutional Treaty. It has become clear that unless citizens acknowledge the EU as a democratically legitimate political entity quite apart from the benefit it brings into their daily lives, the process of integration will continue to stand on shaky ground.

Meanwhile, the search for solutions has seen a new factor working its way into the equation: the idea of bringing national parliaments 'back in' in order to address the 'democratic deficit' has been gaining support among academics and practitioners of EU institutional politics. It has first surfaced in terms of statement of principle in the Treaty of Maastricht, become established with the Treaty of Amsterdam and further strengthened in the Constitutional Treaty. Two Protocols attached to the Treaty establish timely and increased information rights for national parliaments on proposed legislation from the Commission and the 'early warning system', according to which 1/3 of national parliaments may force the Commission to review a legislative proposal if they deem the proposal contrary to the principle of subsidiarity. Despite the uncertain future of the Treaty, national parliaments are forging ahead with implementation of these measures on their own initiative and asserting their new powers in the EU political system.

The direct involvement of national parliaments in EU policy-making, which is apparently here to stay, raises a number of normative questions that have yet to be directly addressed: why is such involvement bound to be a solution to the 'democratic deficit'? Is there a sense in which NPs and the other much discussed would-be repository of democratic legitimacy, the European Parliament should be at odds over which is more likely to help address the 'democratic deficit', or are they best allied to that purpose, and if so why? If an alliance is called for what are the principles on which it should stand and what is the form that it should take?

After a brief summary of the evolution of relations between NPs and the EP, it will first be argued that in the particular EU context it is not the direct involvement of NPs

in EU affairs as such, but the close co-operation between NPs and the EP that is desirable if democratic accountability in the EU is to be achieved. Secondly, construing accountability as ‘check’ and ‘forum’, whereby the control and law-making functions of parliaments constitute ‘check’, while the communicative and elective functions taken together are ‘forum’, the nature of co-operation that is necessary if accountability is to be achieved will be set out. The claim will be that (1) co-operation must involve both NPs and the EP in both ‘check’ and ‘forum’ and (2) co-operation should involve both the substance of law-making and the procedure whereby it is decided which level of governance should handle law-making in different policy-areas. Finally, the approach adopted in the Constitutional Convention, mainly the emphasis on enhanced information rights and the ‘early warning system’ will be examined with respect to the extent to which they are bound to encourage or discourage co-operation thus understood.

An evolving relationship

National parliaments were generally considered to be losers in the process of European Integration. Insofar as areas of decision-making were transferred from the national to the European level there was a loss of legislative competence, leading to a limitation of the role of NPs to ratifying Treaties and transposing directives without being able to influence agenda setting or the substance of the laws. Conventional wisdom had it that this development was coupled with a general loss of power of the legislative power with respect to the executive nationally and in the EU overall. In short, not only was there a transfer of power but a ‘deparliamentarization’ process at work in the EU (Auel 2005). Moreover, this has meant a weakening and inability to exercise their functions, not only with respect to European policy-making, but domestically as well (Bortzel and Sprungk 20034).

However, conventional wisdom has been challenged since the mid-1990s: NPs are not mere losers, but can be seen as ‘latecomers’ in European governance and policy-making (Raunio 1999, Maurer and Wessels 2001). In a first phase, going from the 1950s to the mid-1980s, national parliaments were not inclined to be involved in EU affairs. They seemed a matter of foreign policy which governments were left to deal with, unanimity in the Council meant that governments were theoretically under the control of national parliaments and EU business was not as much or wide-ranging nor did it seem as important. In a second phase going from the signing of the SEA in the mid-1980s to the late 1990s, NPs started to realize that Europe mattered and started to strike back: they were busy establishing structures, i.e. specialized committees to deal with European affairs, pushed for information rights and have to varying degrees succeeded in influencing the positions of respective national governments in EU decision-making. Since the 1990s, we have been going through a third stage, during which ways are being sought to ensure greater involvement of NPs in EU policy-making since they are seen as bastions of legitimacy and means of remedying the ‘democratic deficit’ (Norton 1996).

The first official acknowledgement of the kind came with Declarations 13 and 14 incorporated in the Maastricht Treaty, which called for greater involvement of NPs in the activities of the European Union, advising governments to ensure that Commission proposals for EU legislation reached NPs in time for them to be

informed and examine such proposals and co-operation with the EP in the context of a Conference of Parliaments that would deliberate and be consulted on the main features of the EU.

The next major step came with the 'Protocol on the role of National Parliaments in the European Union' that was attached to the Treaty of Amsterdam and had legal force. The Protocol made things more specific: it acknowledged the right of NPs to receive all EU documents with the governments responsible for forwarding them to their legislatures 'as appropriate'. It established a period of six weeks between the issuing of a legislative proposal and its discussion in the Council to allow NPs to exercise legislative scrutiny. Finally, it acknowledges COSAC as a means of more active participation of NPs in EU business.

A broader discussion on the role of NPs in the EU political system has been set off with the Treaty of Nice, the Laeken Declaration and the Constitutional Convention, where the more enhanced information rights that oblige the Commission to forward information to the NPs in a timely fashion and the 'early warning system' were established (Rizzuto 2003).

Even after it became clear that the ratification of the Treaty would not be an easy ride, national parliaments seized the opportunity to assert their new status. EU institutions have agreed to implement information rights and the Council has begun to open up its legislative work to the public, thus allowing NPs to check individually what their respective governments do in Council. Despite disagreements from the Italian Parliament and some concern that not all NPs are up for being full participants, through COSAC, the committee that brings together representatives of the specialized European Affairs Committees from national parliaments, NPs are on their own initiative collectively organising an equivalent of the 'early warning system'. They have warned the Commission that they will be bringing pieces of legislation they deem inappropriate in terms of subsidiarity to its attention and expecting it to review them. A pilot project involving cross-border divorce law and the liberalization of postal services is being put to work as we speak (COSAC website). While the Commission has raised objections that there is no legal basis for review as well as that such piecemeal implementation of the Treaty will weaken its ratification prospects even further, it has conceded that it will take national parliaments objections into account, as it would be politically very costly for the Commission to ignore the contrary opinion of a good number of NPs.

Throughout their ascendance to greater power in the EU emerging polity, national parliaments have not always been on the best of terms with the EP. While it was always declared that NPs and the EP are to co-operate in the EU context, the purpose (issues pertinent to the general direction of the EU, specialized policy issues or shadowing the intergovernmental mode), the type (co-operation between European Affairs committees, standing specialized committees or grand plenary deliberative events) and the institutional formula of co-operation between them (Assizes, COSAC, bilateral or multi-lateral meetings of specialized standing committees, the Convention method, versions of bicameralism at EU level, a joint chamber or an inter-parliamentary Congress) was not uncontroversial.

In the mid-1980s, when NPs realized that they needed to become involved in EU affairs, they were unsure about how to handle relations with the European Parliament. At about the same time, the EP was upgraded to European level co-legislator. Its strategy towards the NPs was to direct co-operation towards functional activities, policy-oriented co-operation, mainly regarding market regulation. The role it saw fit for NPs was that of scrutiny of their governments, a role with which it saw itself as helping them in by providing information. At the same time it sought to avoid the creation of any other institution at the EU level that would involve the NPs directly in EU legislation (Neunreither 2005).

It also hoped to gain access to information from NPs - which is why it hesitated to open up its committees to NPs because it insisted on reciprocity. But this dimension is flourishing much less. MNPs are not very open and there is great diversity in political contacts, formal structures and interest.

Initially NPs preferred inter-parliamentary congresses and an upgraded role for generalist COSAC. They did not completely trust the EP as an honest broker and feared it would usurp their power. They sought to 'duplicate the EP's own field of activity'(?). In the early 1990s NPs were disenchanted with the Assizes and Cosac and turned their attention towards functional co-operation which has intensified through specialized bilateral or multi-lateral specialized committee meetings. Complaints from the NPs side is that in committee contacts the EP committees take a leadership role, while many in the EP talk about 'overkill'. Neunreither mentions that thoughts for the future involve joint chairmanship of committees and equal rights for areas where competencies are shared and EP specialized committees hosting representatives of standing NP committees where the EU legislates (Neunreither 2005).

Why the relationship between EP-NPs matters for tackling the 'democratic deficit'

The 1990s call for stronger involvement of national parliaments in EU policy-making rests on one empirical observation as well as on a normative assumption. The empirical observation is that despite more than half a century of European Integration and despite the impressive power gained by the European Parliament over the course of these decades, national parliaments continue to be the primary repositories of democratic legitimacy in the European Union. Citizens in the EU will identify themselves primarily with their national representatives in the national assemblies rather than with their MEPs. National elections will be considered first-order elections, while European elections will be second-order, a chance to debate national issues and punish or reward the national government on its performance on national issues, rather than debate European issues or sanction government performance in European issues. Following public opinion, it is national assemblies rather than the European Parliament that will draw most media attention.

The normative assumption is that national parliaments should continue to be the primary repositories of democratic legitimacy. National parliaments are closer to the citizen, therefore a better plane on which citizens can put their views across to their elected representatives than the distant Brussels arena. Furthermore, national parliaments are to be considered the more appropriate loci through which citizens belonging to diverse political communities can debate and manage their own affairs,

matters which they understand better than anyone else. Finally, national demoi best feel represented through and identify with national parliaments. As well known, the EU does not have a demos (Weiler et al 1995), which explains the lack of popular interest for the EP. Demoi are based on common cultural, linguistic or other 'thick' belongings. In the EU diversity is such that it should only ever constitute an ensemble of demoi.

Given empirical realities and the primacy ascribed to national parliaments as repositories of democratic legitimacy, the 'democratic deficit' is understood as a result of the fact that national governments are no longer effectively accountable to their national parliaments for their joint actions at European level. Since certain interests are in common and some problems are best solved jointly, national parliaments have authorized governments to take common decisions at European level. However, governments' meeting secretly in Council and voting through qualified majorities represents a hindrance to democratic accountability. Therefore, if democratic accountability is to be restored for European-level decisions, national parliaments should play a direct role in European decision-making.

Serious objections can be raised against both the empirical and the normative accounts. The legitimacy enjoyed by national parliaments may no longer be taken for granted. Disillusionment with national politics and the process of European integration itself have not been inconsequential here. European integration in particular has been argued to have strongly impaired national parliaments capacity to exercise their functions (Bortzel and Sprungk 2004). Moreover, it may well be the case that European issues may be gaining in salience, as the referendum of the Constitutional Treaty in France and the Netherlands have recently shown, as citizen disappointment in the Union's capacity to maintain a common stance on key foreign policy issues has repeatedly been expressed or as the increasing realization that immigration and terrorism are phenomena that the nation states of Europe are no longer able to tackle on their own has begun to surface. Greater politicisation of EU issues at national level and greater media attention to European affairs and the activities of European institutions could well be expected in due course. While the EP may as yet not be the beneficiary of legitimacy lost to national parliaments, that possibility could hardly be excluded.

Coming to the normative account, one may argue that national parliaments are indeed physically closer to citizens with respect to the European Parliament. However, one may not argue that the EP's operation is less transparent than national parliaments, that there are fewer channels that citizens can use to access the EP, that MEPs do not visit their constituencies or that the EP is less responsive to citizens' concerns, just because it is further away than national parliaments. One might even argue that the EP fares better than some national parliaments in one or more of these counts.

Secondly, the EP is, if anything, the parliamentary assembly that respects and celebrates diversity more than any other in the EU and elsewhere. This is written into the way in which its seats are allocated to different nationalities, the electoral system that it adopts, the balance kept between geographical representation and political affiliation in the makeup of its committees, the translation facilities available to MEPs coming from even the smallest of states. Again many national parliaments might do well to take example from the EP when they pick their choice of electoral system,

make rules for the representation of minorities or extend the use of facilities for the use of minority languages.

Finally, true enough, there are indeed national demoi which identify with national parliaments and see themselves best represented through them, while there is no European demos. One might argue with Habermas that the demos need not stand on a cultural principle, but belonging could form around an alternative principle of 'constitutional patriotism' (Habermas 2001). The demos is here something that is never fixed, but constructed in time. Institutional incentives can do much to encourage its development along with the emergence of a pan-European public sphere. Others remain unconvinced that democratic rules, the achievement of distinctive European goods and the protection of individual and group rights will suffice to create a demos. The development of political contestation between integrated (though diversity respecting) EU-level political parties with which citizens can directly identify is thought by some to be a more convincing alternative for the emergence of a European demos (Tsakatika, forthcoming).

In any case, a demos is best seen as a constructed and evolving entity, not a reality fixed for all time. A European demos may yet emerge and no institution other than the EP could be its epicentre of democratic legitimacy. This would not mean the end of national demoi. Rather, one might imagine a state of affairs where national demoi and the European demos co-exist, are mutually reinforcing and open to each other. All things considered it is fair to argue that it is not the case that national legislatures should continue to take precedence as sources of democratic legitimacy in the EU with respect to the EP. Rather NPs and the EP should both be allowed their claims as loci of legitimacy. The alternative is a choice between a multitude of weakened demoi and a demos that never explored its potential.

How are we then to understand the 'democratic deficit'? It is indeed the case that national parliaments cannot ensure democratic accountability of their governments for EU affairs. Furthermore, Europe and its Member States are intermeshed to such an extent that this state of affairs is practically irreversible. On the other hand, the European Parliament does not effectively exercise democratic accountability over the executive for those competencies that are transferred to it. At the same time, not all competencies 'lost' to national parliaments do get transferred to the EP, but are handled through co-operation between executives. The result is that neither national parliaments nor the European Parliament can each on one's own adequately ensure democratic accountability.

In terms of comparative politics, The EU can be thought of as a case of 'co-operative federalism'. It is generally accepted that co-operative federalism leads to executive dominance, and to the weakening of overall democratic accountability. This is because joint competence leads to network governance, technocracy, blurred responsibility and lack of transparency, which raise difficulties in legislature's efforts to control executives. However, the system most similar to the EU, German co-operative federalism, involves a party system that is tight and vertically integrated which compensates for the potential danger executive dominance represents for democratic legitimacy (Bortzel).

The road towards building up a unified party system in the EU is riddled with obstacles. The diversity of party systems in the national arenas render its development

possible mostly from the bottom up, and can therefore be expected to be slow, cumbersome and in any case maintaining a great degree of diversity. Were a unified party system to develop it would anyway remain diverse and loosely coupled across levels. Such a party system might not suffice to counterbalance executive dominance, as in the German case. It would *anyway* require an arena in the context of which diversity could be managed and compromises negotiated.

To sum up, executive dominance, the inability of either NPs or the EP to counter it and the absence of a counterbalancing party system constitute the bedrock of the EU's 'democratic deficit'. But where does this leave us with respect to the claim that direct involvement of national parliaments in EU decision-making would go a long way towards closing the 'democratic deficit'? One point is that such involvement is not in itself desirable insofar as it cannot provide a solution for the 'democratic deficit'. Rather it would be an alliance between NPs and the EP that would be desirable as it could be expected to provide a solution for effective democratic accountability in the EU, in the direction of what Maurer and Wessels have termed 'multi-level scrutiny' (Maurer and Wessels 2001). This would stand on the joint interests of national and European parliaments as actors to address executive dominance and ensure democratic control. It would require that any stronger involvement for the NPs should not weaken the EP's position, but should be tailored to strengthen both. A second point is that the alliance in question would also be desirable if it provided an arena for the development and management of an EU-wide, vertically integrated party system and the emergence of the Union's composite demos.

Obstacles to alliance

Alliance between national parliaments and the European Parliament, argued to be a key to achieving democratic accountability in the EU is at risk by the process of European integration. Insofar as the process of European integration involves transfers of competencies between levels - so far mostly from the national to the European level - it involves considerations of power between the two and may pit them against or make them suspicious of each other (Neunreither 2005). This is indeed reflected in the instances or periods of suspicion and even outright hostility, which has been a facet of the relationship so far, as was shown in the first section.

From the perspective of European integration as a zero-sum game where power is transferred from the national to the European level, the EP does not look like a natural ally of national parliaments *contra* executives, but rather an adversary ready to usurp functions that they once performed. It is rather national governments that national parliaments would think of as allies in defending national interests and national sovereignty.

The ad hoc way in which European Integration has taken place so far involving 'competence creep' has seen competencies taken away from national and onto the EU level piece in a piecemeal fashion on the initiative of supranational institutions and the compliance of executives, or, according to the alternative version, on the initiative of national executives and the implementing efforts of the supranational institutions. This has not done much to appease suspicion. National parliaments may have been threatened in the process, not necessarily because their competencies were being

taken away, but because it was unclear exactly to what purpose, to what extent and who would exercise these competencies. However, even if the EP were to successfully take over the competencies lost by NPs this would not suffice because there is not a clear division of competencies in 'co-operative federalism'.

As is well known, the question of competencies is far from settled even in established federations. Over time, there are periods of centralization and de-centralization reflecting different needs of the time and political contingencies. Federations provide safeguards against 'competence creep'. While the EU has mostly been in a centralizing path for the first half century of its existence, it is not inconceivable that it will undergo a de-centralizing trend in the future, involving or partial re-nationalization of competencies (one might for example think of the CAP). It might have begun to look more like a federation from the point of view of competence allocation. Rather than European Integration we might be heading towards constitutional agreements on competence allocation.

In the EU context, the Convention was meant to address, though not resolve the question of competence allocation, while post-Maastricht subsidiarity had already been meant to make a clean break with 'competence creep'. Yet, subsidiarity as envisaged in the EU is based on efficiency grounds. While efficient allocation of competence is important, the question clearly has a political side to it, which cannot ultimately be decided without citizen consent (Verges-Bausili 2002: 11). This was discussed in the Convention, which assigned national parliaments a collective, distinctively political role in addressing the question of subsidiarity through the 'early warning system'. Yet, giving NPs the possibility to 'resist' further integration the foundations have been laid for adversity with the EP. National interest as opposed to the general European interest will have been given primacy and inter-governmentalism will have been privileged.

NPs and the EP have different constituencies to represent and ways must be found to reconcile the choices of these constituencies by those actors that are thought to best represent them. Both should be engaged in what is the political side of subsidiarity, on equal terms, in a co-operative exercise. Without the co-operation of both, integration, or rather any attempt to manage competence allocation will not be legitimate before citizens and will jeopardize the alliance between NPs and the EP, argued to be desirable from the point of view of ensuring democratic accountability in the EU.

It is therefore of paramount importance to establish a joint system of agreeing on subsidiarity questions whereby consensus can be reached between EP and NPs on the matter of which level is more appropriate, so that relations between partners do not turn adversarial. Such a system would examine the subsidiarity question not only in terms of efficiency (which level is more efficient to deal with a task/policy), but also what citizens would consider appropriate to resolve at which level, thus handle the question of diversity. What is distinct about the EU is that it is a multi-national entity with great diversity where such questions are bound to be more sensitive than in established federations and therefore it is more important that they are dealt with by democratically elected bodies.

Another way to look at this is to say that if democratic accountability is to be ensured in the EU, the executive/s should be accountable to the legislature/s both for decisions

concerning day-to-day policy-making and the way in which such decisions affect the allocation of competencies.

Exploring ‘multi-level scrutiny’

Democratic accountability as conducted through the parliament medium is janus faced: it must involve check *and* forum. To use a language familiar to legislative studies, it is not only about the extent to which control is actually exercised over the executive and the degree to which parliaments can actually influence legislation, it is also about debating political issues publicly and thus expressing and forming popular views on these issues, as well as about the public ritual of conferring authority upon executives through electoral procedures.

Check without effective forum will isolate the people’s representatives and their views will not reflect those of the citizens at large. Executive performance will not be publicly evaluated, reasons will not given for choices and lessons will not be learned. The citizens will not identify with their representatives. On the other hand, forum without effective check may turn into powerlessness or a mere scapegoating exercise. Citizens will feel powerless in influencing the executive through their representatives and retreat from the accountability game. Or, executives will be chosen and sacked for reasons that are not grounded in their actual performance or concrete policy proposals but on populist manipulation; therefore authorization will not have the force and unambiguous clarity required for taking political decisions. The ‘forum’ side of accountability is the public side of accountability. It is what ties citizens to their elected representatives, allowing the latter in turn to carry the democratic weight (not merely the institutional power) necessary for effectively controlling governments and influencing law-making.

Painting a more specific picture of ‘multi-level scrutiny’ for the EU would require us to answer the question: how can national parliaments and the EP jointly ensure accountability understood as ‘check’ and ‘forum’, or, how can they jointly ensure that the four functions are effectively exercised?

‘Check’ is seriously flawed but present in the EU. The EP is meant to control the Commission and the NPs are meant to control national governments. The EP as co-legislator influences law-making at the EU level, while NPs have a say in the way EU law is transposed in national legislation and implemented in several though not all policy areas. NPs are also the bodies that must ultimately ratify Treaties, although they are not able to influence their content. But ‘check’, including the subsidiarity check (Donnelly and Hoffman 2004: 3) has an inherent ‘handicap’: the diverse strength, capacity and interest of national parliaments in the EU with respect to controlling the government on EU issues (e.g. Dimitrakopoulos 2001, Maurer and Wessels 2001, JLSt 2005) and consequently influencing EU legislation.

On the contrary, ‘forum’ is completely lacking in the EU and may be considered the main hindrance to democratic accountability. Public parliamentary debate on EU matters is not produced in NPs and is not followed when conducted in the EP. Moreover, citizens do not feel their elected representatives have a say in authorizing in some sense the EU executive (Commission-Council as a collective body) through

electoral procedures. If we think of the demos as evolving rather than fixed and given, the lack of 'forum' in the EU can also be argued to be the main obstacle to the development of a European multi-level demos and the consolidation of European political parties.

A great range of proposals has been put forward by both politicians and academics about how to involve the NPs in the EU policy-making process. Some, though not all of these proposals include thoughts on the respective roles of NPs and the EP as well.

1. Several proposals have been put forward in what concerns the *legislative* function, which have ranged from setting up a new body of national parliamentarians at the EU level as a second chamber of the directly elected EP (Blair, Schroeder) to the 'early warning system' envisaged in the European Convention which would retain the EP as central legislative body in the EU while giving NPs a say in the implementation of subsidiarity. The 'early warning system' involved a 'yellow card' procedure that would force the Commission to review a proposal if 1/3 of NPs thought it violated subsidiarity. Gisella Stuart went further in proposing a 'red card' procedure where 2/3 of NPs could force the Commission to drop a proposal altogether on the same grounds.

2. Focusing on the *control* function, measures such as greater information rights to NPs so that they can more readily check their governments when legislating in Council and making Council legislative deliberations open were promoted in the Convention. COSAC as a forum for NPs to exchange best practices on scrutiny of governments. EP focuses on controls on the Commission.

3. Focusing on the *elective* function, Hix has advocated entrusting the election of the Commission President to national parliaments. The EP would maintain the vote of investiture to the College and remain the sole bearer of the right to censure the College (Hix 2002). The second proposal went along federal lines in the direction of further strengthening the electoral ties of the Commission President to the EP, whereby Presidential candidates would be nominated by the political party/ies holding a majority of seats in the EP and national parliaments would have no role (Jospin). A third proposal was Giscard's 'Congress of the Peoples of Europe', where a joint assembly of MEPs and national parliamentarians meeting annually would – among other things - nominate or confirm candidates for top EU appointments, such as the Commission President and the permanent President of the European Council.

4. Finally, focusing on the *communicative* function, there were proposals for the 'European weeks' involving yearly simultaneous debates on EU issues in all national parliaments attended by representatives of EU Institutions and interparliamentary conferences on specific issues (Final Report, WGIV). The Convention method itself would also fall in this category. Giscard's Congress would 'be consulted on the eventual evolution of Union competencies and on eventual future enlargement, it would receive and discuss an annual report of the President of the Council and the President of the Commission on the state of the Union'.

NPs and EP in the Constitutional Convention

Did the Constitutional Treaty improve ‘check’ and did it remedy the imbalance between ‘check’ and ‘forum’? In other words, did it improve overall democratic accountability in the EU? And do decisions reflected in the Treaty augur well for alliance between EP and NPs?

In the Convention the EP group was more cohesive with respect to what could have been an NP group (each NP delegation was internally diverse) because it was more numerous, internationally experienced and more prepared. (Neunreither 2005) This caused some NPs to argue that the Convention was biased against them (Norman 2003: 202). Through political groups vertically convened (‘caucuses’), MEPs had the upper hand, but also benefited from discussing with their NP colleagues. Norman claims that by June 2003, MEPs had formed an alliance with the majority of NPs that were pro-EU – the main medium for the alliance having been the party families – isolating Eurosceptic MNPs. He claims that this alliance was key for arriving at a common constitutional document. Indeed, Giscard himself commented that despite rejecting his Congress idea, the parliamentarians had formed a Congress of their own in the Convention (Norman 2003).

The EP was from the start against the idea of a second chamber. It would mean the EP’s losing its role as co-legislator in the EU. It was also against Giscard’s Congress plan. Brok argued that the Congress would add complexity to the Union’s Constitutional structure. (While open plenary joint parliamentary events, like Assizes in the past favoured the EP, not NPs, for the same reason that the Convention favoured the EP in this respect. However, the Congress would also make top appointments, like the Commission President and the E. Council chair. The EP would altogether lose its prerogative to elect the Commission President). Hubner said it would distract MNPs from what was their primary task: to scrutinize national governments. This seems to be how most national parliamentarians now see their role (Magnette 2005: 174).

Neunreither saw a climate of mutual trust developing now which has grown from experience that the EP’s strategy and role ascription works best. One might argue that the EP got its way with respect to a diverse group of NPs. NPs’ priority is now to strengthen their position at national level. The 2004 Guidelines coming from the Conference of Presidents (of both EP and NPs) spoke of ‘complementary roles’ and agreed to information rights and subsidiarity control. It mentions a division of labour between co-operation among standing specialized committees and COSAC as co-ordinating the European Affairs Committees.

NPs now seem content with developing ‘their own capacities of handling EU proposals, with regard to both a more effective scrutiny of their own governments and an increased role in controlling the subsidiarity principle, which may lead to enhanced relations – including possible frictions – with the EP’ (Neunreither 2005).

Neunreither argues that the focus in the Convention was narrowed down to legislation and control of the executive, to the neglect of the elective and communication functions. Maurer and Wessels had from earlier on identified this trend.

Indeed the Convention moderately (Raunio 2004) strengthened ‘check’ overall, particularly in what concerns information rights and Council openness. Information rights which will no doubt strengthen ties between NPs and the EP and help them to co-operate on controlling the executive on specialized policy issues and decisions. It will thus help them to be more influential on the content of legislation. Furthermore, mentioning COSAC as a potential forum for exchanging good practices on controlling executives is positive in that it addresses the diversity of NPs in this respect, argued to be a problem for ‘check’ overall.

It did not tend to strengthen ‘forum’ as none of the proposals involving changes of the way the elective function is exercised were adopted. Working Group IV’s proposals for ‘European Weeks’ and periodic thematic inter-parliamentary conferences were positive but not radical enough to strengthen the communicative function. It goes to show that without the possibility for parliaments to have a stronger part in the elective function, interparliamentary debate will remain an under-publicized ‘talking shop’ and not suffice for ‘forum’.

In what concerns the extent to which the Convention itself and the provisions in the Constitutional Treaty encouraged alliance among NPs and the EP, three points can be made. As an arena involving both national parliamentarians and MEPs, the Convention method turned out to be effective in the formation of alliance, particularly through the mediation of political parties. Second, the subsidiarity check has the potential to cause friction between the two in due course (elaborate). Finally, the only proposal that involved a joint system of dealing with the substance of EU policy-making *as well as* addressing questions of subsidiarity and therefore encouraging long-term alliance, Giscard’s Congress, was rejected.

Conclusions

It appears that in the Constitutional Treaty and the Constitutional Convention that led to it, ‘check’ was privileged with respect to ‘forum’. Furthermore, while parliamentary involvement in both policy-making decisions and in subsidiarity was promoted, it was not everywhere joint parliamentary involvement. Only national parliaments were given a say in subsidiarity, which may be cause for adversity with the EP in the future.

The ‘Congress of the peoples of Europe’ would not be the magical answer to the ‘democratic deficit’. But it was indeed an interesting proposal that actually did live up to most of the criteria set out here for the effective exercise of parliamentary accountability in the EU, particularly those most sidelined in the Convention. Its great disadvantage would be that it would deprive the EP of one of the few occasions in which the lights of publicity are turned exclusively upon it: the election of the Commission President. Hix’s proposal suffers from the same defect.

One thought could be the full parliamentarization of the Commission, whereby the President would be elected by the EP on proposal from the political parties that hold a majority in the EP, while the permanent Council President, were such a post to be established after all, would be nominated by the Council and elected by a special majority of national parliaments or an electoral College of national parliamentarians.

It would be the Council President candidate/s that would need to campaign across the EU, discussing the Union's strategic directions for his or her term of office with special emphasis on the EU's role in the world.

The question of co-operatively settling questions of subsidiarity might involve a modified version of the 'early warning system': if 1/3 of national parliaments plus 1/3 of MEPs agreed that a Commission or Council proposal violated the principle of subsidiarity, they could produce a 'yellow card'; if 2/3 of national parliaments plus 2/3 of MEPs agreed on the same principle, they could hold up a 'red card'.

In all of these procedures, EU level political parties would play a protagonist role in the communicative game, setting the basic parameters of debate, while managing diversity. They would have incentive to provide the unifying political glue that the EU so desperately needs.

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