Tailoring representative democracy to the European Union: does the European constitution reduce the democratic deficit?

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Abstract: *Even if the institutions of representative democracy that have developed in the nation-state context cannot be simply transposed to the European Union, for practical and normative reasons they do provide the main starting point for any reflection on the EU's 'democratic deficit'. This article draws upon the Constitution prepared by the European Convention to reconstruct the concept of representative democracy in the EU. Drawing on the proposals put forward, it identifies two distinctive challenges that need to be overcome if the concept of representative democracy is to be successfully applied to the EU: the multilevel character of the polity and the shift of the centre of political gravity from legislative to executive politics. The article then examines the extent to which the institutional proposals contained in the Constitution go to meet these two challenges and also highlights some aspects in which these proposals fall short.*

Introduction

As the European Union is a unique political construction beyond the Nation State, it is by no means self-evident that we can simply project on it the democratic institutions we know from the national level (cf. Schmitter, 1996; Majone, 1998; Héritier, 1999). A different context may well ask for a different approach. Indeed, there is some appeal in the suggestion that post-national political systems like the European Union require a 'third democratic transformation', a wholly new concept of democracy after the

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directly democratic model of the Greek polis and the representative model of the modern nation-state (Dahl, 1989).

Still, in practice most attempts to instil democracy on the EU start from the institutions that are characteristic of representative democracy in the Nation State. The most obvious example is the European Parliament, that was originally conceived as an assembly of national parliamentarians and then step by step—changing its name, the introduction of direct elections, the expansion of its powers—has come to style itself more and more on the example of national parliaments.

The Treaty Establishing a Constitution of Europe (TCEU) that was signed by the EU Heads of Government on 29 October 2004 in Rome to a large extent reconfirms the reliance on the Nation-State model of representative democracy.[1] To be sure, in a specific title on 'The Democratic Life of the Union', the Constitution underlines the importance of direct engagement of citizens and representative organisations in the policy-making process. What is more, this title also provides for the opportunity for a multitude of citizens to directly demand the submission of a legislative proposal (TCEU, Article 47(4)). However, the legitimacy of the main decision-making procedures essentially relies on the representative roles ascribed to the different institutions involved, above all the Council of Ministers, the European Parliament, the European Commission and the European Council.

This article draws upon the deliberations and proposals of the European Convention to reconstruct the concept of representative democracy in the European Union. It proceeds in three steps. The next section starts out with a short reminder of the strength of the normative underpinnings of representative democracy. In section II, I then move on to argue that if we are to apply representative democracy to the European Union, we need to amend the traditional understanding of it on (at least) two key accounts. First, there is a need to properly take account of the multilevel nature of the emerging polity that requires the close and coordinated articulation of the two levels, the national and the European, of democratic representation. Second, there is the more general phenomenon that in modern, complex political system, the political point of gravity has shifted from the act of legislation to that of execution. As a consequence, making representative democracy work does not only require the imposition of parliamentary authority over the legislative process but also giving it effective powers to scrutinise the executive process. The remainder of the article then goes on to demonstrate to what extent the institutional proposals contained in the European Constitution go to meet these two challenges as well as bringing to light some aspects on which they have been compromised.

I   The Value of Representative Democracy

There is a widespread perception that there is a mismatch between the powers exercised by the European Union and the presence of democratic controls.[2] Basically, it is this

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[1] The Constitution will enter into force once it has been ratified by all 25 Member States. The ratification process is expected to be concluded by Autumn 2006, but it may take longer if one or more states encounter difficulties in ratifying the Treaty, for example due to a negative outcome of a national referendum.

[2] For an argument to the contrary, see Moravcsik (2002). Without engaging any further with Moravcsik's argument, I assume in this article that European politics *does* involve important political choices whether it involves the definition of the terms of the internal market, the striking of the balance between market liberalisation and the protection of public services and also in the handling of the decision of whether or not things can in fact best be tackled at the European level.

perception that lies at the heart of the so-called 'democratic deficit thesis'. More specifically, it is observed that in the process of European integration the democratic institutions of national parliaments have lost powers that have been insufficiently compensated for by the powers of the representative institutions at the European level, the European Parliament in particular.

One response to the democratic deficit thesis is to advocate a rolling back of European competences to the national domain that is susceptible to adequate democratic controls. However much there may be to recommend this strategy, this article focuses on the alternative strategy of possible ways to strengthen democratic controls so as to make them effective given the present European competences.

As the transposition of representative democracy so far leaves much to be desired, some observers have suggested that indeed it might be better for the EU to lower its ambitions in this regard and to rather develop alternative sources of democratic legitimacy. In particular it has been suggested that more expertise-oriented and deliberative concepts of democracy might provide for 'substitute democratic legitimation' where representative democracy falls short at the European level (Héritier, 1999; cf. Joerges and Neyer, 1997; Gerstenberg and Sabel, 2002). Undeniably, expertise and deliberation can be of value in reaching and legitimating EU decisions. However, in giving-up too easily on representative democracy, we are also giving-up on some of its fundamental merits. In fact, calls for some form of substitute democratic legitimacy are liable to underestimate the strength and the distinctiveness of the normative foundations that underlie representative democracy.

Admittedly, representative democracy is often embraced for being, in the famous words of Winston Churchill 'the worst form of government, except for all those other forms that have been tried from time to time'. On closer scrutiny, representative democracy can be shown to be founded on some very powerful normative ideas, in particular the ideas of delegation, conditionality and equality.[3] Delegation is of course the defining feature that distinguishes representative democracy from the classical ideal of direct democracy. To fully appreciate representative democracy, it is essential to recognise that delegation is not merely a practical necessity, given that the ideal of collective direct democracy is not workable in modern societies. We may well want to consider whether collective direct democracy is a genuine ideal and whether some division of labour in the political sphere is not to be welcomed *per se*. Many people have good reasons to have rather different ambitions than to conform themselves to the classical ideal of the *zoon politikon* in which a life dedicated to politics is the norm for the good life. There is something rather all-encapsulating—not to say totalitarian—to the ideal of collective direct democracy. Instead the division of labour inherent to representative democracy has the same merit it has in other spheres of society as it allows some to focus on certain tasks so that they can become professional specialists, while freeing all others to focus on pursuits of their own choosing. The idea of representative democracy also serves to highlight that politics is only one sphere of society besides other spheres that can, at least to some extent, operate independently from it. Thus, the

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[3] Normative theories of representative democracy have always faced the challenge of creating a footing independent from the classical, city-state ideal of direct democracy. After the historically groundbreaking work of founding fathers such as James Madison and Abbé de Siéyès, this challenge has been taken up in a systematic way by modern analysts like Hanna Pitkin (1967), Bernard Manin (1997) and, above all, Robert Dahl (in particular Dahl, 1989). This section on the value of representative democracy is very much indebted to the latter works.

delegation of certain powers to a limited number of people in representative democracy also creates room for the constitution of a private sphere beyond the reach of politics (cf. Habermas, 1992: Ch. 3).

However, a key condition for justifying the delegation of political power is that this delegation is *conditional*. For a start, there are the formal conditions that require that political offices be allocated on the basis of free and equal elections, open to all and always subject to a specified term. After this term the political mandate needs be renewed, ensuring that politicians are continuously aware that if they fall short they are bound to be replaced by political competitors. As a consequence, politicians are under a structural imperative to deliver to the electorate and to communicate their achievements.

The third and final element (after delegation and conditionality) that lies eventually at the foundation of the justification of representative democracy is that the terms by which the mechanisms of conditionality or accountability work can be based on strict *equality* that reflects the recognition of the equal intrinsic worth of individuals and the idea that each of them can make an equal claim to personal autonomy (Dahl, 1989, Chs. 6–8). Thus democracy requires that, whatever differences and inequalities exist in society, 'at the decisive stage of collective decisions, each citizen must be ensured an equal opportunity to express a choice that will be counted as equal in weight to the choice expressed by any other citizen' (Dahl, 1989, p. 109). The normative force of representative democracy lies in the fact that it allows for the expression of the ideal of political equality in a way that—apart from direct democracy—no other conception of democracy has matched so far. This fundamental idea of equality is eventually nowhere better expressed and secured than by the institution of the vote.

II   Two Challenges in Democratising the European Union

Together these three elements—delegation, conditionality, and equality—define the concept of representative democracy and also explain why it has come to be the standard for the maintenance of political order in modern societies. Naturally, there is a wide range of institutional models of representative democracy in practice. At the heart of all of them is the institution of a parliament as the foremost institution to which the people, acting as political equals (in elections), delegate political power, on a conditional basis. Thus parliaments can claim to represent the people and to effectively embody popular sovereignty. Parliament may be complemented by other elected institutions, such as a directly elected president, or by directly democratic mechanisms, such as referenda. But while representative democracy can also do without the latter, the presence of a parliament is essential to any system of representative democracy.

In effect, embodying popular sovereignty, parliaments act as gatekeepers of the political process: all authoritatively binding political decisions that are passed within the polity either rely on a decision of parliament or, at least, are assumed to conform to its will so that it will not be provoked to recall them. In the classical understanding, this gatekeeper role is ensured above all through the combination of parliament's exclusive control over the legislative process with the application of the concept of the rule of law in which all political decisions require (direct or indirect) authorisation by law.

This logic might seem easy to transpose to the European level by establishing a European Parliament to which people delegate political power, and which can act as a gatekeeper over the legislative process. In practice, however, such a transposition is

complicated. There are two challenges in particular that can be read out of the debates of the European Convention and that are reflected in its proposals.

The first challenge may be labelled the challenge of democratising a multilevel polity. It follows from the fact that the European Union is not created *ex nihilio* but that it is created on top of the existing system of sovereign Nation States with a fully developed democratic political system of their own, and a strong sense of their own distinctive national history and identity. The development of the political system of the European Union is often seen as taking place at the direct expense of the national political systems. Certainly, powers are shifted from the national level to the European level. At the same time, while the European level makes certain kinds of collective goods possible that the national level simply cannot deliver, there are also certain features of the national level that the European level will never match, not least the kind of political allegiance that Nation States have mobilised over time. Thus it appears that, rather than pitting the two levels against each other, European integration relies on the two levels coexisting and complementing each other.

This also has implications for the workings of representative democracy. It means that European democracy inherently needs to involve the pre-existing national democracies. Rather than building a whole new democratic system, the challenge of democratising European politics lies in adding a new democratic level and ensuring proper coordination between the two levels so that democratic mechanisms at each level operate in a relation of mutual reinforcement. The proper response to this challenge is therefore not to play the democratic institutions at the different levels off against each other, but rather to ensure that they reinforce each other. In other words, while there is a need to empower representative institutions at the European level, the European Parliament above all, democratising the EU also requires a strengthening of the powers of the national parliaments, rather than a reduction of them.

The challenge of democratising the multilevel polity of the European Union is further complicated because it also needs to take account of a more general trend that has required parliaments to reassess their role, namely the shift of the point of political gravity from legislation to execution or administration. In fact, this shift challenges the traditional understanding of politics under the rule of law, not only in supranational political systems, but also in national ones. As the level of complexity of legislation has increased in modern societies, the initiative in the legislative process has shifted to executives: most legislation is drafted by governments and, as many of them rely on a stable majority in parliament, they expect parliament to approve their legislation leaving only space for relatively minor amendments. What is more, to keep the body of law manageable, most laws are limited to defining the main guidelines of a certain policy, leaving most of the more concrete details to be spelled out by executive (or administrative) acts.

Thus, the circumstances of the modern state give reason to doubt whether the remaining legislative responsibilities of parliaments in the legislative process suffice for them to exercise the sovereign control over the political process that is presupposed in the concept of representative democracy (cf. Strøm, 2000). In fact, these trends have led to a shift in the work of many parliaments. Instead of controlling political power through the act of legislation, much parliamentary work has shifted to the control of the agents who are responsible for implementing the political will, the government above all. Parliaments have come to command a range of oversight powers by which they can control the government and hold it accountable, such as the powers of selection and appointment, information rights and the right to censure (de Winter, 1995;

Table 1. Four complementary approaches to overcome the EU's democratic deficit

	Legislation	Execution
National Parliaments	III *A*	IV *A*
European Parliament	III *B*	IV *B* and *C*

Saalfeld, 2000). By exercising these powers and by invoking the credible threat of possible sanctions (blocking legislation or budgets and, in parliamentary systems, the ultimate instrument of a censure vote), parliaments compensate for the substantial reduction of their legislative powers by tightening their grip on the executive process.

In the European Union, shifting the focus of parliamentary action from legislation to executive oversight is, however, particularly complex since there is no single government institution in which executive responsibility is concentrated. Instead, executive responsibility is shared by the governments of the Member States, which in turn have delegated some of it to various European bodies with more or less autonomy. Again, the dispersion of executive power is definitely not an exclusive EU phenomenon. At the national levels, autonomous agencies and a variety of public and private actors have also come to share in executive power. The EU situation is distinctive, however, for the absence of a single institution representing the government, and for the variety of forms in which executive powers have come to be dispersed.

Given this dispersion of executive power in which the distinction between the national and the European often becomes obfuscated, it is clear that here again a joint, complementary effort is needed of national parliaments and the European Parliament. Rather than the question of executive accountability getting lost in the transition from one political level to the other, the development of the political system of the EU challenges us to find appropriate answers to this question in each and every case in which executive power is outsourced beyond the established political institutions.

Taken together the two challenges outlined indicate that the democratic deficit of the European Union is a multifaceted challenge, and that it is unlikely to be overcome by a single recipe. Instead, multiple, complementary mechanisms are needed that reinforce the role of representative institutions and give credibility to their democratic roles. These mechanisms need to involve the national parliaments as well as the European Parliament. At the same time, they need to provide for controls over the legislative process as well as for controls over executive powers. The two challenges are juxtaposed in table 1. The remainder of this article explores the options for strengthening the grip of representative institutions on the political process of the European Union. First, this involves a closer examination of the problems involved in ensuring that the European Parliament and the national parliaments are effectively engaged in the process of European legislation. Second, I turn to the preconditions for parliamentary control over executive power in the EU.

III   Restoring Parliamentary Control over the Legislative Process

In principle, as long as decision-making between the EU Member States in the Council of Ministers requires unanimity and each government holds the power to veto a piece of legislation, no parliament needs to fear a loss of power over its government's engagement in international decision-making. Thus one can reconstruct a chain of effective

democratic control in which decisions in the Council are traced back to the individual governments that are in turn accountable to their national parliaments that are chosen by the people.

Still, in practice, even in its most basic form, international cooperation tends to compromise parliamentary control. While parliaments normally have the possibility to enter into negotiations over the terms of the legislation proposed and to decide on amendments to it, when it comes to international agreements, their options are very much restrained. Even if a parliament can formally send the government back to renegotiate the terms of the international agreement, it is not in a position to dictate the terms of the ensuing decision as the other parties to the agreement are beyond the parliament's control (Scharpf, 1988; Putnam, 1988). The situation is further complicated as it is generally very hard for parliaments to probe whether the government has in good faith striven to secure the maximum possible of its brief or whether it has given in too easily.

While agreements on international treaties are generally one-off events, in the European Union, intergovernmental decision-making has become a permanent and institutionalised activity. In the Council, governments are continuously engaged in legislative activity. The incentives for national parliaments to scrutinise these processes are small. Close monitoring of the government's work in the Council is rather demanding because it operates mostly behind closed doors, and the Council's proceedings are opaque. What is more, while parliamentarians do generally have a good overview over the national decision-making processes, expertise of the European procedures tends to be concentrated among those who have a particular responsibility for European affairs. As a consequence, substantial policy expertise and knowledge of the EU process often fail to be matched. At the same time, the gains national parliamentarians can make from monitoring their government's role in the EU tend to be relatively small. Even if a national parliament successfully challenges a European decision in which its government has been engaged, it is unlikely to sway the position of other governments. Hence, at best the role of national parliaments is a negative one of blocking an agreement, while they have no real ability to contribute towards a constructive solution.

What is more, while important political fields (CFSP, criminal law, and police matters) are still subject to the intergovernmental mode and require unanimity in the Council, in other fields decision-making by a qualified majority of the Member States has been introduced. The move to qualified majority voting (QMV) obviously opens much better prospects for the furthering of European integration, as it removes the power to veto of each individual Member State. However, whenever a member government can be overruled, national parliament's powers over it come to be fully inconsequential.

At this point there appears an obvious role for the European Parliament as a parliamentary assembly that is directly chosen by the people and that can thus provide an alternative chain of democratic accountability. Wherever national parliaments are unable to control decision-making in the Council through their controls over their government, the European Parliament might step in. More particularly, whenever the Council can decide by qualified majority voting, the European Parliament should act as a co-legislator (Corbett et al., 2000: Part III, ch.14). In fact, the European Parliament has over time come to be involved as a co-legislator in many of the policy areas in which the Council can use qualified majority voting.

Notably, however, the development of the European Parliament as a co-legislator is an incremental process, and on many occasions the member governments have resisted

granting full co-legislative powers equal to those of the Council to the European Parliament. The European Parliament has, for instance, no say at all in common commercial policy, and its involvement in the Common Agriculture Policy is restricted to simple consultation. This reluctance has had the consequence that between the traditional intergovernmental mode and full co-decision of Council and the European Parliament, around 30 variants of the legislative procedure have emerged within the EU (European Convention, 2002). What is more, in various domains, governments have also developed the habit of adopting non-legislative acts in the Council and the European Council whose political effects often equal or even surpass that of acts passed through the formal, legislative procedures but that are exempt from any parliamentary control.

Thus there are two obvious avenues to explore to restore parliamentary control over the legislative process in the European Union. One is to enable and motivate national parliaments to properly engage in the legislative process and to monitor their national governments. The other is to ensure the full involvement of the European Parliament in all legislative decisions that are passed at the European level.

A Full Information and an Early Warning Mechanism for National Parliaments

In the debate over the EU Constitution, there have been various proposals to restore parliamentary control over the legislative process. Various national parliaments, not least those in the new Member States, have for instance been looking at the example of those parliaments, in particular the Danish and the Finnish ones, that seem to be most effective in constraining the mandate of their government representatives in the Council. However, if applied by all, this approach raises the problem that the more state representatives negotiate with tight mandates, the slimmer the chances are that they enjoy enough room to reach any agreement. Another proposal has been to establish an additional, third European legislative chamber of national parliamentarians. This suggestion has generally been rejected as too burdensome for the European legislative process.

Instead, the European Convention has proposed to strengthen the role of national parliaments in EU decision-making through the establishment of an 'early warning mechanism'. The early warning system gives national parliaments a formal right to register their objections against any European legislation in progress and requires these objections to be properly addressed, at least when they are shared by a significant group of national parliaments (i.e. one-third of them). The big question to be seen in practice is how active parliaments will be in activating this mechanism and whether they will be able to find a balance between using it too much, in which case it will become a serious burden on the European legislative process, and using it too little, which would reduce its value to little more than a symbolic one.

The main merit of the early warning mechanism is, however, that it provides a formal structure for the involvement of national parliaments in the European legislative process. In effect it disables the well-known apology of national parliaments to blame undesirable legislation on Brussels and to lament that they themselves have been unable to engage in it. In that respect the value of the power to file a complaint is eventually secondary to the other guarantees that:

- national parliaments shall receive all proposals for legislation simultaneously with their governments, and

- during the first six weeks it is up to them to express their opinion while governments are prohibited from reaching any agreement on the proposal during that time.

If closely observed, these guarantees not only allow national parliaments to consider whether they want to raise an objection to the Commission, but more importantly, they also facilitate a more active engagement with their governments on their actions in the Council.

B Generalising the Involvement of the European Parliament in European Legislation

The dismissal of the option of a third European chamber of national parliamentarians reconfirms the key role of the European Parliament as directly representing the peoples of Europe in the European legislative process. Indeed, the European Convention followed up on the previous Treaty revisions of Amsterdam and Nice by again extending the use of the co-decision procedure to another 37 policy domains (on a total of 269 legal bases in the Treaty) (Maurer, 2003, p. 18).

The truly groundbreaking move the Convention made in this regard is, however, that it has come to identify the co-decision procedure as the standard legislative procedure of the Union (TCEU, Article 34). This move implies that any exceptions to the procedure—such as a right of initiative of the Member States and a reduction of the powers of the European Parliament below that of the Council—are clear aberrations from the rule and thus warrant justification.

The co-decision procedure is further strengthened by the much-improved systematic treatment of the instruments of the EU. Thanks to the work of the Working Group on Legal Simplification, led by Convention vice-chair Giuliano Amato, the Constitution clarifies the hierarchy of acts in the EU. This begins with the recognition of the constitutional nature of the Treaty base, reinforcing its status as the 'rule of recognition' for EU legislation (cf. Curtin, 1993, p. 64). Then there is a much-clarified distinction between legislative and executive acts and its implication that any executive act requires a legislative (or constitutional) mandate. This means that, except for constitutionally provided exceptions, the European Parliament acting as a full legislator enjoys a veto-power over any delegation of executive powers in the EU. Lastly, one should note that the full legislative process is now subject to transparency requirements that apply equally to the European Parliament and to the Council (TCEU, Article 50, esp. (2)).

The clarification of the hierarchy of acts is to put an end to the proliferation of pseudo-legislative acts that the EU has witnessed in the past. This will serve to reinforce the proper functioning of the rule of law in the EU. Laws adopted through the legislative procedure will be indispensable as a legal base for any concrete actions by EU institutions.

IV Making Executive Powers Accountable

Executive control is a complement to a parliament's legislative functions. Although in complex modern states the focus of political power has tended to move from legislative to executive functions, parliament's formal veto-power over legislation remains sacrosanct. At the same time, with ever more powers being delegated to the executive branch, parliamentary controls over these powers have come to be essential.

As indicated, the most basic complication about executive control within the European Union is that executive power has been thoroughly dispersed. In many respects the execution of European decisions remains the prime responsibility of national (and sub-national) authorities. However, as the expansion of European cooperation inevitably leads to a demand for pan-EU executive tasks, Member States have adopted a kind of 'divide and rule strategy' in allocating executive responsibilities (Crum, 2003). In the traditional community competences the Commission has in many respects come to act as a supranational executive coordinating and monitoring implementation efforts. In some cases it has even acquired some actual operational competences of itself, but these have generally been delegated again to agencies. What is more, to the extent that the Commission can act as an executive it has been subjected to an intricate web of committees ('comitology') through which the Member States monitor its moves (Joerges and Vos, 1999). Outside the Community sphere, the Council has been reluctant to involve the Commission. In the third pillar, new executive tasks have been assigned to the specialised bodies Europol and Eurojust. Supranational executive responsibilities in the second pillar of the CFSP have firstly been concentrated in the rotating presidency (or troika). Increasingly, however, the Council is relying on the secretariat of the Council and in particular on the High Representative.

A   Increasing National Accountability of Ministers in Europe

It is striking how the Convention debate on national parliaments became focused on their engagement in the legislative process through the early warning mechanism, rather than on the strengthening of their powers of oversight over their national governments. One explanation for this is that the relation between parliaments and governments falls eventually under the prerogative of the Member States themselves. However, some reforms can be envisaged at the European level that may have important effects on the interaction between parliaments and governments at the national level.

The move to hold legislative sessions of the Council in public is of major importance in this respect, as is the guarantee that national parliaments will receive all legislative proposals in good time, as well as the agenda and the information on the outcome (including the minutes of legislative sessions). As a consequence, national parliaments will be much better informed about what actually goes on in the Council, at least when it is acting as a legislator. There are no real reasons not to extend these guarantees of publicity and reporting to the executive work of the Council as well, though it should be possible to justify exceptions in cases in which publicity might actually jeopardise the likelihood of Member States reaching agreement.

Even more far-reaching was the proposal of the Convention to concentrate all Council legislation in the Council for Legislative and General Affairs, especially since this provision was combined with the requirement that within each Council formation there will only be one specific representative at the ministerial level with the power to effectively commit the Member State in question. Thus the responsibility to represent the Member State in Europe would converge on one minister.

This proposal would have radically changed the way national parliaments monitor their governments' action in the European Union. The 'Minister for EU Affairs' would not be able to play the ball to his specialist colleagues, but would have to justify her or his position to the parliament. Also the concentration of responsibility in the government would be likely to be mirrored by a selection of EU-specialised counterparts of the different party-groups in the national parliament. Any disagreements concerning

the national stance taken in the Council would then get a natural forum in the exchange between these two sides. What is more, the Minister for EU Affairs would also provide the public with an identifiable face of who is responsible for their country's position in the EU. In short, concentrating responsibility for EU legislation on one national minister, would allow national parliaments to fully exploit all means they have to hold ministers accountable.

As it turned out, however, the proposal of a Council of Legislative and General Affairs was the first to be stricken by the governments once they started finalising the draft Constitution in the Intergovernmental Conference (CIG 36/03). Obviously there was a widespread fear among the governments that a specialised Minister for EU Affairs might become too powerful a figure and pose a threat to her or his colleagues in the government in charge over the various sectoral responsibilities and, maybe, also to the head of government.

B Increasing Accountability of European Executive Power to the European Parliament

It is one thing to increase the efficacy of accountability mechanisms with regard to national ministers acting on the European plane. However, more and more executive power has come to be organised at the supranational, European level. As indicated, this power has been dispersed over many actors. Purposefully, EU member governments have not concentrated European executive power in the European Commission alone. European executive powers also reside in the Council secretariat, the High Representative, Europol, the European Central Bank (ECB), and so on.

Accepting that the very motivations behind this dispersion preclude the simple solution of integrating all European executive power into a single European government, there are still several measures that may help to establish democratic oversight. From the wide array of oversight instruments that national parliaments can employ, various ones can be suited to the conditions of the European Union. Laying them out in a step-by-step fashion, we can start from the most circumspect measures and work towards the most demanding controls.

As a first step, much is gained by the mere recognition of these executive organs as political agents and by providing them with an identifiable political face. In that respect, the Convention's proposal to upgrade the administrative function of the High Representative into that of a Foreign Minister, 'double-hatted' with the responsibilities of the Commissioner for External Affairs, does mark a welcome step forward (TCEU, Article 28). Similarly, whatever other objections may be raised against it, the proposal of a permanent president of the European Council at least provides that institution also with a clear and permanent public face.

A second step is that executive organs should be required to subject their work to public scrutiny by subjecting themselves to the requirements of transparency and openness and by actively reporting about their activities. In this the European Parliament can play an important role by acting as the main addressee of the activity reports of the executive organs. It can also play a more active role in monitoring the activities and in commenting upon the actions undertaken and the general strategy adopted.

The next logical step is that the European Parliament could be given the right to question all executive institutions with an obligation for them to reply. If dissatisfied,

it might also be given the right to start hearings or to organise an inquiry into the workings of these institutions. The European Parliament enjoys these powers already with regard to the Commission (Magnette, 2001). The European Parliament also already has its briefing and question and answer sessions with representatives of the EU presidency, the ECB, and other executive organs. Still, most of these meetings lack regularity and a mutual understanding of their meaning and possible implications, with the European Parliament generally over-asking and the executive representatives downplaying the importance. Much would be gained if the EU Constitution explicated and systematised the rules of the game.

In practice, scrutiny powers can only work effectively if they can be backed-up by credible sanctions, with the power to censure the political actors involved as the ultimate instrument. Currently the European Parliament enjoys a formal right to censure the European Commission, which requires a two-third majority of the votes cast representing a majority of its constituent members (Article 201 EC). After the experience with the Santer Commission, a new provision has been introduced in the Treaty of Nice allowing the Commission President to demand the resignation of individual commissioners. While some have suggested that the European Parliament could be given the direct right to censure individual commissioners, eventually these provisions return unamended in the Constitution.

There is however an important change following from the fact that the future Minister of Foreign Affairs will become a member of the Commission. It follows that in principle the Minister will also be implicated by a censure vote of the Commission and might also have to resign when asked to do so by the Commission President. Realising this, the Member States in the Intergovernmental Conference have however gone to great length to ensure that a parliamentary censure vote can only affect the Foreign Minister in her or his capacity as member of the Commission. Eventually, the fate of the Minister remains in the hands of the European Council.

Less clear is what powers the European Parliament will come to enjoy vis-à-vis the European Council President who in most scenarios is likely to enjoy considerable European executive powers beyond her or his responsibility for preparing the summits of the European Council. Article 22(2)(d) of the European Constitution does provide that the European Council President will present a report to the European Parliament after each summit. It is however not clear what rights the European Parliament can assert to hold him or her accountable. This relationship will need to evolve in practice. Hypothetically one may well wonder what implications it would have if, for one reason or another, the European Parliament would come to express its lack of confidence in the European Council President.

Lastly, the Convention did not really address the democratic accountability of executive organs like Europol and the ECB. In both cases there would seem to be little harm in formalising the reporting relationships of these institutions with the European Parliament. Beyond that, each of them has its own distinctive features that warrant a measured approach. Europol for the moment is still very much an intergovernmental initiative that is closely monitored by each of the Member States. However, if for its further development it became necessary for it to acquire more autonomy, this will need to be matched by democratic controls. The ECB is the archetypical example of an institution whose credibility relies on it being immune to political steering rather than subject to it. At the same time, these considerations need not necessarily preclude some more indirect oversight role of the European Parliament, for instance in approving the nominees for the ECB's executive board.

C Democratising Appointments to European Executive Positions

In the end there always remains the question of whether European citizens through a single election could directly decide the fate of European executive power. Drawing again on the analogy of national parliamentary systems, there has been a strong movement advocating that the European Parliament should control the appointment of the Commission President. Up to now, it has been the European Council that controls the appointment of the Commission President. Ever since the Treaty of Maastricht, the European Parliament has been involved in the appointment procedure, initially through a right of consultation and eventually through a right to approve or reject the candidate put forward by the European Council. The EU Constitution states that the European Parliament 'shall elect the President of the European Commission' (TCEU, Article 20(1)). Looking closer, however, it turns out that the election procedure follows current practice, in which the European Parliament has the power to endorse or to reject the candidate proposed by the European Council (TCEU, Article 27(1)).

Potentially, the European Parliament might come to seize the initiative in this procedure if its constituent party groups can agree that no candidate for the Commission Presidency will be endorsed except the one supported by its majority. Thus it would force the European Council to return with another candidate until it came forward with the one to the liking of the European Parliament. This would require the European Parliament to identify its candidate beforehand and party-groups to withstand any pressure coming from national capitals to endorse the European Council's nominee. While the chances that these conditions can be met have been much increased since the Treaty of Nice, the European Council chooses its nominee by a qualified majority rather than by unanimity (Coussens and Crum, 2003, section 2.2), they depend eventually on the will and capacity of the European Parliament party-groups to assert their independence from their home parties.

In any case, given the peculiarities of the EU institutional architecture, it is essential that the Commission is not exclusively dominated either by (a majority of) the Member States or by a majority in the European Parliament. The Commission President needs a good working relationship with both institutions. Moreover, in its current stage it is undesirable that certain national or political groups are structurally excluded from executive power. Given the heterogeneity of the EU, it would be least desirable if it turned into a majoritarian system in which the Commission could govern the EU while enjoying a stable majority in the Council and/or in the European Parliament.

As a consequence there is much to be said for appointing the Commission President by some kind of conciliation procedure as proposed by the Convention. However, this procedure does fall short in democratic terms because of its opaqueness and its weak link to the expression of the will of the citizens. Democratisation of the election of the head of the European executive (be it the Commission President or, in the future, a double-hatted EU President presiding over the Commission and the European Council) will eventually probably require a further development of the EU in the direction of a presidential system (Bogdanor, 1986; Duverger, 1997; Hix, 2002). In such a system, the appointment of the President is fully disassociated from the legislative chambers (Council and European Parliament), and instead left to an Electoral College composed of people's representatives, or even to an election by the citizens directly. While proposals of this kind have been vented at the European Convention, this is too big a democratic step for the EU at its present stage. However, once the executive organisa-

tion of the EU has fallen into place, proposals of this kind are bound to recur on the table at future Treaty renegotiations.

V   Conclusion

The emergence of supranational political systems requires us to rethink our notion of democracy. Maybe in the end, these supranational political systems will only be tamed by 'a third democratic transformation' (Dahl, 1989), a wholly new concept of democracy that surpasses the concept of representative democracy that is so much rooted in the Nation State. For the moment, however, the institutions and the experience of representative are what we have to start from, and bit by bit it may be possible to draw upon that experience to tailor institutions that are appropriate for the European Union.

In this paper I have identified two challenges in particular that object to a simple transposition of the Nation-State model of representative democracy to the European Union: the multilevel character of the polity and the shift of the centre of political gravity from legislative to executive politics. As has already been said, there is no simple, straightforward recipe for dealing with these challenges. However, the debates in the European Convention suggest three premises from which any solutions to them will need to depart.

First, democratising supranational power requires the interplay between national and supranational representative institutions. On the one hand, the chain of accountability connecting national and supranational decision-making needs to be strengthened. On the other hand, separate supranational representative institutions need to be put in place.

Second, representative institutions need to be enabled to take up their classical role of gatekeeper of the legislative process: no binding decision can be passed adopted without it having been approved by a representative assembly or without it having being mandated by an act thus approved and being subject to scrutiny of the representative assembly.

Third, all institutions exercising executive power need to be subject to democratic accountability. On the basis of the foregoing analysis, we can identify four steps through which parliamentary institutions can tighten their grip on executive power:

- identifying executive power and personifying responsibility;
- imposing transparency and reporting obligations;
- allowing for accountability mechanisms towards representative institutions;
- democratising dismissal and appointment.

Depending on the context, this sequence may not need to be followed through fully up to the very last step. However, together these four steps lay out a clear agenda for the direction of the reforms needed to improve executive accountability in the European Union.

Indeed, I would submit that a successful solution of the question of accountability of supranational executive power lies at the heart of any solution of the EU democratic deficit. Notably, while this question is of particular urgency in the European Union, similar concerns arise in national representative democracies where ever more power is exercised by executive organs that elude the control of parliament. In that respect, the lessons of representative democracy at the international level may well feed back again into the historical prototype at the national level.

Whether the reforms proposed by the European Convention will indeed overcome the longstanding democratic deficit of the EU remains to be seen. Our analysis suggests that they do move in the right direction in many respects. Still certain reforms also remain to be desired, most notably:

- the democratisation of the election of (the head of) the European executive;
- accountability of EU executive organs besides the Commission;
- full openness of the Council;
- the involvement of the European Parliament in certain policy fields (CFSP, criminal law, police).

Democratisation remains an incremental process in which institutional reforms go only so far. Eventually it requires rising popular involvement in EU politics expressed through rising electoral turn-outs, increased media coverage, and better knowledge of EU politics. We will have to see how the citizens of Europe will accommodate to the new institutions. Only after that can an assessment be made of whether more or other reforms remain necessary. Thus, the learning process of how to institutionalise democracy continues.

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