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ARTICLE

Bicameral or Tricameral? National Parliaments and Representative Democracy in the European Union

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ABSTRACT The Treaty of Lisbon defines the European Parliament and the Council as the principal institutional actors of ‘representative democracy’ in the EU, thus endorsing an essentially ‘bicameral’ model of EU democracy. In this model, national parliaments focus their scrutiny on their governments’ conduct of EU affairs, but are not themselves EU-level actors. However, the Treaty of Lisbon also creates an Early Warning Mechanism which empowers national parliaments to intervene collectively in the EU’s legislative process. This suggests a new, ‘tricameral’ model in which national parliaments constitute the third chamber in a reconfigured representative system for the EU. This reconfiguration moves the EU away from traditional models of representative democracy and more towards a complex ‘demoi-cracy,’ as it now has three bodies to represent the citizens, governments and peoples of Europe.

KEY WORDS: National parliaments, representative democracy, tricameralism, subsidiarity, European Union

I. Introduction

The Treaty of Lisbon affirms that the functioning of the European Union (EU) is ‘founded on representative democracy’ (Art. 10 TEU). This representation takes a dual form: ‘citizens’ are represented directly in the European Parliament (EP), and ‘member states’ are represented in the European Council by their heads of state or government and in the Council of Ministers (Council) by their governments, which are ‘themselves democratically accountable either to their national Parliaments, or to their citizens’ (Art. 10 (2) TEU). This definition implies that national parliaments (NPs) are not direct participants in ‘representative democracy’ at the EU-level;

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rather, they are national-level bodies to which their respective governments are accountable. Their role at the EU-level is confined to a list of six more specific and technical functions, set out in a separate treaty article (Art. 12), through which NPs ‘contribute actively to the good functioning of the Union’. Their role is supportive rather than integral, much like the ‘representative associations and civil society’ with which Union institutions are supposed to maintain a dialogue (Art. 11(2)). In this way, Article 10 sets out an essentially ‘bicameral’ model of representative democracy for the EU, with two representative bodies, the EP and the Council, in which citizens and member states are represented, respectively.

Yet the implied exclusion of NPs from the EU’s system of ‘representative democracy’ is puzzling, because at another point the Treaty of Lisbon for the first time makes them actors at the EU level, empowered to intervene in the EU’s legislative process. Most notably, under the new Early Warning Mechanism (EWM) set out in Protocol 2 TEU/TFEU, NPs may raise subsidiarity-based objections to new legislative proposals; if one third of NPs do so (a ‘yellow card’) the Commission must review the proposal, and if a majority do so (an ‘orange card’) an early vote on it is triggered in the Council and the EP. NPs are thus empowered to intervene not only on an individual, informal basis – such as is the case in their ‘political dialogue’ with the Commission – but collectively and formally. As democratically-elected bodies with a formal say in the EU’s legislative process, they would seem perforce to be direct participants in the EU’s system of representative democracy. Arguably, they are not merely a representative *channel* linking the citizen to the EU – which is also true, for example, of civil society organizations (see the contributions to this special issue by Kröger and Monaghan) – but a representative *body* at the EU level, alongside the EP and the Council: they are a ‘virtual third chamber’ (Cooper 2006, 283; Cooper 2012). Whereas Art. 10 implies bicameralism, Protocol 2 suggests a ‘tricameral’ system of representative democracy in the EU.

The notion of a tricameral EU may be challenged on empirical or normative grounds. Empirically, it may be inapt to characterise NPs collectively as an EU chamber because their powers and/or actions are inconsequential in comparison to those of the EP and the Council. In keeping with this perspective, many scholars maintain that the EWM has had little impact since Lisbon and/or is unlikely to do so in the future (Bellamy and Kröger 2012; De Wilde 2012; Fraga 2005; Raunio 2010). However, recent events have dealt a blow to this pessimistic view, since NPs triggered the first ‘yellow card’ in May 2012. Twelve parliamentary chambers raised objections to a controversial Commission proposal, known by the nickname *Monti II*, that was widely seen as hurting the interests of EU workers by limiting their right to strike.¹ As a consequence, the Commission was required to review the proposal, after which it had the option to maintain, amend, or withdraw it. Faced with this opposition, in September 2012 the Commission withdrew the *Monti II* proposal.² Thus for the first time, NPs had collectively intervened in the legislative process of the EU, decisively affecting its outcome. This episode makes it more difficult to make the empirical argument that the EWM is inconsequential.

The normative argument against a tricameral EU is that the active involvement of NPs is detrimental to democracy in the EU. Critics of the EWM argue that it tends to blur the lines of delegation and accountability that exist in a strictly 'bicameral' system: national *governments* should be the primary representatives of the member states at the EU level, and they should in turn be responsible at the domestic level to NPs for how they conduct EU affairs (De Wilde 2012). Put another way, normally the NP is the 'principal' and the government is its 'agent,' but the EWM confuses this relationship by also making NPs 'agents' at the EU level (Fraga 2005; Kiiver 2006; Raunio 2007). A related criticism of the EWM is that it leads NPs to waste scarce time and resources on intervening at the EU level, where they are likely to have little impact; instead, each NP should focus on its main task of scrutinising its own government's conduct, where its influence is greatest (De Wilde 2012). Under the logic of a bicameral system, direct parliamentary scrutiny of the EU should be carried out by the EP, the parliamentary body at the EU level, rather than NPs, whose task is to exercise scrutiny at the member state level.

The principal aim of this paper is to explain and defend the notion of a tricameral system of representation for the EU. In practical terms, this involves making a normative case for the direct involvement of NPs at the EU level, as opposed to a representative system dominated by the EP and the Council. I argue that a strictly bicameral system, as implied by Art. 10 TEU, does not provide adequate democratic representation in the EU; and furthermore, the direct involvement of national parliaments at the EU level provides a value-added bonus for democratic representation, even if the third chamber they comprise is a 'virtual' one. I wish to build upon the characterisation of the EU as a 'demoi-cracy', not a singular democracy but a union of democracies, defined as '...a new kind of political community, one that rests on the persistent plurality of its component peoples, its *demoi*' (Nicolaïdis 2004, 82; see also Bellamy's contribution to this special issue). This community requires a more complex system of representation than one of classic bicameralism on the federal model. In particular, it ought to give greater scope for the direct involvement of NPs, as the bodies most representative of the component peoples that make up the EU.

This paper has three main parts. First (Section II) I argue that the current system of 'emerging tricameralism' is the most recent phase in a long historical development of representative democracy in the EU. In this context, the Treaty of Lisbon may be seen as restoring some influence to NPs that was lost as a result of direct elections to the EP. It also notes that the idea of tricameralism has historical precedent, in that a system of this kind was proposed for the European Political Community in the early 1950s. Here, in addition, the origins and functioning of the EWM are explained. Second (Section III), I make the normative argument that the increased involvement of NPs in the work of the EU enhances its democratic legitimacy. Building on the theoretical concept of 'collective representation,' I argue that the EWM in effect creates a third chain of representation linking the citizen with the EU. It is not redundant, namely merely mirroring the representative functions performed by the Council and the EP, but has a

representational ‘value-added’ effect. I also briefly compare the EWM to two other EU institutions, each of which is a kind of ‘representative body’ that has sometimes been thought of as a possible ‘third chamber.’ Third (Section IV), I explain in greater detail the structure of this new, third chain of representation involving NPs. The chain has three ‘links’: (1) citizens elect the NP in part to reflect their views (values and/or interests) concerning how it should conduct scrutiny of EU affairs; (2) the NP is an autonomous actor with a mandate – that is, not only the capacity but also the right – to advance an independent position on EU affairs; and (3), NPs together form a representative body at the EU level which functions much like a legislative chamber, including voting by majority. Each of these points is defended against likely objections, including the question of whether this system opens up the door to minority rule. Finally, in a brief conclusion (Section V), I address two key questions regarding the direct participation of NPs in EU politics through the EWM – whether it contributes to an increase in the political equality of citizens or peoples, and whether it is normatively desirable for the EU from a democratic perspective.

II. The Historical Development of Tricameralism in the EU

The operative model of ‘representative democracy’ in the EU has changed over time as the power and composition of the various representative bodies associated with it have varied. This historical development has unfolded in (at least) three phases. Whereas the powers of the EP have risen steadily from one phase to the next, the fortunes of NPs have waxed and waned over time, in that they lost some of their initial influence in the transition from the first to second phase, only to regain it somewhat in the third. The first phase (1952–1979) was one of executive dominance with parliamentary oversight. Like many postwar international organisations (Marschall 2008), the early EU had an element of democratic control in the form of a parliamentary assembly – the Common Assembly of the European Coal and Steel Community (ECSC), the forerunner of the EP – made up of members of NPs exercising a ‘dual mandate’. Whereas most parliamentary assemblies are mere ‘talking shops’, this body was unusual in that it had some powers in the area of executive control and, eventually, budgetary matters (Rittberger 2005); however, decision-making during this period was dominated by the High Authority/Commission and the Council. Moreover, the pre-1979 EP did not enjoy full democratic legitimacy as it was not directly elected. Following after direct elections came the second phase (1979–2009) of emerging bicameralism, in which the EP, now a supranational parliament, gradually gained legislative powers that eventually put it on a co-equal basis with the Council. Yet while direct elections of the EP almost certainly resulted in a net gain for the democratic legitimacy of the EU, there was also a loss, in that it severed the institutional connection between the NPs and the EU, contributing to a decline in the NPs’ influence. Concerns about this decline eventually led to demands for some new mechanism, perhaps in the form of a ‘third chamber’, which would once again give NPs a direct voice in EU affairs. The eventual result was the reforms contained in the Treaty of Lisbon, which brought the EU

into the third phase (2009–present) of emerging tricameralism, in which NPs have become joint scrutinisers of EU activities as they acquired the power to collectively intervene in the EU legislative process.

In fact, there was a serious proposal for a ‘tricameral’ system of representation – or something very much like it – in the early 1950s, though the episode is now largely forgotten (Rittberger 2006). In 1953, shortly after the creation of the ECSC, the Common Assembly (refashioned as the *Ad Hoc* Assembly for the purpose) produced a draft treaty on a European Political Community (EPC). It envisaged a system that differed from the ECSC (and the eventual EEC) in that in addition to a Council of Ministers – in which national governments would be represented – it would have had a strong bicameral parliament. The lower house was to be a directly-elected 268-member People’s Chamber, representing ‘the peoples united in the Community’: in order to maintain and augment public support for the whole enterprise, the first direct elections were to take place without delay – within six months of the entry into force of the EPC treaty – on the basis of proportional representation (Karp 1954, 192–5). By contrast – and of greater interest for our purposes – the upper house was to be an 87-member Senate, representing ‘the people of each state,’ whose members would be elected by national parliaments; this selection method was seen as likely to enhance Community independence, as compared with having members appointed directly by national governments; moreover it would mean that the Senate would function more like a legislative body and less like a diplomatic conference of national representatives (Karp 1954, 188). Whereas the bicameral parliament would have had considerable powers of legislation and executive control, the Council of Ministers would not have been a legislative body but a supervisory one, with strong veto powers over new policy initiatives. This proposal failed when the European Defence Community treaty, to which it was attached, was defeated in 1954. Yet it is significant because it set a precedent for the notion of a tripartite system of representation at the European level, with a separate body elected by NPs to represent the ‘people of each state’, in addition to a directly elected chamber and a body to represent national governments directly.

The European Convention (2002–2003) devised the EWM as a mechanism to directly involve NPs in the EU’s legislative process. Currently, any NP which believes that an EU legislative proposal violates the principle of subsidiarity may, in the first eight weeks, formally raise objections to it in a reasoned opinion. Under the terms of the Constitutional Treaty, the EWM was essentially advisory: one third of NPs raising objections would be a warning to the Commission, a ‘yellow card.’ The Treaty of Lisbon strengthened the EWM with the addition of the ‘orange card’: if a simple majority of NPs raise objections to an EU legislative proposal this forces an early vote on it in the Council and the EP. If either chamber decides with the NPs – by a vote of 55 per cent of Council members regardless of population size (15 of EU-27), or a simple majority of votes cast in the EP – that the proposal violates subsidiarity, it receives no further consideration.

It has been argued that the EWM creates a ‘virtual’ third chamber in that it performs the functions of an EU parliamentary chamber even

though it does not meet in a single physical location (Cooper 2012). In choosing this, the Convention rejected proposals to create an *actual* (bricks-and-mortar) third chamber. Before the Convention there had been numerous proposals – put forward by Joschka Fischer, Tony Blair and others – for a grand redesign of the EU institutions that would have given NPs more involvement through the creation of a ‘third chamber’ of national parliamentarians (see Hoeffel 2001; Kiiver 2006, 133–45; Smismans 1998); a similar proposal was favoured by the Convention president, Valéry Giscard d’Estaing. Most of these were basically proposals for a parliamentary assembly – that is, a recreation of an institution much like the pre-1979 EP alongside the current directly-elected EP. Such a system would have indeed been ‘tricameral,’ but with a third chamber of uncertain effectiveness. In all likelihood, it would have been an unelected transnational body without substantial legislative influence, meeting intermittently to discuss the broad outlines of policy rather than the details of legislation – in other words, a ‘talking shop’. Instead, the Convention created a mechanism of subsidiarity control that sets up the collectivity of NPs (not just their delegates) as ‘members’ of a larger body, which has significant influence to scrutinize policy not only in its broad outline but also in its legislative detail, yet without the opportunity to discuss it face-to-face. It avoids the problem that plagued the pre-1979 EP – its lack of collective legitimacy – wherein each individual member was in effect *appointed* to the body even if he or she had a legitimate democratic mandate back home. In the case of the virtual third chamber, each NP retains its collective legitimacy, and the ‘meta-parliament’ they form could be said to enjoy legitimacy in aggregate (see the discussion of ‘collective representation,’ below). In this way, it is a genuine innovation in the institutional design of parliamentary oversight, and quite different from that envisaged in earlier proposals such as the 1953 Draft Treaty. However, the Treaty of Lisbon is similar to the 1953 Draft Treaty in that each features a broadly tricameral system of representation, with EU institutions that represent not only its citizens and its member states, but also the ‘peoples of each state’ as represented through their NPs.

III. Democratic Representation and the Early Warning Mechanism

The rationale for the creation of the EWM appears to have been twofold, to enhance both the subsidiarity compliance and the democratic legitimacy of the EU. First, it was devised as a new *ex ante* subsidiarity control mechanism that did not involve creating any new institutions – something the Convention, tasked with simplifying the EU’s structure, wanted to avoid. As subsidiarity was thought to be a political principle, rather than a strictly legal or technical one, it was fitting to leave its enforcement to political institutions such as the national parliaments. Moreover, NPs were ideal ‘subsidiarity watchdogs’ (Cooper 2006) because when they defend a strict interpretation of the principle they are also defending their own prerogatives. The EWM may be defended solely as an effective measure for ensuring subsidiarity compliance, leaving aside its democratic rationale (Kiiver 2011).

The second rationale for the EWM is that increasing the involvement of NPs would improve the democratic legitimacy of the EU. This aim was part of the Convention's mandate, as apparent in the Declaration on the Future of the Union (2000), which stated that the forthcoming Convention should reassess 'the role of national parliaments in the European architecture' as part of a broader effort to '...improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States'.³ But while the EWM is intended to improve the EU's democratic legitimacy, it is not entirely clear *how* it is supposed to do so. It seems to have been hoped that by a kind of osmosis the democratic legitimacy of NPs will somehow 'rub off' on the EU – or as one observer puts it, 'beneficial properties can be extracted from them for an all-European purpose' (Kiiver 2006, 184). While it seems to make intuitive sense that increasing the involvement of NPs will make the EU more democratic, this has yet to be demonstrated by logical argument.

Perhaps the first step in justifying an enhanced role for NPs in the EU – both in general and in the specific form of the EWM – is to demonstrate its 'value-added' nature with respect to democratic representation. Given that the preferences and/or views of the NP will overlap heavily with those of the national government representative in the Council on one hand, and the national delegation of MEPs on the other, what exactly is gained by giving NPs an independent voice at the EU level? The answer is, NPs uniquely combine two key elements: they are representative bodies, elected on a national basis. As such they are distinct from the Council, whose members are elected on a national basis but are executives, and the EP, which is a representative body but elected on a transnational basis.

At this point, a brief detour into the theory of political representation (see also the Lord and Pollak contribution to this special issue) helps to illustrate the general argument of this paper. Two forms of representation may be distinguished from one another: in 'dyadic representation', the individual MP represents his or her constituency; in 'collective representation', the entire parliamentary chamber represents the electorate as a whole (Weissberg 1978; Pitkin 1967, 61, 216). This paper builds on the latter concept. While this might seem an uncontroversial way of looking at democratic representation, it differs markedly from the 'standard account' which overwhelmingly favours dyadic representation, presupposing a one-to-one, principal-agent relationship between an individual parliamentarian and a geographically defined constituency (Urbinati and Warren 2008, 389; Mansbridge 2009). To some extent, the idea of collective representation resembles the 'virtual representation' of Edmund Burke (Pitkin 1967, 168–89) and the 'surrogate representation' of Mansbridge (2003, 522–5), in which individual parliamentarians may represent interests or persons outside their own constituency. But collective representation goes beyond these other forms of representation in seeing the parliament as a whole body with a representative function that is not reducible to the aggregate of that of its individual members. This approach does not deny that individual parliamentarians have an important representative function

too, but merely maintains that the representative whole is more than the sum of its parts.

This shift in level of analysis from dyadic to collective representation has implications that bear directly on the argument presented here. For one, the parliament has a broader base of representation than the government, because it encompasses the full spectrum of public opinion rather than that of the governing majority; for this reason, it is both practically feasible and normatively justifiable for the parliament's position on an issue to differ from that of the government. In this, the parliament is not only an arena for political competition, but in certain circumstances an actor in its own right exhibiting an element of corporate agency: for example, it may take an position on EU affairs different from the government's and it may independently promote that position at the EU level. Furthermore, as an elected body representative of the whole people, the parliament enjoys a collective democratic legitimacy that cannot be reduced to the sum of the individual democratic mandates of its members; therefore from a democratic perspective it is preferable that this corporate agency be exercised by the parliament as a whole, such as is the case when it casts its 'vote' in the EWM, rather than by individual members appointed to an international parliamentary assembly. Finally, the notion of collective representation may even be extended to NPs as a group, in that together the NPs constitute a representative body, a kind of 'meta-parliament' at the EU level. In this sense, the 'virtual third chamber' is not just a heuristic device: even though it is not based in a single physical location it is nonetheless a *real* (functioning) parliamentary chamber at the EU-level (Cooper 2012, 445).

Building on the concept of collective representation, we can discern three interconnected arguments in favour of the EWM on democratic grounds. First, historically European integration has had the overall effect of increasing the power of the executive branch of government to the detriment of the legislative branch: as powers have shifted upwards, NPs have lost much of their ability to scrutinise and control their own governments' conduct of EU affairs, and the increase in power for the EP has not compensated for this loss. This is the 'deparliamentarisation' thesis (O'Brennan and Raunio 2007). Second, there is what I will call the 'NP-Exceptionalism' thesis: NPs have a unique legitimacy – greater than any supranational or subnational parliament – and an irreplaceable role as the locus of democratic activity within their particular member states. For this reason the problem of 'deparliamentarisation' cannot be solved solely by giving new powers to the EP: despite its growing power, elections to that body are still, and are likely to remain, second-order elections in the minds of voters (Reif and Schmitt 1980). Taken together, these arguments lead to the conclusion that NPs, more than any other set of institutions, have suffered a loss of influence as a result of European integration; moreover, new powers for the EP have not and indeed cannot fully compensate for the NPs' loss of authority, and therefore the only way to address the democratic deficit is to (re-)involve NPs directly at the EU level in some way. A third argument makes the case that NPs' involvement should

specifically take the form, as it does in the EWM, of subsidiarity control – the political monitoring of actions taken by the EU in areas where its competence is shared with the member states – because this gives them the opportunity to defend their sphere of competence against the encroachment of EU powers.

Comparison with Other ‘Third Chamber’ Candidates

Another way to look at the question of the EWM’s representational value-added quality is in term of opportunity cost: if the goal is to open up channels of representation between voters and decision-makers, must this be done through NPs, or are there better alternatives that are ‘representative’ in a wholly different way? Consider two existing consultative bodies that have occasionally been thought of as candidates for ‘third chamber’ status in the EU system – the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). The EESC is quasi-corporatist in structure in that it brings together appointed representatives of business, labour, and other socio-economic interest groups from civil society; it has at times been considered as a possible ‘third quasi-legislative chamber in a tricameral system’ (Lodge and Herman 1980, 282). It could act as a ‘functional assembly’ that could enhance the EU’s ‘input-legitimacy’ as it is based on a representational logic that is different from and complementary to the territorial representation of the Council and the EP (Smismans 2000).

Alternatively, the CoR is a consultative body made up of elected representatives of subnational (regional and local) authorities. The CoR complements the Council and the European Parliament in a different way in that it introduces a ‘third level’ of territorial representation in addition to their national and supranational orientation (Christiansen 1996). In the early years after its creation the CoR sought to increase its powers, attempting to acquire an institutional status comparable to a ‘third chamber’ (Jones 1997). Moreover, members of the CoR may with some justification present themselves as the natural guardians of the subsidiarity principle – even more so than NPs – given that they represent the levels of authority ‘closest to the people’. If greater representation is the goal, then why not increase the powers of the EESC or the CoR rather than NPs?

The best response to this challenge is to restate the NP-Exceptionalism thesis: the NP is for the citizen not just one among many but the most important representative institution, and restoring its authority lost as a result of European integration should take precedence in institutional reform. Furthermore, to give more than consultative powers to the EESC and the CoR, they would arguably need to be elected bodies – rather than appointed, as is currently the case – and this would create serious problems with respect to representation. As the EESC is organised on a functional basis, with its members drawn from various sectors of society, it is difficult to envision how this body could be elected by commonly accepted democratic standards. This problem is less acute for the CoR, which is already made up of elected officials; yet much like a parliamentary assembly the CoR lacks collective legitimacy because even though its members have

democratic mandates in their regions or localities, they are in effect appointed to the CoR. Due to the great differences in the internal structures of the member states, the members of the CoR represent vastly disparate constituencies. In the absence of a common definition of a 'region' it is difficult to envision direct elections to the CoR in order to make it a representative body of subnational authorities on a pan-EU basis. From a democratic perspective, and given the historical trend of 'deparliamentarisation,' the best option for representative value-added is to find a mechanism to empower NPs.

IV. A Third Chain of Representation Linking Citizens with the EU

In the bicameral model there are two 'chains of representation' (Holzhacker 2007, p.260) linking citizens to the EU via the Council and the EP. In the tricameral model there is a third chain in which citizens are linked to the EU through their NPs bypassing national executives to act directly at the EU-level. This chain has three 'links':

- (1) In NP elections citizens vote based in part on their perspective on how the NP should conduct the scrutiny of EU affairs;
- (2) The NP can and should take a position on EU affairs independent of the national government's position in the Council; and
- (3) NPs collectively constitute a representative body at the EU level, a virtual third chamber, in the sense that they can take joint decisions by the equivalent of a majority vote.

If all three of these links are in place, then the EWM has a clear 'representative value-added' advantage over pre-Lisbon arrangements; moreover, arguably the EWM will have improved democratic legitimacy by giving citizens another means by which to exercise a degree of control over the policy agenda of the EU. However, all three of these links may be contested. It may be argued, first, that EU issues are not salient in national elections; second, that NPs do not take an independent line in EU affairs; and third, that the views of NPs cannot be aggregated into a coherent pan-European representative system. In this section a clearer picture of the representative chain will emerge from my brief responses to these criticisms.

First Link: Citizens Elect National Parliaments to Represent their Views on the EU

Regarding the first link, given that EU issues have low salience in national parliamentary elections (Raunio 2009, 16–17), it seems unlikely that many voters will make their choice with the EU in mind at all, let alone with an opinion specifically on how it should conduct subsidiarity scrutiny of EU affairs. Any given MP is unlikely to be judged by voters for his/her performance of EU scrutiny, even if s/he happens to sit on the EU affairs committee: the word 'subsidiarity' will rarely be on the lips of candidates or in the minds of voters during a parliamentary election campaign. NP elections suffer from a problem that is the reverse of that for EP elections:

EP elections do not produce a faithful reflection of public opinion on EU affairs because they are ‘second-order elections’ which do not attract full public attention and in which national issues predominate (Reif and Schmitt 1980); by contrast, NP elections – ‘first-order elections’ which attract greater public attention – do not faithfully reflect public opinion on EU affairs because there the EU is a ‘second-order’ issue that is peripheral in public debate. As a result, NP elections bestow at best a tenuous mandate on the winners – whether parliamentary majority, particular parties, or individual MPs – for their conduct of EU affairs scrutiny.

This objection may be answered with reference to the theoretical point made above, that representation may be understood in collective, and not merely dyadic, terms. Of course, if one’s notion of representation is confined to a one-to-one principal-agent relationship between an individual parliamentarian and his or her constituency, then this link in the chain of representation may seem weak. Yet if we employ a broader, collective notion of representation, then it is possible to think of EU affairs as part of a diffuse national interest represented by the parliament as a whole or, in the manner of ‘virtual’ or ‘surrogate’ representation, by individual members with particular interest or expertise in EU affairs. Even in NP elections, the EU is an important issue – not just objectively, but also in the minds of voters, though it is seldom their top priority. And it is an observable fact that within most NPs there are at least a few members with considerable expertise on EU affairs, regardless of whether it confers an electoral advantage; one only has to attend a meeting of COSAC (the twice-yearly meeting of NPs’ EU affairs committees) to see this. Moreover, the national interest in careful EU scrutiny is reinforced by the fact that, as noted above, NPs have an institutional self-interest in scrutinising EU affairs with respect to subsidiarity control in order to guard against excessive encroachment of EU activities into their own sphere of legislative competence.

Furthermore, there is an even simpler response to the above critique. While it is perhaps difficult to verify this link in the third chain of representation – that is, it is doubtful to claim that citizen select NPs specifically to act on their behalf at the EU-level – the same problem also applies to the other two chains of representation. After all, the salience of EU affairs is also low in national elections that produce Council and European Council representatives, which in most cases are the *same elections* as for the NPs. And even in EP elections, which in theory ought to be fought on issues related to EU affairs, domestic issues often predominate in practice. In so far as citizens may still be said to elect national leaders and MEPs as their representatives at the EU level it is difficult to see why the same could not be said of NPs.

Second Link: National Parliaments Take An Independent Position on EU Affairs

As for the second ‘link,’ the problem with the EWM for some observers is that it ‘ignores the fusion of the executive and legislative branches in parliamentary democracies’ (Raunio 2009, 325). In a sense, the EWM treats each NP as a unitary actor, when they are in fact internally divided between majority and opposition, with the majority generally supporting

the government's position on EU affairs. This again raises the question, what is the 'value-added' effect of giving the NP an independent voice on EU affairs? The answer is that NPs are representative institutions in a way that national governments are not: NPs include many political parties, and in this way reflect the broad array of public opinion. Minority parties will usually have no say in government, but they do at least have input in the scrutiny of EU affairs, which generally is done on a cross-party basis. Moreover, there are some cases of NPs (e.g. Denmark, United Kingdom) that are genuinely assertive of their independence and may express autonomous opinions on proposed EU legislation.

A related criticism of the EWM is that it undermines parliamentary democracy at the national level (Fraga 2005, 498; see also Raunio 2007, 86). As noted above, in parliamentary democracy it is commonly thought that the government is the agent, dependent on the principal, the parliament, for support; the EWM undermines this relationship by making the parliament itself an agent, in effect an independent actor at the EU level. When the NP expresses subsidiarity objections to an EU proposal this could effectively be 'an act of opposition' to the government, which may well have already formed an opinion on the merits of the proposal (Kiiver 2006, 162–3). Yet the treaty stipulates that the Council cannot take up the measure until the NPs' eight-week scrutiny period has expired. Plainly the intent of the treaty is that NPs should formally receive a legislative proposal *at the same time as* national governments, and the former should at least have a chance to scrutinise and object to it before the latter decide upon it. Under such circumstances the NP's objection, necessarily expressed before its government has formally taken a position, is hardly an 'act of opposition'. While it is true that as a matter of practice national governments have often already formulated a position on a draft measure even before it has been formally proposed, this growing trend is of questionable democratic legitimacy precisely because it evades the scrutiny of NPs (Farrell and Héritier 2003, 14–15). Seen in this light, the intention of the EWM is to *restore*, rather than subvert, parliamentary democracy at the national level.

Third Link: National Parliaments Comprise an EU-Level Representative Body.

In so far as NPs, themselves representative bodies at the national level, participate in a structure of joint scrutiny that includes majority voting, they could be said to comprise a representative body at the EU level. The idea of distributing 'votes' in the EWM has been criticised by Kiiver (2006) for its presupposition that NPs are comparable, unitary actors, whose individual opinions can easily be aggregated into a common decision. In fact, NPs are a quite heterogeneous group as regards their composition, powers and functions. They are internally divided between majority and opposition. And while NPs are indispensable sites of representative democracy at the national level, collectively their work does not aggregate into a coherent contribution to pan-European representative democracy; rather, they are a 'phantom collective' (Kiiver 2006, 162).

In response, it is certainly true that NPs do not (yet) form a strong 'collective' in the sociological sense, with a common sense of identity and

purpose. However, the Treaty of Lisbon does constitute NPs as a collective in a legal and procedural sense: they are formed as a kind of ‘meta-parliament’ in so far as they can cast ‘votes’, in the form of reasoned opinions expressing subsidiarity objections; an absolute majority of these votes constitutes a collective decision (the orange card) which is difficult to construe as something other than a collective act with a common purpose. This is particular so if NPs have actively cooperated in forging such a majority, in which case it would hardly be the act of a ‘phantom collective.’ Moreover, as each ‘vote’ in the EWM represents the considered decision of a democratically representative body, it is not fanciful to interpret a majority of such votes as representing an outcome that is meaningful for pan-European representative democracy. By way of comparison, if the votes cast by national governments in the Council of Ministers may be legitimately aggregated into an expression of pan-European representative democracy (as implied in Art. 10 TEU), it is difficult to see why the same could not be said of the votes of NPs in the EWM.

The Potential for Minority Rule

If we are to take seriously the idea of NPs comprising a representative body at the EU-level, there is one final point which ought to be addressed. If this body can make a joint decision by majority vote, and each ‘vote’ is the result of a majority vote in any NP, then this opens up the theoretical possibility of minority rule. In a thought experiment, rule by ‘majority of majorities’ can lead to undemocratic outcomes: if a bare majority of members of a bare majority of (equal-sized) parliaments voted ‘yes’ to a measure, that would mean only slightly more than one quarter of all members voted ‘yes’ – and thus a measure could pass with nearly three quarters of members opposed. In the case of the EWM, the problem is compounded by the vast differences in population sizes between member states. As it takes only one third of NPs to trigger a yellow card, then it is theoretically possible for the nine smallest member states in EU-27, representing about 4.1 per cent of the total population, to do so. Moreover, as a majority of NPs can trigger an orange card, it is theoretically possible for the 14 smallest states in EU-27, representing about 11.3 per cent of the total population, to do so. Even acknowledging that the yellow card is advisory and the orange card is not a veto, this seems to have the potential to put powers into the hands of a minority.

There is no need to delve into the complexities of public choice theory to answer this criticism. The simple rejoinder to this point is that the ‘votes’ in the EWM are ‘no’ votes rather than ‘yes’ votes, in that they represent opposition to rather than positive approval of a legislative proposal. The system is structured so that in effect any NP which does *not* raise subsidiarity objections to a measure has given its tacit consent. This turns the problem on its head: far from being a system allowing minority rule, the EWM is in effect a system requiring supermajority approval. In numbers of parliaments, legislation must meet with the tacit approval of exactly half of NPs (13½ of EU-27) to avoid triggering an orange card,

and slightly more than two thirds (18½ of EU-27) to avoid triggering a yellow card. These are reasonable voting rules for the essentially ‘negative’ cast of the EWM. But if the representative body of NPs were reconfigured to allow for ‘positive’ voting in the virtual third chamber, then the voting rules would have to be substantially rethought.

V. Conclusion

In conclusion, we turn to the two key questions mentioned in the introduction, regarding the new representative channel discussed in this paper, the direct participation of NPs in EU politics through the EWM. First, does it contribute to an increase in the political equality of citizens or peoples, or both? Second, is it normatively desirable for the EU, helping to enhance its democratic legitimacy? The simple answer to the first question is that on balance the EWM has had the effect of increasing the political equality of peoples rather than of individual citizens. That is because under the EWM, as discussed in the previous section, the NPs of each member state cast ‘votes’ of equal weight, regardless of population size. This marginally increases the influence of less populous member states; but given the limited power and scope of the EWM, it does not greatly alter the balance between the two main channels for the representation of citizens (EP) and peoples (Council). Yet this simple answer raises another issue: why should the ‘peoples’ of Europe be primarily represented by their national *governments* at the EU level?

This brings us to the answer to the second question. This paper has argued that the direct, collective involvement of NPs at the EU level does enhance the EU’s democratic legitimacy, by enabling broader representation of its component peoples – its *demos*. Arguably, NPs as a group constitute not just a representative channel but a representative *body* at the EU level, albeit a virtual one. If so, the system of representative democracy is in fact tricameral, composed of three ‘chambers’ for the representation of the citizens, the governments, and the peoples of the EU. A tricameral model more accurately depicts the complex empirical reality of the post-Lisbon EU, and helps us come to terms with the normative implications of that complexity: it is a system of representation better suited to an EU understood as a *demos*-cracy, a union of democracies. In an EU whose functioning is ‘founded on representative democracy’, it gives proper recognition to NPs, the institutions that are, arguably, still its most important sites of representative democracy.

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Notes

1. The EWM allots two votes to each unicameral NP, and one vote for each chamber in bicameral systems. In the case of *Monti II*, seven unicameral parliaments and five single chambers from bicameral systems raised objections, for a total of 19 votes – just over the ‘yellow card’ threshold of 18 (one third of the total 54 votes).
2. ‘EU Anti-strike Rules Sink as Parliaments Wield Lisbon Powers’, *EUObserver.com*, 12 September 2012.
3. Nice Treaty, Declaration No. 23, paras. 5–6.

References

- Bellamy, R., and S. Kröger. 2012. Domesticating the democratic deficit? The role of national parliaments and parties in the EU’s system of governance. *Parliamentary Affairs*, advance access.
- Christiansen, T. 1996. Second thoughts on Europe’s ‘third level’: the European Union’s Committee of the Regions. *Publius* 26, no. 1: 93–116.
- Cooper, I. 2006. The watchdogs of subsidiarity: national parliaments and the logic of arguing in the EU. *Journal of Common Market Studies* 44, no. 2: 281–304.
- Cooper, I. 2012. A ‘virtual third chamber’ for the European Union? National parliaments after the Treaty of Lisbon. *West European Politics* 35, no. 3: 441–65.
- De Wilde, P. 2012. ‘Why the early warning mechanism does not alleviate the democratic deficit’. OPAL Online Paper No. 6/2012.
- Farrell, H., and Héritier, A. 2003. The invisible transformation of codecision: problems of democratic legitimacy. Swedish Institute for European Policy Studies.
- Fraga, A. 2005. After the convention: the future role of national parliaments in the European Union (and the day after ... nothing will happen). *Journal of Legislative Studies* 11, no. 3: 490–507.
- Hoefl, D. 2001. Une deuxième chambre européenne, rapport d’information, sénat. Available at <http://www.senat.fr/rap/r00-381/r00-381_mono.html>
- Holzacker, R. 2007. Democratic legitimacy and the European Union. *Journal of European Integration* 29, no. 3: 257–69.
- Jones, J. 1997. The Committee of the Regions, subsidiarity and a warning. *European Law Review* 22, no. 4: 312–26.
- Karp, B. 1954. The draft constitution for a European political community. *International Organization* 8, no. 2: 181–202.
- Kiiver, P. 2006. *The national parliaments in the European Union: a critical view on EU constitution-building* (The Hague: Kluwer Law International).
- Kiiver, P. 2011. The early-warning system for the principle of subsidiarity: the national parliament as a conseil d’état for Europe. *European Law Review* 36: 98–108.
- Lodge, J., and V. Herman. 1980. The Economic and Social Committee in EEC decision making. *International Organization* 34, no. 2: 265–84.
- Mansbridge, J. 2003. Rethinking representation. *American Political Science Review* 97, no. 4: 515–28.
- Mansbridge, J. 2009. A ‘selection model’ of political representation. *Journal of Political Philosophy* 17, no. 4: 369–98.
- Marschall, S. 2008. Transnational parliamentary assemblies and European security policy. In D. Peters, N. Deitelhoff, and W. Wagner, eds., *The parliamentary control of European security policy*, RECON report no. 6, ARENA report no. 7/08, Oslo: Arena.
- Nicolaïdis, K. 2004. The New Constitution as European Democracy? *Critical Review of Social and Political Philosophy* 7, no. 1: 76–93.
- O’ Brennan, J., and T. Raunio. 2007. Introduction: deparliamentarization and European integration. In *National parliaments within the enlarged European Union*, eds. J. O’ Brennan and T. Raunio, 1–26. Abingdon: Routledge.
- Pitkin, H. 1967. *The concept of representation*. Berkeley: University of California Press.
- Raunio, T. 2007. National legislatures in the EU constitutional treaty. In *National Parliaments Within the Enlarged European Union*, eds. J. O’ Brennan and T. Raunio, 79–92. Abingdon: Routledge.
- Raunio, T. 2009. *National parliaments and European integration: what we know and what we should know*. ARENA, Oslo: Working Paper.
- Raunio, T. 2010. Destined for irrelevance? Subsidiarity control by national parliaments. Working Paper 36/2010. Elcano Royal Institute, Madrid.

- Reif, K., and H. Schmitt. 1980. Nine second-order national elections – a conceptual framework for the analysis of European election results'. *European Journal of Political Research* 8, no. 1: 3–44.
- Rittberger, B. 2005. *Building Europe's parliament: democratic representation beyond the nation-state*. Oxford: Oxford University Press.
- Rittberger, B. 2006. 'No integration without representation!' European integration, parliamentary democracy, and two forgotten communities. *Journal of European Public Policy* 13, no. 8: 1211–29.
- Smismans, S. 1998. The role of national parliaments in the European decision-making process: addressing the problem at European level? *ELSA Selected Papers on European Law* 9, no. 1: 49–76.
- Smismans, S. 2000. The European Economic and Social Committee: towards deliberative democracy via a functional assembly, *European Integration online Papers* (EIoP) 4, no. 12 (2000). Available at <<http://eiop.or.at/eiop/texte/2000-012a.htm>>
- Urbinati, N., and M. Warren. 2008. The concept of representation in contemporary democratic theory. *Annual Review of Political Science* 11: 387–412.
- Weissberg, R. 1978. Collective vs. Dyadic Representation in Congress. *American Political Science Review* 72: 535–47.