

THE PARLIAMENT WITHOUT A PEOPLE: EXAMINING QUESTIONS OF LEGITIMACY IN THE CONTEXT OF THE EUROPEAN PARLIAMENT

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This paper is a detailed treatment of the European Parliament. It traces the parliament's beginnings as the 'poor relation' of the European institutions and examines the reasons behind its steady rise to relative prominence in recent years. The Parliament's initial difficulties in establishing its legitimacy, as well as the fundamental compromises which have shaped and perhaps inhibited its development are also analysed. Finally, the author assesses the parliament's current role, in a Europe shocked by referendum defeats in France and the Netherlands and argues that only greater parliamentary power can free Europe from the persistent charge of having lost touch with ordinary Europeans. An empowered parliament, he concludes, will win back the apathetic European electorate and breathe new life into the European project.

A INTRODUCTION: EUROPE DEPARTING, ALL ABOARD?

From its inception ... the 'European project' has been troubled, even bedevilled by the twin problems of legitimacy and democracy ... there always was an element of deception – a kind of elite conspiracy – in the actions of the promoters of the project.¹

The European project, whatever else it may be about, has always been about the integration of Europe. This integration has been achieved by men and women who “have both seemed sure that they had the right vision for the future of Europe and have been profoundly worried about whether they were being followed.”² They were not. European policy takes a back seat in national general elections, and a majority of European states do not require referenda to ratify the successive treaties. Therefore the peoples of Europe have rarely had a say in the direction that Europe has taken. Increasingly, when they are asked, the answer is ‘no!’³

This essay will begin by asking the most basic question: Is the European Parliament a validly constituted entity? It will examine the role of the European Parliament within the European Union. Though the EU may lack social legitimacy, the Parliament suffers from difficulties of democracy, and this essay will show they are not illegitimate. As the Union has grown, so too has its Parliament, largely due to the work of MEPs. This essay will

¹ Blondel, Sinnott & Svensson (1998), *People and Parliament in the European Union* (Clarendon Press), 3.

² *ibid.*

³ Of 40 EU-related referendums from 1972–2003, the anti-EU side won two between 1972–1990, five in the 1990's, four between 2000–3, and two in quick succession in 2005 when the French and Dutch rejected the Constitutional Treaty. Data: Hix (2005), *The Political System of the European Union* (Palgrave Macmillan), 196.

present an overview of the factors undermining legitimacy and consider how MEPs might work to cure the malaise afflicting Europe.

B LEGALLY VAILD?: PARLIAMENT'S FORMAL LEGITIMACY

Dann notes “the institutional and systemic environment of a parliament is doubtlessly central to the understanding of how a parliament works.” This is true of the European Parliament, whose legitimacy rests on that of the system which created it. Weiler identifies two forms of legitimacy – formal (legal) legitimacy, and social (empirical) legitimacy. The latter will be addressed later, for first the Union’s formal legitimacy must be addressed. Such legitimacy is attained by ensuring that “all requirements of the law are observed in the creation of the institution or system.”⁴ This concept is similar to the Kelsenian idea of validity – achieved if “we assume that it has ‘binding force’ for those whose behaviour it regulates.”⁵

The Treaties that created the Union and empowered its Parliament were drawn up at Inter Governmental Conferences, signed and ratified by each Member State. Its laws are binding upon the citizens of the Member States. The European Union, and the Parliament, clearly enjoy formal legitimacy. Arnall held it “unimpeachable,”⁶ it is perhaps improvable.

In modern Western society, the legitimacy of a state is accepted as deriving from its democratic roots – government by consent.⁷ However, direct consent to a legal order is not necessarily a prerequisite of legitimacy. The German people have never consented to the *Grundgesetz*, yet it is without doubt legitimate. It might be said to enjoy Weberian ‘traditional legitimacy’: the belief that what has always been is legitimate.⁸ Thus the *Grundgesetz* is legitimate now as it has always been so.⁹ The European Union cannot base its formal legitimacy on tradition, as it challenges the Westphalian order of sovereign nation states. The answer must lie elsewhere.

In *Brunner v The European Union Treaty*,¹⁰ the German Federal Constitutional Court held that

the common authority [of the Union] is derived from the member-States and can only have binding effect within the German sovereign sphere by virtue of the German instruction that its law be applied.¹¹

⁴ Weiler (2003), *The Constitution of Europe: ‘Do the new clothes have an emperor?’ and other essays on European Integration* (Cambridge University Press), 80.

⁵ Kelsen (1946), *General Theory of Law and State* (Harvard University Press), 30.

⁶ Arnall (2000), ‘Introduction: The European Union’s Accountability and Legitimacy Deficit’, in Arnall & Wincott (eds.), *Accountability and Legitimacy in the European Union* (Oxford University Press), 4.

⁷ Weiler, *op. cit.* n.5 above, 80.

⁸ Mommsen (1989), *The Political and Social Theory of Max Weber* (University of Chicago Press), 47.

⁹ Its initial validity may be derived from the Kelsenian *coup d’état* – Nazi defeat in the Second World War.

¹⁰ [1994] 1 CMLR 57.

¹¹ *ibid.*, 91.

Thus the Member States, it argues, are the masters of the treaties, the gatekeepers to the Union. This is a valid theoretical viewpoint. The legal legitimacy of the European Union has been attained by the consent of legitimate representatives and so rests upon that of the Member States.¹² One could posit the argument that the Union has implied legal legitimacy - that because it is assumed binding, it has validity and formal legitimacy. However, in Kelsenian terms, there was no legal *coup d'état*, and the validity of the system still rests upon that of its predecessors – sovereign nation states.

A further consideration in Brunner was the absence of a *Staatsvolk*. Habermas, in refuting this 'no-demos thesis', notes it amounts to "the empirically-based argument that ... as long as there is not a European people which is sufficiently 'homogenous' to form a democratic will, there should be no constitution."¹³ Thus, it argues the Union's legal legitimacy should rest upon that of the Member States until there is a *Staatsvolk*. This is a normative analysis aimed at the self-preservation of the state. Such a *volk* may never evolve, and it is unlikely to do so if German Constitutional lawyers continue to use its absence to justify inaction.¹⁴ Furthermore, the Preamble and Art 6 of the Treaty celebrate the diversity of Europe's peoples, and doesn't seek to diminish it in a Schmittian attempt to create homogeneity.¹⁵

The flaw in the no-demos thesis is that it is based on a particular understanding of *demos* – one tautologically linked to the nation-state, a concept that is itself under threat. What is required is an alternative basis for Europeans to confer legitimacy on the Union – that it may be legitimate, even in the absence of a *volk*, and so nationalists cannot forever hold the Parliament, Council and Commission to ransom. Grimm claims democracy is obstructed not by "the lack of cohesion of Union citizens as a people, but their weakly developed collective identity and low capacity for transnational discourse."¹⁶ This is echoed in Craig's alternative *demos* - "tied to the very idea of *humanitas*, of political participation as the very essence of the human condition."¹⁷ This is the Europe that MEPs should strive for, and what's more, it is achievable.

European discourse is on the increase as Europeans are visiting more and more of their continent. This results in better integration, aided by the unlikeliest of actors.¹⁸ Grimm's 'identity and discourse' is developing. Even more Schmittian characteristics such as heritage are not necessarily absent.

¹² The argument holds even where consent is obtained by referendum: the referendums to amend Bunreacht na hÉireann (Constitution of Ireland) is couched in terms of allowing the state to ratify the successive treaties, thus legitimacy is derived from the state Constitution. See Art 26 Bunreacht na hÉireann.

¹³ Habermas (1995), 'Remarks on Dieter Grimm's "Does Europe Need A Constitution?"' 1 ELJ 303, 304.

¹⁴ Douglas-Scott (2003), *Constitutional Law of the European Union* (Longman), 151.

¹⁵ Schmitt (1985), *The Crisis of Parliamentary Democracy* (MIT Press).

¹⁶ Grimm (1995), 'Does Europe Need A Constitution?' 1 ELJ 282, 297.

¹⁷ Craig (2001), 'The Search for a European Political Imagination' 7 ELJ 24, 27.

¹⁸ The Economist, Charlemagne: 'Low-cost founding fathers', January 27th 2005.

Habermas highlights Europeans' "common cultural background and the shared historical experience of having happily overcome nationalism."¹⁹

Though secure, the formal legitimacy of the Union can be bettered. Legitimacy should not be viewed as a binary value – either attained or not. The *dicta* of the German Court show that the means of attainment is just as important as attainment itself.

The Constitutional Treaty represents (or at least represented) a chance to significantly increase the legal legitimacy of the European Union. Were the Constitutional Treaty to win a popular mandate from each and every one of the peoples of Europe, it would have legitimacy hitherto unknown in the European project – a 'common political space' would be cultivated.²⁰ This was argued at the Constitutional Convention by the 'European Referendum Campaign.'²¹ Despite the support of a large number of delegates, the euro-elite were not convinced of the plan's merits. Rather disappointingly, this was due to a fear of defeat: "given the limited voter appeal of Union issues, a Europe wide referendum would be a high risk strategy."²² While successful referenda would have consigned to the dusty shelves of history the *dicta* of the Federal Constitutional Court, the rejection of the Constitution has dealt a serious blow to the Union.

Clearly then, the European Parliament is a validly constituted body in a formally legitimate legal order. There is little it can do to strengthen its legal standing, but that standing is secure nonetheless. Therefore the problems of legitimacy and democratic deficit that it suffers cannot be attributed to a legal problem. A brief analysis of the role of the Parliament within the Union may shed some light on questions of legitimacy.

C THE ROLE OF THE PARLIAMENT: FROM JOKER TO JOINT LEGISLATOR

"The European Parliament could easily be misconstrued as the EU equivalent of a national parliament."²³ It has direct elections by universal suffrage,²⁴ using proportional representation voting systems. It is divided along party political, rather than national lines (unlike all other EU institutions), a fact recognized in the Treaty.²⁵ It operates by simple majority of votes cast.²⁶ In appearance therefore, if not form and function, the European Parliament is akin to the parliament of a nation-state.

However, the European model is unique, and forced analogies misrepresent reality. Dann uses two paradigms: the 'working parliament' and the 'debating parliament' as heuristic devices to analyze the role of the

¹⁹ Habermas, *op. cit.* n.14 above, 307.

²⁰ See: CONV 658/03.

²¹ <http://www.european-referendum.org>.

²² Norman (2003), *The Accidental Constitution: The Story of the European Convention* (EuroComment), 132.

²³ Dinan (1999), *Ever Closer Union* (Macmillan Press), 267.

²⁴ Art. 190 EC.

²⁵ Art. 191 EC.

²⁶ Art. 198 EC.

European Parliament.²⁷ When it was founded, the role of the Parliament was that of a reporting body: it comprised national politicians who kept domestic parliaments informed of the goings-on in Brussels. Its history is one “of relentless efforts by MEPs to increase [its] power,”²⁸ and a grudging acceptance by the euro-elite that such powers may be necessary to strengthen the Union’s legitimacy. Douglas-Scott identifies its three main powers: “to legislate; those relating to the Community budget; and its supervision of the executive.”²⁹

1 The Legislative Role

“In Jean Monnet’s vision, it was, together with the European Court of Justice ... an institution of control and scrutiny, not of decision-making.”³⁰

The Treaty of Rome gave the European Parliament a mere consultative right in legislating. At best it was an advisory body, at worst a talking shop for career politicians. The view of Niels Anker Kofoed, a former MEP, that “the primary task of the European Parliament is to exercise political control over the Commission”³¹ accepts this limitation. The Single European Act broadened the legislative areas in which it acts, and the Maastricht Treaty elevated it to the level of co-legislator with the Council in certain competences. Much of the Parliament’s growth in power has been fought for and won by MEPs – it has “inserted itself”³² into the process, often without welcome.

Three procedures exist by which the Parliament is involved in the legislative process: consultation, co-operation, and co-decision, in order of increasing influence. The co-operation procedure is limited in its application and was “practically eliminated” by the Amsterdam Treaty.³³

The consultation procedure prevents the Council from adopting an act until it has formally received the Parliament’s opinion on the matter.³⁴ The Parliament may use this to delay legislation, and where that legislation is a matter of urgency for the Council, the Parliament may win concessions. The

²⁷ Dann (2003), ‘European Parliament and Executive Federalism: Approaching A Parliament in a Semi-Parliamentary Democracy’, 9 ELJ 549.

²⁸ Dinan, *op. cit.* n.24 above, 267.

²⁹ Douglas-Scott, *op. cit.* n.15 above, 89.

³⁰ Neunreither, (2000), ‘Political Representation in the European Union: A Common Whole, Various Wholes, or Just a Hole?’, in Neunreither & Weiner (eds.), *European Integration After Amsterdam: Institutional Dynamics and Prospects for Democracy* (Oxford University Press), 133.

³¹ Kofoed (1978), ‘The European Parliament’s Ability to Exercise Democratic Control’, in Parlement Hellenique, *Le Parlement Européen* (Athenes), 83.

³² Wallace & Wallace (1996), *Policy Making in the European Union* (Oxford University Press), 63.

³³ Bergman & Raunio (2001), ‘Parliaments and Policy-Making in the European Union’, in Richardson (ed.) *European Union: Power and Policy-Making* (Routledge), 118.

³⁴ Craig & de Búrca (2003), *EU Law: Text, Cases and Materials* (Oxford), 141.

European Court of Justice has found such tactics lawful,³⁵ provided the Parliament respectfully co-operates with its fellow institutions.³⁶

The co-decision procedure was introduced by the Maastricht Treaty, initially only covering fifteen Treaty items. The Amsterdam Treaty extended the competences covered by the procedure, and streamlined it.³⁷ If agreement cannot be reached, a Conciliation Committee is convened to find consensus. In the event that no ‘common position’ can be reached, the legislative act is not adopted. Under this procedure the Council and the Parliament have an equal power of veto, and the emphasis is clearly on legislation through compromise. This is the process that most accurately resembles that of a bicameral legislature. One body represents the people (Parliament), the other the states (Council).

A severe limitation on the Parliament’s legislative role is its inability to initiate legislation. This right remains the preserve of the Commission. One view of this is that it is the “essential absurdity”³⁸ at the heart of the European legislature. On the other hand, this may be seen as a necessity in the EU, given the vast resources required to draft legislation. By using the power to request legislative initiatives from the Commission,³⁹ as granted under the Maastricht Treaty, the MEPs have an increased ability to affect the initiation of law-making, though ultimate power rests with the Commission.

2 Budgetary Powers

The Community budget has been financed from ‘own resources’ since 1970. While it lacks a means to directly tax the citizens of the Member States (since the Maastricht Treaty, its own citizens), it relies on trade tariffs, customs duties, and a contribution of not more than 1.27 per cent of each Member State’s GNP. Despite these fiscal limitations, the Community has a large budget,⁴⁰ and the Parliament has ‘significant powers’ in determining its disposal.⁴¹ Dinan notes that parliaments have the “power of the purse” in liberal democratic regimes.⁴² In Europe, the budgetary procedure is “carefully balanced” between the three principle institutions of the Community.⁴³ The Commission draws up the draft budget, with the Council having responsibility for ‘compulsory’ expenditure (dominated by the Common Agricultural Policy), and the Parliament for ‘non-compulsory expenditure’. The Parliament has been successful in reducing ‘compulsory expenditure’ to approximately 55% of the overall budget, compared with an original figure in excess of two thirds. An Inter-institutional Agreement provides for a conciliation procedure in the

³⁵ Case 138/79 *Roquette Freres SA v Council* [1980] ECR 3333.

³⁶ Case C-65/93 *European Parliament v Council* [1995] ECR I-643.

³⁷ Smith (1999), *Europe’s Elected Parliament* (Sheffield Academic Press), 92.

³⁸ Ward (2003), *A Critical Introduction to EU Law* (Butterworths), 25.

³⁹ Art. 192 EC.

⁴⁰ €93 bn in 2005.

⁴¹ Douglas-Scott, *op. cit.* n.15 above, 91.

⁴² Dinan, *op. cit.* n.24 above.

⁴³ Craig & de Búrca, *op. cit.* n.35 above, 107.

event of conflict between the Council and the Parliament.⁴⁴ The Budget is formally adopted by the Parliament, though it is the Council which retains greater power in its drafting.⁴⁵

It is the Parliament that will benefit if the Constitutional Treaty is ratified. Arts III-403 to III-409 deal with the budgetary procedure, and the distinction between compulsory and non-compulsory expenditure is abolished, giving the Parliament wider power in controlling expenditure. The budget would also be adopted under the ordinary legislative procedure. In addition, the Parliament reviews expenditure. The Budgetary Control Committee, assisted by the Court of Auditors, assesses the Commission's handling of the Budget, and grants it 'discharge'. The refusal to grant discharge on the 1996 Budget led to an investigation into Commission fraud.⁴⁶

3 Control of the Executive

That the legislative assembly should exercise some control over the executive is a classic ideal of constitutional theory:

the legislative power in a free state ... has a right and ought to have the means of examining in what manner its laws have been executed.⁴⁷

Europe's Parliament may not be that of a state, but it still has such a role, one that "has been developed through both treaty amendments and informal developments."⁴⁸ There are inherent difficulties in controlling the Union's executive power, as it is dispersed – between the Council, Commission, and even member states, "who are reluctant to yield to Parliament scrutiny."⁴⁹ Little power exists to control the Council. The Parliament can call the Commission to account, most powerfully by the 'nuclear option' – a motion of censure.⁵⁰ This has never been used, though the Commission resigned in 1999 rather than face such a motion. Far more frequently used is the more general Art. 197 procedure to question the Commission.

Since the Maastricht Treaty, the Parliament has enjoyed a vote of approval over the appointment of the Commission as a body. It informally developed 'Commission hearings', to allow its relevant standing committee to quiz prospective Commissioners on their portfolios. This procedure was formalized under the Amsterdam Treaty.⁵¹ The Commission hearings came to the fore in 2004, when the Parliament forced the current President of the Commission, José Manuel Barroso, to withdraw his proposed Commission

⁴⁴ Inter-Institutional Agreement on Budgetary Discipline and Improvement of the Budgetary Procedure [1999] OJ C172/1.

⁴⁵ Craig & de Búrca, *op. cit.* n.35 above, 108.

⁴⁶ Smith, *op. cit.* n.38 above, 70.

⁴⁷ Montesquieu (1949), *The Spirit of the Laws* (Hafner Publishing Company), 158.

⁴⁸ Douglas-Scott, *op. cit.* n.15 above, 92.

⁴⁹ Scully (2003), 'The European Parliament', in Cini (ed.), *European Union Politics* (Oxford University Press), 169.

⁵⁰ Art. 201 TEU.

⁵¹ Art. 214 TEU.

from consideration, and return with a reshuffled deck. Three Commissioners were replaced before the Parliament approved the body.⁵² In this manner the Parliament has evolved through its own initiative a procedure to allow it to keep unsatisfactory Commissioners from being appointed. Nevertheless, the power to wholly reject the Commission is a blunt tool, lacks the corollary power to appoint, and relies on political rather than legal force to ensure its efficacy. Nugent notes that

it is not difficult to make a case that ... the European Parliament exerts a greater influence over affairs than do the more executive-dominated parliaments of some member states.⁵³

If legal legitimacy is assured, and the democratic body enjoys increased prominence, it seems it is the quality, rather than the quantity of democracy that must be improved. As Weiler observed, the traditional view of increasing the Parliament's powers as the cure for ailing legitimacy is misguided.⁵⁴ The Parliament's growth has not translated into a growth in legitimacy for, as we shall see, aspects of its operation continue to hinder its acceptance by the European public.

D SOCIAL LEGITIMACY: INTEGRATING THE PEOPLES OF EUROPE

Social legitimacy is the "broader, empirically determined, societal acceptance of the system."⁵⁵ It is "more nebulous ... more difficult to acquire and retain."⁵⁶ Hix has commented that the Maastricht Treaty marked the end of the 'permissive consensus' by which the majority of European citizens were either uninterested in Europe, or generally supported their government's policy.⁵⁷ Fifty-six per cent of citizens polled would now be either relieved or indifferent were the Union to be dissolved.⁵⁸ If the gap between the Union's legal and social legitimacy is to be bridged, Europe's public space must be improved. Naturally, as the democratic institution, the Parliament comes to the fore in such discussions. Dann classifies the evolved Parliament as a 'controlling parliament' – that is a working parliament whose powers are largely negative. As such, it suffers both the flaws of all working parliaments, and of the Union itself.⁵⁹ Parliamentarians can take some solace that theirs is still the most trusted institution and viewed as the most important.⁶⁰ By addressing certain problems, MEPs can play an important part in remedying the situation. Craig highlights: distance; executive dominance; the comitology⁶¹ phenomenon; complexity and lack of transparency as issues of

⁵² The Economist Global Agenda, 'Back In Commission', November 5th 2004.

⁵³ Nugent (2003), *The Government and Politics of the European Union* (Palgrave Macmillan), 234.

⁵⁴ Weiler, *op. cit.* n.5 above, 80.

⁵⁵ *ibid.*

⁵⁶ Arnall, *op. cit.* n.7 above, 4.

⁵⁷ Hix (2005), *The Political System of the European Union* (Macmillan), 151.

⁵⁸ Eurobarometer 62, May 2005.

⁵⁹ Dann, *op. cit.* n.28 above, 573.

⁶⁰ Eurobarometer 62, May 2005.

⁶¹ The proliferation of parliamentary and executive sub-committees in governance.

particular note to the health of Europe's democracy.⁶² As qualitatively poor democracy undermines legitimacy, these headings provide a useful framework for this discussion.

1 The Distance Issue

The distance issue - why should they over there decide what I do over here - is the most obvious articulation of questions of democratic deficiency and legitimacy. It also encapsulates Dann's primary problem with working parliaments: responsiveness to the electorate.⁶³ While distance cannot be overcome, it can be counteracted. The parade around central Europe that is the life of an MEP is a farce that continues to diminish the status of the Parliament.⁶⁴ They over there are also over there and over there. Were the states that hold back centralization to be forced to come to their senses, at least Europeans would have a single democratic seat to point to. In the interim, MEPs can 'bring Europe home'. Enhancing their profile in national politics would help.⁶⁵ The European parties focus on transnational manifestos and coordination - "they have tended to leave the actual organization of the campaigns to national parties."⁶⁶ In the European Parliament, national interest is "the dog that has barked remarkable rarely,"⁶⁷ yet the other face of this Janus is that campaigns are fought and won on national policies.⁶⁸ The resulting parochialism undermines the importance of the elections, and unsurprisingly, they are seen as playing second fiddle to national general elections. The Treaty envisages a European polity, with political parties that are representative of the people - contributing "to forming a European awareness and to expressing the political will of the citizens of Europe."⁶⁹ Furthermore, in a parliament whose centre of gravity is its committees, parties are important as 'representative agencies.'⁷⁰ European Parliament elections that focus on European policy and increased European party branding would be an informal, but effective step forward. A renewed look at matching party funding to the Treaty's lip-service might help to achieve this.⁷¹

2 Checking Executive Dominance

If distance represents the physical disempowerment of the people, then increased executive dominance is the legal equivalent. Featherstone, citing Moravcsik notes the European Union strengthens national executives in the

⁶² Craig (1999), 'The Nature of the Community: Integration, Democracy, and Legitimacy', in Craig & de Búrca (eds.), *The Evolution of EU Law* (Oxford University Press), 23.

⁶³ Dann, *op. cit.* n.28 above, 570.

⁶⁴ Somewhat unfortunately for the MEPs, the division of operations between Brussels, Luxembourg and Strasbourg was not of their design - it was the choice of the Member States.

⁶⁵ For instance, the Irish Seanad recommends entrenching MEPs' right to address the House. See: Seanad Éireann Committee on Procedure and Privileges: Sub-Committee on Seanad Reform (2004), *Report on Seanad Reform* (Official Publications Office), 57.

⁶⁶ Smith, *op. cit.* n.38 above, 92.

⁶⁷ Wallace & Wallace (1996), *Policy-Making in the European Union* (Oxford University Press), 64.

⁶⁸ Hix, *op. cit.* n.58 above, 193.

⁶⁹ Art. 138a TEU.

⁷⁰ Dann, *op. cit.* n.28 above, 571.

⁷¹ Douglas-Scott, *op. cit.* n.15 above, 87.

domestic sphere. Governments can use a ‘European frame’ to drive through policy, and can enact law in Europe which would be politically unviable at a domestic level.⁷² On the other hand, Duina and Oliver argue that by setting precedents for legislating and regulating in certain policy areas, the EU has allowed parliaments to act “beyond the traditional remit of national parliaments.”⁷³

On balance, integration clearly accentuates the current trend of de-parliamentization, resulting in disenchantment with the Union itself.⁷⁴ In accession states, the mammoth task of adopting the 80,000 pages of the *acquis communautaire* often necessitates fast-track procedures. In addition, centralized management of the negotiation process weakens national parliaments.⁷⁵ This grievance was greater when traditionally the Council and the Commission dominated the Union. However, the political landscape has changed somewhat. The development of the democratically elected Parliament, and its ability to fashion conventions that later crystallize in treaties, represents re-parliamentization, albeit at a supranational level.

Its action to curb to the rise of an authoritarian party in Austria demonstrates that the Union itself acts to “help the liberal-democratic and hinder the authoritarian political forces”⁷⁶ in Member States. This is of particular benefit to newer Member States, fledgling democracies that they are. If Europeans could look to the Parliament as a check on domestic abuses, the EU’s democratic credentials would be improved.

The Constitutional Treaty’s power of election of the Commission President would have improved Parliament’s oversight of the Executive.⁷⁷ Denied this, MEPs should consider Delors’ suggestion, that they indicate in their manifestos their preference for the Commission, and so allow the electorate a sense of influence over the executive.⁷⁸

3 Controlling Comitology⁷⁹

Europe’s phenomenon of comitology was born so the Council could delegate the detailed work of agricultural regulation but retain ultimate power.⁸⁰ The ‘Council-in-Commission’ committees are appointed by the Council and presided over by the Commission. Committees are a necessity in

⁷² Featherstone (1999), ‘Citizenship, Participation and Legitimacy in the European Union’, in Campbell & Lewis (eds.), *Promoting Participation: Law or Politics?* (Cavendish Publishing), 170.

⁷³ Duina & Oliver (2005), ‘National Parliaments in the European Union: Are There Any Benefits to Integration?’ 11 ELJ 173, 173.

⁷⁴ Crysochoou (2003), ‘EU Democracy and the Democratic Deficit’ in Cini (ed.) *European Union Politics* (Oxford University Press), 374.

⁷⁵ Sadurski (2004), ‘Accession’s Democracy Dividend: The Impact of EU Enlargement upon Democracy in the New Member States of Central and Eastern Europe’ 10 ELJ 371, 383.

⁷⁶ *ibid.*, 401.

⁷⁷ Treaty Establishing a Constitution for Europe, Art I–26.

⁷⁸ Smith, *op. cit.* n.38 above, 67.

⁷⁹ See: Joerges & Vos (eds.)(1999), *EU Committees: Social Regulation, Law and Politics* (Hart Publishing).

⁸⁰ Council’s “Comitology” Decisions: 87/373/EEC & Decision 1999/468/EC.

an enterprise seeking to harmonise and integrate up to twenty-five different legal systems. Agreement by deliberation rather than negotiation is facilitated by the lack of accountability that secrecy allows. Thus the clandestine nature of the system might be presented as a necessary evil. Nonetheless, the damage done by in camera proceedings should not be underestimated. Public access is a precondition of perceived public ownership, and thus a necessity for social legitimacy. Furthermore, comitology masks bias: being from common academic backgrounds, those sitting are likely to share opinions, which may not necessarily be reflective of the views of the majority of Europeans.

Toeller and Hofmann note there are “structural as well as pragmatic limits to [the Parliament’s] potential role to improve the democratic legitimacy of comitology.”⁸¹ The 1999 Decision empowers it to intervene in Comitology Committees only on the basis of a Committee acting *ultra vires*.⁸² This gives it very limited control over the process. On the other hand, were it to gain too much power, it would cross the policy – administration divide, endangering the separation of powers. Thus in attempting oversight, it sails between Scylla and Charybdis.⁸³

Nevertheless, the veil of secrecy has been somewhat lifted in recent years. Parliament now receives copies of Committee documents, though draft measures are inadequately scrutinized by parliamentary committees.⁸⁴ While its resource problems remain an issue, by encouraging ‘quality assurance’ principles - inclusiveness, accountability, efficacy – the Parliament can engender a better culture of responsibility in the institutions.

4 Decreasing Complexity, Increasing Transparency

The complexity of the Union derives in part from the above issues. Matters are not helped by the complex Rules of Procedure of the Parliament, nor by plenary sessions riddled with different languages. The net result is a system that is incomprehensible to the lay observer. Featherstone put it succinctly: “an understanding of [the Parliament’s] role is less a social asset than are the finer points of trainspotting.”⁸⁵

The much maligned Constitutional Treaty provided for an ‘ordinary legislative procedure’. This procedure, modeled on the co-decision one currently in operation, is the most democratic, and most legitimate. States and peoples are equally represented. In addition, the abolition of the co-operation procedure would simplify matters. However, these proposals have been shelved for now. Newman notes: “the emphasis on institutional reform at EU

⁸¹ Toeller & Hofmann (2000), ‘Democracy and the Reform of Comitology’, in Andenas & Türk, *Delegated Legislation and the Role of Committees in the EC* (Kluwer Law International), 49.

⁸² Art. 8, Council Decision 1999/468/EC.

⁸³ Classical mythology: a whirlpool and a ship-wrecking rock.

⁸⁴ Türk (2000), ‘Comment on the Commission Proposal’, in Andenas & Türk, *op. cit.* n.76 above, 395.

⁸⁵ Featherstone (1999), ‘Citizenship, Participation and Legitimacy in the European Union’, in Campbell & Lewis (eds.) *Promoting Participation: Law or Politics?* (Cavendish Publishing), 170.

level ... should play a subordinate role in the immediate future.”⁸⁶ Perhaps this is true. Any attempt to further reform the Parliament would have to be ‘sold’ to the politicians and the peoples of Europe. They are reluctant buyers – not because of the merits of the reforms, but because of disaffection with the project.

To decrease complexity, MEPs should focus on information, not innovation. As Dehaene notes “there must be a much greater effort to communicate with the citizen: the Brussels institutions must not become ivory towers.”⁸⁷ This communication has been sorely lacking from the start of the European project – even the great Jean Monnet was an unashamed technocrat. MEPs can spend a quarter of their time in their constituencies. This time should be spent informing EU citizens what they have. Perhaps then they can decide what they want.

E CONCLUSION – TOWARDS A EUROPEAN POLITY

If the European Parliament is to be a successful democratic institution, it must serve a single polity. Chrysochoou is emphatic: “the emergence of a European civic identity out of the many democratic traditions that currently exist in the EU is imperative.”⁸⁸ It would be counter-productive to try, and impossible to achieve, a single European people. Similarly, excessive focus on the retention of state sovereignty fails to recognize that such a concept “may be illusory in the real interdependent world.”⁸⁹

The answer then – a union of peoples. Not a *volk*, but a *demos humanitatis*. Recent developments to allow EU citizens to vote in European Parliament elections, whatever their current country of residency, fosters a sense of citizenship transcending the nation-state. Craig reminds us “Europe needs its ‘romantic’ visions.”⁹⁰ His is a romance for academics, yet the sentiment is apt. As Europe’s states have marched towards integration, its people have been left behind. They now need to be romanced into catching up.

Since the beginning of the European project, the Parliament has been the peoples’ institution, untainted by the presence of the executive. The answers provided in this essay are largely extra-legal, they may be pursued without any further treaties. With the Council divided by money,⁹¹ and the Commission equally beleaguered,⁹² the Parliament is uniquely placed to capture Europe’s imagination once more.

⁸⁶ Newman (2001), ‘Democracy and Accountability in the EU’, in Richardson above, 369.

⁸⁷ Dehaene (2003), ‘Understanding Europe: the citizens right to know’, quoted in Norman (2003), *The Accidental Constitution: The Story of the European Convention* (Eurocomment), 131.

⁸⁸ Chrysochoou, *op. cit.* n.75 above.

⁸⁹ Weiler, *op. cit.* n.5 above, 82.

⁹⁰ Craig, *op. cit.* n.18 above, 40.

⁹¹ The Guardian, ‘UK and France head for Budget clash’, 8th November 2005.

⁹² The Economist, ‘Charlemagne: Whipping the Commission into shape’, 17th November 2005.