Europe’s Sleeping Beauty and the Future of Parliamentary Democracy in the EU

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Abstract

Parliamentarism in the European Union is in crisis. The pooling of competences at the European level is neither matched by the new powers of national parliaments to scrutinize governmental policy-making nor by the expansion of the competences of the European Parliament. A new approach to strengthening parliamentarism in the European Union is needed. This new approach should centre on placing citizens and national parliaments at the heart of the constitutional process. Strengthening COSAC and transforming it into a constitutional body with the power to stimulate the development of the European constitutional order is the adequate strategy.

Keywords: COSAC, parliamentarism, national parliaments, European Parliament, justification, accountability
The Challenge

National parliaments have moved centre stage in much recent constitutional reflection. The Treaties of Maastricht, Amsterdam and now Lisbon have given formal rights to national parliaments and explicitly stated that they have a legitimate role in European governance. The Treaty of Lisbon provides for expanded information and contestation rights to national parliaments and makes them guardians of the subsidiarity principle by introducing what is usually called the Early Warning System. The growing awareness that national parliaments deserve a more prominent role in European politics has also been reflected in the German Constitutional Court’s decisions on the Treaties of Maastricht and Lisbon. The Court has argued that national parliaments are the most important institutional sites for providing democratic legitimacy and that they must have an important role to play not only in national but also in European policy-making. According to the Court, it is national parliaments and not the European Parliament that guarantee that democratic principles are respected. National parliaments thus have a political function, which cannot be substituted by the European Parliament or any other institution. Giving national parliaments a central role in the European institutional system is thus the *conditio sine qua non* of democracy in Europe and a matter of utmost importance to the integration process.

Although most observers agree that national parliaments must be better integrated in the European multi-level system (Raunio, 2009), there is no consensus yet of how to divide the ‘multi-level parliamentary field’ (Crum and Fossum, 2009) among the national parliaments, the European parliament and the Council. Whilst some observers claim that ‘parliamentary democracies and multilevel governance co-evolve in processes of mutual adjustment’ (Benz, 2011 p. 13), others (Herzog and Gerken, 2007) question whether formally parliamentary systems like Germany still deserve that attribute. Integrating national parliaments into multilevel governance has proven difficult. Empirical studies show that parliamentary majorities are more than hesitant to use their control competencies (cf. Auel and Benz, 2005). Most often national pa-

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liaments’ majorities shy away from using their competences to publicly scrutinise their governments and are content to support them.

European integration is thus faced with a pressing question: What to do with national parliaments? What is their adequate place in the European multi-level polity and how can they be empowered to occupy that role? This article deals with this question in three steps. The following section starts with discussing the concept of multi-level governance and substantiates it with a normative argument that centres on the individual right to justification. The third section distinguishes between vertical and horizontal concepts of democracy and argues that only the latter provides a normatively attractive interpretation of European multi-level parliamentarism. It goes on arguing that national parliaments have an important role to play in any horizontal concept of European democracy and that they should be given a more active role not only in scrutinizing European governance but in shaping the European constitutional process.

**Multi-level Governance and Normative Theory**

Reflecting on the adequate role of national parliaments in the European political system must start with an idea of the overall institutional structure in which they are to be embedded. Whilst more dated concepts on the EU’s institutional structure often relied on the concepts of supranationalism and intergovernmentalism, it has become common recently to start with the notion of a multilevel governance system. The notion emphasises the parallelism between different layers of governmental, intergovernmental and supranational governance and maintains that all of them must be taken into account if an empirically meaningful understanding is to be developed (Piattoni, 2010). The concept of multi-level governance has in the past proven to have important strengths in describing the EU’s institutional complexities. Rule-making often starts with non-governmental input, proceeds with intensive consultations between the Commission and the member states, involves the Council and the European Parliament and is implemented by the Commission and the member states. It also integrates various non-governmental interest groups, the regions, and – last but not least – is conducted under the shadow of a European law that is developed in coop-
eration between the European Court of Justice (ECJ) and domestic courts. Although strong in heuristic force, the concept of multi-level governance also has its weaknesses. It is an empirical concept developed for understanding European politics but is hardly suited for meeting the challenge of developing normatively sound reflections. It stops at describing practices, linkages, networks, and veto-players and does not provide us with criteria of how we should assess their contribution to a legitimate European polity.

Accountability

Recent applications of the concept try to overcome this shortcoming by relying on the notion of accountability (Curtin, 2009; Bovens, Curtin and ‘t Hart, 2010). Papadopoulos (2010, p. 1034-1039) for example argues that multi-governance is hard to reconcile with democratic principles. The network character of multi-level governance fosters a policy-making style that is ‘deliberately informal and opaque’ with often unclear attributions of responsibility. Control on the part of national parliaments is difficult because the ‘length of the chain of delegation combined with the magnitude of administrative discretion makes their democratic accountability fictitious’. Networks are dominated by policy experts who ‘must be unaccountable to constituencies’ in order to remain credible to their professional communities. Participating non-governmental organizations (NGOs) represent well-organized interests rather than the median voter, and their internal organizational structure hardly ever lives up to the standards of democracy.

Accountability has become a new analytical focus for much of the multilevel governance literature because it promises to combine an emphasis on input-legitimacy without unduly limiting the problem-solving capacity of the EU. It underlines the need for transparent decision-making, legal oversight and good administrative procedures without necessarily imposing participatory requirements that would endanger the efficiency of decision-making. It is, finally, a concept that is very much in accordance with the practices of the EU. Although the concept is clearly adapted to analysing EU practices, it also has its shortcoming. Accountability has recently been described as a ‘dustbin filled with good intentions… and vague images of good gov-
ernance’ (Bovens, 2007, p. 449). Bovens describes the contribution of accountability to democratic governance as ‘ensur(ing) that public officials, or public organisations remain on the virtuous path’; it may foster ‘public catharsis’, ‘identify and address injustices and obligations’, ‘establish public control’, ‘prevent and detect corruption and the abuse of public power’, help creating checks and balances’ and ‘induce reflection and learning’ (Bovens, 2010, p. 955). Accountability matters to legitimate governance ‘because of the presumption that its absence means that those in power have the capacity to act without regard for those who authorize their actions and for those whose lives are affected by those actions’ (Barnett/ Finnemore, 2004, p. 171).

All this sounds good and is surely welcomed by any reflection on European democracy. What the concept lacks so far, however, is an explanation of its normative foundations. It is, in the words of Lord and Pollak (2010), an ‘unsaturated concept’. It does not answer the most pressing questions such as who should be accountable to whom, when or for what reasons. The approach most often used for finding an answer to these questions is principal-agent analysis (Auel, 2007). According to principal-agent analysis, those who delegate power have the right (and the power) to demand accounts on the part of those actors or institutions to whom powers are delegated. Accountability is thus an element in a relationship between a sender and a receiver of political competences. An important strength of principal-agent analysis is its clarity and its parsimonious character. Political relationships are clearly structured and responsibilities are easy to locate. Political reality, however, is often too complex for easy analytical concepts. Principal-agent analysis systematically overlooks that actors who are commanding delegated competences might either deliberately or non-intentionally use them for negatively affecting the interests of third parties who have neither delegated nor received any competences. According to the theory, affected actors who have not delegated competences would have no right to demand and receive an account. In European politics, such situations are ubiquitous. The introduction of the Euro, to take a prominent example, was to a significant degree motivated by the interest of the member states to curb the power of the German Bundesbank. Before the introduction of the Euro, the Bundesbank only took into account the concerns of the German economy. Due to the dominant role of the Deutsche Mark as the strongest currency in the EU, the Bundesbank’s decisions had
a significant effect on the currencies of all other member states. If the Bundesbank decided to raise or lower its interest rates, all other European central banks were de facto forced to follow its example, even if their domestic economic interests strongly differed. The decisions of the Bundesbank thus had a strong effect on third parties who, according to principal-agent analysis, would have neither the power nor the right to influence them. Similar examples could be taken from trade policy, migration policy and many other areas. All these examples point to the normative limits of principle-agent analysis and its structural negligence of the external effects of decisions on third parties.

**Justification and Justified Structures of Justification**

An alternative way of explaining the normative thrust of accountability is to contextualize it with a theory of justice that focuses on the right to justification (cf. Forst, 2011 and Neyer, 2012). The idea of justice as a right to justification is established on the assumption that we have a human right to demand and receive justification from all those individuals or organisations that restrict our freedom. We, as the citizens and the ultimate bearers of the right to justification, are entitled to explanations and convincing reasons on the part of all political institutions that wield power. This does not necessarily imply that no limitations of our freedom by a government or by other political actors are legitimate. It only holds that the legitimacy of any such intervention depends on the reasons that are given to explain it. As a person (or organisation), I have the right to have any restriction of my individual freedom justified by whoever causes that restriction or has the intention to do so. This argument takes the freedom of the individual from domination as a starting point, and places all restriction of this freedom under the reservation of good reasons, i.e. those reasons that withstand critical public scrutiny (cf. Neyer, 2012, chap. 6).

Understanding justice as the right to justification gives the notion of justice an intrinsically procedural and discursive character. Any question regarding the specific implication of justice in a given context is answered with reference to a normatively demanding discursive procedure. All parties concerned, be they individual or governmental, must be given the chance to voice their concerns and to have them
properly respected in the formulation of binding rules. In this way, the search for justice becomes an inclusive, discursive and always only temporarily concluded project. Though those concerned by a regulation may temporarily agree upon a specific accord, they often will only do so with the reservation of possible later changes. In an ideal world of justification, all political actors would permanently justify their policies to all possibly affected parties and abstain from conducting any policy that cannot be fully justified or that has not yet been fully justified. No implementation of policies would be realized before an inclusive debate on the merits and problems of policies is concluded. Critics would be invited to raise their concerns and be given opportunity to address them directly via policy-makers. The arguments brought forward would be weighed according to their relative merits. Policy would not follow interests but arguments.

Supranational structures of justification do a lot for narrowing the gap between the politics of power and these ambitious criteria (Neyer, 2012, pp. 115-148). They reduce power asymmetries and create and maintain justification-based discourses. Supranationality creates a space for justificatory discourses and transforms international bargaining into transnational deliberation (Joerges and Neyer, 1997). This function of the supranational layer of European governance is of crucial importance for assessing the legitimacy of the EU. However, the taming of power asymmetries and the establishment of structures of justification does not in themselves lead to greater justice. Structures of justification can even further injustice if established on an unjustified normative framework. They cement unjust conditions if they merely reproduce norms that reflect the asymmetry of power relationships rather than the outcome of an inclusive and deliberative procedure. International law is well-known for its codification of international power asymmetries. It often either only formalizes an already existing state practice or gives expression to the interests of major powers (Mearsheimer, 1994). It is for this reason that many observers are so deeply sceptical about the capacity of international and European law to produce just outcomes (Bull, 1977, p. 87).

The legitimacy of the EU can therefore only be affirmed to the degree that its structures of justification are established in processes that themselves are the product of
justificatory processes, of inclusive and discursive constitutional reflections. In his discussion of fully justified structures of justification, Forst specifies the conditions that the process of justification must meet. ‘(P)olitical or social structures or laws have to be based on or (at least) to be compatible with moral norms applicable to them and must be justifiable within appropriate legal and political structures (and practices) of justification.’ Structures of justification must be embedded in a ‘fundamentally just basic political and legal structure...in which the members have the means to deliberate and decide in common about the social institutions that apply to them and about the interpretation and concrete realization of their rights.’ It is important that ‘everyone (can) participat(e) effectively in the practice of justification’ (Forst, 2010, p. 731) and that ‘dissent should be heard, taken seriously and channelled in such a way that it could lead to a reform of the social structure’ (Forst, 2010, p. 733). A just structure of justification must provide for the ‘possibility of free and equal participation and adherence to proper procedures of deliberation and decision-making’ (Forst, 2010, p. 734).

These conditions are obviously highly demanding. Perfectly justified structures of justification must not contradict prevailing norms of morality, they must be embedded in reflexive procedures for adapting to changing normative preferences and be transparent and open to public participation. Even a perfectly deliberative discourse would be illegitimate if it rested on unfair procedural norms (e.g. the exclusion of important stake holders, withholding of information) or unacceptable material norms (e.g. the violation of basic human rights). To put it in a nutshell, structures of justification are only as good as their normative and procedural context. Thus, only justified structures of justification deserve to be called legitimate.

**National Parliaments in a Multi-Level System**

After having substantiated the concept of multilevel governance with a normative theory, it is time to come back to national parliaments. Why should they play an important role in a justified multilevel governance system? What is their comparative advantage to other political institutions in tying citizens closer to the European plane and in giving effect to the right to justification? How and where should they be inte-
grated in the system? Much of the recent debate on the role of national parliaments is inspired by the notion of a ‘multilevel parliamentary field’ (Crum and Fossum, 2009). According to Crum and Fossum, national parliaments and the European parliaments must not be viewed in isolation from each. They together form a combined system of citizen representation in which European citizens have some of their concerns being represented at the national level and some at the supranational level. Both levels of representation coexist and complement each other without necessarily having conflicting claims with a view to their competences. Although the notion is helpful in understanding that both levels of parliamentary representation co-exist in the EU, it does not in itself help answering the question what competences and role the two levels should have. The concept of a ‘field’ is a sociological rather a constitutional category and as such of descriptive rather than of normative value.

**Vertical and horizontal concepts of European democracy**

A more helpful starting point for reflecting about the proper role of national parliaments is to distinguish between a horizontal and a vertical interpretation of multilevel parliamentarism. In a vertical interpretation, multilevel parliamentarism is a concept for transforming the EU into a federal state (Morgan, 2005). It employs the idea that the EP is to become the central parliament of an emerging federal state-like entity with supremacy of EP law over national parliaments’ law in case of conflicting regulations. Supranational system effectiveness is at least as or even more important than member state autonomy. The problems with applying this reasoning to the EU are obvious. European federalism does not address the concerns of those who emphasise that democracy is still firmly located at the national level and that the EP’s competences should therefore be limited to scrutinizing the EU institutions’ policies. It overlooks that the EP is for good reasons established on the principle of digressive proportionality and that it deliberately violates the democratic criterion of individual political equality for the sake of safeguarding small member states from big member states’ dominance. Federalizing the multilevel parliamentary field would mean a major revolution of the EU’s normative structure. It would disempower the national
democratic layer, empower the democratically deficient EU, and most probably necessitate the adoption of new constitutions in many member states.

An alternative idea for interpreting the meaning of multilevel parliamentarism is to employ a horizontal idea of democracy. According to this idea, the EU is not to become a quasi-federal state but remains a governance regime among democracies (Müller, 2011 and Nicolaides, 2013). Its role is not to supersede the member states’ democracies with a new layer of supranational democracy but to provide an instrument for internalizing the external effects of member states’ decisions and for intervening in cases of political market failure. National parliaments remain the most important sites for democratic decision-making, with the EP collaborating with the Council and the Commission in filling the regulatory gaps that national parliaments’ functional limitations leave open. The EU’s institutional order would, in short, follow more the concept of a pluralistic democriacy than that of a homogeneous democracy.

There are many good reasons for a more cautious, horizontal interpretation of European democracy. Among them is the obviously lacking readiness of most people in Europe to merge into a unitary polity, a general respect with regard to the democratic achievements of member states and for the principle of subsidiarity, and the principle of digressive proportionality in the European Parliament and the strong reasons for its maintenance. National parliaments are still the only institutions in which the democratic sovereignty of a people is institutionalized and the most prominent place where the people formulate their preferences and ideas in a politically effective way. National parliaments are thus a prime candidate and a most crucial element in the policy-making process for giving a prominent role to the individual right to justification.

The Control Function

The recent debate on the role of national parliaments in the EU reflects these insights (see introduction by Auel and Raunio). It builds on an understanding of the role of parliaments in the democratic process that centres on their function to represent the people and to safeguard that governments are actually doing what the people want.
It is built on the idea of a linear stream of bottom up delegation and control that runs from the citizens to parliamentarians and from here to government. In this perspective, efforts at strengthening national parliaments would have to centre on giving them as many rights as possible to make governments accountable to parliamentary scrutiny.

Most of the recent political innovations in the role of national parliaments in the European political process reflect this idea. The member states have adapted the Treaty of Lisbon and implemented domestic legislation for ensuring that national parliaments can better control their governments’ activities in EU policy-making. The new treaty stipulate in its Protocol on the Role of National Parliaments in the European Union the desire to ‘encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the European Union as well as on other matters which may be of particular interest to them’. To implement that goal, all Commission consultation documents, draft legislative acts and the minutes of Council meetings shall be forwarded to national parliaments. The national parliaments are also granted an eight-week period between a draft legislative act is being made available to national Parliaments and the date when it is placed on a provisional agenda for the Council.

In addition, the Protocol on the Application of the Principles of Subsidiarity and Proportionality stipulates that the Commission must review a proposal if reasoned opinions by a group of Parliaments (quorum depending on the legal matter) claims the proposal to be violating the subsidiarity principle. The Commission must ‘justify why it considers that the proposal complies with the principle of subsidiarity’ if it nevertheless decides to proceed with the proposal. It must also follow a procedure that opens further avenues for the Member States and the European Parliament to stop it.

All of these changes in the institutional architecture are to be applauded for the new awareness that they attribute to national parliaments. It must also be said, however, that their effect will probably not reach far beyond political symbolism. It is difficult to imagine how a quarter or even a third of all national parliaments should make it in less than eight weeks to formulate coordinated reasoned opinions. In most cases, it
will take probably exceptional circumstances to overcome the costs of coordination between the parliaments. In addition, a clever timing on the part of the Commission might use the parliamentary breaks for making it even more difficult for national parliaments to achieve common reasoned opinions.

The effort to strengthen national parliaments control competencies is not limited to the EU level but is shared by most of the member states. European Affairs Committees (EAC) have been set up in all member state parliaments and many of them have been equipped with the necessary legal resources for scrutinizing their government’s policies (see the introduction by Auel and Raunio). The role model for many of these institutional reforms has been the Danish Folketing (Laursen, 2001). The Folketing participates in governmental policy-making by tying the government to a mandate given in advance of intergovernmental negotiations. Before entering negotiations, the responsible minister has to present a proposal in person to the EAC of the Folketing and must obtain a supportive majority. The members of the committee not only vote on the proposal but also have the right to propose amendments. The minister has no right to enter into any negotiations in Brussels if s/he fails to convince the majority of the committee of his/her proposal. Likewise, if the negotiations in Brussels make it necessary to change the Danish position, and if s/he wants to go beyond the authorisations given by the mandate, s/he must present new suggestions to the committee and wait for new instructions.

The Danish model has received much praise for the limitations it imposes on governmental discretion. It must be added, however, that much of this effect is due to factors apart from the mandating procedure. According to Art. 20 of the Danish constitution, all transfers of political competences to supranational institutions require a 5/6 majority in the Folketing or a simple majority plus a referendum. In practice, all European treaties since the accession of Denmark to the EU had to pass through the bottleneck of the referendum and thus received broad public awareness. An equally important aspect is the fact that Denmark has since long minority governments. Much of the salience of European politics in Denmark is explained by the fact that the opposition parties use the EAC for criticizing governmental policies and indirectly addressing the Danish public. The Danish case thus not only highlights the im-
portance that a national parliament can have in processes of European governance but also the difficulty to generalize from single cases. Many other member states have made less convincing experiences with strengthening the control competences of their parliaments. The Austrian example provides a telling case of a parliamentary EAC that is equipped with strong control and monitoring competences but hardly ever uses them (Pollak and Slominski, 2011). It underlines that national parliaments are not only losers of the integration process but only too often ‘voluntary victims’ (Auel). A most important reason for this political failure is that the majority of MPs in a parliamentary system represents the same party as the government is composed of. They thus have few incentives to scrutinize their governments’ activities. ‘The result would be similar to a defeat of a governmental bill, namely a public and therefore humiliating opposition to the government by its own parliamentary majority, something the majority will usually have no incentive to risk, because it may undermine their own political credibility’ (Auel, 2007, p. 492). Strengthening the control competences of national parliaments might thus be simply the wrong strategy if the goal is to bind citizens and European politics closer to each other and to prepare the ground for an effective justificatory discourse.

The Communicative Function

Control is fortunately not everything. An alternative option for increasing the role of national parliaments in the EU is to emphasise their communicative function. The so-called communicative function of parliaments has since long been highlighted by classics such as John Stuart Mill. According to Mill, it is a most central function of the parliament to provide a space for debating politics. The parliament is not only the agent of the citizens and the principal of the government but a political space in its own right. It is a forum in which preferences and concerns can be voiced and differences articulated. It is towards parliament that the government must justify its policies and it is in parliament where the legitimacy of a political system is contested and re-affirmed (Norton, 1996). It is true that the communicative function of parliament and its role as a transmitter between governmental activities and citizen awareness has somehow lost in importance in domestic politics since the times of Mill. News-
papers and other media today closely watch all domestic governmental activities. Some observers already describe the advent of a media democracy in which newspaper and television programs have adopted many of those functions that were formerly in the hands of parliaments. In European politics, however, things look quite different. Peter and de Vreese (2004) report that television coverage of EU politics takes place only sporadically and is of limited visibility. Newspapers are only slightly more adapted to European integration. Although Sifft et al. (2007) observe an intensifying scrutiny of EU politics by newspapers, they also conclude that most EU politics takes place unnoticed. Gerhards (2000, p. 294) adds that ‘European questions receive the lowest level of media attention in comparison to all other … issue-areas’ and Risse and van den Steeg (2003, p. 3) report that the European public discourse is ‘fragile, fragmented, and constrained to particular sets of issues’. The defect is the more serious as European news coverage is strongly biased towards governmental activities and by and large overlooks parliaments, party actors, and civil society (Koopmans, 2007). Inclusive and effective justificatory public discourses thus face serious obstacles on the European level (cf. Risse, 2010).

Important reasons for this meagre role of the public discourse in European politics are probably to be found in the fact that that most citizens are already well-occupied with following national politics. Many citizens do not have the additional time and resources to get informed on the often very technical and complex details of European affairs and to gather the necessary information for formulating an own opinion on, say, the new directive on data storage or on public procurement. In addition, many relevant political issues today have a level of complexity, which can be processed only by the average citizen if it is reduced to its most important ethical or redistributive implications. For very practical reasons, debates on nuclear energy, global warming, genetically modified organisms or the intricacies of health reform need to be simplified and organized into a limited set of options for making them accessible to the public discourse. An active role of parliamentarians is thus a precondition of reasonably autonomous decision-making by citizens. The need for parliamentarians to adopt an active role is aggravated by the fact that the media are often slow in reacting to real-world problems and operate according to own economic standards. Politically relevant topics are also often overlooked due to limited public
interest or lack of expertise on the part of journalists. Relying on the media for facilitating discursive processes between government and citizens might thus be overly optimistic.

**Europe’s Sleeping Beauty**

A more promising way to revitalize the communicative function of national parliaments and to work towards a fully justified political system is to awaken the EU’s sleeping beauty, the ‘Conférence des organes parlementaires spécialisés dans les affaires de l'Union’ (COSAC). COSAC is a body that meets once every six months in the member state holding the presidency, bringing together delegations from the national parliaments’ EU committees and representatives of the European Parliament (Raunio, 2011). Although the member states have granted COSAC in the Treaty of Lisbon the competence to ‘make any contribution it deems appropriate’, COSAC’s own rules of procedure limit its function to primarily ‘exchanging information, in particular on the practical aspects of parliamentary scrutiny’. The right to submit non-binding contributions to the European Parliament, the Council and the Commission is hardly ever used as an instrument for interfering with either the constitutional function of the European Council or with the political competences of the other European institutions. COSAC thus serves today basically as a kind of informational platform that organizes discourse among the EACs of the national parliaments.

It is hardly surprising therefore that COSAC is rarely discussed as a major political actor in the EU. The political irrelevance of COSAC is in sharp contrast to its capacity for giving effect to the right to justification, however. It combines all those aspects that the EU is in urgent need of. COSAC can be seen as an interparliamentary layer of governance in *statu nascendi* that is neither domestic, intergovernmental nor supranational but ties together a direct representation of the citizens with a European voice. By claiming a central role in the European political process, COSAC could transform national parliaments from fence-sitting losers of the integration process to its driving force. For employing that role, COSAC would not have to compete with the Commission or the Concil for influence in the legislative process.
That task is already well conducted by the European Parliament and there is no need for duplication. What is urgently needed, however, is a strong legislative voice that overcomes the intergovernmental bias inherent in the EU’s constitutional process. The ambivalence of the Treaty in giving parliaments only a very limited role in the constitutional process reflects the EU’s international legacy more than its democratic future. COSAC should take the ambition of the EU to better integrate national Parliaments seriously and transform into an Interparliamentary Constitutional Assembly (ICA). This reformed institution should claim – as it is adequate for parliaments – the competence to review all practices and competences of the EU, and to propose amendments to the Treaty or any other legal documents of the EU. The new ICA would safeguard that the EU’s constitutional development reflects not only intergovernmental bargaining but be via its members in permanent close contact with the national parliaments and thus the democratic sovereign of the member states. If COSAC were transformed into an ICA, the EACs of the national parliaments would no longer only observe and eventually criticize governmental politics but become crucial actors in the EU. National parliaments would re-adopt the constitutional importance as it is foreseen in national constitutions and as it is demanded by the German Constitutional Court. It would also be an important corrective to the role occupied by the ECJ. The Court’s sometimes very ambitious interpretation of the Treaties is misunderstood if interpreted only as an act of self-empowerment (Scharpf, 2010). It also reacts to the lack of a proper constitution-giving body and the corresponding political deficit in working on the development of the constitution. Turning COSAC into an ICA would therefore be an important institutional reform for helping to justify European structures of justification. These structures would no longer be unduly shielded from critical scrutiny by the practices of intergovernmental diplomacy but become subject to permanent contestation, critique and eventual reform. The ICA could propose a harmonization of corporate taxation, the introduction of a European tax for financing infrastructure, the fading out of the outdated structural funds, a balancing of the four freedoms with the social protection of workers, and many other projects that are today blocked by the opposition of single governments. The ICA would thus have the potential to move the EU a significant step closer towards a fully justified structure of justification.
Conclusion and Research Agenda

This paper has undertaken a – somewhat sketchy - tour de force through European institutional structures and a discussion of adequate normative standards. It has analysed difficulties to democratise the European multi-level governance system and taken issue with the possible contribution of national parliaments to remedying normative problems of the EU. It has worked on the assumption that national parliaments are the institutional backbone of any proper working democracy. They are the mediating link between government and citizens and carry much of the burden for safeguarding responsible and responsive governance. The establishment of political structures above the nation-state and, by implication, beyond democratic governance is a serious challenge to the institutional order of democracy. It threatens to disable the parliamentary link between citizens and government and to open a window of opportunity for the de-coupling of governance from democracy. Parliaments today do not yet live up to the challenge of re-establishing their central role in the political process. Dominant incentive structures for most MPs militate towards downplaying and de-politicizing Europe domestically. Hardly any European parliament thus uses its legal competences fully. Most seem to be content with being the losers of integration and to accept being bypassed by a growing importance of the executive.

Much of this discussion has been brief, lacks proper systematic evidence and must be preliminary. What the discussion should have been helpful for, however, is to situate the analysis of national parliaments in the EU in wider constitutional and normative debates and to identify important future research questions. We do not know, for example, too much about the practices of national opposition parties in bringing European topics closer to their domestic audiences. Where and when do they undertake such efforts and under what conditions are these efforts successful? Does the media listen to the opposition’s efforts to politicise European politics? When and how does that happen? What impact on the public discourse can additional mechanisms such as the Danish use of mandating and public relations offices have in other member states? Do national parliaments still have the capacity to mediate between citizens
and European governance or are we forced to look for new non-parliamentary means for legitimizing the EU?

How we answer these questions is important for understanding the future of parliamentary democracy in the EU and beyond. If (a) the EP remains for the foreseeable future too weak in terms of both competences and normative potential to compensate for the losses of domestic legislative power, and if (b) national parliaments face incentive structures which militate against taking their role in the European multilevel system seriously, then we are in the midst of a deep crisis of European parliamentarism. How this crisis will unfold - and be met - depends to an important degree on the creativity of academia in finding innovative answers to the challenge of situating national parliaments in a multilevel governance structure.

Bibliography


