

Assessing the European Parliament's Democratic Credentials

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Abstract: *Doubts persist about the democratic legitimacy and role of the European Parliament in EU decision-making – this article takes a critical look at the body's democratic credentials. An analysis of voter turnout and the impact the 'Spitzenkandidaten process' had on the second-order nature of European elections suggests that the European Parliament suffers from lower turnout than national counterparts, and that the 2014 European elections remained a second-order affair, in spite of the Parliament's efforts. Existing data and analysis show that while the European Parliament does a reasonable job translating citizens' views in relation to left/right issues, the Parliament is more supportive of EU integration than citizens – new data gathered suggest the lack of congruence is pronounced. The European Parliament's institutional framework set by the Treaties affects its choices, its more limited role in certain areas may lead it to adopt policy positions that are at odds with citizens' views and security. Ultimately, the European Parliament does not enhance the democratic nature of the EU. The adoption of a more intergovernmental approach to EU decision-making at the expense of the European Parliament would help improve the democratic credentials of EU decision making, and as a minimum further expansion of the Parliament's powers should be avoided.*

Keywords: *European Parliament, democracy, legitimacy, democratic deficit, elections*

It is an article of faith for certain academics (for example Føllesdal, p.85, 2000; Loewe, 2014; Wessels and Diedrichs, 1997; Borchardt, 2010) and MEPs that the European Parliament (EP) enhances the democratic nature of the EU. The European Parliament has recently made a concerted push for greater involvement in oversight of the Greek bailout deal, which Gianni Pittella, Chair of the Group of the Progressive Alliance of Socialists and Democrats in the EP sees as “a matter of democratizing the procedures” (Michalopoulos, 2015). In many instances the belief in the democratizing power of the EP is based on the fact that it is “the only directly elected EU institution” (Crombez, 2003). Counterclaims are made by those such as British Prime Minister, David Cameron who believe that national parliaments are “the true source of real democratic legitimacy and accountability in the EU” (Cameron, 2013). I use this piece to take a critical look at whether the EP enhances

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the democratic functioning of the EU, arguing that the EP's democratic legitimacy and role is open to question in several regards. The article proceeds as follows:

First, I chart the rise in power of the EP and its role in EU decision-making under the Lisbon Treaty. Second I briefly examine what constitutes democracy and democratic legitimacy, and look at the EU's democratic deficit, and the second-order nature of elections to the Parliament. I then analyse whether the EP meets ordinary standards of democratic legitimacy, considering the issues of voter turnout and the congruence of MEPs' and citizens' views – broadly concluding that the EP suffers from a shortfall in democratic legitimacy, and compares unfavourably to national parliaments in this regard. Moving beyond this analysis I explain how the EP's more limited role compared to national governments in certain areas may lead it to adopt policy positions that are at odds with citizens' views and security. I then draw together these arguments to come to a critical view of the EP's role in enhancing the democratic nature of the EU. Finally, I offer solutions to address the problem, advocating the adoption of a more intergovernmental approach to EU decision-making at the expense of the EP, or as a minimum avoiding any further expansion of the Parliament's powers in future Treaties.

The rise and rise of the European Parliament

The EP's predecessor, the Parliamentary Assembly of the European Economic Community began life in 1957 with the merging of the ECSC Joint Assembly, the EEC Assembly and the Euratom Assembly (Borchardt, 2010). Each new EU Treaty has seen the EP's power increase, with Corbett, Jacobs, and Shackleton (p.4, 2011) elegantly describing the transformation of the EP as "from fig leaf to co-legislator".

Kreppel (p. 7, 2002) points to two key events in the history of the EP that saw its power and influence increase: First, the inaugural direct election of its Members in 1979; and second, the agreement of the Single European Act in 1987, which introduced the co-decision procedure, giving the EP "partial decision-making power". These events are also cited as seminal in the development of the EP by Corbett, Jacobs, and Shackleton (p.4, 2011).

The Lisbon Treaty marks the latest stage of the empowering of the EP, under which the 'co-decision process' between the EP and the Council becomes the default position for negotiating legislation (Verdun, 2013; Bonde, 2011) known as the 'ordinary legislative procedure'. The EP also used changes associated with the Lisbon Treaty to secure a greater role in selecting the President of the Commission via the so called 'Spitzenkandidaten process' (Hobolt, 2014; Reestman, Eijbsbouts and Beukers, 2014), which I consider in more detail later.

The EP is a powerful EU institution (Volacu, 2012), with MEPs playing a key role in relation to a majority of EU legislation. However, in some important areas it is not granted a full role under the ordinary legislative procedure. Instead under the special legislative procedures the Council decides on matters on the basis of unanimity, with the need to only obtain the consent of the EP to act (or in the case of foreign and common defence policy, not at all) (EUR-Lex, 2010). This affects the policy positions it adopts, a point covered later in the article.

Democracy, second-order elections, and the democratic deficit

There is no one, universally accepted definition of democracy (Osborne, p.3, 2012; Moghadam, 2013). Most academics and observers tend to agree that free and fair elections are an integral part of democracy (Dahl, 2005; Newberg and Carothers, 1996; Touraine, 1992; Rice, 2006). Delanty (2009) offers the helpful clarification that democracy must be grounded in a legal framework to function effectively. Touraine (1992) notes that there must be a genuine choice of Government, a theme taken up by Vachudova in her notion of “political competition” (p.3, 2005).

A considerable body of work exists looking at whether a given democracy can be considered as an embedded, ‘consolidated’ democracy (for example, Svobik, 2008; Schedeler, 2001; Diamond, 1994). There is little debate about whether elections to the EP are free and fair, which suggests it is thought to be a given that they are. This is understandable as most EU Member States are considered to be consolidated democracies (Spendzharova and Vachudova, 2011), although some lingering questions remain in relation to possible ‘backsliding’ by Member States such as Hungary away from liberal democracy (Spendzharova and Vachudova, 2011; Sedelmeier, 2014).

Although politicians or officials may be installed via free and fair elections (thereby opening the door to democracy), this is no guarantee they will act in a way that matches the will and expectations of citizens. The idea of representation acts as a compliment to the basic criteria to be considered a democracy (free and fair elections). Significant work has been undertaken looking at the extent to which citizens’ preferences are translated into action by the EP and the congruence between the views of citizens and MEPs (for example, Mair and Thamassen, 2010; Lefkofridi and Katsanidou, 2014). Congruence between European citizens and the Parliament is cited in positive terms for the institution’s representativeness (Mair and Thamassen, 2010).

Elections to the EP are widely considered to be ‘second-order’ in nature (Majone, 2014; Hix, Marsh, 2009; Bellamy, p.67, 2012; Sasmatzoglou, 2013; Jacobs, 2014; Bressanelli, 2014; Hobolt and Wittrock, 2011; Moravcsik, 2002). Mair and Thamassen (2010) explain that “elections [to the EP] are fought by national political parties and on mainly national issues [not European issues]” and that citizens often “‘abuse’ ... elections [to the EP] to express a judgment on the incumbent national government”, the result of which is that the elections can be classed as ‘second-order’. European issues do not form a significant part of the public debate surrounding EU elections (Habermas, 2015; Majone, 2014), with one consequence of this paucity of debate being that few voters actually understand the role of the EP (Dinan, 2012).

A sizeable body of work is devoted to analysis of the EU’s perceived ‘democratic deficit’, looking at whether such a deficit exists, and if it does what the appropriate response is, if any (Zimmerman and Dür, p.63, 2012). But in spite of (or perhaps because of) the large amount of academic thinking addressing the EU’s democratic deficit, no one definitive definition exists, with the idea meaning different things to different people (Crombez, 2003). This is perhaps unsurprising, because although the Treaty on European Union contains “Provisions on democratic principles” (European Union, 2012), the citizens of different

EU Member States value, weigh and implement principles such as democracy differently (Bellamy, p.67, 2012), the natural consequence of which is that different definitions of the democratic deficit exist.

Habermas' (2015) notion of "the increasing distance separating the decision-making processes of the EU authorities from the political will formation of European citizens in their respective national arenas" is perhaps the best conception of the democratic deficit. The difficulty of holding MEPs accountable for their actions via democratic means, notably elections, must be at the core of our conception of the EU's democratic deficit.

Original research

New empirical data obtained from a survey of MEPs bolster and challenge the arguments made here. Similar surveys have previously been undertaken (for example Hix, Scully, and Farrell, 2011). The survey was conducted via the internet. On 5 July 2015 all MEPs for whom addresses were readily available were emailed an explanation of the survey's purpose with questions in English (see <https://stephenvitkovitchepdata.wordpress.com/> for the questions put to MEPs, their responses, and the composition of the sample). A reminder was sent to MEPs on 20 July. A commitment was given that any responses would be anonymised and filtered by (1) Member State, and (2) European Political group. Seven of the eight questions put to MEPs were multiple choice.

Limitations

A total of 26 MEPs from 15 different Member States and from all 9 political groups (including non-attached members) provided responses to the survey. There are a number of limitations associated with the data. First, the sample size is small at only 3.46% of the total number of MEPs. Second, the data set does not include MEPs from nearly half of the Member States and for those that are included, the ratio of MEPs per Member State in sample does not correspond to their respective populations – for example, Belgian MEPs represent 11.54% of the sample, but Belgium only represents 2.22% of the EU's population (Eurostat (2), 2015). Moreover, there are no MEPs from the fourth largest Member State, Italy, (Eurostat (2), 2015) and twelve other Member States. Thirdly, while it is welcome that all 9 political groups are represented in the data set, unsurprisingly the ratio of MEPs per political group in sample does not correspond to that in the EP as a whole.

The European United Left - Nordic Green Left and the Liberals and Democrats are overrepresented in the data set, largely at the expense of the underrepresented Socialists and Democrats. In spite of these significant limitations, the empirical data obtained is of some value for the purposes of my analysis and argument, although clearly any conclusions drawn on the basis of the data must be treated with caution and should be validated by existing published data.

Assessment of the European Parliament's democratic legitimacy

In assessing the democratic legitimacy of the EP, first we consider the issues of voter turnout and the second-order nature of elections to the body, and second the congruence of MEPs' and citizens' views.

Voter turnout and the second-order nature of elections to the European Parliament

The 2014 elections to the EP were supposed to be "different" – the EP boldly trumpeted the fact to Europe's media and citizens (European Parliament (1), 2013). These claims were based in large part on the changes introduced by the Lisbon Treaty to the process for electing the President of the European Commission (Hobolt, 2014). Article 17(7) of the Treaty on European Union states that the European Council is obliged to "[take] into account the elections to the European Parliament" in "[proposing] to the European Parliament a candidate for President of the Commission" (European Union, 2012). The EP used this change to argue successfully for a significant role in the selection of the President of the Commission. Its rationale and vision were as follows: "In order to 'Europeanise' the elections and to boost the democratic legitimacy of EU decision-making, [the European] Parliament called on the political parties to nominate candidates for the Presidency of the [Commission] allowing for citizens to influence directly, through their vote in the European elections, the choice of the head of the European executive" (European Parliamentary Research Service, 2014). This was referred to as the Spitzenkandidaten process (Decker, 2014). The EP's success in using the Spitzenkandidaten process to assert itself can be viewed as confirming Lake's argument (2003) that sovereignty is not necessarily fixed and can be established through practice.

Most academics agree on the second-order nature of elections to the EP, but much of the analysis completed in this regard is based on elections prior to those conducted in 2014. Can the 2014 elections to the EP still be considered second-order?

Academics and MEPs alike were certainly hopeful that the 2014 elections would be "different" and move beyond being considered a second-order affair. European People's Party MEP Kostas Sasmatzoglou (2013) argued that the Spitzenkandidaten process would lead to elections "conducted in a true European setting ... [with] greater interest on the part of the general public". Hix and Crombez were hopeful of seeing "genuine 'European' elections" (Hix and Crombez, 2013). Holbolt (2014) explains that the EP expected the Spitzenkandidaten process to "increase interest and participation in European democracy". One concrete fact we can look to in considering whether the 2014 elections remained second-order is the turnout. This fell slightly to an all-time low of 42.61% (European Parliament, 2014). Dinan (2014) rightly links citizens' interest to voter turnout – if people are interested it is reasonable to assume (all other things being equal) that they will turn out to vote. This suggests that the 2014 elections did not mark a break with the past in terms of public interest. Nor did the 2014 elections offer a significant break in the pattern of the contest being fought on national issues by national parties, with the "political footprint" of EU level political groups left unchanged (Peglis, 2015). Research undertaken by the Commission (2014) suggests that the majority of national parties made their Affiliation

to an EU level political group “visible *in a limited way only*” (original emphasis). This corroborates the European Policy Centre’s analysis that national parties campaigning in the elections did not focus on European issues (or the Spitzenkandidaten process) (European Policy Centre, 2014). Ultimately, the 2014 elections to the EP continued the established second-order pattern.

Certain academics (for example, Decker, 2014) argue that in spite of the (record) low turnout in the 2014 elections, the Spitzenkandidaten process enhanced the democratic legitimacy of the EU, amounting to “a democratisation of the European system of government” (Decker, 2014). There are strong arguments to the contrary. As Hobolt (2014) argues, for the EP’s grand statements about “a new era for European democracy” and a “concrete step in addressing the democratic deficit” (Schulz (1), 2014) to carry weight, voters need to have been aware of and bought into the process. A variety of data suggest this was not the case. Half the voters or more were aware of the Spitzenkandidaten process in only four of the fifteen Member States surveyed (Hobolt, 2014); in Germany, a Member State in which the process was relatively well known, only 15% of voters were aware that Jean-Claude Juncker was the European People’s Party Group’s candidate (Cameron, 2014); and only 5% of respondents to the EP’s post-election survey stated they voted “to influence the choice of Commission President” (European Commission, 2014). All of this points to a marked lack of engagement by the public with the Spitzenkandidaten process. It is hard to accept that the Spitzenkandidaten process marked a great breakthrough in democratisation and addressing the democratic deficit.

Confirming the continued second-order nature of European elections is important because if EU citizens do not select their MEPs (when they vote at all) on the basis of the role they will play in the EU’s legislative and decision-making process, but instead base their choice on other concerns – often national parties and national issues – then it renders the prospect of their MEPs effectively representing them remote. Elections to the EP are not the forum through which the public engage and express their views on EU issues (Mair and Thomassen, 2010), and MEPs’ chances of re-election by the public are less dependent than those of national Members of Parliament (MPs) on their performance in office (Rittberger, 2012). In simple terms there is no “strong electoral connection in the European Parliament” (Hix and Høyland, 2013). This is important as it gives MEPs more of a free hand than their counterparts in the Council to pursue their own ends without the brake or sanction provided by scrutiny by the electorate to keep them in check. In short, the second-order nature of European elections opens the door to less democratic outcomes, giving MEPs scope to adopt positions that are at odds with citizens’ views. The extent to which this occurs in practice is explored in the later section on congruence of citizens’ and MEPs’ positions.

Rather than considering the EP in isolation, the democratic legitimacy of the EP should be seen against Member States’ national Parliaments. Averaging a level of 68% across the EU during the period 2012-2014 (Eurostat (1), 2015), elections to the national Parliaments of the Member States benefited from a significantly higher voter turnout than elections to the EP for which the turnout was 42.61% in 2014 (European Parliament, 2014). The link between voter turnout and democratic legitimacy has been made by both academics

and politicians (Euractiv (1), 2014, 7 August; Stylianou and Burn-Murdoch, 2014; Hill, 2006). When discussing the incorrect first estimate of the turnout in the 2014 European elections, which showed a slight increase, influential MEP Guy Verhofstadt stated that “the eighth legislature of the European Parliament will be more representative than the previous one as average turnout across Europe is an improvement on 2009” (Euractiv (2), 2014, 26 May). The survey data gathered suggest that a majority of MEPs agree that voter turnout is linked to representativeness and legitimacy, with 79% of respondents agreeing with the statement that *‘all other things being equal, a higher turnout in elections would lead to a more representative and legitimate legislature’*. In addition, a majority of MEPs I surveyed (70%) agreed that it is national governments that EU citizens hold principally responsible for their well-being and quality of life, with only a small number (9%) suggesting that citizens hold the EP responsible for these matters. Elections to national Governments can be characterised as first-order (Lefevere and Van Aelst, 2014; Elgie and Fauvelle-Aymar, 2012), which should lead to better representativeness. The significantly higher voter turnout in elections to national parliaments than to the EP suggests that it is the former that benefit from greater democratic legitimacy. Moreover, the legitimacy gap suffered by the EP as compared to national parliaments is widened by the second-order nature of European elections. The pertinence of these conclusions will vary across the EU – voting is compulsory in Belgium and Luxembourg for example, leading to a high turnout in European elections, whereas turnout is incredibly low at 13.1% in Slovakia and 18.2% in the Czech Republic (as compared to 59.1% and 59.5% in national elections) (Eurostat (1), 2015). My arguments around legitimacy should resonate most in Member States where the gap between turnout in European and national elections is widest.

Congruence of MEPs’ and citizens’ views

In seeking to measure the congruence of the positions of the EP and EU citizens a number of academics have taken a two dimensional approach looking at (1) the left/right dimension, and (2) the pro-/anti-EU dimension.

A significant body of academic work argues that the EP does a good job of translating the preferences of the public in terms of the left/right dimension into legislative and policy positions (Mair and Thomassen, 2010; Lefkofridi and Katsanidou, 2014; Costello, Thomassen, and Rosema, 2012; Hix, Noury, and Roland, 2006). However, the picture is less definitive in relation to the pro-/anti-Europe dimension. Views in relation to the pro-/anti-Europe dimension can be equated with support for further EU integration. Delanty (2005) highlights the dominant academic perspective that the “EU is a multi-levelled polity that does not supersede the nation-state but exists alongside it in constantly changing relations”. In practice, EU integration can be viewed as a transfer of decision making power, or “sovereign rights” (Leuffen, Rittberger and Schimmelfennig, p.5, 2013) from a national level to a level governed by EU structures – Stone Sweet and Sandholtz (1997) describe this as the process of increasing “supranational governance - the competence of the [EU] to make binding rules in any given policy sector”. This transfer of decision making power to the EU level can be seen as deepening EU integration (Leuffen, Rittberger and Schimmelfennig, p.13, 2013).

Academics by and large agree that congruence of the positions of the EP and EU citizens is less pronounced in terms of the pro-/anti-Europe dimension than in relation to the left/right dimension (Mair and Thomassen, 2010; Costello, Thomassen, and Rosema, 2012; Hix, Noury, and Roland, 2006; Walczak and van der Brug, 2012; Lefkofridi and Katsanidou, 2014). The survey data suggest a lack of congruence on the pro-/anti-EU dimension. A number of the multiple-choice questions put to MEPs were identical to those put by ComRes (2015) to a representative sample of 4,564 adults from different Member States during the period 12-19 December. This provides for a direct comparison between the views of the public and by MEPs, albeit based on a small sample, and allows us to draw some tentative inferences in relation to representation on the pro-/anti-Europe dimension.

The extent to which respondents favoured the EU having more, less, or about the same level of involvement in the affairs of their country provides a good basis on which to estimate congruence in relation to the pro-/anti-Europe dimension. MEPs displayed markedly more pro-EU tendencies than the public, with 43% agreeing that the EU should have more involvement in the affairs of their country as compared to 25% of the public. A greater proportion of the public is seemingly content with the present level of EU involvement in their country's affairs – 33% as compared to only 17% of MEPs. Similar numbers of MEPs and the public agreed that the EU should have less involvement in the affairs of their country (39% and 43% respectively).

In relation to the future of the EU, MEPs were again more pro-EU than the public, with 36% stating themselves in favour of Europe becoming a single country: a United States of Europe, as compared to 19% of the public. And while 15% of the public supported the idea of disbanding the European Union, only 4% of MEPs took this position.

The data also suggest the public is more satisfied with the status quo than MEPS. Given the choice of a) Very dissatisfied; b) Fairly dissatisfied; c) Neither satisfied nor dissatisfied; d) Fairly satisfied; or e) Very satisfied, the most popular choice by the public was c) Neither satisfied nor dissatisfied at 38%. Only 9% of MEPs shared this opinion. Taken with the fact that more of the public were seemingly content with the present level of EU involvement in their country's affairs (33% versus 17% of MEPs), this suggests a potentially significant mismatch between the public and MEPs in relation to contentment with the status quo.

We can conclude that the survey data gathered indicate that MEPs and the EP are more supportive of EU integration than European citizens and that congruence between the public and the EP in relation to pro-/anti-Europe positions is poor. These conclusions broadly corroborate the data and analysis of Lefkofridi and Katsanidou (2014), Costello, Thomassen, and Rosema (2012), and Hix, Scully and Farrell (2011).

An assertive European Parliament

The EP's actions translate this lack of congruence into action at EU level by strongly asserting its interests and pressing for a greater role, thereby increasing power at the supranational level seemingly against the preferences of citizens.

The EP's power has increased significantly with time (Kreppel, p.4, 2002; Mair and Thomassen, 2010; Kohler, 2014), in large part due to its success in fighting for it (Corbett,

Jacobs, and Shackleton, p.4, 2011). Data gathered in 2010 by Hix, Scully, and Farrell (2011) suggest that the EP will continue to press for further powers - 75% of MEPs supported the proposition that the EP should have equal power with the Council in all areas of law-making, and 76% of MEPs supported the EP having the right to initiate legislation.

How is the EP able to assert its interests so effectively? MEPs' chances of re-election do not rest as heavily as those of their national Government counterparts on the public policy positions they take, which gives them more scope to play a long-term game in negotiations with Council, holding out for more power with less likelihood of being punished by the electorate (Rittberger, 2012). As Leuffen, Rittberger and Schimmelfennig (p.74, 2013) highlight, the EP is "less sensitive to failure" than national governments, because citizens hold the latter responsible for EU failures. This argument would seem to be borne out by the fact that "MEPs are prepared to vote without regard to party programmes in order to enact legislation that promotes the common good of increasing EP influence on the course of European integration" (Rose and Borz, 2013). In short, somewhat counter-intuitively, the second-order nature of elections to the EP enhances the institution's negotiating hand against the Council.

In addition, at the instigation of powerbrokers within the Parliament such as President Martin Schulz and Secretary General Klaus Welle (Dinan, 2014), the institution has often been successful in advancing its own interpretation of the Treaties – which of course plays to its advantage at the expense of national governments (Benedetto and Hix, 2007). The Spitzenkandidaten process provides a good example of this (Hobolt, 2014).

Some academics have argued that a lack of congruence in relation to the pro-/anti EU dimension is not necessarily significant in terms of a negative impact on the EP's ability to represent citizens. Mair and Thomassen (2010) argue that a lack of congruence on "issues relating to European integration ... is not necessarily a problem" because these issues are "largely intergovernmental". In similar terms, Costello, Thomassen and Rosema (2012) argue that congruence on the pro-/anti-EU dimension is less important "as long as the majority of the European Parliament's legislative workload relates to economic issues such as the regulation of the single market". Such arguments are difficult to accept. In practice, much of the EU's legislative work is about "the level of integration" rather than strict left/right issues (Kreppel, p.39, 2002). In its daily legislative activities the EP plays a fundamental role in deepening EU integration in advancing EU solutions over those at a national (or intergovernmental) level. Legislation adopted to regulate or harmonise the internal market has the effect of deepening EU integration, and the creation of EU-level organisations and structures clears the way for a stronger supranational influence (Jevnaker, 2015). A lack of congruence in relation to the pro-/anti-EU dimension *does* matter and has strong negative consequences for the EP's representation of Europe's citizens.

How do the Treaties incentivise the European Parliament?

Three factors influence an actor's strategic choices: (1) preferences, (2) relations with other relevant actors, and (3) institutional constraints (Volacu, 2012). The previous section provided an analysis of MEPs' preferences. Both the EP's relations with other relevant actors and institutional constraints are defined by the Treaties, so this is the focus of our analysis.

As Jose (2010) notes, “sovereign authority no longer rests exclusively with the state and its publicly accountable apparatuses, but is dispersed along several axes of organised power” – and for EU states, this includes sharing power with the EP. However, the Heads of State and Government agreeing the Treaty in 2007 maintained the primacy of the Council, and thereby the role of national Governments, in certain areas by retaining a special legislative procedure for EU decision making, under which the Council is “in practice, the sole legislator” (EUR-Lex, 2010), with the role of the EP “limited to consultation or approval depending on the case” (EUR-Lex, 2010). This gives the Parliament only “weak input” (Turk, p.69, 2012). The extent to which Member States are willing to share sovereignty in a given area is a function of importance they place on that issue (Leuffen, Rittberger and Schimmelfennig, p.51, 2013). States’ preferences in relation to areas in which they are content to share sovereignty will be shaped by domestic social actors (Moravcsik, 1997; Schimmelfennig, 2015), although the EU’s institutions and framework may cause states to alter how they view their own interests (Haas and Haas, 2002). The areas in which special legislative procedures involving decision making by unanimity in the Council and a reduced role for the EP are:

“Common foreign and security policy (with the exception of certain clearly defined cases which require qualified majority, e.g. appointment of a special representative); citizenship (the granting of new rights to EU citizens); EU membership; harmonisation of national legislation on indirect taxation; EU finances (own resources, the multiannual financial framework); certain provisions in the field of justice and home affairs (the European prosecutor, family law, operational police cooperation, etc.); harmonisation of national legislation in the field of social security and social protection” (Council of the European Union, 2014)

While the EP is excluded from or plays a reduced role in certain key areas of national sovereignty, it does possess significant power in the area of regulatory policies with “the steady expansion of regulatory policy-making at the European level” (Majone, 2014). Two areas in which the EP plays a more limited role under the Treaties – taxation, and security and defence policy – prove instructive as case studies in understanding the impact this has on the Parliament’s positions.

Moravcsik (2002) has examined the impact of the EU’s “fiscal constraints” noting that they have “important consequences”, but only goes as far as stating that those fiscal constraints mean that the EU has a limited capacity for “discretionary funding” and can be outspent by Governments seeking to reverse the effects of EU policies. The EP has very little power in relation to taxation, and any decisions on tax matters at EU level are on the basis of Directives, meaning they require transposition into national law (European Union, 2012). This represents an institutional constraint that influences the EP’s strategic policy choices. But while the EP has little responsibility for raising tax, a role that rests with national Governments, it plays a full role in agreeing the EU’s Budget and is able to call for increased spending while being absolved of the need to raise more money to fund it. The link between tax and spending is therefore broken, creating a skewed incentive structure for the EP. This skewed incentive is compounded by the fact that the second-order nature of elections to the body mean that the actions of MEPs in advocating more EU spending

and a bigger EU Budget are not punished by voters when there is a lack of alignment with their own position.

The logical outcome of this disconnect is that MEPs campaign for increased EU spending – which they generally do (BBC, 2012, 23 October) – because they are not responsible for raising taxes that fund EU spending, but do have some control over the level and direction of EU spending. Greater EU spending means more power for the EP, and as Rose and Borz (2013) highlight, “MEPs are prepared to vote without regard to party programmes in order to enact legislation that promotes the common good of increasing EP influence on the course of European integration”. Advocating greater EU spending is at odds with the views of EU citizens, with a majority feeling their country should contribute less to the EU Budget (51%), and only 9% feeling that their country should contribute more (ComRes, 2015).

The EP has very limited influence in relation to security and defence policy (Leuffen, Rittberger and Schimmelfennig, p.55, 2013). Under Article 4(2) of the Treaty on European Union “national security remains the sole responsibility of each Member State” (European Union, 2012), a competence Member States guard jealously from encroachment by the Commission and the EP, as can be seen from the fact that the EU's Renewed Internal Security Strategy (Council of the European Union, 2015) does not include the Commission's “European Agenda on Security”. While the EP has a minor role in relation to security and defence policy it plays a full role as co-legislator in a majority of areas under the Lisbon Treaty (Hix and Høyland, 2013). And although the EP also has concluded an Interinstitutional Agreement with the Council that gives one of its Committees access to some sensitive documents (Rosén, 2015), the Parliament has less access to intelligence than national Governments, as exemplified by the comparison that while there is no EU intelligence service, the British Government alone spent £2.3bn in the 2010-2011 financial year on its intelligence agencies (Secret Intelligence Service, 2015). As such the EP has a less complete picture of the security threat facing the Member States and the EU, and may therefore underestimate the need to act to protect citizens' security.

An analysis of the EP's approach to the Commission's proposal for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime suggests that the EP's limited role in relation to security and defence matters (but a fuller role elsewhere), and its lack of full information influence its strategic choices in relation to security matters. The EP is a co-legislator with the Council in the negotiation of data protection legislation. In order to enhance its power vis-à-vis the Council, which the EP has shown itself keen to do (for example see Rittberger (2012) or Decker (2014)), the Parliament has an incentive in the negotiations on PNR to place greater importance to the areas in which it plays a full role, namely data protection and citizens' rights, and less importance on national security matters, which are the responsibility of Member States. Moreover, with less access to intelligence than the Council, the EP may not fully grasp national security threats. Negotiations on PNR do suggest the EP is privileging of citizens' rights and data protection concerns over security (at least compared to the Council): the Parliament has blocked and voted against the Commission's proposal (Charlemagne, 2014; European Parliament (2),

2013), and has been entreated by the President of the European Council, Donald Tusk to accept the legislation in order to help protect the security of EU citizens (Euractiv, 2015, 14 January). British Prime Minister David Cameron goes as far as saying that in blocking PNR legislation “the European Parliament is letting us down in terms of keeping our people safe” (Holehouse, 2014).

In general terms the EP has sought to set itself up as a champion of data protection matters against national Governments, as can be seen from the Parliament’s President’s statement on following the body’s first reading of the Data Protection Package: “In a world where big data increasingly combined with big government, the European Parliament is leading the fight to ensure that people regain sovereignty over their privacy” (Schulz (2), 2014). As Servent and MacKenzie (2011) comment, “the [EP] has its own set of interests, which have often been at odds with those of the Council (especially in data protection)”. This championing of data protection concerns by the EP in the face of opposition by the Council on counter-terrorism and security grounds is arguably rational in terms of maximising the Parliament’s power. The EP ultimately weighs concerns differently to the Council as can be seen by its blocking of intra-EU PNR and the reaction this has drawn from the Council (Euractiv, 2015, 14 January; Holehouse, 2014). It is questionable whether the EP’s championing of data protection matters is in line with the preferences of citizens. 66% of the public tend to trust or totally trust national public authorities to protect their data – a higher level of trust than is placed in banks and financial institutions (56%), European institutions (51%), and Shops and stores (40%) (Eurobarometer, 2015); and more EU citizens (13%) believe terrorism rather than civil liberties (6%) should be one of the top three priorities for their government at the moment (ComRes, 2015).

The above case studies suggest that the fact that the Parliament is not an equal partner with the Council may affect the policy positions it adopts, given the EP’s tendency to fight for further powers (Corbett, Jacobs, and Shackleton, p.4, 2011). The slightly more consensual approach in terms of balancing data and security concerns adopted by the EP when it gained some limited powers in relation to security under the Lisbon Treaty (Servent and MacKenzie, 2011) seems to support this analysis. Moreover, the survey data collected show that 87.5% of MEPs agreed that the adoption of the ordinary legislative procedure as a basis for decision making in relation to matters currently governed by special legislative procedures such as common foreign and security policy, harmonisation of national legislation on indirect taxation, and harmonisation of national legislation in the field of social security and social protection would lead to the EP taking a different position on these and other EU matters, with 50% stating this would be to a significant extent, and 37.5% stating this would be to some extent.

Is there a solution to the problem?

The EU suffers from a democratic deficit, and that this is largely due to the role of the EP. The charge sheet against the EP is a serious one: it suffers from a lack of legitimacy as a result of low turnout in European elections (as compared to national parliaments), and the fact that the elections are second-order affairs; it provides unsatisfactory representation of citizens’ views in relation to pro-/anti-EU matters, being significantly more supportive of

further integration than the public; and it suffers from a skewed incentive structure which can lead to it adopting positions that are at odds citizens' preferences or puts their security at risk (Euractiv, 2015; Holehouse, 2014). The EP undermines, rather than enhances the EU's democratic legitimacy. The question is, what to do about it?

Rittberger (2012) also identifies that the EU has a "legitimacy gap" and suggests that a solution will either involve strengthening the EP or the role of national Parliaments in EU decision making. On the face of it, strengthening the EP would seem a logical way to improve the EU's democratic legitimacy. The argument runs that because of its unique position as "the only directly elected European institution" (Schulz, 2015), the EP benefits from democratic legitimacy (Borchardt, 2010), and therefore giving it more power necessarily creates more democratic outcomes. However, arguments that favour further empowerment of the EP are difficult to accept. Direct elections to the EP and past changes to empower it as an institution have failed to deliver democratic legitimacy (Majone, 2014; Menon, 2014) – there is little reason to expect a different outcome with further empowerment of the Parliament.

The public at large is hostile to further EU integration (Lekofridi and Schmitter, 2015) with 76% of the public supporting either maintaining the current level of EU involvement in their country's affairs, or reducing the level of involvement (ComRes, 2015). Further EU integration is likely to come at a high cost to national "autonomy and identity" (Leuffen, Rittberger and Schimmelfennig, p.268, 2013) and cause further politicisation of and opposition to the EU. Consequently, further empowerment of the EP seems against the will of citizens and may well lead to increased disenfranchisement with the EU, which could exacerbate its democratic deficit.

National parliaments and governments benefit from greater democratic legitimacy than the EP: national elections on the basis of which they are formed benefit from a higher turnout than their European counterparts (Eurostat (1), 2015; European Parliament, 2014), and can be characterised as first-order (Lefevere and Van Aelst, 2014; Elgie and Fauvelle-Aymar, 2012). Providing a greater role for national parliaments in EU decision-making could enhance the democratic legitimacy of the EU, as has been proposed by Cameron (2013), Menon (2014) and others. This would also have the positive effect of ensuring a stronger link between revenue raising (conducted at a national level) and EU spending. Arguably, prescribing how national parliaments need to be involved in EU decision making would not comply with the principles of subsidiarity and proportionality, runs counter to Protocol 1 to the Treaties, and might be opposed by certain national parliaments such as the UK – which has opposed the EP's attempts to create a joint scrutiny arrangement for Europol placing obligations on national parliaments (Bradley, 2014). The inescapable conclusion is to advocate a more intergovernmental approach to EU decision-making, thereby privileging the position of national governments, with a reduced role for the EP. This would leave individual Member States to decide on the appropriate level of scrutiny individual parliaments want to maintain in relation to EU matters. Adopting a more intergovernmental approach to EU decision-making at the expense of the EP would also represent a more future-proofed strategy for enhancing the democratic nature of the EU because European elections suffer from a more rapidly increasing rate of abstentions than national elections (Stylianou and Burn-Murdoch, 2014).

In reality, the adoption of a more intergovernmental approach to EU decision-making at the expense of the EP is unlikely. While Member States adopted an approach to dealing with the Eurozone crisis, which as “overwhelmingly intergovernmental rather than supranational” (Scicluna, 2012) represented a one-off – the last four decades have seen an empowering of the EP with successive Treaties. It seems unlikely that Heads of State and Government will buck the trend and adopt a more intergovernmental approach to EU decision-making at the expense of the EP. As noted, the public appears relatively content with the institutional setup of the EU as it stands; while a more intergovernmental approach would enhance the democratic nature of the EU, a more realistic goal would be to avoid expanding the power of the EP in any future Treaty change, which would also have the benefit of alignment with the preferences of a significant proportion of the public.

Conclusions

Although notions of democracy and the EU’s democratic deficit are contested, questions remain about the EP’s democratic legitimacy as part of the EU’s decision making processes (Turk, p.62, 2012). The EP suffers from a lack of legitimacy because of the low turnout in European elections as compared to national parliaments, which is compounded by the fact that the elections are second-order affairs – a problem the Spitzenkandidaten process failed to solve. The data I gathered corroborates previous findings (Lefkofridi and Katsanidou, 2014; Costello, Thomassen, and Rosema, 2012; and Hix, Scully and Farrell, 2011) in showing the Parliament to be significantly more supportive of further EU integration than the public, which has significant negative consequences for the institution’s representation of citizens. And finally, the EU’s institutional setup creates a skewed incentive structure which can lead to the EP adopting positions that are at odds with citizens’ preferences or put their security at risk. All this leads to the conclusion that the EP does not enhance the democratic nature of the EU, and instead to advocate the adoption of a more intergovernmental approach to EU decision-making at the expense of the EP. However, in reality avoiding any further expansion of the Parliament’s powers is the best that can be hoped for. Looking to the future and the possible Treaty change being discussed to further Eurozone integration once the British referendum on EU Membership is out of the way (Watt and Traynor, 2015), it seems unlikely that discussion about the role of the EP will go away. Further research into the democratic credentials of the EP could focus on a more in depth assessment of the congruence of citizens’ and MEPs’ views on EU integration, providing for a more definitive assessment of the extent of the mismatch between the preferences of the two groups. Given there is virtually no prospect of the European Parliament being disbanded (absent a total break-up of the EU), further work to consider how to ensure better alignment between the views of citizens and MEPs in relation to EU integration would be valuable – for example, tackling the “cartelisation” of EP Groups in favour of further EU integration, as highlighted by Rose and Borz (2013) – in short moving from diagnosis to cure.

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