

Why National Parliaments in the EU Should Be Empowered

Written by Sandra Kröger

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SANDRA KRÖGER, JUN 26 2015

In early 2013, UK Prime Minister David Cameron has publicly announced a referendum on European Union (EU) membership by the end of 2017 should he be re-elected in 2015. He has since linked the now certain referendum to the re-negotiation and eventual re-location of certain competences to the UK as well as the possibility, for the UK, to opt out of specific policies. Just how convincing such demands are in the light of the recent British government's own balance of competences review not finding any competences that should be returned to Westminster is open to debate. Be that as it may, one central demand of Cameron is a 'bigger and more significant role' for National Parliaments (NPs), reflecting a desire for more national democracy.

How representative institutions and actors such as parliaments and political parties can influence politics in a context of multi-level cooperation and shared sovereignty is a very important question. And indeed, there is a 'democratic disconnect' between domestic democratic institutions and processes and the decisions made at the EU level. Enhancing the role of NPs in EU decision-making offers a way to reconnect the integration process with the communal self-rule of the member states and their citizens. However, Cameron's framing of the issue is out of touch with recent increases in power for NPs in the EU, with the way the executive tends to dominate foreign affairs, and with the way the British Parliament uses existing powers in regard to EU affairs. After showing why that is so, the article concludes with a proposal to enhance NPs' role in EU affairs further, i.e. the Parliamentary Legislative Initiative (PLI) which should support mainstream domestic parties develop competing EU policies that reflect their core ideological positions and those of their voters.

The Normative Role of National Parliaments in EU Affairs

The Euro and debt crisis has no doubt accentuated the politicization of EU affairs – the increasing salience, polarization of and mobilization around related topics – indicating the definite end of the 'permissive consensus' according to which public support for the integration process was by and large taken for granted. The politicization of the EU has manifested itself in electoral defeats for governments deemed to have been too submissive towards contested EU level policies or in the increase of votes for Eurosceptic and anti-system parties, testifying to a 'democratic disconnect' between domestic democratic processes and decisions taken at the EU level. This democratic disconnect signals a tension within the integration process between the functional and economic factors that promote European integration on the one hand, and the normative, cultural and social psychological factors associated with political identity and the desire for national self-determination on the other. In short, the economic benefits of European integration did not result in an increasing acceptance of the legitimacy of gradually shifting collective decision-making to supranational institutions. The large majority of EU citizens still mainly think of themselves as nationals of a specific member state rather than as Europeans. I argue that NPs can play an important role in overcoming this growing tension between European integration and communal self-rule by connecting the one to the other.

The legitimacy of EU level decisions rests on their satisfying the normative logic of a two-level game (Bellamy and Weale 2015), whereby they must be acceptable not just to the contracting national executives but also to the respective *demos* they claim to represent. From this perspective, negotiators must treat each other with mutual

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respect as representatives of their citizens; appreciating that the legitimacy of their decisions depends on their retaining the on-going, democratic support of all their different peoples. We can see the role of NPs as a way of ensuring that the decisions of governments at the EU level operate under the equal influence and control of their peoples, whilst recognizing the obligation of all other member states to operate similarly. They can do so by providing a means for the *domestication* and *normalization* of EU policy-making. They domesticate it by taming it and bringing it home. It can be tamed by NPs not only using their subsidiarity checking powers, such as the Early Warning Mechanism (EWM) [1], but also exercising more control over government ministers via EU Affairs and other Committees to ensure EU policies do not unduly encroach on or subvert 'essential areas' of domestic democratic action. They can also bring EU policy-making home and thereby normalize it so that debates about more or less integration get related to the normal domestic debates concerning the character and quality of particular policies in terms of the broader ideological commitments of citizens, particularly their position on the left-right spectrum.

European integration need neither come at the cost of a loss of communal self-rule nor be regarded as in 'inevitable' tension with it, so that the assertion of one always comes at the expense of the other. Rather, the EU can be conceived as needing to be democratically connected to, and dependent for its legitimacy upon, the legal and political systems of the member states. By stemming from, rather than operating against, communal self-rule, the politicization of EU affairs need not be equated anymore with Euroscepticism and the rise of populist movements, but become a positive and necessary feature of democratic politics.

How the British Parliament Uses Its Powers in EU Affairs

Since the early 1990s, NPs have often been labeled the 'losers of European integration' (Maurer and Wessels 2001). Whilst there is some truth to such an assessment, with executives generally being strengthened in the context of the integration process, it would be misleading to think that NPs have no powers. In fact, European integration has helped NPs to *gain* powers over strong executives. In the UK (other prominent examples are Denmark, Finland and the Netherlands), the House of Commons' European Scrutiny Committee and the House of Lords' European Select Committee conduct detailed and authoritative investigative studies and public hearings. With a few exceptions, the government does not agree to EU proposals until Parliament has expressed a view through the scrutiny process. The Scrutiny Committee can either clear European Commission legislative proposals and non-legislative texts from scrutiny or ask ministers for further explanations. Whenever the Scrutiny Committee considers the documents 'politically or legally important' it can request a debate on them on the floor of the house, or in one of the Commons' three EU committees. NPs can now also jointly engage in subsidiarity and proportionality checks, by means of the EWM. Quite considerable scrutiny and accountability powers, one would have thought. So where do things go wrong?

Two factors immediately come to mind. First, the coalition government led by Cameron (2010-2015) was clearly not interested in having EU affairs up high on its agenda. E.g., in 2010, it abandoned the regular Commons debates on European Council meetings, *before* the latter take place. Instead, Cameron usually reported back to the Commons *after* EU summits, thereby putting a question mark behind his declared desire for a 'more important' role for NPs. Along the same lines, and as recently as March 2015, the European Scrutiny Committee criticized the government for failing to pursue a meaningful dialogue with MPs over EU affairs. Six of the plenary debates the Committee requested in the previous legislature (2010-2015) have not been held. The government's response has been that few MPs are interested in the EU beyond members of the Scrutiny Committee. Which leads us to the second factor.

It is true that most MPs do not have the inclination to learn how the EU works and to engage with its policies. They doubt that voters would reward them for engaging with the EU. In fact, there is a wide gap between MPs and members of the House of Lords in terms of their interest and expertise in European affairs, with the latter often have a better understanding of the EU than their Commons counterparts. Similarly, British MPs do not seem to co-ordinate their positions on Commission proposals in the context of either the political dialogue or the EWM very much and also do not network sufficiently well with the British MEPs to support effective cooperation in EU affairs. By way of example, in the German *Bundestag* and the Polish *Sejm*, MEPs can participate in meetings of the EU affairs committees. In contrast, in the House of Commons only MPs can take part and speak in the scrutiny committee or on the floor of the house. MEPs can only contribute if the scrutiny committee invites them to give evidence as part of an

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inquiry. Such a lack of networking works against British MPs familiarizing themselves with the EU political system and being knowledgeable of important dossiers.

Introducing the Parliamentary Legislative Initiative (PLI)

Looking at the above, the crux does not seem to be a lack of available scrutiny powers for NPs, but a dependency on the good will of government as well as on individually disposed MPs to look after EU affairs. Therefore, we might want to look at the incentive structure that political parties generally find themselves in. For parties to politicize an issue, four conditions must usually be met (Miklin 2014). First, the issue must be sufficiently *salient* to affect the choices of the party's voters. Second, the party's position on the issue needs to be *congruent* with that of its voters. Third, its position needs to be sufficiently internally *cohesive* to avoid internal conflicts. Finally, the party's competitors need to hold different positions that allow for *polarization*. Hitherto these conditions have only applied to Eurosceptic parties with regard to EU affairs. Now, the Euro crisis has undoubtedly raised the salience of EU affairs and so does the prospect of the British in/out referendum. However, it is quite possible that once the Euro crisis is settled and the referendum held, political parties and NPs will go back to 'business as usual', preferring not to debate EU affairs. To avoid that from happening, and to more permanently couple the EU and domestic levels through NPs, I propose the introduction of a Parliamentary Legislative Initiative (PLI) [2].

A PLI would mean the possibility for NPs to *jointly* put forward legislative proposals in regard to issues that are of shared concern with the citizens of the *demos* of other member states. Such legislative proposals could be either for the EU to initiate legislation in a new policy area, or they could propose the EU modifying or withdrawing from a given policy area. A similar mechanism, the so-called 'green card', has been suggested recently by both the European Committee of the British House of Lords and the Dutch Parliament, and is now the subject of an inter-parliamentary consultation exercise[3]. A PLI would be triggered by at least 1/3 of the MPs in a minimum of 1/4 of all the NPs in the EU. The total number of NPs would be calculated by counting each chamber in bicameral systems as one and weighting the NPs of unicameral systems as two. In the case of the threshold being reached, the Commission would be obliged to put forward a legislative proposal to be considered by the ordinary legislative procedure. This threshold is set deliberately below requiring a majority of MPs in 50% of all NPs in order to stimulate debate, by empowering opposition parties as much as those in government. The legitimacy of any measure would still be guaranteed by the ordinary legislative process requiring a super majority in the Council and the EP for any proposal to be enacted.

Given the salience of EU affairs these days and the fact that there will always be, to some degree, internal party division over EU policies, how would the PLI work in favor of the remaining two conditions listed above, congruence and party polarization? It would do so by allowing parties to influence EU affairs positively rather than merely in a reactive way as is the case in the context of the EWM. Parties in government can push their executives towards adopting proposals that go beyond the compromises they may feel obliged to make as members of an EU level super majority. Such moves could aid their bargaining power by revealing a ground swell of domestic support for particular measures. More importantly, the comparatively low threshold of a 1/3 of MPs is designed to allow opposition parties also to promote such initiatives and thereby to put forward alternative EU policies to the government. Meanwhile, the need to cooperate with other NPs will work against parties acting purely opportunistically or operating in the manner of Eurosceptic parties to protect a narrowly conceived national self-interest. The ability of parties to promote policies that align closer to their ideological identities supports both congruence with their supporters and polarization between parties. They will not be tied to merely passively supporting commitments made by their executives at the EU level. Instead, they may shape those commitments and engage directly in dialogue with other NPs as well as EU level institutions. To the extent that the PLI fosters these developments by non-Eurosceptic parties, it will allow them to reconnect their input into EU policy-making with the domestic democratic process.

Conclusion

Whilst it is true that NPs have lost in power in the context of European integration, it is not true that they do not currently hold important powers which allow them to make abundant scrutiny of EU policies. If the British Parliament has not made full use of these competences of late, this is because of a lack of interest in EU affairs by both the government and individual MPs. Cameron's call for more competences for NPs therefore seems misleading,

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particularly given his lack of willingness to openly discuss EU affairs in the House of Commons. But also, following the ideology of New Public Management, the UK government has chosen to delegate the regulation of public policies to agencies and other quangos, thereby massively outsourcing accountability. Suggesting a huge increase in accountability for NPs by moving back competences from the EU to the UK is therefore misleading in different ways. The Parliamentary Legislative Initiative (PLI) was here introduced as an incentive, for political parties and MPs alike, to take more control of EU affairs by engaging positively with EU policies as well as with other NPs. However, neither such an instrument nor other competences for NPs could, on their own, address the fact that the UK, like many other countries, is today affected by a massive distrust towards representative democracy which the EU alone for sure cannot take the blame for.

Notes

[1] The EWM was introduced with the Lisbon Treaty and allows NPs to co-operate to engage in subsidiarity and proportionality checks of European Commission legislative proposals.

[2] This idea draws upon Kröger and Bellamy (2016), forthcoming.

[3] HoL EU Committee, 9th Report Session 2013-14, The Role of National Parliaments in the EU, 24 March 2014, pp. 19-20; Questionnaire for the 23rd Bi-annual Report of COSAC, 23 February 2015, Section 2.

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