THE PARLIAMENTARY ELECTION OF THE COMMISSION PRESIDENT: CONSTRAINTS ON THE PARLAMENTARIZATION OF THE EUROPEAN UNION

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ABSTRACT

The proposal for parliamentary election of the Commission president, officially advanced by the European Commission and the European Parliament for the election of the latter in 2014, constitutes the most significant step towards the parliamentarization of the European Union. Connecting the election of the EP to the choice of the Commission president is considered to be an effective way to provide a definitive solution to the democratic deficit of the Union. This article discusses the arguments favoring the parliamentarization project and those against it, showing that the strategy of parliamentarization of the EU is destined to encounter powerful institutional and structural constraints. A different project could be pursued to strengthen the EP without being trapped by those constraints.

Keywords: Parliamentarization of the EU, Lisbon Treaty, European Parliament, European Commission, legislative models.


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Introduction

It seems that the time has come for parliamentary election of the European Commission president. On 12 March 2013 the Commission made public Communication IP/13/215 recommending “political parties (to) nominate a candidate for European Commission President in the next European Elections (2014) and (to) display their European political party affiliation”. In its Blueprint for a Deep and Genuine Economic and Monetary Union (EMU) of 28 November 2012, the Commission had already stressed the necessity, “without this being a point specific to EMU, (of considering) a number of steps….to foster the emergence of a genuine European political sphere. This includes, in the context of the European elections of 2014, most importantly the nomination of candidates for the office of Commission President by political parties”. In its Resolution of 22 November 2012 on Elections to the European Parliament in 2014, the EP “urges the European political parties to nominate candidates for the Presidency of the Commission and expect those candidates to play a leading role in the parliamentary electoral campaign in particular by personally presenting their program in all Member States of the Union; stresses the importance of reinforcing the political legitimacy of both Parliament and Commission by connecting their respective elections more directly to the choice of the voters”. In his State of the Union Address on 12 September 2012, the President of the Commission, José Manuel Barroso, reminded the members of the European Parliament or EP (MEPs) that “an important means to deepen the pan-European political debate would be the presentation by European political parties of their candidate for the post of Commission President at the European Parliament elections already in 2014”. This proposal was taken up by the European Socialists and Democrats in October 2012 and formalized in their program for the EP elections of 2014 (Poguntke 2013), a move that will probably pressure the European Popular Party to adopt a similar position. The electoral connection between the EP and the Commission was also proposed before the 2009 EP elections (see Bonvicini et al. 2009 and Estella 2009).
The proposal for parliamentary election of the Commission president constitutes the further, and logical, development of the strategy to parliamentarize the European Union (EU). If parliamentarization is defined “as the ambition to establish and the gradual evolution towards a system of government at the European level with a strong priority-setting and policy-planning input for the EP, a system that in a way would resemble mutatis mutandis parliamentary democracy in a nation-state” (Lehmann and Schunz 2005: 10), then the concept has both a descriptive and prescriptive character. It is a political argument justified by the institutional evolution of the EU. As Burgin (N.D.:10) argued, “an elected Commission president signals a rupture with the old frame of the Commission as a technical agent fulfilling the tasks given by the European Council. Instead it represents the acceptance that the Commission has a political role, which has to be legitimized through election. Therefore the election of a Commission president is a further step towards the parliamentarization of the Union”. The parliamentarization of the EU decision-making system has been proposed as the solution for the EU’s democratic deficit since the 1970s (Marquand 1979). In fact, notwithstanding what the EP has become, the limited role and powers of the EP in forming and legitimizing the Commission have been considered the source of the alleged democratic deficit. Is the proposal in question both desirable and feasible?

The article aims to answer this question, discussing the factors for and against the parliamentarization of the EU, using the perspective of comparative institutional analysis. The final answer is much more problematic than assumed in the official position of the Commission, the EP and the main European political parties. In order to show that, I will discuss, first, the factors supporting and justifying the parliamentarization of the EU; second, the factors arguing against the latter; third, the structural conditions for parliamentarization in decentralized and multi-level polities that the EU cannot satisfy. I will conclude that the parliamentarization of the EU would have unintended negative effects, thus requiring the search for a plausible alternative to the parliamentarization project.
1. Favoring the parliamentarization of the EU

*The theoretical argument*

The Lisbon Treaty has unmistakably recognized the EP as the popular chamber of the EU bicameral legislature\(^1\). If the Treaty has kept the EP at the margins in crucial intergovernmental policies (such as, *inter alia*, economic and financial policies or foreign and security policies), in the vast majority of single market policies it has celebrated the co-decisional power of the EP with the Council of Ministers or Council in the law-making process as the *ordinary legislative procedure*. According to TFEU, Art. 289, “the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission”. Notwithstanding what the EP has become, however, a recurrent critique has continued to be raised, namely that it is not a true parliament. According to many authors (Hix 2013; Majone 2009; Hix 2008a and 2008b; Kohler Koch and Rittberger 2007; Hix, Noury and Roland 2006; Follesdal and Hix 2005), the EP is not a *true* parliament because it does not play a decisive role in the formation of the Commission (which is assumed to be the European government). Indeed, the EP does not have a party link with the Commission in the sense that the composition of the latter does not reflect the partisan majority of the EP. The election of MEPs is a second-order election because of a lack of a truly trans-European party system (which explains, in all probability, the low turnout in those elections). In order to increase the governmental role of the EP, it is considered necessary to transform its election into the vehicle for vigorous confrontation between partisan alternatives, in particular through the promotion of different candidatures for the role of Commission president. The parliamentary election of the Commission president is thus the crucial step in transforming the EP into a true parliament.

\(^1\) The Lisbon Treaty amended the two consolidated treaties, the Treaty on the European Union or TUE of 1992 and the Treaty on the European Community, renamed as the Treaty on the Functioning of the European Union or TFUE, of 1957, and gave binding force to the Charter of Fundamental Rights, considered *de facto* as a third treaty.
For Hix (2008a: 38) the EU is already “a quasi-parliamentary system of government – where a particular political majority could choose ‘its’ Commission with a particular policy agenda and so be ‘in government’ at the EU level for the 5-year legislative mandate, while several Member States and some political parties could find themselves ‘in opposition’”. Hix (2008a: 4) recognizes that “the EU never will be, and never should be, like the Westminster model of government, where a narrow political majority can dictate policy outcomes”, but rather “the EU should become more like the German or Scandinavian models…”, that is more consensus-oriented parliamentary systems. Such consensualism, for Hix (2008a: 4), has not prevented Germany or Scandinavian parliamentary systems from functioning through the formation of “a broad coalition…in support of policy changes via an open and vigorous political debate”. If the EP has the power to elect its own Commission, then the transformation of the quasi-parliamentary EU into a coherent parliamentary union will be accomplished. To give the EP this power would not even require a change of the Treaties. Hix (2008a: 159) suggested introducing a de facto change in the latter’s practice in order “to allow a majority in the European Parliament to nominate, and the European Council to then approve by Qualified Majority Voting” the Commission and its president.

According to this approach, the EU’s difficulties come from political rather than institutional or structural conditions, that is from the low level of politicization of the EP elections, debate and decision-making process. The EU needs more partisan politics rather than another cycle of treaty reform. The EU’s difficulties are due to the policy gridlock which tends to emerge from the interactions between the three governmental institutions (the Commission, the Council and the EP), from the declining level of the EP’s popular legitimacy and from the democratically unaccountable character of the decision-making process taking place within the other two institutions. The EU has already become less consensual and more majoritarian in institutional terms, due to the reforms introduced since the Single European Act of 1986. What it needs therefore, it is argued, is a transformation of elite and mass political behavior to correspond to the institutional changes that have already taken place. The EU needs (according to several authors, see Magnette and
Papadopoulos 2008) to politicize the EP’s elections, transforming them into the arena where a popular majority should emerge regarding the governmental program to pursue. This politicization is regarded as particularly necessary in the context of the euro crisis and its dramatic implication of dividing the citizens of debtor and creditor member states.

Crucial in this theoretical argument is the role assigned to political parties (Hix 2008b). The democratic future of the EU will depend on their capacity to aggregate citizens’ preferences in order to transform them into governmental action. Making the EP the center of the decision-making process would trigger the strengthening of the parties, as both electoral and governmental actors. Parliamentary systems, assembling decision-making in the popular legislature, represent the most favorable environment for party action. For this reason, a panoply of reforms has been suggested. The name of European political parties should formally appear on election ballots (it has not up to now); parties should run the EP election on the basis of their pan-European program (they have not up to now); after the election, parties should adopt winner-takes-more rules for allocating institutional roles within the EP; parties should encourage more transparency in the deliberation process taking place within the Council. But, above all, parties should be required to indicate their candidate for the position of Commission president during the elections for the EP. By having to decide the Commission’s political composition and leadership, the EP elections would increase their worth in the eyes of European voters. The candidatures for the Commission president would epitomize and personalize the political battle on the strategies of the Union. The politicization of the EP elections would extend its effects to the other institutions, the Council in particular, thus encouraging the latter to divide along the lines of left vs. right. In short, according to this argument, parliaments matter only if they form (elect) a government (Farrell and Scully 2007) and, at the same time, an executive is legitimated only if formed, supported and eventually voted down by the popular legislature (Hix, Noury and Roland 2006). This argument has certainly influenced important aspects of the Lisbon Treaty.
The institutional justification

The recognition, by the Lisbon Treaty, of the co-decision procedure as the ordinary legislative procedure constitutes a striking success for the EP. Certainly, the Council has preserved its legislative power, that arises from being constituted (in its various configurations) by the ministers of the member states. Indeed, in intergovernmental policies it has monopolized that legislative power. The Council’s power has been largely supported by the Committees of the Permanent Representatives of the member states in Brussels which have coordinated and ordered the decision-making process within it (Kreppel 2006). The Lisbon Treaty has thus institutionalized a bicameral legislature, organized around a double principle of representation (individual voters in the case of the EP – although with the correction of degressive proportionality\(^2\) - and member states in the case of the Council), as is proper of federal, federalized or federalizing territorial systems (Elazar 1987). The EP has increased its role and the Council has maintained its own influence. Although the power of legislative initiative has remained in the Commission’s hands, the EP has learned how to operate to let the Commission know its preferences.

The Lisbon Treaty has not only strengthened the legislative role of the EP, but it has also connected the Commission to the latter’s formation. According to TEU, Art. 17.7, the European Council, “taking into account the elections to the European Parliament and after having held the appropriate consultations, (…), acting by qualified majority, shall propose to the European Parliament a candidate for the President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members”. Once the candidate is elected, adds

\(^2\) The Lisbon Treaty set the number of MEPs at 751, although that threshold will be consolidated with the elections of 2014 (in the elections of 2009 754 MEPs were elected in order to accommodate the new member states). The parliamentary seats are apportioned according to the criterion of the population of member states, but following the criterion of degressive proportionality. This means: (1) a minimum of 6 EP seats is assigned to each member state (162 seats); (2) the remaining 589 seats are assigned to member states in proportion to their population; (3) the largest member state (Germany) can obtain a maximum of 96 seats. MEPs have been elected directly every five years since 1979, according to national versions of the proportional representation system (although British MEPs were elected through majoritarian uninominal elections until 2004).
the following paragraph of the same Article, “the Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission (…)”. Thus, “the President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority”.

Moreover, the Lisbon Treaty also codified the power of the EP to vote down the Commission as a whole, a power won by the EP itself during the crisis of the Santer Commission in 1999 (Moury 2007). According to TEU, Art. 17.8, “the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body…”. Thus, apparently, the Lisbon Treaty has advanced significantly in the direction of making the EP the crucial institution in both voting for and against the Commission. The political pressure to strengthen this role further is thus understandable. For instance, Viviane Reding (Vice-President of the Commission and Commissioner for justice, fundamental rights and citizenship), in a talk given to Deutsche Bank's 13th Women in European Business Conference, in Frankfurt on 14 March 2012, not only supported the Commission’s proposal, but added that “before the European elections, leaders should agree that the next Commission President would also become the President of the European Council. The current European Treaties allow for this.” In any case, will the Commission’s proposal finally make the EU a parliamentary union?

2. Arguments against parliamentarization

Rhetoric vs. reality

If it is true that the Lisbon Treaty celebrates a parliamentary idea of the EU, it is also arguable that such a celebration has a rhetorical significance rather than reflecting an institutional reality. The claim that the EP ‘elects’ the president of the Commission, although the candidate for the job is preselected by the European Council, risks being contradicted by several institutional factors. The formula “taking into account the elections to the European Parliament”, in fact, is technically generic. Those elections are organized at the state level through proportional
representation systems which cannot generate an electoral majority, unless in all the member states’ elections there is a competition between the same two groupings or parties as an effect of an EP party system already being structured in a bipolar format, which is evidently not the case. Thus, it is unlikely that the European Council could act as a notary, a collegial head of state of Europe, limiting itself to formalize the popular will as expressed by and through the elections (as heads of state, presidents or monarchs generally do in parliamentary systems). Given the real possibility of no clear majority emerging from the EP elections – and the likelihood of a party holding only a plurality of EP seats - the European Council will have to interpret the outcome of those parliamentary elections.

Also, should the party receiving the plurality of votes have contested the elections indicating its candidate for the job of Commission president, the European Council, even in accepting that choice, will have to take into consideration several other factors in proposing the composition of the Commission. Any Commission will have to be multi-national and necessarily multi-party. The composition of the Commission must reflect a coalition of parties (especially if the elections of 2014 bring a significant number of anti-EU MEPs to sit in the EP) but also a balance between member states, according to a magic formula that the European Council should elaborate in the first place. Consequently, the EP elections might serve to indicate the candidate for the job of Commission president, but not to elect him/her or to decide the political composition of the Commission. The parties’ indication of their candidate for the Commission president will not deter the European Council and the EP from entering into a complex negotiation which will have to take into consideration more than partisan arguments.

At the same time, it is true that the EP may vote down the Commission as a whole, but it can do that only on the basis of moral and not political reasons. Indeed, the Santer Commission was called into question in 1999 for the former and not the latter. This power recalls the impeachment

3 I refer to the classical analysis of Sartori (1976 now 2005) on the correlation between the electoral system and the party system.
prerogatives of the ancient British parliament towards the King during the Tudor constitution (Huntington 1968), a prerogative which then migrated to the US Congress during the Philadelphia Convention of 1787 (Art. II Section IV of the US Constitution says: “The President, Vice-President and all civil officers…shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors”), although in the EU’s case it concerns an entire body and not just its head or individual Commissioners. This power does not coincide with the parliamentary prerogative to withdraw confidence from the Commission on the basis of political and not legal or moral considerations.

The relationship of political confidence between the EP and the Commission is obstructed by further institutional factors. The EP has a statutory fixed mandate of five years (according to TEU, Art. 14.3, “the members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot”) and cannot be dissolved at the request of any institution (be it the Commission or the European Council), thus impeding recourse to the flexibility which is part of the parliamentary system. While the EP cannot vote down the Commission politically, no institution can dissolve the EP either. This contrasts with a crucial tenet of the parliamentary model, i.e. the possibility to dissolve parliament when there is no longer a political majority supporting the government. At the same time, another crucial tenet of the parliamentary model – i.e. the parliamentary status of the executive’s members - is contradicted by the Lisbon Treaty. TFEU, Art. 245, states in fact that “the Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not”, which excludes that members of the Commission could also be MEPs. In short, rhetoric does not fit easily with institutional reality.
Institutional complexity

Not only has the institutional structure of the EU become more complex than recognized by supporters of parliamentarization, but normative considerations would also advise more prudence in promoting the latter’s strategy. Regarding the decision-making structure, the parliamentarization strategy continues to consider the EU as institutionally organized around a trilateral decision-making system, with the EP, the Council and the Commission. There is no room, in this strategy, for the European Council, notwithstanding the fact that the Lisbon Treaty has formally recognized it as an executive institution chaired by a permanent president\(^4\) and despite the dramatic decision-making growth of the European Council since the explosion of the euro-crisis in 2009. A decision-making growth justified by the fact that, within the EU, conflicts have an inter-state nature, not only an ideological one. A parliamentary system can accommodate a left vs. right cleavage, but certainly not a cleavage between member states of different size and capabilities. Although the Commission’s power of legislative initiative has been formally preserved in a growing number of policies (as shown by the Six Pack and Two Pack measures adopted between 2011 and 2013), the Commission’s initiatives have come clearly from European Council’s political inputs (De Scoutheete 2011). It is certainly worth bringing the king (the executive power) back to the parliament (the legislative power). But if the king is no longer the Commission, to bring the latter under the EP’s control does not seem the solution to the question of the democratic accountability of those taking decisions in the EU.

If the European Council has come to play a political role in the EU, and if its political composition is dependent on member states’ domestic elections, how is it possible to guarantee its

\(^4\) By recognizing, for the first time, the European Council as a Union institution, chaired by a president elected “by a qualified majority” of member states “for a term of two and half years, renewable once” (TEU Art. 15.5) and no longer chaired by the rotating presidency as in the past, the Lisbon Treaty has transformed the European Council into a political executive of the Union (Closa 2012). In fact, the European Council should “define the general political directions and priorities” of the Union (TEU, Art. 15.1) and the president of the European Council should “ensure the external representation of the Union on issues concerning its common foreign and security policy” (TEU, Art. 15.6). Moreover, because the Treaty explicitly states (TEU, Art. 15.1) that the European Council “shall not exercise legislative functions”, the distinction with the Council (and its various formations or configurations) is now formalized.
political convergence with the Commission president nominated by the EP? The different electoral source and political representativeness of the European Council and the Commission constitute a further obstacle to the formation of a unitary parliamentary executive. Theoretically, one might consider, as the Vice-President of the Commission Vivian Reding did, the possibility of rearranging the two presidencies (of the European Council and the Commission) into one single role, thus coming close to a unitary executive. However, it seems highly implausible to assume that the heads of state and government of the European Council would accept to be led by an official elected or selected by the EP. The very proposal to give the party which has a majority in the EP the power to nominate the Commission president assumes that the European Council will willingly give up the power to decide the candidate for the Commission president with whom it and its permanent president will have to work. This assumption too seems unreasonable. Both assumptions fail to take into account the political motivations driving the European Council.

There is also a normative argument to consider. The parliamentarization argument seems to underestimate the negative consequences of having a political Commission. It is arguable, in fact, that a political Commission would not have the legitimacy to ensure “the application of the Treaties” or to oversee “the application of Union law under the control of the Court of Justice” (TEU, Art. 17.1), nor could such a Commission guarantee that “in carrying out its responsibilities…(it) shall be completely independent” or “shall neither seek nor take instructions from any Government or other institution, body, office or entity” (TEU, Art. 17.3). Thus, contrary to what Hix and others argue, a political Commission would require a formal change of the Treaty, not just a de facto adaptation of the latter to a revised political practice. A Commission understood as ‘government of the Union’, an expression of a clear parliamentary majority, would marginalize the MEPS belonging to minority parties (or that might be the fear of the latter), especially if they represent small-medium size member states lacking the power to make their voice heard. Because the Commission also has to exercise a supervisory role in making sure the treaties or the laws are properly respected, its politicization might cloud the perception of its technical neutrality in those
member states or sectors of the population which are not part of the majority supporting it. In short, if it is true that the Lisbon Treaty has introduced parliamentary features into the EU (Goetze and Rittberger 2010), it is also true that those parliamentary features have been countered by contrasting processes and factors.

3. Conditions for parliamentary federation

The asymmetry puzzle

Comparative institutional analysis shows that parliamentary federations are structured institutionally on a highly differentiated bicameral legislature. In parliamentary federations only the lower chamber (the popular one) has the prerogative to give or to refuse its support to the government (a prerogative that epitomizes the governmental role of the popular legislature). The higher chamber (the one representing the member states) has important legislative prerogatives in particular policies (such as control of the budget and the power to raise taxes and to distribute their costs and benefits in the various territorial units of the federation), but it does not intervene in the formation of the government (although it might condition it once it has been constituted). This legislative differentiation derives from various reasons. It is the outcome of a process of federalization through the disaggregation of a previously unitary state with the popular chamber consolidated enough to retain its governmental role (as in Belgium). But it may also be the outcome of a specific constitutional tradition which stresses cabinet’s responsibility to the political majority of the lower chamber (as in Canada or Australia). Or it may derive from the need to preserve a center of governmental authority in a process of radical decentralization of territorial power (as in post-World War II Germany) (Burgess and Gagnon 2010).

Yet, these genetic and constitutional reasons should be seen in a larger structural context. Parliamentary federations seem to require also a manageable balance (in demographic and
capability terms) among the territorial units in the higher chamber, in order not to alter the representation of individual voters in the lower chamber. They require, that is, a *governable asymmetry*. Consider the cases of Germany and Canada, the two most conspicuous Western parliamentary federations. After the Second World War, German *Länder* were designed by the Allied authorities (Jeffery and Saviger 1991) in such a way as to guarantee structural equilibrium among them, thus preventing the resurgence of a future territorial hegemonic actor (as happened in the pre-Weimar confederal experience with Prussia dominating the new German confederation, Ziblatt 2006). Only Bavaria, Saxony and the city states of Bremen and Hamburg predated the *Länder* created in 1945 and thus formalized in the 1949 Basic Law. Many of the other *Länder* were created as new entities, as shown by their hyphenated name. In terms of asymmetry, the 1950 demographic ratio between the least populated *Land* (Bremen with 600,000 inhabitants) and the most populated one (North-Rhine Westphalia with 13,200,000 inhabitants) was 1:22. The ratio was inevitably affected by the subsequent demographic development of the country, but not radically altered. Indeed, in 2010, the ratio between Bremen (still the least populated *Land* with 660,706 inhabitants) and North-Rhine Westphalia (still the most populated the *Land* with 17,854,154 inhabitants) was 1:26. The representation of relatively balanced relations between *Länder* in the *Bundesrat* (the legislative chamber representing the *Länder’s* executives), combined with a political community which has grown homogeneous in political and cultural terms (also because of the constitutional ban on neo-Nazi and neo-Communist parties participating in the elections), has thus made it possible to organize a national political competition for the *Bundestag* (the popular chamber of the legislature) around the two main political parties of the center-right (Christian Democratic Union or CDU) and the center-left (Social Democratic Party or SPD). With the exception of the mainly catholic Bavaria (which has created its own version of Christian democracy – the CSU), the *Länder* have not displayed cultural or linguistic distinctions which could have prevented the development of trans-*Länder* homogeneous partisan competition.
In Canada, the governmental role of the popular chamber (House of Commons) is the expression of the British legacy and cannot be challenged by an institutionally weak Senate. Indeed, although Canada is composed of 10 Provinces and 3 Territories, the 105 members of the Senate are not only appointed by the Governor-General on the advice of the Prime Minister (expression of the political majority in the House of Commons), but their seats are assigned on a regional - and not on a provincial - basis, with each of the four major regions receiving 24 seats and the remainder of the available seats being assigned to smaller territories (Smith 2010). Demography has helped the process of consolidation of the parliamentary-federal model. In 1951, the ratio between the least populated province (Prince Edward Island with 99,285 inhabitants) and the most populated one (Ontario with 4,597,542 inhabitants) was 1:46. The post-war demographic development has increased the ratio between the two provinces (in 2006, it was 1:89 with Prince Edward Island still the least populated province, 135,000 inhabitants, and Ontario still the most populated one, 12,600,000 inhabitants), but not to the point of questioning the House of Commons’ political role. Moreover, the process of parliamentarization of the federation has been eased by the fact that Canadian provinces have not displayed “constitutional distinctiveness vis-à-vis the national government and each other” (Smith 1993: 133), notwithstanding the linguistic division. The relation between the center and the provinces, rather than through the Senate, has been structured much more by the meetings of the federal Prime Minister with the Premiers of the provinces, according to a model defined as ‘executive federalism’\(^5\). The recognition of the linguistic distinctiveness of French-speaking Quebec has contributed to triggering a high territorial decentralization (in favor of the provinces) in many policies, but this decentralization has not called into question the exclusive

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\(^5\) One might argue that the meeting of the federal prime minister and provincial premiers has functional similarities with the European Council. However, in the latter case there is not a prime minister but an executive officer (the president of the European Council, to whom the Commission president and the High Representative should be added) not backed by any parliamentary majority and the meeting is formalized in the Treaty (whereas in Canada it is a de facto practice or convention).
role of the House of Commons in the formation of the government. In short, it seems plausible to argue that, in federal systems, parliamentarization has been made possible not only by a deep-rooted constitutional tradition, but also by favorable structural conditions (such as a relative symmetry and a homogeneous party system between and within territorial units). The combination of these conditions has legitimated the popular chamber of the legislature to play an exclusive governmental role.

The asymmetry constraints in the EU

It is a shared view that the EU is a multi-level system of governance (Hooghe and Marks 2001) displaying clear federal features (Kelemen 2003), at their turn moving from a dual to a cooperative model of federalism (Schutze 2009). This is why the EU might be compared with other federal systems. However, the EU does not seem to meet the structural and cultural conditions that have made possible the adoption of a parliamentary model of government in the above federations. If the formation of the ‘government’ is assigned exclusively to the EP, then the least populated member states (i.e. Malta with its 408,000 inhabitants in 2011) will have an evidently smaller influence than the most populated member state (i.e. Germany with its 81,471,834 inhabitants in 2011), notwithstanding the criterion of degressive proportionality. The 2011 demographic ratio between the least and the most populated member states was 1:202 (that is six times higher than the 2010 German ratio). Such asymmetry would be necessarily difficult to manage within a single representative institution, unless a trans-member state competition based on parties representing supra-state ideological programs and identities could develop. Regional and member state divisions (due not only to their size, but also to their different national language and culture, economic model,

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6 Regarding the other established cases of Western parliamentary federations, it is necessary to recall that also in Austria and Australia the chamber representing respectively the nine Länder and the six states (plus several territories with various degrees of self-government) plays a minor role in policy-making vis-à-vis the popular chamber. The Belgian crisis seems to confirm that combining vertical decentralization with horizontal centralization is difficult when the territorial or cultural communities are not (or are perceived not to be) symmetrical in terms of capabilities (or demography).
regional location, and social structure) have necessarily weakened any partisan attempt to order them only in the left vs. right format. As confirmed by the post-2009 euro crisis, the division between Northern and Southern euro area member states has dramatically superseded the partisan division across them: the fact that the Spanish Prime Minister Mariano Rojoy and German Chancellor Angela Merkel belonged to the same European Popular Party did not alter the terms of the division of interests between their countries. A German or Canadian model adopted in the EU would be unable to represent these inter-state cleavages.

Moreover, that model implies a hierarchical relation between the two chambers, a possibility that seems unrealistic in the EU: even if the EP elects the Commission president, the Council has (and will continue to have) the resources to oppose any attempt to transform it into a Bundesrat or Canadian Senate with policy competences in specific and important fields but without a voice in governmental decision-making. Historically, the Council has played a crucial role in the process of integration, a role necessary for keeping asymmetrical and differentiated member states on board. The EU consists of states and citizens, not only the latter. The balance between the two representative institutions constitutes a systemic necessity for a union of highly asymmetrical states. If the decision-making power is shared by multiple institutions, then Maltese voters may not be as important in the EP as German voters, but they can make their voice heard within the Council where decisions are taken on the basis of a super-majority logic or QMV. A QMV system leaves many opportunities to a minority coalition of member states to make its voice heard should its preferences not be taken into consideration by the majority coalition. Moreover, those voters will have a voice (or a coalition power) also in the European Council and even in the Commission, although according to the treaties commissioners should represent the European interest and not the interest of the member states of which they are nationals. These constraints, arising from the high level of asymmetry between the states, combined with their cultural and economic differences, seem to be underestimated by the proponents of the parliamentarization strategy. Although it is difficult to define theoretically the precise level of the asymmetry ratio compatible with

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7 The Lisbon Treaty, TEU Art, 17.5, states that each member state has a right to propose a national as commissioner until 1 November 2014, then adding that after that date the Commission will be composed of “two thirds of the number of the Member States, unless the European Council, acting unanimously, decides to alter this number”. That decision was made in order to appease Irish voters required to vote on the Lisbon Treaty for a second time (in October 2009) after having rejected it in a previous referendum (in June 2008). As was predictable, this decision was confirmed by the European Council on 22 May 2013 (EUCO 119/13), that states “that the Commission will continue to consist of a number of members equal to the number of Member States...The decision, which in effect maintains the current practice, will apply from 1 November 2014”.
parliamentarization, it is however plausible to argue that the latter is incompatible with the need to represent the interests of states which are as differentiated as the EU member states. In short, if parliamentary federations recognize to the lower chamber alone the role of forming the government, how is it possible to adopt this model in the EU, where the Council has historically and necessarily represented a crucial stakeholder in this process?

4. Unintended negative effects

Notwithstanding its parliamentary features, the institutional reality of the EU is different from that of a parliamentary federation. In single-market policies, the Lisbon Treaty has formalized a decision-making regime organized around a bicameral legislature (EP and the Council) and a dual executive (European Council and Commission). It is a quadrilateral decision-making system constituted by separate institutions unconnected by a political confidence vote, an expression of different communities of interests, with distinct temporal mandates and different patterns of legitimacy. The proposal for parliamentary election of the Commission president constitutes an attempt to simplify this separated decision-making structure, strengthening the role of the EP through the dethroning of the European Council and the downsizing of the influence of the Council. Would parliamentarization make the EP stronger and more influential in the decision-making process?

From a comparative institutional analysis, there are at least two alternative models for a popular legislature’s role in a democratic system: the parliamentary model, according to which its role is to form or elect a government, and the congressional model, according to which its role is to balance the other legislative chamber and to check the executive branch. According to Kreppel (2008: 161), the distinction between the two models is based on the “relative level of interdependence” between the legislature and the executive branch: “in parliamentary systems the executive branch is selected from within, and by, the legislature”. These are fusion of powers
systems. On the contrary, in separation of powers systems, “the legislative and executive branches (are) selected independently and (...) neither has the ability to dissolve or remove the other from office”. The first type of legislature is called ‘parliament’, the second ‘congress’\(^8\). Thus, “parliaments and congresses, generically, can be best understood as specific types of legislature”. Parliaments dissolve when they are not able to form a government, congresses operate according to a fix temporal mandate because they do not depend on the existence of the government. Parliaments are flexible, congresses are rigid.

The point is that popular legislatures in separation of powers system are more powerful than any popular legislature in a fusion of powers system (Shugart 2006; Sartori 1994; Loewenberg and Patterson 1988). In the latter, with few exceptions (such as the unicameral legislature of small Denmark or – in the past - the bicameral legislature of an ideologically divided consensus democracy such as Italy of the First Republic or France of the Fourth Republic)\(^9\), parliaments have come to play a limited role in legislation and policy making. Parliaments have even lost de facto the power to initiate the legislative process now seized by governments (which have control of the agenda, the technical expertise to elaborate legislative proposals and the institutional machinery to support those proposals with data and reports and the capacity to focus the attention of public opinion on their work). Indeed, the fusion between the legislature and the government has obliged the former to become the disciplined support structure of the latter, an obligation inexistent in separation of powers systems.

Since the seminal article by Polsby (1968) there has thus been a general acceptance of the basic distinction between the policy-making legislature of separation of powers systems and the

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\(^8\) It should be noted that the ‘congressional’ model of legislature does not require, per se, a presidential form of government. What characterizes the ‘congressional’ model is the reciprocal independence of the legislative and executive branches, not a specific format of the latter. Indeed, the ‘congressional’ model functions properly with both a monocratic (in the US) or collegial (in Switzerland) executive.

\(^9\) It should be noted that the centrality of the legislature in the French Fourth Republic (1948-1958) was the cause of the latter’s crisis because of its impotence in dealing with the challenges presented by the process of de-colonization in the late 1950s. At the same, the duration for four decades (1953-1993) of the centrality of the legislature in the Italian First Republic was made possible also by the country’s lack of an independent foreign policy, which was delegated to the US and NATO.
arena legislature of fusion of powers systems, where the former is a law-making institution and the latter an arena for adversarial confrontation between the government and the opposition (in competitive parliamentary systems) or for negotiation between the main political parties (in consensual parliamentary systems). Probably, as argued some time ago (Norton 1998), arena legislatures have also started to stake a claim in the policy-making process. However, a basic distinction still remains between the two legislatures: in separation of powers systems the policy-making legislature formulates policy of its own and does not merely react to the policy put forward by the executive, whereas fusion of powers systems have policy-reacting legislatures that can only reject measures brought forward by the executive but lack the capacity to formulate and approve a policy of their own. Although the EP does not have the power to introduce autonomous legislation, however its role is closer to the working legislature of separation of powers systems than to the debating legislature of parliamentary systems (Kreppel 2009; Shackleton 2005). It might be considered a variant of the former, definable as a controlling legislature (Dann 2003).

In the end, therefore, the parliamentarization of the EU might produce an outcome which is contrary to what is expected from it. After electing the Commission and its president, the EP would leave to the latter the business of politics and policy. On the contrary, if the EP evolves coherently as the popular legislature of a separation of powers systems, it could become much more influential as a legislative and policy-making institution. Unconstrained by any governmental discipline, the EP could focus on checking the executive power of the EU (European Council and the Commission) and on acting as a balance to the Council. The political independence of the EP from the executive institutions of the EU constitutes the basis for its strengthening. In particular with the growing and uncontrolled power acquired by the European Council, only the EP can keep the latter within a framework of democratic accountability. In the new post-2009 institutional context, one might talk of a democratic deficit only if the EP is unwilling to, or precluded (as in financial and foreign policies) from fully playing its controlling role over the executive power of the EU (the European Council in particular).
Conclusion

The proposal for the parliamentary election of the Commission president stresses the necessity that the elections of the EP should become the arena for defining the strategies of the Union. According to the Commission and the EP, European political parties involved in the EP elections in 2014 should propose their candidate for the job of Commission president, in case one of them wins the majority of the EP seats. In this perspective, the decision-making circuit would be determined by the electoral relations between the EP (and its majority) and the Commission. Making the Commission president and commissioners politically supported by the EP and accountable to it would make the EU, according to this proposal, more effective and more legitimate, finally solving its democratic deficit.

However, the proposal for parliamentary election of the Commission president and the parliamentarization project more generally face powerful constraints. The EU emerging from the Lisbon Treaty and the euro crisis is significantly different from a parliamentary federation in the making. In single market policies, decisions are taken by separate institutions sharing power. If the diffusion of decision-making power is a systemic necessity for a Union of asymmetrical states, then the accountability’s pattern of the parliamentary model cannot be adopted. Whereas it is easy to identify who is responsible for what in a fusion of powers system, it is much more difficult to do that in a separation of powers system. However, the simplest solution is not necessarily the right one. If one accepts the structural and institutional constraints within which a union of states and citizens such as the EU has to operate, then another perspective ought to be considered in order to make the EU more effective and legitimate.
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