

European Parliament and National Parliaments: Are They Comparable?

[1] Historical questions.

Are European Parliament and national parliaments comparable? One will understand that this is a far too complicated question to be sufficiently answered in one short article. One will also realise that, to be complete, I should compare the European Parliament with 27 parliaments among the Union member states. I simply don't know all of them, even in terms of their main characteristics. I'm only more or less familiar with a few parliaments within the Union, most of them lying in the North-West of it. So I have to simplify the question, by comparing the European Parliament with a few national parliaments I know a little bit about. I can only try to give you some picture of what seems to be of essential importance¹.

But before I come to that comparison, I first will have to find an answer to two preliminary questions, which are of a historic character, but at the same time of methodological importance.

The first question would be: what kind of organisation is the European Union and has it been always the same set of institutions, at least as far as its essential characteristics are concerned? What was and what is, in the EU, the significance of preserving democracy among its members?

The second question is: provided that the European Union is a union of democratic states, is the Union itself organised in a democratic way? Have there always been genuine democratic institutions or not, and where do we find the guarantors of democracy, in the European Communities and, later on, in the Union? What development do we observe through these fifty years in terms of European parliamentary representation?

As I said, for an answer to these questions we shall have to look into the history of European integration and to democratic evolution in Europe, not only in the original member states but in Europe as a whole, from the end of the Second World War onwards.

[2] A small and functional Community (1951 – 1975).

Amidst the ruins of two World Wars in Europe, the economy, and society in a broader sense, had to be restored. In many European countries democracy had to be reinstalled alongside, and besides, it had to be defended against world communism. A young generation cherished the aspiration to bring all European nations together, preferably in United States of Europe, which would render war and political violence obsolete. This ideal, formulated during the Congress of The Hague in 1948, proved to be too ambitious, as was demonstrated in Prague and Berlin in that same year and, with another outcome, in Greece. 'High politics', by which I mean the process of influencing the main power relations in the world, if needed with the use of effective violence, proved too heavy for a destroyed Europe that came to be divided in two spheres of power. Those European states, which were not occupied or dominated by the

¹ Ph. Kiiver, *The National Parliaments in the European Union: A Critical View on EU Constitution Building*, The Hague: Kluwer Law International, 2006; V. Herman and R. van Schendelen (eds.), *The European Parliament and the National Parliaments*, Farnborough: Saxon House, 1979; A. Maurer and W. Wessels (eds.), *National Parliaments on Their Ways to Europe: Losers or Latecomers?*, Baden-Baden: Nomos, 2001; M. Cotta and H. Best (eds.), *Democratic Representation in Europe: Diversity, Change and Convergence*, Oxford: Oxford University Press, 2007.

Soviet Union, needed the military and economic support of the USA to stay themselves free from communist hegemony and to be able to restore and develop their economies. Not the European Council would be the most important organisation of political cooperation, but two organisations, in which the US were leader and partner at the same time, NATO and the OEEC (now OECD).

Europe had to look for more modest instruments of independent integration. Under the leadership of France and West-Germany, and inspired by Jean Monnet, the European Coal and Steel Community (ECSC) was founded in 1951. Production and distribution of the essential materials of industrial production of that time were consciously withdrawn from national authority and transferred to a 'High Authority', independent from the participating states, France, West-Germany, Italy and the Benelux. The United Kingdom preferred not to take part².

What happened was, that the founders of European integration did not choose for a comprehensive method of integration but for a limited purpose, a limited membership, and a functional approach, for an incremental route to a far away ideal which was nevertheless maintained: a federal Europe. Organising peace in Europe started with the choice for 'Low Politics', the day to day work on building prosperity and social security, in only one primary sector of the economy.

The next project of functional integration, now tried out in the field of 'high politics', the integration of the military – with the defence of West-Germany and France as its nucleus - was doomed to fail, because of the refusal of the French parliament to accept the European Defence Community, in 1954. 'High Politics', with the inclusion of German rearmament, was to be left for an indeterminate amount of time to more globally organised cooperation such as NATO. European integration had not only to follow a functional path but also to limit itself to 'Low Politics'.

Limited and functional integration can do without intensive parliamentary control. It is sufficient to have a consultative assembly to involve parliamentarians in the member states, like has been the case in the Council of Europe and in NATO. The main common decisions were to be made in a depoliticised institution like the 'High Authority' in the Coal and Steel Community and an even more modest institution, called European Commission, within the European Economic Community, that started in 1958. EEC and Euratom were new steps on this incremental and functional road, staying within the limits of 'Low Politics', but never did the founders forget what it was all about: not only to create a common market but also to build eventually a federation.

In this process a parliament was not installed to be a critical and controlling institution in the first place, but as a centre of support and idealistic action. Parliamentarians came together in Strasbourg, but they were at the same time the main supporters of European integration in their own respective parliaments. That may not precisely be what parliaments are for, but in those early years the indirectly elected European Parliament did what it was made for, not without success³.

² D. Dinan, *Europe Recast: A History of the European Union*, Basingstoke: Palgrave MacMillan, 2004; Neill Nugent, *The Government and Politics of the European Union*, Basingstoke: Palgrave Macmillan, 2006 (6th ed.).

³ R. Corbett, F. Jacobs and M. Shackleton, *The European Parliament*, London: John Harper, 2005 (6th ed.).

[3] Sceptical new members and a directly elected Parliament (1975 – 1985).

The old ambition, at least of the Benelux, to see Britain join the Community succeeded, after many difficulties, in 1974. That was maybe a blessing for the development of a common market, but it went to the detriment of old ideals about a European federation. The UK but also the other two new members, Ireland and Denmark, were less inclined to supranational cooperation than the six founders of the Community. (The three new members of the eighties, Greece, Spain and Portugal would be more constructive.) The net effect of the enlargement, together with a long period of economic stagnation in the seventies, was stagnation of the European integration process. The same stagnation could be seen in the European institutions. Only the Court in Luxembourg continued to do its job, with important effects on the economic integration⁴.

Most members succeeded to convince the British leaders that it was about time to give effect to art. 138 of the EEC-Treaty and to organise direct elections for the European Parliament. The first election took place in 1979 in the nine member states. This election didn't mean an immediate reinforcement of European ideals in political integration. Parliament had to limit its influence within procedures of 'consultation' and 'cooperation' without real parliamentary power. But it proved inventive enough to make use of the instruments, which in 'real parliaments' are the prerogative of the opposition: time and argument⁵.

Gradually the new Parliament would increase its influence and would force the other institutions, the European Council in particular, to extend its powers. A second reason for extending the power of the European Parliament was the gradual broadening of policy areas the Commission had proceeded upon. In spite of opposition from some member states a dynamic of harmonisation and integration was getting its own speed and was reinforcing itself, so that the Commission grew in power and in reach. It is, what Moravcsik eventually would conclude in 1995: "*(I)ntergovernmental demand* for policy ideas, not the *supranational supply* of these ideas, is the fundamental exogenous factor driving integration. To a very large extent, the demand for co-operative policies creates its own supply"⁶. That may explain, why British and Danes did no less than other members to deepen the integration process.

The European Parliament, now an institution in its own right and with only a few dual mandates, could further develop into a watchdog of integrationist policies and a symbol of the old federalist ideal. It strengthened the idea of a multilevel government system in Europe, each with its own, independent authority. But, this way it organised its own isolation from the national parliaments in the Community, and in some countries it even got isolated more and more from its constituencies. A parliament can, at least temporarily, behave like an action group, but in the long run it has to show real political majorities and political antagonism; it

⁴ H. Rasmussen, *On Law and Policy in the European Court of Justice*, Dordrecht: Martinus Nijhoff, 1986; J.H.H. Weiler, A Quiet Revolution: The European Court of Justice and the Interlocutors, in: *Comparative Political Studies*, 26 (4), 1994, 510 – 534.

⁵ A. King, Modes of Executive-Legislative Relations: Great Britain, France and West-Germany, in: *Legislative Studies Quarterly*, 1, 1976, 11 – 36.

⁶ A. Moravcsik, Liberal Intergovernmentalism and Integration: A Rejoinder, in: *Journal of Common Market Studies*, 33 (4), 1995, 618 (Italics in original).

must be able to call the executive effectively to account; it has to have a decisive influence on legislation.

Those were my questions at the time the EP was directly elected for the first time⁷. What I didn't realise in 1979, was that the European Parliament might be relatively weak in these traditional areas of parliamentary activity, but that it proved to be strong in its critical look towards democratic development in the member-states or, at a later stage, accession-states. Parliament developed into a real political force in that area, even without any formal power.

It is my conviction that the accession of Greece in 1981 has been a major turning point. From 1974 onwards Greece, which itself had restored parliamentary democracy after seven years of military dictatorship, asked for membership of the EEC. The Commission refused to accept and to start negotiations. The European Parliament, joined by most of the member states, forced the Commission to start the accession procedure, although the Greek economy probably wasn't strong enough at that time to join the Community. Greek membership would support Greek politicians and the population on their way to democracy⁸.

The Greek accession showed that the European Communities were more than an institution to further a common market and economic growth. Europeans realised that the Greek accession was "a moral duty"⁹ and that Europe is a community of values. Gradually the Community got less interested in what it would be in the end and united on what it already was: a set of regulations and institutions with the task to protect democracy, the rule of law and economic freedom within its territory. The accession of Greece made room, maybe unconsciously, for a way of thinking about the European Community, which made it fit for the enlargement, first with Spain and Portugal (1985) and more recently with the eight (and by now ten) countries of Central and Eastern Europe, after the fall of the Berlin Wall. Their membership could be seen, not without good reasons, as a major economic risk, but what counted primarily was the question of 'moral duty'. The persistence of Greece's demand for membership has been, in hindsight, of major importance.

[4] European revival and the question of institutional democracy (1985 – 2005).

The second half of the eighties showed a revival of the integration process and especially of further steps toward a common market, among other things thanks to the leadership of the Commission, under the presidency of the Frenchman, Jacques Delors. It led not only to the Single European Act (1985) but it also paved the way for the single currency and the Treaty of Maastricht (1992)¹⁰.

What is seldom mentioned in reference to the SEA, the Maastricht Treaty and also the Treaty of Amsterdam (1996) is, that in these treaties major steps have been set to democratise the institutions of the European Union, as it is called now. The European Council was indeed written into the EU Treaty, but at the same time the position of the Commission and, more importantly, the authority of the Parliament was reinforced. Its position as legislator was approved by substituting cooperation procedures by 'codecision' and an effective veto. Also its influence on appointment and composition of the Commission got stronger, although the

⁷ J.Th.J. van den Berg, Toch maar gaan stemmen donderdag, in: *NRC-Handelsblad*, 2. June 1979.

⁸ Nugent, *Government and Politics of EU*, 29 – 30.

⁹ Nugent, *Government and Politics of EU*, 69 – 70.

¹⁰ C.Church and D. Phinnemore, *The Penguin Guide to the European Treaties: From Rome to Maastricht, Amsterdam, Nice and Beyond*, London: Penguin, 2002.

Parliament reinforced its position itself by taking advantage of the weak operating of Delors' successor, Jacques Santer and his Commission¹¹.

Another area of activity in which the European Parliament took its role was the accession of the Central and Eastern European states. (By the way: the EP played a major role also in the preparation of Turkey's future accession.) It did so in forcing the Commission and the accession-states themselves to take much more care about implementing the so called 'Copenhagen criteria', which were originally brought in by the French Prime Minister, Edouard Balladur, during the European Council meeting in Copenhagen, in 1994. Parliament proved to be an effective watchdog, and a better one than the Commission, of democratic criteria for accession, but now doing its job differently than when the accession of Greece was on the agenda. Now accession-states were pushed back into the waiting room, like Slovakia first and Romania later, because of their lacking to maintain the rule of law, fighting against corruption and stimulating democracy¹². More than the *acquis communautaire* and the economic performance, European Parliament found the development of integrity, democracy and the rule of law in the Union of prime importance.

The European Union began to develop two faces. The most well known face is that of the primarily technocratic, functional organisation of the early years, concentrating on the economy, but gradually expanding its work towards other political areas. In as far as it had a real political face, it was more and more a neo-liberal face, where competitiveness and open market were at the forefront. In organisational terms the most successful formula was to make new important institutions as depoliticised as possible, as was originally done in founding the High Authority of the Coal and Steel Community and the European Commission itself. It now was continued with the establishment of 'non-political' European Agencies and, last but not least, the independent European Central Bank in Frankfurt¹³.

The second face was established by the European Parliament: the face of 'Low Politics', making for a union of well-rooted democracies in the whole of Europe, especially after the meltdown of communism, and giving an excellent example of a new organisation of peace, not enforced by military arms or military threat, but by stimulating and supporting the growth of democracy and the rule of law alongside economic freedom and a perspective of growing prosperity.

This new role is quite another one than that of an institution striving for a federalist state, although several politicians in the EP and in the member states have persisted in their federal aspirations. Real federalists cannot sleep well at night, without Europe taking part in "High Politics". They cannot accept staying passive, if problems of war and violence are to be met. One can understand that, in particular when such problems manifest themselves within European territory, like in former Yugoslavia during the nineties: indeed a tragic European failure. The question at stake is if and how the European Union will be able, without developing into a federation, to participate effectively in the world's 'High Politics' and be

¹¹ Committee of Independent Experts, *First Report on Allegations Regarding Fraud, Mismanagement and Nepotism in the European Commission*, Brussels: European Parliament, 15. March 1999.

¹² A.P. Oostlander, *Leven in de droom van gisteren*, Franeker: Wever, 2002. (*Living in Yesterday's Dream* are the political memoirs of the Dutch christian-democratic MEP, Arie Oostlander.)

¹³ P. Taylor, *The European Union in the 1990's*, Oxford: Oxford University Press, 1996; M.G. Schmidt, The Consociational State: Hypotheses Regarding the Political Structure and the Potential for Democratization of the European Union, in: J. Steiner and Th. Ertmann (eds.), *Consociationalism and Corporatism in Western Europe*. Special Issue of *Acta Politica*, 37, 2002; O. Costa and P. Magette, The European Union as a Consociation: A Methodological Assessment, in: *West-European Politics*, 23 (3), 2003, 1 – 18.

taken seriously. But that is not a question for the European Parliament in the first place. This question has to be dealt with in the only institution that is able to render an answer: the European Council¹⁴.

The problem of this second face of Europe, as a successful organisation of peace through ‘Low Politics’, is that it isn’t very spectacular, not very ‘sexy’. Instead of weapons it has to make use of political intelligence, the capacity to negotiate and patience. Mass media are not very interested in this face of Europe, which is primarily the face of the European Parliament. What is the visible part of Europe, is the so-called ‘Brussels bureaucracy’ on the one hand, as if this bureaucracy were invented by the European institutions and not, as Moravcsik has pointed out, by the member states themselves. On the other hand there is the face of impotence of the European Union in the sphere of ‘High Politics’.

[5] Comparing parliaments: complementary tasks.

For time reasons I will not dwell upon the theoretical question, formulated by political scientists and lawyers, if the European Union is in fact already a state-like ‘political system’ or polity, or that it has fundamentally remained an intergovernmental organisation¹⁵. I agree with the German legal theoretician, Ingolf Pernice, and my compatriot, Leonard Besselink¹⁶, that the European constitutional system is not a ‘multilevel system’, in which the European institutions are of a higher level, with their autonomous capacities to make rules. We have to do with, what both call, a ‘composite constitution’, in which national institutions, parliaments in particular, are part and parcel of European decision-making processes, no more or less than the European institutions themselves. This means, that national parliaments have a role to play in formulating their judgement, *vis à vis* their own governments, on legislative concepts of the European Commission, before their ministers go to Brussels. This is already done by several national parliaments in the Union, including the ones of the United Kingdom and Denmark. National parliaments cannot be forced to limit themselves to questions of subsidiarity alone, as is suggested by the Constitutional Treaty and the Treaty of Lisbon.

If those are the facts, comparing national parliaments and the European Parliament gets the more relevant for our analysis. To that end, I will make use of my own small theory about the character of democratic parliaments. Every parliament is, according to that theory (which owes much to the work of the British political scientist Anthony King¹⁷) three social institutions in one: it is a political *arena*, it is an independent *institute* and it is a *marketplace* where social interests are dealt with.

Most national parliaments are dominated, at least until now, by the characteristics of the *arena*, where party conflicts play the key role and where members are divided between government supporters, mostly building a majority, and members belonging to the opposition. At the same time it is their stronghold. Effective policy making is only possible, if the

¹⁴ J. Werts, *The European Council*, London: John Harper, 2008.

¹⁵ An overview of the theoretical diversity in: Nugent, *Government and Politics of EU*, 545 – 577. Also: B.F. Nelsen and A. Stubb (eds.), *The European Union: Readings on the Theory and Practice of European Integration*, Basingstoke: Palgrave Macmillan, 2003. For a fine example of the intergovernmentalist approach: P. Magnette, *What is the European Union? Nature and Prospects*, Basingstoke: Palgrave Macmillan, 2003.

¹⁶ L. Besselink, *A Composite European Constitution*, (Inaugural Address University of Utrecht), Groningen: Europa Law Publishing, 2007; I. Pernice, Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitutionmaking Revisited, in: *Common Market Law Review*, 36 (4), 1999, 703 – 750.

¹⁷ A. King in: *Legislative Studies Quarterly* 1976; J.Th. J. van den Berg, *De Eerste Kamer, of: de zin van rivaliteit*, (Farewell Address University of Leiden) Leiden, 2006.

government can be sure of a parliamentary majority, at least when important questions are concerned. National parliaments in Europe look with bad conscience to questions of pure interest representation, but in most cases they are effective *marketplaces* for all sorts of lobbies. The American Congress is the best example of a parliament with relatively weak party-loyalty, but high sensitivity for lobby-influence. National parliaments in Europe are relatively weak in representing the authority and influence of the parliamentary *institute* as such; loyalty to government or opposition is mostly too strong.

The European Parliament is no longer the integrationist action-group of the beginning, during the fifties. It has, as I have tried to explain, developed into a real parliamentary *institute*, in the sense that it is successfully participating in legislation, in investigating problems in Europe, and in trying to get hold of the Commission's activities. More problematic and part of the famous 'democratic deficit', are the opportunities to control the implementation and maintaining of European laws and policies. Those are mostly activities, decentralised to the member-states.

The main advantage of the EP is its independence from the executive and co-legislator, much more than in national parliaments, but apart from a motion of non-confidence against the Commission and the power to veto part of the legislation, it has no real 'threat potential'. The European Parliament is more of a busy *marketplace*, which is of real significance for its being well informed and its influence too. As a *market*-institution the EP is growing into a real competitor of national parliaments in the member-states¹⁸.

Its main weakness is the near absence of a real political *arena*, although there are several political groups in the EP. There is no majority for or against a government; besides, political groups are internally divided. For viewers from outside it is hard to understand what a debate is about and what really is at stake. That is, apart from the language problems which make lively debate not very easy.

Given these differences in character, there are repeatedly complaints about the democratic deficit in the European Union. Furthermore, politicians who really like their job, prefer national parliament to the EP: more seems at stake; there is more threat potential to be played with; there is more drama. All qualities, bound to the political arena, which fails in Brussels and Strasbourg. Often the conclusion is, that the European Parliament is not only depoliticised and dull, but also less politically important. This is, in my opinion, a misunderstanding.

If one is prepared to think in terms of the European Union as an composite constitution and not a multilevel one, national parliaments and the European Parliament not only have their own task in the European scene. There is reason to believe that both are able to be each others complement. The division of tasks between both kinds of parliaments is not a zero sum-game, but a question of each making its choices on an equal level and busy with the same main questions of European policy-making. Both kinds of parliament have to use their strengths to compensate for the weaknesses of the other. National parliaments are better arena's and are also more experienced and more equipped controllers. The European Parliament has shown outspoken quality in legislation. Both should further develop their investigative qualities.

The European Parliament's almost exclusive stronghold is its capacity, and its opportunity at the same time, to investigate, analyse and judge the state of democracy in the 27 member-

¹⁸ J. Greenwood, *Interest Representation in the European Union*, Basingstoke: Macmillan, 2003.

states¹⁹. That is, and will be for many years to come, an activity of prime importance in the European Union. No national parliament can take this responsibility over from the EP. In the recent past the EP has proven to be highly influential – even with a certain ‘threat potential’ towards member-states – in this area of democratic action. I can only hope that it will preserve its growing strength and turn it into a real power.

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¹⁹ See also chapter of Stelios Perakis in this book, *supra*.