

Problems of Compound Representation in the European Union after Lisbon.

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Introduction

The Lisbon Treaty makes a ‘double move’. On the one hand, it endorses a form of compound representation. In other words, it affirms that multiple channels and institutions should be used to represent citizens at the Union level. On the other hand, Lisbon confers responsibility for the strategic direction of the Union on just one of the bodies that takes it takes to be a part of the Union’s compound system of representation: namely, the European Council. Are these two elements of the ‘double move’ really compatible? This chapter proposes some criteria that may help us answer that question.

Lisbon endorses a compound form of representation through its claim that ‘citizens are directly represented at Union level in the European Parliament’ whilst ‘Member States are represented in the European Council by their Heads of State or Government and in the Council by their Governments, themselves democratically accountable either to their national Parliaments or their citizens (Lisbon Treaty A8 (2))’. On top of that, the Treaty claims that ‘political parties at the European level contribute to European political awareness’ and Union institutions maintain an ‘open transparent and regular dialogue with representative associations and civil society’ (*ibid* A8 (b1)) in which ‘citizens and representative associations’ have ‘the opportunity to make known and exchange their views in all areas’ (*ibid* A8 (b2)). Here, then, is a view of how representation should work in the European arena that compounds together the contributions of elected national governments, a directly elected European parliament, national parliaments, European parties and civil society representation.

Of course, compound forms of representation are common enough. Or at least they are in single state polities. More radical is the notion that they ought and can be employed beyond the state. Now, it may well be that Lisbon only confirms a ‘reality on the ground’, a *fait accompli* by which the Union has developed a compound form of representation through a series of individual steps, including at least the decision to introduce multi-national party groups to the first Assembly of the European Coal and Steel Community in the 1950s, agreement to a directly elected European Parliament in the 1970s, the proliferation of informal forms of interest representation in response to the single market initiative in the 1980s, the establishment of the Committee of the regions in the 1990s and so on. Yet, for all that, there is something novel in a group of states using a treaty to accept the principle of compound representation by making quite so explicit a claim that their association together in an international body is somehow improved by sharing power with a number of other representative institutions and processes. It is more common, of course, for governments to claim a near monopoly on the representation of their own publics in the exercise of political power from beyond the state. That, in turn, reflects a view that representation within and between states are and should be two quite distinct things: that it should be pluralistic and structured by democratic principle within the state, whilst beyond, it ought to be a monopoly in which only states themselves, and not individuals and groups, can be represented. Representation should, according to that conventionally understood dichotomy, take on all the colours of the domestic political rainbow within the state, assuming just as many forms and passing through just as many channels - parties, interest groups, advocacy coalitions, new social movements or whatever – as individuals choose to represent their needs and values. Beyond the state, on the other hand, representation ought to be a monochrome of intergovernmental representation in which each public is represented by its own national government in negotiation with its counterparts.

Closer to that conventional view that governments should represent peoples in international bodies is, of course, the other element in what I have termed the ‘double move’ made by the Lisbon Treaty: namely, its provisions to strengthen the European Council. Those provisions establish the European Council as a full institution of the Union, they give it responsibility for the strategic direction of the

Union, and they establish a permanent Presidency who can prepare European Councils and co-ordinate work in between meetings.

Yet, there is at least the possibility of a contradiction between endorsing a compound view of representation whilst conferring responsibility for the overall strategic direction of the Union on just one element within the compound: the European Council. That somehow seems to introduce an element of hierarchy to a treaty that can otherwise be understood as a coherent attempt to move the Union closer to compound representation by simultaneously strengthening several of the institutions that could contribute to any compound: the European Parliament, national parliaments and the European Council. Whilst it is too soon in the life of the Lisbon Treaty to determine for certain whether there is a conflict between its commitment to compound representation and its conferral of responsibility for the strategic direction on the European Council, it is not too soon to think of criteria by which we might recognise such a conflict. This chapter aims to do just that. Section 2 considers possible justifications for compound representation. Section 3 identifies some constraints that any system of compound representation will need to satisfy if it is to meet standards of democratic of public control with political equality. Section 4 concludes by identifying some circumstances in which the decision to give the European Council strategic direction of the Union could conflict with the justifications for a compound form of representation or make it harder for it to satisfy minimum democratic standards.

Justifications for compound representation.

In this section I review what I believe are three powerful arguments for compound representation.

a) An Argument for compound representation from a pluralist understanding of representation. In any one polity there may be many different cleavages – cultural, territorial or sociological (Rokkan *et al*, 1999) – all of which citizens care very much should be represented in the institutions that make collective decisions on their behalf. As is often remarked

individuals have complex representative needs in modern societies where they engage simultaneously with the polity as citizens, members of occupational groups, consumers, as someone's relative, in sickness and in health and so on. On top of all that, many different values may be involved in satisfying each of the many needs that any one individual has for a system of collective choice. As Isaiah Berlin famously remarked there are many different kinds of human valuing. Whilst, however, representative needs are complex and many values may be involved in representing them successfully, any one process of representation works through drastic simplification. There are limits to ways in which electoral systems can be designed, and to the dimensions of co-operation and conflict along which a party system can structure voter choice. Not only, though, do representative systems 'mobilize bias' (Schattsneider, 1960), making it more difficult to get some issues on to the political agenda than others, but, once those biases are mobilized, those who want to change the institutional features which support them may be at a distinct disadvantage to those who do not. The building blocks of modern mass representation – electoral and party systems, civil society groups, identities and civic knowledge – may all be prone to 'path dependence'. Switching between possible ways of delivering these systems and capabilities may mean foregoing 'increasing returns' from continuing along settled paths practices, whilst incurring high start-up costs associated with new arrangements (Pierson, 2000). These biases are especially disturbing to the extent that formal representative processes are supposed to be procedurally neutral between alternative 'conceptions of the good' (Rawls, 1993). No substantive interest or value should have any *a priori* claim on the representative process.

Complex forms of representation have to some degree evolved precisely to meet the foregoing difficulty. Formal representation can be sub-divided into separate representative bodies (chambers of a legislature) or offices (chief executive) elected at different times, in different ways, and at different levels (local or centre). Mobilisations of bias can, as it were, be confined to particular representative bodies, whilst being offset against one another at the level of the representative system as a whole. Indeed, it may even be a mistake to design representative

institutions other than on the assumption that they should *not* be required to deal with more than one dimension of choice' at any one time. Otherwise, their decisions may be chaotic (all outcomes are possible) (McKelvey, 1976) or prone to manipulation (he who controls procedures, controls outcomes) (Riker, 1986).

Informal representation likewise has a role in dealing with social complexity. One well-known difficulty is that individuals don't just differ in their values. They also differ in the intensity with which those values are held. We might find it easy to agree that democratic representation is the best way to represent diffuse interests but find it less than self-evident that it is the best to represent intense values, given that democracy's commitment to political equality puts the person whose life can be turned upside down by a particular decision on a level with those who are only remotely affected. Informal representation responds to the latter difficulty, since it is, of course, precisely those with intense interests who are most likely to organize themselves to influence a polity by means over and above those afforded by formal channels of representation.

b) An argument for compound forms of representation from the protective function of representation. The previous point largely assumed an aggregative approach to representation: the role of the representative is assumed to be one of combining the views of the represented and feeding them into the political system. According to a different view, however, the role of the representative is better understood as one of 'keeping watch': of controlling power holders on behalf of the represented who have but intermittent opportunities to sanction executives themselves (Weale, 1999). The key value behind a protective understanding of representation is one of avoiding arbitrariness: of avoiding public decisions that take no account of the represented, that have not been justified to their representatives and that cannot be challenged or reversed by them (Pettit, 1997). This objective, though, faces the difficulty of ensuring representatives are distinct enough from power-holders that they can be relied upon to control them. Plural forms of representation may help both to meet the objective and to combat the difficulty. They can increase the number of points in a political system at which public policy

can be challenged by representatives and decrease the probability that a governing majority will be able to control all those veto points at the same time. Indeed, by allowing for mutual watchfulness, and for checks and balances between representatives themselves, they can encourage representatives to compete to demonstrate the superiority of their claims to represent the represented, *inter alia* through the speed and effectiveness with which they take up challenges of public control.

c) An argument for compound form of representation from the deliberative functions of representation. Even their aggregative and protective roles do not exhaust the purpose of formal and informal forms of representation. Democracy also entails a right to justification (Forst, 2007). Democracy often requires us to do what we would sooner not do (Dunn, 2005, p. 19). But, it is a most unusual structure of domination. It is the one method of taking collectively binding decisions that derives from obligations we all assume through the very act of claiming personal autonomy for ourselves (Habermas, 1996, p. 67). This puts a different complexion on voting. Ever since Dewey (1927) it has been well understood that voting in the absence of justification cannot possibly be enough for democracy. It is however Habermas who fully clarifies why this is so. If nothing can be democratically legitimate that we cannot justify to one another in rational discourses – without coercion, between equals and without limits to the views that are eligible to be considered – then voting is merely a device for making *pro tem* decisions: for coping with the fact that the rational discourse may not be fully worked out for now. Thus voting always needs to be accompanied by justification for the very good reason that its decisions are always defeasible: their defenders are open to continuous challenge to demonstrate that they can still be justified.

Yet representative institutions face tough challenges securing the right to justification thus defined. The aim of ensuring that all views have access to the agenda - so that, in Mill's terms, they can all be tested against all others in 'adverse controversy' and demonstrably only 'set aside for what are thought to be better reasons' - comes up against the difficulty that modern representative institutions often hand significant agenda control to particular categories of representative, usually dominant majority

parties. Moreover, they, arguably, do that for what are also important reasons of democratic practice: it allows majorities to enact the programme on which they have been elected; it provides an agreed procedural basis for removing indeterminacies in agenda-control that would otherwise create opportunities for manipulation (see above, p. 4); and it ensures that temporary majorities can be accountable to publics for both those things. Worse, the challenge of securing the right to justification through representative institutions is more than procedural. Away from the fantasy world of rational choice, the information and understanding needed for weighing justifications are costly to acquire, and may only fully develop through political debate, rather than prior to it (Cohen et al, 1972). Thus modern legislative studies calibrate the relative strength of representative bodies not just with their formal powers but with how well they are organised for the accumulation of expertise (Krehbiel, 1991). Yet even then the solution becomes a problem. The same empirical studies that demonstrate that rationality is bounded would lead us to expect that any cognitive frameworks representative institutions develop for sifting justifications will privilege some causal relations over others, return repeatedly to some problems while filtering out others, and so on (Kahneman et al, 1982).

In sum, then, cognitive, as well as procedural, challenges need to be addressed if all views are to be justified equally in relation to all others. How might plural representation help? Once again, what may be a problem at a level of single representative body may be less serious at the level of a representative system of several representative institutions and processes. Multiple – partially competing - representative bodies may be motivated to take up issues excluded from the agendas of others or to challenge the cognitive frameworks and justifications employed by others.

So far, then, I have suggested that all the following feature amongst possible benefits of compound representation a) value pluralism, b) safeguards against arbitrary rule and c) better justification for collective decisions. I now want to suggest a number of reasons why those arguments for compound representation might be expected to apply with special force to the European Union.

First the Union is probably at least a two dimensional political space (Hix, 1999). The difficulties that would arise from attempting to represent the Union's complex cleavage structure through a singular form of representation are nicely captured in the following question asked by Philippe Schmitter as a challenge to those who assume that it would be enough to represent all views on Union matters just through Member States: 'Who, then, would represent the transversal preferences of Euro-proletarians, Euro-professionals, Euro-consumers, Euro-regionalists, Euro-youths or just plain Euro-citizens?' (1992, p. 400) The key term here is 'transversal preferences'. There is an irony in the incantation of subsidiarity by defenders of intergovernmental decision-making. If subsidiarity implies that the Union should mainly occupy itself with problems that have cross-border effects, it is less than obvious that citizens will always be best represented in the European arena through their national governments. It is surely where Union policies are directed at cross-border problems, that they are most likely to divide citizens within Member States ; and where citizens may, conversely, value representative practices that allow them some opportunity to communicate and combine with like-placed and like-minded individuals in other Member States?

Second, the European Union would seem to make many decisions that vary in the intensity with which they affect different actors. It will be evident from the next point that I do not share the view that the constraints of consensus make the Union structurally unlikely to engage in any large-scale reallocation of values. But I would concede that it is mainly where they affect intense (sector-specific) interests that the Union's reallocations of value are probably most visible. Any benefit of fishing quotas to future consumers somehow seems politically less salient than their immediate costs to the livelihoods of fishermen and their communities. Likewise tradable carbon emissions entail a benefit to everyone but a cost to a few (those who work in the car and coal industries).

Third European integration may increase the need for forms of representation that are likely to protect against arbitrary decision-making. Here, two of the earlier arguments for compound representation over-lap. The benefits of using compound representation as a protection against arbitrariness increase where there are problems of value pluralism; or, in other words, where choices may need to be made

between contradictory but equally reasonable values (Rawls, 1993). The difficulty here is that European integration increases value pluralism wherever the range of cross-country variation of contradictory but equally reasonable values is greater than within-country variation. It may well have just such an effect in relation to welfare states (Offe, 1998), the practice of democracy itself (Schmidt, 2006) and emotional ties of political community. All three are saturated with assumptions of the right and the good that remain to some degree specific to their national arena of origin, and yet each is also affected by European integration, if only through the lowering of boundaries between Member States, rather than the construction of common policies at Union level (Bartolini, 2005). Moreover, any tendency for feelings of political community, and for procedural consensus, to be relatively stronger at the national level than the European has a further effect: it increases the likelihood that any Union decision that visibly redistributes between equally reasonable values will be perceived as an outside, and, once again arbitrary, interference, rather than the act of a self-governing people that happens to find that it has to struggle with the dilemmas of value pluralism in the process of authoring of its own law.

Fourth checks and balances between multiple forms of representation are often prescribed for polities, such as the Union, that struggle to satisfy certain conditions for democratic politics. As is well documented, political systems typically employ one of two patterns of delegation to achieve democratic control through representatives. ‘Type A’ polities involve a chain of delegation that is, in Kaare Strøm’s words, ‘marked’ by its ‘singularity’: ‘at each link a single principal delegates to one and only one agent, or to several non-competing ones, and each agent is accountable to one and only one principal’ (2006, p. 65). Such a form of representation has the advantage of effectively allowing the whole polity to be controlled *via* the median voter in one single electoral contest. But it is probably best not attempted in polities that have weak or problematic *demos* or trouble forming minimum infrastructures of public control such as their own party systems or their own media capable of supporting a public sphere. In the absence of the *demos* condition the right of majorities to make collectively binding decisions is likely to be contested. In the absence of the infrastructural condition, it is unlikely that political competition will be structured around choices and deliberations relevant to

the shared polity. There is, however, a ‘Type B’ chain of delegation in democratic polities. In effect this substitutes competition between representatives elected at different times and/or different levels for competition in a single election at the level of the shared polity. Type B polities cannot go as far as Type A polities in allowing the whole polity to be controlled through a single chain of delegation from a single electoral contest. However, to quote Strøm again, Type B polities can go further than Type A polities in allowing ‘agents to check one another, or to make competing demands from which [principals] can choose’ (cit, p. 67). Adrienne Héritier offers a flavour of how the EU decision-making practices may already include a kind of mutual surveillance between different actors with varied claims to represent others: ‘Because decision-making involves a consensus among different actors who monitor one another suspiciously, every step in policy development implies a high degree of mutual control between knowledgeable actors (1997, p. 110). Likewise Yves Mény claims the Union is structurally better able to provide the sophisticated system of checks and balances needed for the ‘protective’ features of democracy than it is to satisfy ‘popular’ and ‘participatory’ conditions (2002, p. 6).

Fifth, deliberation between different categories of representative becomes more important in arenas, such as the EU, where no one voting rule enjoys uncontested legitimacy. Here my assumptions are that majority voting is an obviously contested voting rule; unanimous voting ought to be contested by anyone who cares to think about it hard enough; *ergo* all possible EU voting rules are contested. The difficulties with unanimous voting relate to Fritz Scharpf’s argument (2006) that it leads a) to joint-decision traps, b) to tyrannies of the minority (let alone of the majority), c) to ‘asymmetric treatment’ of defenders of the status quo and those prejudiced by it, and thus d) to profound difficulties using European integration to establish a ‘fair scheme of co-operation’ between defenders of different values (Lord, 2011). David Miller has pointed out that deliberation assumes a greater importance precisely where it is hard for all actors to agree which decision rules best confer legitimacy. As he puts it ‘deliberative democracy has the resources to attenuate...social choice problems... where there is no rule for aggregating individual preferences that is obviously fair and rational and thus superior to the other rules; and that virtually every rule is subject to strategic manipulation’ (1996, pp. 80-1). Given,

however, that the difficulty of identifying a voting rule - or perhaps any procedure – that is completely uncontested arises precisely from the claims of different kinds of majority on the Union’s decisions – majorities of all citizens of the Union, majorities of particular member states, majorities of particular segments and so on – deliberation can only be expected to play a role in softening those conflicts where it is a compound deliberation between representatives of all those different majorities.

3) Normative limits to compound representation

Compelling though the foregoing arguments for compound forms of representation may be – both in general and in their application to the EU – it is a profound mistake to assume that combining different modes of representation in one polity will *automatically* add up to good representation. To the contrary the lumping together of different approaches to representation may amount to little more than a fallacy of composition. The components of any one ‘system of representation’ may be individually desirable. Yet they may combine in unsatisfactory ways. In the remainder of the chapter I illustrate the problem by questioning how far the various elements of what Lisbon takes to be an established pattern of compound representation in the European arena combine to ensure two core standards of democratic representation: namely public control with political equality (see Lord, 2004, Beetham, 1994, pp. 27-8, Weale, 1999, p. 14). I argue that those two standards require ‘minimum systemness’ in arrangements a) for law-making, b) executive responsibility and c) for political competition which compound forms of representation have struggled to deliver at the Union level.

a) Minimum systemness in arrangements for legislation. Laws can only be legitimate in liberal democratic systems where equally empowered citizens can control their making, amendment and administration through their representatives (Habermas, 1996). I would suggest that at least the following conditions follow. First, *all* law should be within the ultimate controlling powers of the representative body (See John Stuart Mill (1972 [1861])). Second the representative body must be based on principles of political equality through and through (Dahl, 2006). It is not just important that it should be elected on the principle one person, one vote. It is no less important that its seats should be

apportioned on a basis of strict equality (Balinski and Peyton Young, 2001) and all representatives should then enjoy equal opportunities to put views on the political agenda. Third, however important it may be for a democratic polity to have a spontaneously organised civil society and public sphere, all proposals for new law should, as Habermas puts it, pass at some point 'through the filters of *procedures*' (his emphasis) structured for democratic 'will-formation' and decision. They can only enter 'legitimate law-making' through 'parliamentary debates' (1996, p. 371) and procedures which, to repeat, are based on strict political equality to a degree spontaneously organised civil society and public spheres are never likely to be (See, of course, Olson 1965 on the intrinsic inequality of spontaneous self-organisation). Fourth, parliamentary procedures should in principle allow any one matter to be considered in relation to any other. Only then can representatives control not just single choices, but trade-offs that arise from competing values and limited resources. Only then, indeed, can the representative process assert some control over negative externalities and cumulative unintended consequences.

b) Minimum systemness in arrangements for executive responsibility. The challenge of democratic control arises twice over for any representative system. First when making a law and then when programming executive bodies to administer it (Habermas, 1996, p. 171). Typically representative systems have adopted one of two solutions. They have either constructed single integrated hierarchies of public control: voters elect parliaments with powers to make or break governments which can, if need be, control the entirety of the public administration. Alternatively, powers of control are dispersed across multiple, competing and mutually suspicious representative bodies, but all, once again, on the assumption that adds up to a system in which there is no administrative body which cannot be controlled to adequate standards (See Strøm, 2003 for this distinction). As Moe has so nicely put it, it may well be in such systems that there is no one body which 'controls' each administrative 'agency' and yet each 'agency is controlled' (1990, p. 143).

c) Minimum systemness in arrangements for political competition. So far I have suggested that 'public control with political equality' requires two things: first, some strategic point on which the

public can act on the polity; second, assurance that all law making does, indeed, ‘pass through’ a procedure programmed for public control with political equality. I now link these two requirements to a third: namely a degree of unity in the process of political competition. Here I have two problems in mind. First, political competition should ideally be able to solve what would otherwise be a core co-ordination problem in modern mass democracy. It should be possible for any two voters to co-ordinate with one another. Here it helps that a great deal of this complexity can be squeezed into ordinal scale of values (left and right) or even into a binary choice (government and opposition). Second it is essential that political competition should have motivational force. Otherwise participation is likely to be low.

How far does the Union’s compound system of representation achieve the foregoing forms of minimum systemness that I have argued are needed for democratic representation? Given constraints of space, I can only answer this question in a rather shorthand way. But let me identify three problems. The first is a certain haphazardness with which the Union’s legislative powers are linked to representative bodies. It is not always clear where EU law-making takes place, or where legislation ends and administration begins. In successive reports the EP has complained that comitology committees do not ‘merely implement’ but ‘modify and supplement’ legislative texts that require Co-decision between itself and the Council (European Parliament, 1998, p. 6 and 2003, p. 7). Of course, this is a problem common to contemporary political systems, as the Parliament itself recognises: ‘increasingly in an uncertain and complex world, policy is often made “on the hoof”, and is characterised by flexibility and negotiation – in such a context, the supposed implementation of policy often actually constitutes the development and establishment of policy’ (European Parliament, 1998, p. 19).

Yet there are structural reasons why the difficulty is likely to be especially acute in the case of the Union. On the hand, the EP is the Parliament of the EU political system, and all that modern legislative studies tell us about the importance to the monitoring powers of representative bodies that they should cultivate expertise over time (Krehbiel, 1991), might lead us to predict that the EP, and

only the EP, is likely to be fully effective in scrutinising any executive body involved in Union decision-making. On the other hand, the staffing of comitology committees by Member States – and the fact that implementing powers belong to the Member States - might argue for monitoring by national parliaments. Yet national parliaments are likely to be in an even worse position than the EP in monitoring comitology committees. On top of all that, it seems unlikely that the Union will resolve any time soon the double blurring between legislation and administration, and processes of co-ordination best monitored at the European and national levels. As claimed by defenders of directly deliberative polyarchy (Sabel and Zeitlin, 2007) and deliberative supranationalism (Joerges and Neyer, 1997) those very practices serve important other values, including: the near ‘real time’ adjustment of complex policies to complex circumstances and changing actor preferences; mutual justification; and management of externalities and potential conflicts of laws between tightly interdependent policy frameworks.

Second, the Union’s executive order is built on a partial substitution of Governance for Government. That is to say, it rests on a proliferation of executive practices away from hierarchies that can, in turn, be held accountable to politically appointed executive actors and, through them, to representative bodies and the voters. The complexification of the EU’s new executive order has been well-documented. For example Morten Egeberg and Deidre Curtin (2008) identify at least the following elements: first, a dispersion of executive responsibilities between the Commission, the Council, agencies of the one or the other, and ‘satellites’ of the two (comitology) (cit, p. 648); b) a partial ‘emancipation’ of those executive bodies; c) a feedback to the fragmentation of national administrations themselves as its various parts are sucked into highly specialised and segmental forms of policy co-operation at the European level and d) a partial re-integration of the whole, but not, it should be noted, into a new form of administrative hierarchy. Rather, if re-integration does occur, it is through informal networks which traverse formal divisions between the Union institutions, geographical levels, and even the public-private divide (see also Peterson, 1995; Papadopoulos).

Lets not exaggerate. Such a structure hardly removes all control from politically responsible actors. But it does constrain the latter. It creates asymmetries of knowledge in favour of those who are 'inside' any one 'loop' of European Union policy-making. It raises the costs to principals of monitoring what has been decided, by whom, when and where. But, to my mind, we can only grasp the full accountability difficulties by acknowledging that the EU's new executive order is an evolution at least as much as a design. Committees and networks which co-ordinate activities across administrative hierarchies, as much as within them, have evolved as actors and their institutions have found that the resources, instruments and legal authority needed to achieve their goals are dispersed both within and across the European and national levels of executive power. Thus, even if they can overcome asymmetries of information, there is a cost to each politically responsible hierarchy in seeking too much control over their representatives in a particular EU committee or network: only those representatives can deliver the cross-institutional pattern of co-operation needed to solve collective action problems in the first place; and that, as is also well documented, depends on mutual justification inside the committee or network, not just on instructions from outside it. Survey evidence reveals that, to varying degrees, participants in European policy-making develop 'sector loyalties' and 'system loyalties' that have at least to co-exist with their self-understanding as representatives of political superiors who are, in turn, responsible to representative bodies. But, more than that, it is likely that there are 'system constraints' that require the wider representative system to accept at least the conditional autonomy of the executive order.

Third, the Union has failed to develop a form of political competition which is relevant to the exercise of political power in its own arena. The central problem here is of course the second order character of European elections. As long as European elections are to some significant degree 'second-order' the link between the citizen and the public control of Union institutions is accidental and not systematic. Voting is neither an evaluation of rival programmes for a forthcoming European Parliament (albeit filtered through media debate rather than a close reading of manifestoes) nor an appraisal of the relative performance of parties in an outgoing European Parliament. Thus both *ex ante* and *ex post* mechanisms of public control would seem to be lacking.

Now I am well aware that Herman Schmitt and Jacques Thomassen (2000) have argued that there is at least one sense in which the European Parliament is representative in spite of second order elections: namely, in the high correlation they claim to detect between MEPs policy preferences and those of their voters, both on the left-right and the pro-anti integration dimensions of policy preference. This is an important finding but to my mind it has the opposite implication to that intended by its authors. That is to say, it does not put to rest the problem of representation and the EU. Rather, it helps us clarify why it is that any democratic system of representation really does require a system of political competition relevant to the arena in which power is exercised.

Consider a couple of puzzles. First, it follows from the convergent nature of political competition that large numbers of voters will often feel that more than one group of representatives is equidistant from their preferences. A sensible basis for choosing might then be to judge who is more likely to deliver. That, in turn, might involve retrospective appraisals of past performance or prospective estimates of how each group of representative is likely to be strategically and institutionally positioned over the coming legislative term. What, of course, this answer to the puzzle does is to destroy any notion that voters can manage without active and informed judgements of the political system in which representative office is held. Left–right selections between national parties cannot serve as proxy choices in relation to the European.

The same conclusion follows from my second puzzle. This begins with the observation that voters may have good reasons to incline to the right in relation to one level of governance and to the left in relation to another. Indeed, experience of federal systems suggests this is quite common, and two characteristics of the EU make it likely in its case. First, the national and European levels differ in the methods they use for allocating left–right values. In the case of the Union, allocation is mainly a by-product of alternative approaches to regulation. Only rarely is redistribution made explicit through financial transfers (Majone, 1996). Second, even where the latter do operate, actors may well stand to benefit from financial redistribution at one level of governance but lose from it at another. Thus a

citizen of a relatively disadvantaged sociological group in a Member State that is a net contributor to the EU's budget could self-interestedly be of the left on domestic issues and of the right on European ones.

Yet these puzzles disguise a deeper problem. Democracy is not distinctively defined by the satisfaction of wants or preferences, but by the exercise by citizens of rights of control (Plamenatz, 1973). It is unclear how far voters can ever exercise control without a structure of political competition which allows them to pass judgement on how well power-holders have exercised the powers of a specific system. Yet that, to repeat, second-order elections neither structure voter choice around competing assessments of how representatives used their powers in the last parliament nor around competing promises for how they might use them in a coming parliament. It thus remains deeply mysterious how they can allow voters to exercise judgement on the exercise of the powers of the Union itself.

Conclusion

So, what conflicts could arise between compound representation and the strategic leadership of the European Council in view of the analysis of this chapter? Let me anticipate one possible difficulty for each of the requirements I have argued that any system of compound representation must satisfy.

Minimum systemness in law-making. One possible understanding of the notion that the European Council should assume a role of strategic leadership is that it should set the Union's policy programme. If confined to setting general objectives this could even be an improvement on present arrangements for compound representation. After all, it is an obvious objection to the Commission's exclusive right of initiative that it confers agenda-setting power on an unelected body. That objection could be met in part were the benefits of the Commission's power of initiative – for the protection of small state interests and the overall coherence of Union policy – to be exercised within the framework of an overall political programme set by elected governments in the European Council. The obvious

risk, however, is that, instead of confining themselves to setting general priorities, members of the European Council might attempt to negotiate the detail of legislation. European Council simply does not have normative characteristics of legislature. It associates heads of government together for the purposes of intergovernmental bargaining, not for those of meeting such procedural requirements for legitimate law-making as transparency, public reason between holders of all views, and public justification of the eventual law that is passed.

Minimum systemness in executive control. A further risk is that the European Council could end up co-ordinating the execution of policy, possibly through its new Presidency. At present, responsibility for the execution of Union policy is, of course, divided between individual member states and the Commission. Any shift in co-ordination of policy execution from the Commission to the European Council could be considered a set back for the delivery of public control through the Union's compound system of representation. The College of Commissioners can be dismissed by an elected representative body; the European Council cannot.

Minimum systemness in political competition. A greater leadership role for the European Council could well pre-empt the possibility of introducing greater political competition to the Union via the direct or indirect election of its political leadership. Whilst the Commission or its Presidency could be elected in such a contest, the European Council plainly cannot. Of its nature, it can only be formed out of 27 national electoral competitions, not out of one election in which voter choice is structured around Union issues.

But might there be a way of adapting the Union's compound form of representation to a larger role for the European Council? To my mind, this would only be possible through greater inter-parliamentary co-ordination. National parliaments would need to co-ordinate to overcome some of the difficulties posed by the fact that only individual members of the European Council are responsible to individual national parliaments. National parliaments would need to co-ordinate with the European Parliament to

overcome asymmetries of information that often put them at a disadvantage in seeking to control their own governments on European issues. But all that is another story or another time.

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