Making EU Representative Democracy Fit for the Future

Göran von Sydow & Valentin Kreilinger (eds)

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Preface

All European democracies are, primarily, representative democracies. There is quite some variation as to how the representative systems are organised in terms of their electoral and parliamentary characteristics. Nevertheless, the idea of democratic representation is vital to all. The same goes for the supranational level, where citizens are represented directly in the European Parliament and indirectly in the Council. At both levels political parties are key actors in providing a link between citizens and political decision-making. In the European Union, a multi-level polity with a mix of supranational and intergovernmental features, finding the right place for representative democracy and political parties is a long-standing challenge. Meeting this challenge is becoming even more crucial as European integration moves into policy areas that are more contested and politicised. Discussions over the democratic deficit in the EU may have matured over time, but it is still central that there is a certain balance between political accountability and the exercise of power. A well-functioning system of political representation is key in order for that to work.

The Conference on the Future of Europe has recently concluded. One key aspect of that exercise was to find new ways to engage with citizens, in a thorough way, beyond election campaigns. Democratic innovations such as deliberation and citizens' panels provide complementary channels for citizens to engage in the democratic life of the EU. At the time of writing the follow-up from the Conference is under discussion. Certain actors believe that the next step should be revisions of the Treaties – including some affecting the features of EU representative democracy – while others are less favourable toward such endeavours.

This anthology consists of four scholarly contributions from leading researchers who highlight various dimensions and aspects of representative democracy's role in the EU. In publishing it our aim is to contribute to the discussion on how to make EU representative democracy fit for the future.

Göran von Sydow
Director

About the authors

Ben Crum is Professor of Political Science at the Vrije Universiteit Amsterdam. His research focuses on how processes of internationalization – European integration in particular – affect established practices and understandings of democracy and solidarity. He is the author of *Learning from the EU Constitutional Treaty* (Routledge, 2012) and co-editor (with John Erik Fossum) of *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and beyond* (ECPR Press, 2013). Most recently, his research articles have appeared in *Political Studies, European Security,* the *Journal of European Public Policy, Transnational Legal Theory,* and the *Journal of Common Market Studies.*

Valentin Kreilinger is Senior Researcher in Political Science at the Swedish Institute for European Policy Studies (SIEPS). His research focuses on national parliaments' involvement in EU policymaking as well as their scrutiny of European affairs, the evolution of interparliamentary cooperation and the role of the European Parliament in the political system of the EU. He holds a PhD in Political Science from the Hertie School in Berlin and an MSc in Politics and Governance in the European Union from the London School of Economics. Prior to that, he studied at Ludwig-Maximilians-Universität München and Université Paris 3 Sorbonne Nouvelle.

Christopher Lord is Professor at ARENA, the Centre for European Studies at the University of Oslo. He has written several books and articles on democracy, legitimacy and the European Union, and his work has been published in the *European Journal of Political Research*, the *European Law Journal*, the *Journal of Common Market Studies*, the *Journal of European Public Policy* and *West European Politics*. He is currently interested in rethinking theories of indirect legitimacy to develop an original understanding of where the legitimacy of the European Union can be derived from the obligations of its member state democracies to national *demoi*.

Sonja Puntscher Riekmann is Professor emerita of Political Theory and European Politics at the University of Salzburg. She is research fellow at the Salzburg Centre of European Union Studies, which she founded in 2008 and directed until 2019; full member of the Austrian Academy of Sciences; chair of the board of the Austrian Science Foundation; member of the European High Level Group on Social Innovation and of the External Advisory Board of the EUI's School of Transnational Governance. She coordinated the Horizon 2020 Project 'EMU Choices' on member state preferences for Eurozone reforms and has published widely on European Integration, EMU, constitutionalism, and democracy.

Göran von Sydow is Director of the Swedish Institute for European Policy Studies (SIEPS). His main research interests are in the fields of party politics, Euroscepticism and democracy. He has also been researching Europeanization, in particular concerning Sweden and the EU. He holds a PhD in Political Science from Stockholm University and has previously also studied at the European University Institute in Florence and at Sciences Po Paris.

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Executive summary

Article 10 of the Treaty on European Union enshrines representative democracy as a cornerstone of the functioning of the European Union (EU). But representative democracy currently faces challenges – even threats – both internal and external. And the question of what form that European representative democracy should take has returned to the fore as part of the Conference on the Future of Europe and the wider debate on widening and deepening the EU. This volume forms part of that debate and discusses how EU representative democracy can be made fit for the future.

Göran von Sydow and *Valentin Kreilinger* set the scene in their introduction by asking what EU representative democracy is and why we should bother about it. They raise a few cross-cutting issues relevant to the volume and contextualise the topic in the current policy debate and broader developments.

The volume continues with an essay by *Ben Crum*. He argues that in the long history of the debates on the European Union's democratic deficit, two prominent lines of argument can be distinguished: one is primarily concerned with strengthening elected institutions and the public-sphere conditions conducive to their well-functioning (the 'public sphere' argument), while the other rather aims at creating new channels for participation beyond the elected institutions (the 'participation' argument). The latter argument – which seeks to move beyond representative democracy in the EU – has long been made but has recently gained new impetus. His essay starts from an examination of the trajectory and components of the participation argument. Then, as a kind of response, he outlines the logic of the public sphere argument and critically reflects upon its validity today. Finally, Crum reviews a selection of institutional reforms and suggests how they might be evaluated from each perspective. Specifically, he considers the following proposals: pan-European referendums; citizens' assemblies on EU legislative proposals; transnational lists for elections to the European Parliament; the direct election of members of the EU's executive bodies, and a permanent Legislative Council of Ministers.

In the next chapter, *Sonja Puntscher Riekmann* addresses the complexity of democratic representation in the EU and its effects on citizens' perceptions of the Union. Her essay considers that complaints about the democratic deficit stem from the conundrum created by potentially colliding modes of representation – a result of the peculiar horizontal and vertical distribution of powers in the novel polity that has, over decades, emerged from international treaties. In the state of emergency induced by 'wicked crises' such as the financial and fiscal crisis and the pandemic, issues of democratic representation became ever more salient. How, Puntscher Riekmann asks, did this reverberate in the Conference

on the Future of Europe in which the EU invited citizens to voice their ideas for the development of the Union and dedicated one segment to issues of supranational democracy? Her first evaluation of relevant contributions to the Conference shows a multiplicity of ideas that oscillate between centralisation and decentralization; between deepening shared-rule and safeguarding national self-rule. Advocacy for shared-rule encompasses support for greater powers for the European Parliament; uniform election rules; direct election of the Commission and/or the European Council President, and a common language and European media. National self-rule is seen to be best safeguarded by the enforcement of the principle of subsidiarity and a stronger role for national parliaments.

The third chapter, by *Valentin Kreilinger*, turns to the EU's economic governance. The creation of a €750 billion spending package (Next Generation EU or 'NGEU') in response to the COVID-19 pandemic raises the question of democratic control. The European Parliament and national parliaments each have distinct roles to play, but their involvement in NGEU has so far been rather limited. His essay first outlines how European integration and national budgetary procedures co-existed with occasional tensions in the past. The euro crisis and the European Semester are also part of this period. Although some severe clashes occurred, these were by no means typical of economic governance during this time. Today, under NGEU, national and EU-level budgetary procedures are increasingly intertwined. Preliminary evidence on the involvement of national parliaments in member states' Recovery and Resilience Plans suggests that they are only playing a marginal role. This is very worrying in terms of democratic scrutiny, therefore Kreilinger puts forward proposals for strengthening parliamentary involvement. Furthermore, with the prospect of EU taxes to repay NGEU debt, the future brings an even greater risk of insufficient (parliamentary) representation in budgetary processes. Here it is necessary that representation meets certain thresholds depending on the level and nature of the taxation. However, this should not be perceived or conceptualised as a one-way street which creates an ever-greater number of veto players. The essay concludes that what is required is intensified, meaningful representative scrutiny throughout the lifetime of NGEU at all parliamentary levels, beginning immediately, and even looking beyond national borders.

In the fourth and final chapter, *Christopher Lord* takes a critical perspective on the challenges when it comes to refounding representative democracy. Thirty years ago, history supposedly ended in the triumph of democracy as the only legitimate form of government. Nowadays it is more common to see democracy – and especially representative democracy – as struggling to survive. One threat is populism. A second threat is the failure of democracies to resolve how they should be 'internationally ordered' to deal with externalities between them and provide essential collective goods. The abstract nature of that second challenge means that it is less understood than the present and immediate dangers of populism. Yet, Lord argues, the two threats feed off one another. The real

crisis in contemporary democracy is that the two threats are hard to solve simultaneously. The European Union exemplifies that predicament. Without some form of union between European states to manage externalities between them and provide collective goods, European democracies are likely to struggle to meet their most basic obligations to their own publics to secure rights, justice, identities, and standards of democracy itself. Yet populism threatens to turn European democracies in on themselves as each pursues its own 'will of the people'. That cannot help manage externalities between democracies. The essay concludes that EU representative democracy needs to slay both dragons if it is to be fit for the future.

These four essays demonstrate that there are no easy solutions. Making EU representative democracy fit for the future requires balancing different ideas for institutional reforms and weighing their pros and cons, as *Ben Crum* shows. The various contributions to the Conference on the Future of Europe analysed by *Sonja Puntscher Riekmann* also often point in very different directions. What is important to have in mind are the broader implications of tools and proposals: do they lead towards strengthening the European 'public sphere' or towards more participation? Furthermore, the EU's recovery fund NGEU, adds another challenge to EU representative democracy, as *Valentin Kreilinger* argues when examining the (insufficient) degree to which the package is overseen by national parliaments. Unless they step up their scrutiny throughout the lifetime of NGEU, there is a risk of taxation without representation. But representative democracy faces further – and bigger – threats: populism and externalities, analysed by *Christopher Lord* in the final contribution. They are hard to solve simultaneously, but this is the task the EU is facing. Russia's invasion of Ukraine has only increased the importance of succeeding in this.

1 Introduction: What is EU representative democracy and why bother about it?

Göran von Sydow and Valentin Kreilinger

'Representative democracies' are polities in which voters choose, in democratic elections, who represents them in political decision-making processes. The complex multi-level system of the EU can be considered as a representative democracy, although arguably one with certain deficiencies. The Treaty on the European Union declares in Article 10(1) that the functioning of the European Union (EU) 'shall be founded on representative democracy'.

This volume contains four essays that think through how to make EU representative democracy fit for the future. In the introduction, we set out a few cross-cutting issues relevant to the subsequent essays, written by *Ben Crum*, *Sonja Puntscher Riekmann*, *Valentin Kreilinger* and *Christopher Lord*.[1]

1.1 Representative democracy according to the Treaty
The expression 'representative democracy' is common in debates about the EU. Since 2009 its importance has even been explicitly spelt out in the Treaty on the European Union:

<div align="center">Article 10</div>

1. The functioning of the Union shall be founded on representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. 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 to their citizens.
3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

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[1] We are very grateful to Ben Crum, Chris Lord and Sonja Puntscher Riekmann for their contributions to this volume, to Daniele Caramani and Christine Neuhold who acted as discussants at a digital workshop during which draft essays were presented and to Sverker Gustavsson who concluded the workshop.

These treaty provisions offer some guidance for thinking about EU representative democracy. There is direct representation of citizens and member states at the EU level. And national leaders are accountable to their national parliaments or, again, to their citizens. Furthermore, the 'right to participate in the democratic life of the Union' is explicitly mentioned and, last but not least, European political parties are also part of Article 10 TEU.

1.2 Global threats and challenges to representative democracy

Representation – the idea at the heart of party democracy – is a complex concept. According to Giovanni Sartori, representation is associated with three quite different meanings: i) the idea of mandate or instructions; ii) the idea of resemblance and similarity; and iii) the idea of responsibility, or accountability. But at the heart of representation is the basic need to be responsive to the electorate. 'The electoral theory of representation' he writes 'is not concerned with satisfying the requirement of similarity but with securing the obligation to respond' (Sartori 1968).

In order to be legitimate in the longer run, political systems need to have some kind of feedback loop. However, the quality of the feedback in the political system of the EU is often questioned. While European Parliament elections tend to deal more with European affairs (of a constitutive character) than national ones do (though still to a quite limited extent), national elections are fought on predominantly national themes. As there is no strong parliamentary chain of delegation at the European level, there are limited opportunities to hold the European Parliament and the EU's executive accountable. Instead, it is on the national level where the evaluation of the incumbent government's policies at the European level and the effects of Europeanization can be addressed. The risk is then that there are few incentives to political parties to focus and campaign on issues relating to European integration.

But what is the state of representative democracy today? There is the populist challenge but there is also the challenge from technocracy. According to Daniele Caramani and others, these challenges are quite substantial today. From the technocratic point of view representative democracy can be criticised for being too slow and for producing outcomes that are sub-optimal compromises. The populist critique of representative democracy tends to focus on the alleged *mis*representation of the 'real' opinions and interests of voters (Caramani 2017).

One can also argue that the entire 'old' model of representative democracy seems under pressure from the global technological transformation and the rise of populism. Citizens can acquire knowledge on any policy issue and thereby challenge decision-makers more easily. This leads to a more informed public debate, but fake news is also spreading widely and endangering trust in political systems at all levels.

And more fundamentally, non-democratic regimes have once again become a formidable threat to democracies. Russia's invasion of Ukraine is a war between democracy and autocracy. Many autocratic states were able to impose tougher restrictions on their populations in the COVID-19 pandemic than democracies. 'Strongman rule' has proven attractive in certain parts of the world and even in certain EU member states. The list of global threats and challenges thus does not leave the EU unaffected.

Christopher Lord addresses a few of these issues in his essay and adds, as a key challenge, the failure of democracies to resolve how to deal with externalities between them and provide essential collective goods.

1.3 Constitutional engineering in the EU

In a multi-level system such as the EU, finding the right structures for a functioning representative democracy can be – but is not necessarily – more difficult. With different levels of democracy, the organisation of accountability and representation is a task of constitutional engineering. This task becomes more prominent when European integration is deepened and extends to areas of more pronounced political salience and contestation.

The Conference on the Future of Europe has recently offered citizens the opportunity to give direct input to the political system of the EU. With a focus on increasing participation, the Conference was as an addition to existing processes. The initiative sought to address the often-criticised democratic deficit or disconnect of EU policymaking. The alternative to such a focus on increasing participation is, as *Ben Crum* argues in his contribution, a focus on supporting the emergence of a European public sphere.

An unprecedented democratic experiment at the transnational level, the Conference was more geared towards gathering citizens' input than previous attempts to debate the Future of Europe. Those earlier reflections on the future of the EU took the form of intergovernmental conferences, a Convention, citizen consultations and scenario-building exercises undertaken by the Commission. Some of these reflections have led to treaty change. It is not yet clear if the EU will embark on treaty change after the Conference on the Future of Europe.

When it comes to EU democracy, observers have repeatedly posited the need to (re)build EU democracy or to 'build it back better' – just as with economies after the pandemic. However, the question remains what this could and should involve. This volume does not confine itself to the Conference on the Future of Europe but takes a broader perspective on representative democracy in the EU. The four contributions were written while the Conference was ongoing.

1.4 More digital tools

Among the most significant changes seen in recent years are the new modes of working and communicating that became widespread during the COVID-19 pandemic. Many political institutions found it difficult to continue working during the pandemic because their functioning heavily relied on physical meetings. In response to this, representative democracy has become more digital at both EU and national levels. European Council meetings, for instance, became videoconferences, and legislatures around the globe started working (at least partly) virtually. Voting and committee meetings in the European Parliament moved online, though Strasbourg and Brussels have not yet become full-service hubs when it comes to digital exchanges. Such digital interactions facilitate the kind of strengthened interparliamentary cooperation *Valentin Kreilinger* argues for in his essay.

Many elected representatives have done an impressive job in remaining connected to their voters during the pandemic. Of course, digital tools cannot completely replace direct contacts, but they seem to be more than a second-best solution. The Conference on the Future of Europe also had a digital platform at its heart and partly relied on digital and hybrid meetings in 2021 and 2022. *Sonja Puntscher Riekmann* analyses the input of citizens on that platform in her contribution to this volume.

Any digital 'rethinking' of representative democracy must take account of, first, the shortcomings in the digitalisation of representative democracy that became obvious in the early months of the pandemic. Second, that digital connections between voters and their elected representatives reduce the distance between the rulers and the ruled. And, third, the further opportunities: different political levels (supranational, national, regional, local) in the EU's multi-level system could cooperate and exchange more easily with digital tools.

1.5 European political parties and transnational conflict lines

In recent years representative democracies have witnessed a decline in the standing of established political parties – France is a prime example for this trend. Despite this decline, and the emergence of new 'movements' as established party systems evolve, parties remain essential in European democracies. One wonders whether political parties can still act as key players at the EU level in the future and what the new ideological cleavages that have started to dominate political conflicts mean for the future of European integration. There is a potential problem with electoral accountability, and thus responsiveness, in a system with divided sovereignty (Gustavsson 2009). At the European level one cannot expand one's own competences. Therefore, even a cohesive pan-European political party federation backed by stable majorities would find it difficult to materialize a political programme of reform. At the national level, governments are constrained not only by the EU but also by the fact that the political outcomes at the European level are the results of intergovernmental and inter-institutional bargaining. Therefore,

it is difficult to ask for a well-specified mandate *ex-ante*. Hence, parties aspiring to government participation share incentives to downplay commitments to specified policy positions regarding the EU. That may result in what Peter Mair called a 'hollowing' of democracy. He was particularly worried about the diminishing role of political opposition in the EU and wrote that 'political opposition gives voice. By losing opposition, we lose voice, and by losing voice we lose control of our own political systems.' (Mair 2007, 17)

Alongside representative democracy Article 10 TEU emphasizes the importance of political parties, but they are also under pressure in EU decision-making. Unable to impose a *Spitzenkandidat* as Commission President in 2019, they are now trying to establish transnational lists for the European Parliament election of 2024. *Ben Crum* discusses the advantages and disadvantages of various institutional reforms such as these in his contribution. The future of political parties in representative democracies is beyond the scope of this volume, but the role of European political parties in the Conference on the Future of Europe has been recently addressed in a SIEPS report (Johansson and Raunio 2022).

1.6 Institutional issues are back on the EU's political agenda

The Conference on the Future of Europe is a tool that was conceived to help making the entire EU fit for the future. Besides calls for the EU to 'deliver' and to have a positive impact on the daily lives of citizens, one should not forget the fundamental constitutional questions in the political system of the EU. Some 20 years ago, 'widening' and 'deepening' were already discussed in the political debate. The different challenges produced by the multiple crises that the EU is facing (Kreuder-Sonnen, Schmidt, Séville, Wetter Ryde, and White 2022) have even increased the necessity of making EU representative democracy fit for the future. Otherwise, there is the risk that citizens will turn their back on the EU if their ideas and grievances remain unaddressed. And the more politically salient issues that are dealt with at the European level, the greater the need for a functioning system of representation and accountability. The tendency of increasing politicisation of EU-related matters creates space for a discussion on how to organise a well-functioning model of representative democracy in the multi-level polity.

The large number of decision-makers at the EU level and from different member states that have called for treaty change in recent years does not mean that the EU will automatically embark on treaty change. Nor that it will be successful. Yet it is important to be prepared, because some of the reforms debated at the Conference on the Future of Europe and put forward by *Ben Crum* and *Sonja Puntscher Riekmann* in their essays require treaty change.

1.7 The future: a 'vibrant' multi-level democracy?

What should a multi-level representative democracy look like in the EU? What possibilities should it offer? It is difficult to prescribe a cure to the EU's problems.

And that is not the objective of this volume. But the European Parliament is well-placed to lead the way in developing a true multi-level representative democracy. National parliaments are the political bodies for which this is of particular importance – and they are also the place where lively European debates could take place. And the model of the Conference on the Future of Europe then offers a possibility to create a whole new strand of participatory democracy in the EU alongside the existing representative channels. Such a vibrant, multi-level representative democracy would reinvigorate institutional processes after the Conference on the Future of Europe. This volume does not provide a common set of recommendations – instead it hopes to stimulate thinking about EU representative democracy, what it is and what it could be.

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2   EU democracy beyond participation: Building an EU political space[2]

Ben Crum

The Treaty on European Union (Article 10) provides that 'the functioning of the Union shall be founded on representative democracy'. However, representative democracy in the EU remains incomplete and a source of discontent. There are many understandings of the underlying reasons for the EU's 'democratic deficit'. In this essay I focus on two prominent understandings.[3] The first is cast in terms of a lack of *participation*. It emphasizes that, for citizens, the EU is often 'distant'. Voting for the European Parliament elections once every five years is felt as too little and as a process in which one's vote does not really make a difference. This view suggests that the focus on representative institutions to democratize the EU is too restrictive and, arguably, inappropriate or outdated. Instead, it advocates additional channels for citizen involvement that can help to strengthen the democratic quality of EU decision-making. These may include all kinds of civil society consultation, direct democracy, and randomly chosen citizen assemblies. The bottom-line of this approach is that the more entry points citizens are offered into the EU decision-making process, the smaller the EU democratic deficit becomes.

The second understanding focusses on the underdevelopment of an *EU-wide public sphere* and the fact that most political debate and identification remains focussed on the national level. In this view, EU representative democracy is weakened because it cannot rely on the societal sub-structures that have historically accompanied the rise of representative democracy at the national level. EU citizens fail to be involved in common deliberation. Hence, rather than building on a common will, political decision-making remains a matter of arbitrating between separate, often national, preferences. From this perspective,

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[3]   The two understandings chosen here highlight aspects that account for the fact that democracy at the EU-level is generally seen as more problematic than that at the level of nation-states. Obviously, however, the EU also shares, or even amplifies, the deficiencies that are suffered by representative democracy at large, in particular the problems that political parties experience in fulfilling their representative role (Biezen, Mair, and Poguntke 2012; Mair 2013). In this paper, I leave those wider democratic concerns aside to focus on the way the public sphere argument challenges the participation argument.

the main political challenge is what we can do to connect EU citizens in a common political space and, specifically, how the organisation of representative institutions can contribute to its development.

The two readings of the EU democratic deficit do not necessarily exclude each other: new channels of participation may contribute to the emergence of an EU public sphere and be effectively coordinated with the representative institutions in place. Still, the two perspectives follow somewhat antithetical logics. Essentially, the public sphere argument seeks to deepen representative democracy in the EU, while the participation argument instead suggests moving beyond representative democracy.[4] In doing so, the participation perspective follows a dispersive, *centrifugal* logic that in many ways fits well with contemporary notions of network democracy and the use of digital tools. This tendency of proliferation and dispersion of political engagement goes directly against the emphasis on focus and centralization of the common public sphere argument. As the key concern of the latter argument is how we can build a common EU political space, it starts from the premise that EU politics is already too dispersed, and its logic is emphatically *centripetal*. For that reason, it tends to be more reserved to welcoming new forms of citizen participation. Hence, the two positions suggest different, and at times contradictory, criteria by which to evaluate proposals for EU reform.

In this essay, I first elaborate the trajectory and components of the participation argument. Then, as a kind of response, I outline the logic of the public sphere argument and critically reflect upon its validity in the present times. In a third section I review a selection of institutional reforms and the way they are evaluated from the two perspectives. Specifically, I consider the following proposals: pan-European referendums, citizens assemblies on EU legislative proposals, transnational lists for the EP elections, directly electing members of the EU's executive bodies; and a permanent legislative Council of Ministers.

2.1 The participation argument
In the search for ways to legitimate EU decision-making that go beyond representative democracy, different options have emerged over time. Four main strands can be distinguished: consociational democracy, civil society consultation, direct democracy, and citizen assemblies. While each of these strands is different in its orientation, they also share some basic intuitions and all build on a sustained dissatisfaction with elected representation in the EU.

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[4] Yet another way to frame the distinction is to identify the common EU political space argument with Article 10 of the EU treaty, as it emphasizes the two channels of direct (via the EP) and indirect (via national governments) electoral representation as well as the importance of political parties, while the participation argument corresponds with Article 11, which is about consultations with social associations and civil society, and provides the legal basis for the European Citizens Initiative.

Consociational democracy. The oldest ideas along these lines look at the EU as a consociational democracy in which decisions emerge from a consensus among the natural representatives of distinct, self-contained groups. Essentially, consociational democracy replaces the idea of electoral representation by functional representation: individuals are represented by virtue of the social groups of which they are part, and the natural leaders of these groups make collective decisions on their behalf (Lijphart 1977). Such a consociational understanding fits a purely intergovernmental conception of the EU, in which the member states operate as separate and self-standing communities (Gabel 1998; Chryssochoou 1994; Piattoni and Verzichelli 2019). As an alternative to national representation, one can conceive of a consociational EU democracy on the basis of different socio-economic groups. In that spirit, one can look at the European Economic and Social Committee (EESC) that is modelled on similar consociational or, more specifically, corporatist arrangements in countries like Austria and the Netherlands that are based on the involvement of social partners (employer and workers organisations) and other civil society groups. Yet another conception that remains essentially consociational in nature is the idea of a 'Europe of the regions', which attracted some popularity in the 1980s and 1990s and persists in the European Committee of the Regions (CoR) (Elias 2008).

Taken to their extremes, consociational conceptions of EU democracy offer a comprehensive alternative to election-based representation. Instead of relying on elections, they assume a natural affinity of interests between citizens who are part of the same group, nation, region, or social class. What is more, they also do not expect political elites to represent any other interest than that of the members of their own groups. These representatives have nothing to account for to the members of the other groups in the polity or indeed to consider any over-arching, general interest. Hence, collective decision-making is best conceived as bargaining between group interests rather than involving joint deliberation.

In practice, decision-making in the EU is never fully captured by consociational arrangements. Rather we find consociational practices co-existing with election-based representation. What is more, the status of consociational arrangements like the EESC and the CoR remains advisory or even informal, while actual decision-making power is held by elected institutions.

Civil society consultation. Still, in a broader sense, the consultation of organized interests and civil society has become a key component of the EU decision-making process (Saurugger 2008; Kröger 2013). It gains particular importance exactly because the democratic credibility of the elected institutions is seen as deficient. The reliance on the consultation of organized interests is especially popular in the European Commission. As the one EU political institution that does not have an electoral mandate, the Commission actively relies on interest group consultation to shape its own policy proposals. This duty to consult with

relevant societal groups is even enshrined in the treaties (Article 11(3) TEU) and, besides more informal and ad hoc consultations, it is organized around Green Papers and White Papers by means of which the Commission informs interest groups ahead of the preparation of policy initiatives and calls for their active input.

At the level of citizens, these group-oriented arrangements are complemented with various administrative law institutions that, in a similar spirit, are meant to make EU decision-making accessible and subject to input and scrutiny. Most importantly, these include the right to access documents, to make complaints to the EU Ombudsman about EU maladministration, and to petition the European Parliament.

Direct democracy. A third alternative to electoral representation is seen in calls for 'direct' democracy. Notably, almost all EU member states have turned to referendums – the primary instrument of direct democracy – to consult their citizens on decisions regarding EU accession or on other major steps in the integration process (Oppermann 2013; Hollander 2019). At the EU level, direct democracy has found a form in the European Citizen's Initiative (ECI), which allows citizens to invite the European Commission to prepare an EU law if they can collect one million signatures representing at least seven different member states. Although in the nine years since 2012, 85 Citizens' Initiatives have been initiated, only six have reached the required threshold so far.

Underlying the use of direct democracy are many of the same justifications that inform the advocacy of civil society consultation; it is supposed to contribute to the transparency, accountability, and openness of EU decision-making. In particular, it is meant to connect EU decision-making and citizens more closely. What is more, the nature of direct democracy ensures a basic sense of inclusion and equality as these mechanisms are by definition open to all, and the vote of each citizen who participates is counted once, and no more than once.

Citizen assemblies. The latest form of citizen involvement in EU decision-making that has been gaining interest is the use of randomly selected citizen assemblies. Most notably, four citizen assemblies were included in the Conference on the Future of Europe. These EU citizen assemblies build upon the experience that the European Commission gained via the Citizens' Dialogues that it has been holding since 2013 and that broadly follow the format of a 'town-hall meeting' (Costello 2021; Renkamp 2019). Along similar lines, the European Commission has been experimenting with various forms of transnational citizens' dialogues (Boucher 2009; Kies and Nanz 2013; Stratulat and Butcher 2018). The European enthusiasm builds upon successful examples in European countries like Iceland (Landemore 2020), France (the 2019/20 Citizens' Convention on Climate; Giraudet 2021) and Ireland (the 2012–14 Constitutional Convention and the 2016–18 Citizens' Assembly; Farrell and Suiter 2019).

Citizen assemblies are an attractive way to bring ordinary citizens into political decision-making and to have them exchange their points of view in an open and deliberative manner. However, the fundamental challenge for citizens' assemblies lies in establishing their external legitimacy: on what basis can we justify that what is agreed among the members of the citizens' assembly should apply to society at large? In the absence of direct mechanisms of authorisation by and accountability to the public, the main source of legitimacy that citizens' assemblies can tap into derives from their openness and the quality of their deliberations (cf. Landemore 2020, 106ff). However, these qualities are unlikely to be compelling enough for the society to adopt the conclusions of a citizens' assembly as collectively binding rules. A citizens' assembly can enhance its external legitimacy if its deliberations receive media attention. Ideally, one wants a citizens' assembly to inspire a wider societal debate and to be able to incorporate the dynamics of that debate directly into its own deliberations and conclusions. These positive conditions seem to have been met in the examples from Ireland, Iceland, and France. However, for EU-level citizen assemblies the challenge is even bigger as they need to resonate across 27 public spheres. Experience so far, including in the context of the Conference on the Future of Europe, suggests that such resonance is not easily attained.

These four lines of complementary EU democratic legitimacy – consociational democracy, civil society consultation, direct democracy, and citizen assemblies – are quite different, but they share important diagnostic and prognostic considerations. The diagnostic element that they share is that electoral representative democracy in the EU is seen as deficient. In particular, it falls short in connecting citizens. The prognostic element is that further channels of participation are needed and that more participatory channels contribute to more democratic decision-making in the EU.

Adrienne Héritier (1999) has linked these kinds of practices to a broader set of decision-making norms and practices that form what she considers an 'alternative perspective' on EU democratic legitimation. Prominent among these norms are the insistence on high levels of transparency as well as multiple checks and balances (Héritier even talks about institutionalized 'horizontal control and distrust', and 'competition among multiple authorities') that all aim to improve the quality of the policy-making process.

In general, alternative participation channels are expected to bring knowledge and insights into EU decision-making that are otherwise unlikely to arise, or may even be blocked, in traditional representative institutions. In this respect, these channels intensify the battle of ideas. Notably, the proliferation of participation channels and the battle of ideas that is implied in much of these approaches resonate well with the emergence of a network society and increased reliance on digital technology. In all four strands, we can see how they can benefit from the use of digital technology as it eases their execution, reduces challenges of geographical distance, and can contribute to access and inclusion.

In a context in which multiple participatory channels exist next to each other and vie for attention, the fundamental question becomes how to arbitrate between them and the inputs that they provide. The conventional answer may be that that is the task of the representative institutions. However, once one validates alternative channels, it also creates the expectation that they will be allowed to make a difference. This is well-illustrated by the use of direct democracy: no referendum appears merely as a non-binding consultation of the electorate; it always creates the expectation that its result will be honoured. The same principle applies, more or less, when one establishes consultative functional organisations, when one commits to consulting civil society organisations, and when one calls a citizen assembly.

A somewhat more sophisticated answer to the question of arbitration is to think of this setting as a battle of ideas in which the best ideas are expected to win, while the corresponding institutions (representative or not) serve as the fora where the necessary selection is decided upon. It is in this context that the aforementioned concerns about efficacy, transparency, checks and balances, and accountability gain particular relevance. These are invoked to ensure that the battle of ideas takes place in an open and equitable way. However, their very invocation underlines that these processes are likely to get messy. One reason for this is that the inputs through the different channels are very likely to be incommensurable, which means that it is impossible to make the way they are weighed against each other fully transparent and explainable (cf. Lord and Pollak 2010). A second reason is that it is impossible to guarantee political equality and inclusion across all channels, let alone once they are combined.

On the whole, then, there are serious reasons to question the proliferation of participation channels in the EU. It raises fundamental problems of political aggregation but also of transparency, political equality, and inclusion. Even more so, I want to suggest that the diagnosis underlying these recommendations is deficient, as the critical challenge for EU democracy is less about reducing the distance between institutions and citizens, and more about creating a common political space.

2.2 In search of a common EU political space

The diagnosis of an absent common EU political space also has a long pedigree. Its most forceful expression can probably be found in the Maastricht judgement of the German *Bundesverfassungsgericht* (federal constitutional court) which argued that there can be no European demos in the absence of 'certain pre-legal conditions, such as a continuous free debate between opposing social forces, interests and ideas, in which political goals also become clarified and change course' (BVerfGE 1993, 185; cf. Habermas 1995). This argument underlines that democracy can only operate when the citizens involved talk to each other and are forced to consider each other's interests and opinions, on the grounds of which they can learn, adjust their own preferences and make concessions.

The key point of the *Bundesverfassungsgericht* is that such a common political space remains absent for EU citizens. Even if political leaders may engage in compromise-seeking and deliberation, their constituencies cannot observe and participate in a parallel process in which they can come to empathize with the decisions made on their common behalf.

This remains a very compelling argument, and it fundamentally shifts the debate about the EU's democratic deficit away from the concern about the distance with the citizens and the lack of participation channels. The *Bundesverfassungsgericht* points to a much deeper, fundamental concern that is also much more resistant towards any form of institutional engineering. We cannot just will a common political space into existence or establish it by legislation.

Indeed, one may take the *Bundesverfassungsgericht*'s argument as essentially prohibitive of European integration. Even if the court has in a series of judgments (until its 2020 ruling on the ECB's Public Sector Purchase Programme) held that the EU's powers remain within justifiable bounds, it is clear that the EU's operations have long since passed the limits of normal political delegation and moved beyond the control of individual member states, including the most powerful among them. In that sense, there is no denying that there is a democratic deficit and, short of asking for the repatriation of competences, the *Bundesverfassungsgericht* offers little by way of a solution to it.

At the same time, the absence of a common EU political space is not a simple black-or-white matter. There are inklings of something like a common EU political space, even if they may be small and even if they may take different forms than that we are accustomed to at the national level. Arguably, there is an elite EU public sphere which, although strongly reliant on Brussels-based supranational actors, is transnational in character and organizes around such publications as the *Financial Times* and *politico.eu*. Of much wider relevance, however, is the fact that, as political decision-making becomes increasingly intertwined and mutually dependent in Europe, this has led to what has been called the Europeanization of national public spheres (Koopmans and Statham 2010; Risse 2015). This means that, rather than seeing the emergence of an overarching EU public sphere, we find that domestic public spheres offer ever more intense coverage of political events at the EU-level and in other EU member states. Whether these be the budgetary policies of the Greek government, the national elections in France, or even the nominations for European Commission President, the attention that they receive in quality media in EU member states is increasing.

An important caveat here concerns the kind of media that we are looking at. While Europeanization can be clearly discerned in higher quality media, there is a marked reluctance to it among tabloids (Kleinen-Von Königslöw 2012). In digital media the patterns are again completely different and much more individualized, so that the variation is even bigger. On social media like

Twitter one can certainly identify communities of (elite) media users that are genuinely transnational, pan-European or even global, in character (Hänska and Bauchowitz 2019). Still, for most social media users their primary network remains within national or even local confines.

Arguably, such a variegated and fragmenting media landscape challenges the very notion of a public sphere, which has been argued to constitute an indispensable condition for any notion of collective self-government (Habermas 2006). The very aspiration to build a common EU political space seems to go against the trends of the time. Indeed, there appears to be a generic disconnect between political decisions becoming more inter-twined across world, while our communicative understandings become increasingly fragmented and disconnected from each other. In that light, the EU's democratic deficit is more likely to increase rather than to reduce over time. However, this makes the challenge of building a common political space only more urgent, and while it is unlikely that a comprehensive solution can be found, we can still evaluate individual reforms according to the impact they are expected to have on the EU political space: will they contribute to convergence or are they more likely to feed into trends of divergence?

2.3 Avenues for building a common political space in the EU

In this section, I review a selection of proposals for institutional reform in the EU. I consider their merits both from the participation and from the common EU political space perspective. Thus, these proposals help to clarify our understanding of these two perspectives, and the differences and similarities between them.

2.3.1 Pan-European referendums

The idea of pan-European referendums which would allow EU citizens to directly approve or reject EU decisions has been floated as one way to increase citizen engagement. One additional consideration is that pan-European referendums might actually substitute for the use of national referendums on EU matters as these often – for instance in the case of new EU treaties – enable one national *demos* to veto a decision for all other EU *demoi*, even if the latter are not consulted. A pan-European referendum does, however, raise complex questions about whether a pan-European majority can overrule the majority will in individual countries. Hence, it would probably require a weighted majority formula that does not only take account of the overall majority of voters but also of the majorities in each member state – e.g., a proposal would only pass if supported by a majority of EU citizens, which would also include majorities in a (super-)majority of member states. It furthermore might allow some form of opt-out or appeal procedure for those member states in which the majority voted against. There are further practical issues to be resolved – whether the referendums should be consultative or binding; the kind of issues to be voted on; the stage in the decision-making procedure at which they should be held – but these need not occupy us here.

Assuming its practical organisation is carefully calibrated, the proposal of pan-European referendums can only be applauded from a participation point of view. It would open a new way to directly engage citizens with EU matters and involve additional ballots on top of the five-yearly elections for the European Parliament. It clearly raises some intricate questions about how the referendums would be coordinated with decision-making in the representative institutions (are they to be advisory or binding?), but these can be resolved one way or another, as long as it is done in a clear and consistent way.

Also from a public sphere perspective, there is much to be said for pan-European referendums. Certainly a pan-European approach is far preferable to national referendums on EU matters. Pan-European referendums would force the European peoples to deliberate together on a particular issue. The main concern here would be that the issues should be important enough for EU citizens, and that they would be so across all EU member states. These conditions being satisfied should ensure significant public exposure and turn-out, as well as turn-out being spread evenly across the Union rather than high engagement in a few member states overshadowing a lack of interest in others.

2.3.2 Citizens assemblies on EU legislative proposals

The most obvious way to insert citizen assemblies into EU decision-making would be to establish them in the preparation of EU legislative proposals, especially where such proposals directly affect people's interests as consumers and citizens. Essentially, a citizen assembly could be called on a proposal when it is on the EU's legislative agenda, and it would be asked to prepare a report about the proposed legislation to advise the EU legislative bodies; the Commission as initiator, and the European Parliament and the Council as the deciding bodies.

Again, from the perspective of participation, this proposal appears beneficial as it would directly involve EU citizens in the legislative process and add inputs and insights into it. From the public sphere perspective, its merits are less self-evident. In terms of direct involvement, the proposal would only reach a very small subset of citizens. What is more, it is very questionable whether the proceedings would attain large-scale and widespread attention across the EU, certainly at the early stages of the decision-making process. Such public exposure is unlikely for typical single market dossiers and might only be expected in the case of exceptional proposals. However, most such exceptional proposals are hyper-political crisis files which typically require urgent political action at the highest level and are even addressed by other, non-legislative means (e.g. European Council decisions). In that sense, there is little merit in the proposal of citizen assemblies from the perspective of a common EU political space, while it risks delaying and complicating the established decision-making process and the authority of the representative EU institutions.

2.3.3 Transnational lists for the EP elections

So far, the members of the European Parliament have been elected on national or sub-national lists. In that sense, the European elections remain 27 parallel elections rather than one integrated one. The proposal to introduce transnational lists would involve setting a certain share of EP seats apart (say, 10% or 75 seats) to be elected on a transnational basis. In that case, citizens would cast two votes in European elections, one for a candidate on a national or regional list, and one for a candidate on a transnational list that would be put before all citizens across the EU.

From the participation perspective, the introduction of transnational lists may be a nice add-on, but it does not necessarily open a new channel of influence for citizens in the EU as it is directed at the European Parliament that already exists, and would retain the same functions. In contrast, from the public sphere perspective the transnational lists proposal appears as a very fitting way to create connections between the European election campaigns in different member states. It would create a common stake at the EU level and a set of shared foci. In that sense, the introduction of transnational lists might well contribute to a pan-European political sphere or at least reinforce the Europeanization of national public spheres.

2.3.4 Directly electing members of the EU's executive bodies

Beyond directly electing the members of the European Parliament, one can also imagine ways of creating a more direct link between voters and politicians in key executive positions in the EU. The first position to consider is the President of the European Commission, the main executive institution in the EU. In fact, an attempt has been made to create a more direct link between the EP elections and the election of the Commission President through the so-called *Spitzenkandidaten*-process that European party-groups have been pushing. The idea of the *Spitzenkandidaten*-process is that each European party puts forward its candidate for the Commission Presidency ahead of the European elections. The choice of the President is then to be decided in favour of the candidate who can attain the support of the majority in the newly elected European Parliament. For this procedure to work, the heads of state and government in the European Council need to be willing to commit to one of the *Spitzenkandidaten* as the nominee that they put to the European Parliament to elect. This is how things played out in 2014, when Jean-Claude Juncker, the chosen *Spitzenkandidat* of the biggest party-group (the European People's Party), was elected Commission President. However, in 2019 the European Council refused to nominate any of the *Spitzenkandidaten*. Instead, it opted for German Minister of Defence Ursula von der Leyen, and a majority of the members of the EP (reluctantly) endorsed this nomination.

While the *Spitzenkandidaten*-process thus remains contested and it is unsure whether it can be resuscitated (Crum 2022), it is only one way of increasing the

influence of EU voters on the composition of the EU executive. One obvious alternative – which would transcend the inter-institutional quarrels between the EP and the European Council – would be to elect one (or more) prominent members of the executive directly. Yet another mechanism would be for EU member states to hold direct elections on the people that they put forward for EU executive positions, such as their member of the Commission.

From the perspective of participation, any additional leverage that can be given to EU voters over EU decision-makers counts as an advance. In that sense, the *Spitzenkandidaten*-process promised a step forward, and a direct vote on EU executive positions would be even more impactful. From the common EU public sphere perspective, much hinges on the public sphere impact that the executive elections are expected to have. Presumably, a directly elected EU executive would reach at least all those European citizens who usually partake in European elections (which have an average turn-out of between the 30 and 35 per cent). If the contest were really to resonate across the EU, it might have a much bigger impact and become itself a driver of a pan-European public sphere.

The *Spitzenkandidaten* process is an indirect, and more complex and contested affair from the common EU public sphere perspective. Studies suggest that the introduction of *Spitzenkandidaten* had a relatively minor effect on voter engagement with the elections (Hobolt 2014; Schmitt, Hobolt and Popa 2015; Gattermann and de Vreese 2020). However, what is particularly problematic from the common EU public sphere perspective, is that this impact is rather skewed. Effects tend to be concentrated among more informed voters and for candidates who have a strong political affiliation with the national political context. Concretely, if the *Spitzenkandidaten*-process has contributed to a transnational public sphere, that public sphere had a marked centre of gravity in Germany: most candidates either came from Germany or from countries directly bordering on it. Such a skewed political space that amplifies existing political differentials is actually inimical to the development of a pan-EU democracy.

For that reason, from the EU common political space perspective, when creating more direct electoral links between citizens and members of EU executive bodies, much hinges on the execution. Any such links between voters and the appointment of EU power holders will need to be clear and strong as well as equally tangible and accessible for citizens across the EU. As it remains doubtful whether the *Spitzenkandidaten*-process can deliver on either account, the alternative is to abandon it altogether or to explore more radical options like some form of direct elections.

2.3.5 A permanent legislative Council of Ministers
The Council of the European Union remains the prime legislative body in the EU. The Treaty of Lisbon now requires that its legislative decisions are taken in public, but most of its deliberations remain behind closed doors. What is more,

the Council's work is in practice divided over 10 ministerial formations, which makes it even harder to follow. One idea that was floated in the early 2000s in the EU Constitutional Convention was to concentrate all legislative activity of the Council in a single formation, with permanent ministerial members who would always meet in public.

From a participatory point of view the merits of this proposal are limited. It would contribute to the transparency of EU decision-making but would not amount to offering citizens new points of access into the process. In contrast, this proposal has significant merits from the common EU public sphere point of view as it would provide a clear public focus point at the ministerial level that would be directly related to consequential decisions. In fact, meetings of such a Legislative Council on major EU legislative dossiers might gain the media coverage that are attracted by European Council meetings, which remain the most widely publicized EU events for now. The ministerial members of the Council would attract particular attention, not only as the national representative in Brussels but also in playing a role in communicating the collective decisions and the logic of the collective decision-making process to their national constituencies.

2.4 Conclusions

This discussion of five reform proposals is certainly not exhaustive. However, it does provide useful insights into the two perspectives distinguished: the participatory perspective and the common EU public sphere perspective. For one, the two perspectives are anything but diametrical opposites. Each departs from the premise that there is an EU democratic deficit. Each is keen to create more and better linkages between citizens and the EU decision-making procedures. And there are proposals on which both perspectives can converge, such as the idea of pan-European referendums.

Table 1 Overview of possible reforms and assessments		
Proposals	**Participation Perspective**	**Common EU Political Space**
Pan-European referendums	++	+ if issues are of wide and symmetrical importance
EU Citizens assemblies	++	- (merits not evident)
Transnational EP lists	O	++
Directly electing members of the EU's executive bodies (*Spitzen*/direct election)	++	+ (dubious in *Spitzen*-case)
Permanent Legislative Council of Ministers	O	++

Still, the discussion also highlights marked differences and priorities (see Table 1). While the proposals for the establishment of citizen assemblies and directly elected members of the EU's executive bodies find strong support from the participatory point of view, the priorities from the perspective of a common EU political space would rather be transnational lists in EP elections and a permanent Legislative Council. These are important differences as, in politically feverish times, the democratic quality of EU decision-making remains a major source of concern, while at the same time the political willingness to actually take on concrete reforms is in very limited supply.

Under these circumstances, the participatory perspective has the advantage of foregrounding solutions that promise immediate gratification in that they at least add new opportunities for participation. What is more, many of its proposals seem to be tailored for democracy in a digital and networked age. Hence, it is no surprise that the participatory proposals mobilize significant energy among policy makers, thinktanks and civil society organisations, with the idea of citizen panels being the most recent example. However, the big risk accompanying many of these proposals is that they remain detached from the key decision-making centres in the Council, Commission and (even) the European Parliament, and that they thus contribute to constructing a kind of Potemkin- or façade-democracy that taps a lot of political energy but leaves little impact. Something of that can be discerned in the fates of the right to petition the European Parliament and of the European Citizens Initiative.

The merits of each perspective can be weighed in different ways. However, my own view would be that, if the EU is founded on the idea of representative democracy, then our primary concern should be to build a common EU political space rather than stimulating participation per se. Admittedly, a focus on building a common EU political space goes against the grain of current social and technological developments. However, I would argue that it is exactly these centrifugal trends that make it all the more imperative. Reinvigorating a common EU democracy now appears a crucial condition for strengthening democracy in EU member states. If we want democracy in the EU to hold, then our priority should be to build a common EU political space.

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3   The European representation conundrum: Can the Conference on the Future of Europe resolve it?

Sonja Puntscher Riekmann

European representatives and policymakers are calling on the represented to voice their visions for the Union. After decades of top-down constitutional initiatives, the three most important EU institutions (the European Parliament, the European Commission and the Council of the EU) seem to want to overcome the much-deplored elite-citizens divide, and allow for input from below via the Conference on the Future of Europe. How does this function, and why is it happening at this moment in history? Does this experiment mark a turn in the debates about the 'democratic deficit' of the Union? Is there a consensus about the nature of the deficit? And, if there were, would such an exercise resolve the problem identified? These are some of the questions this paper aims to address. It starts from the premise that there is not so much a rational consensus among European citizens about the democratic deficit as a feeling of unease about the Union's model of representation. The model is unique in several respects: first, insofar as it has been developed for a union of states and thus in a transnational context; second, it imitates national representation models – but only to some extent – and is therefore in a state of 'permanent revolution' as a response to the extension of EU competencies and actions and problems stemming from that; third, institutional adaptation does not follow a clear plan, but is rather driven by crises and produces suboptimal, provisional solutions; fourth, the process of representation is marked by dilemmas that arise from half-hearted deepening which in turn originates from the agonism between centripetal and centrifugal political and societal forces.

Since Maastricht (1992), and in the wake of lost or hard-won referendums, the Union has engaged in a number of constitutional initiatives which aimed at steadying the would-be polity. The historic enlargement into Central and Eastern Europe demanded a more stringent model of representation; the growing 'constraining dissensus' (Hooghe and Marks 2009) of citizens required improved democratic credentials. However, the work of two Conventions which attempted to settle these requirements in a Constitution for Europe and a Charter of Fundamental Rights was rejected by citizens' vote in two founding member states,

France and the Netherlands (Puntscher Riekmann and Wessels 2006). While the bulk of the Constitutional Treaty as well as the Charter of Fundamental Rights provisions were preserved in the Treaty of Lisbon (2007), the financial and fiscal crisis, mass migration movements from non-EU countries and, last but not least, the COVID-19 pandemic confronted the Europeans – representatives and represented alike – with an uncomfortable truth: the EU's political system was ill-prepared for these 'wicked' challenges (Rittel and Webber 1973). The policies and governance structures underpinning EMU were incomplete or inefficient (see, among many others, Ioannou, Leblond and Niemann 2015; Jones, Kelemen and Meunier 2016; Copelovitch, Frieden and Walter 2016; Caporaso 2018), while EU competency in health matters was almost non-existent and limited to supporting coordination of member state policies.

And yet, with the exception of migration and asylum policy, European leaders hammered out stabilizing solutions, in particular with regard to the Eurozone crisis (Kudrna, Puntscher Riekmann and Wasserfallen 2021). At the same time (and perhaps for the first time) citizens became aware of the representation conundrum in the Union: the increasingly frequent and decisive European Council meetings conveyed the message that heads of state and government were being in the driver's seat, but citizens also learned about the complex interplay of a variety of other bodies, formal and informal, such as the Eurogroup and the ECOFIN Council, the Commission, the Parliament and last but not least the European Central Bank (ECB). The complexity of the multi-level system of governance was epitomized in the fact that the treaties establishing the European Stability Mechanism (ESM) and the Fiscal Pact were inter-governmental in nature (i.e. outside the EU's institutional system) and thus national parliaments were called upon to ratify them and in some cases to authorize ESM budget increases. Finally, the famous 'Troika' which set out the conditions imposed on member states accepting financial assistance and monitored their observance included not only the Commission and the ECB, but also the International Monetary Fund.[5]

The COVID-19 measures are apt to reinforce the confusion about the institutional set-up. At the beginning of the pandemic the EU had very limited competency in the field of health but was nonetheless put in charge of procuring and distributing vaccines for all member states. This made initial problems concerning common crisis measures and negotiations with vaccine producers hard to understand for ordinary citizens. Approval of vaccines rests with the European Medicines Agency (EMA), but member states also take national decisions. The same dual responsibility applies in respect of pandemic-related border management. Moreover, the financing of crisis measures was negotiated by member states in the context of the Multiannual Financial Framework, which meant the involvement of the Commission, the Parliament and the Council of the EU, whereas the final compromise (in particular regarding the balance between grants and loans)

[5] See the contribution by Valentin Kreilinger in this volume.

was reached in the European Council, after strenuous bickering. Moreover, the Recovery and Resilience Facility to combat the consequences of the pandemic came with a new provision that allowed the Union to borrow €750 billion on financial markets, a first in its history (at least at this extraordinary scale). This money is administered and distributed by the Commission in a second or 'shadow' budget (De Witte 2021, 668) that is outside the MFF and the annual budget. While such a budget is beyond the European Parliament's control, it also violates the unity principle as stipulated in Article 310 TFEU. Among others these provisions create legal concerns (Research Group for Comparative Fiscal Federalism 2021, 140). As is often the case, under the spell of crisis European leaders tend to think primarily in terms of output legitimacy.

While all this may be understandable, it comes as a surprise that the Union, after some delay, now wishes to foster input legitimacy by turning to its citizens for inspiration. Before going into a necessarily very preliminary assessment of the Conference on the Future of Europe, it is important to recall the provisions of democratic representation enshrined in the Treaty on the European Union; to discuss some of their effects in the light of the theoretical and empirical literature, and finally, to compare the citizens' proposals with the current praxis.

3.1 Representation in the EU: Who represents whom, what, when and how?

Since Lisbon (2007), Article 10 of the Treaty on European Union (TEU) states that 'the functioning of the Union shall be founded on representative democracy', whereby 'Citizens are directly represented […] in the European Parliament' and '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 to their citizens.' It asserts the right of all citizens to equal participation in European political life, and notes that political parties 'contribute to forming European political awareness and to expressing the will of citizens of the Union.'

Article 11 not only compels the Commission to consult citizens and representative organizations regarding its actions, but also introduces a novel element of direct democracy, the European Citizens' Initiative (ECI). If more than one million citizens, spread across seven member states agree, they may 'invite' the Commission, 'within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.' The ECI has so far been a modest success (Weisskircher 2019).

New also is Article 12, which stipulates a special role for national parliaments – to 'contribute actively to the good functioning of the Union'. While the idea of the 'role of national parliaments in the European architecture' already appears in the Treaty of Nice (2001), and has since the 1990s been part of the political

and academic debate on the democratic deficit, the Treaty of Lisbon formalizes their role. It makes them the arbiters of the principle of subsidiarity, and spells out the procedural details in the protocol on subsidiarity and proportionality. In principle any activity of the Commission can be assessed in terms of subsidiarity and in some member states such assessments are carried out with vigour, to satisfy – and perhaps even fuel – Euroscepticism. What has been hailed as multilevel parliamentarism (Auel, Eisele and Kinsky 2016; Winzen 2017) is at the same time an instance of possibly colliding modes of representation (Lord and Pollak 2010) and thus may add to the conundrum. Across the 27 member states national parliaments enjoy quite different rights in terms of scrutinising their governments' dealings at the European level. In Austria, for instance, these far-reaching rights are enshrined in the Constitution, but very lightly used, whereas in Germany MPs seeking to make the Bundestag defend its budgetary sovereignty during the Eurozone crisis had to take a case to the Federal Constitutional Court. The Danish Folketing has a long-established tradition of influencing its government's EU policy, while other parliaments limit themselves to information and consultation rights (Pollak 2014).

And at EU level the European Parliament is not the only organ of representation of citizens. As Article 10 notes, it is co-legislator, in most policy areas, with the Council, while neither can act except on the initiative of the Commission. The Parliament is elected according to national election systems and representation of citizens is degressively proportional, which has been criticized by some for violating the one man-one vote rule of modern democracies. Most importantly, citizens seem to have only loose identification with 'their' MEPs (i.e. those representing their own member state), and generally consider the Parliament as too remote; the reasons for its decisions seem hard to understand. Citizens often fail to consider the organization of parliamentarians in transnational factions on a left-right axis. Moreover, while political parties at EU level are described in the TEU as expressing the will of the citizens, their supranational organizational weakness hardly allows them to fulfil such demanding task. Last but not least European elections being largely 'second-order elections' (Mair and Thomassen 2010) adds to the problem. Representation also occurs via the Committee of Regions and the European Economic and Social Committee composed of local representatives and social partners respectively, yet the powers of each are limited and mainly consultative.

Composed of heads of state or government, the purpose of the European Council is to 'provide the Union with the necessary impetus for its development and shall provide the general political directions and priorities thereof.' 'It shall not', the treaty says, 'exercise legislative functions.' (Article 15(1) TEU). While the European Council was founded in 1974 it became a legal organ of the Union only with the Treaty of Lisbon in 2007, which also established its permanent President. And despite its importance in the history of integration its power became obvious to the public at large only with the outbreak of the financial and

fiscal crisis a decade ago. The management of this crisis gave prominent roles to a number of heads of state and government, not only of the usual suspects such as the German Chancellor and the President of France. In particular, the leaders of smaller member states very effectively used the European Council as a stage from which to communicate with their domestic audiences, and thus created the impression of being the ultimate decision-makers at the Union level. This led to the apparent downgrading of the Council of the EU and the Commission, who were assigned the role of executors of European Council decisions, while at the most crucial moments the European Parliament – supposedly the prime locus of citizens' representation – was largely side-lined. And as one might expect, the prominence of governmental actors at EU level was further increased during the migration crisis of 2015, in which acrimonious debates were framed in terms of national sovereignty and identity.

And yet, in Article 17(1) TEU it is the Commission which is defined as the organ that is to 'promote the general interest of the Union and take appropriate initiatives to that end'. Thereafter a number of far-reaching powers of the Commission are enumerated, from ensuring the application of the treaties and the application of EU law under the scrutiny of the Court of Justice, to the execution of the budget and the managing of programmes. It must perform its responsibilities independently from member states or any other body, and represents European common interests not only internally but also in external relations. With regard to external relations the representation conundrum is most conspicuous because the Commission shares the role with two other actors: namely the President of the European Council and the High Representative for Foreign Affairs and Security Policy, the latter being 'double-hatted' as she or he is simultaneously Vice-President of the Commission and chair of the Foreign Affairs Council. The 'Sofa-gate' incident during the official visit to Turkey of the President of the Commission and the President of the European Council in 2021 – EUCO President Charles Michel was given a chair alongside the President of Turkey while Commission President Ursula von der Leyen was relegated to a sofa – disclosed not only a gender issue but also epitomized the confusion about external representation. Indeed, this event could have been further complicated by adding the High Representative to the invitation. Small wonder if citizens are flabbergasted; so are many non-European observers.

Finally, TEU also sets out the roles of the Court of Justice, the European Central Bank and the Court of Auditors – institutions which are to serve the interests of the Union, its citizens and member states. Although Central Banks or Courts are rarely discussed in terms of representation, there are nevertheless pertinent questions over what, who, and how they represent. The financial and fiscal crisis significantly empowered the European Central Bank which was accused by core Eurozone member states of overstepping its mandate. If we concur with those who consider the famous 'whatever it takes' dictum by the ECB President in 2012 as the *real* source of stabilization of the euro and the Eurozone, we nevertheless

need to ask whether then President Mario Draghi was representing the interests of the Union, its citizens and member states or simply and wilfully expanding the institutional powers of the Bank. Similar questions could be raised with regard to the Courts, in particular the Court of Justice. Its caselaw in recent decades has tended to strengthen the doctrines of the supremacy and direct effect of European law, and the Court has generally ruled in favour of the Union and its citizens' interest. While the campaign for the UK to leave the European Union was fought in the name of 'taking back control' of – among other things – the judiciary, and thus against the power of the European Court, current disputes between the Union and Poland or Hungary unfold over the question whether the Court is illegitimately encroaching on national constitutions or defending (and thus representing) the rights of member states' citizens.

3.2 The political science of representation

The scholarly work on representation at the European level largely draws on theories developed in the frame of national democracies. It is beyond the scope of this brief paper to summarize the theoretical debates in any detail. Suffice it to say that following the basic definitions of representation as 'making present what is absent' and as 'authorization' for institutions to exert power in the name of the represented (Pitkin 1976), the literature explores what or who is absent and urges to gain presence, and who claims to be the legitimate representative of the absent (Saward 2010). Addressing the issue of the legitimacy of a system of representation and the processes by which representatives achieve legitimation, scholars have tackled the complex question of the relationship between representatives and represented as well as the relationship between input, output and throughput legitimacy in that system (Scharpf 2010; Schmidt 2013). This question entails others, such as the definition, aggregation and organization of individual interests; the possibility of formal and informal access to the policy process; the role of gatekeepers; the procedures to ensure responsiveness, accountability and responsibility, and ultimately the very nature of existing power structures. While an essential aspect of representative democracy is the power of the represented to 'throw the scoundrels out', finding out who the scoundrels are depends on another essential aspect: procedures of justification which are binding on the representatives (Mair and Thomassen 2010; Schmitt and Thomassen 1999; Puntscher Riekmann 2010; Frost 2013).

The Union, while formally conceived as an international organisation with more-or-less pronounced federal ambitions but undefined end-goal, over decades developed into a compound that unlike any other international organisation constitutes a system of governance that potentially impinges upon all aspects of the political, economic and social reality of its members (Fabbrini 2010). Hence the constant need to negotiate the balance between shared rule and self-rule is a major challenge for the representative system at the Union and at the national level. Profound innovation in politics is rare, and the Union copied the institutions of the states it compounds, but it did so only to some extent:

the Commission governs but is not a fully-fledged government; the Parliament legislates but is not a fully-fledged parliament (in particular it lacks the right of initiative); the Council legislates but is not a classical senate, and so forth. There are numerous layers of checks and balances, but procedures of accountability and responsibility remain largely obscure to the represented. This leads to a general imputation of responsibility to 'Brussels', particularly if dissatisfaction with output prevails, while national leaders tend to sell themselves as heroic representatives of domestic interests that they need to compromise on at the European level. National parliaments differ widely in their formal and informal capacity to control the action of these governments at European level, while public debates are by and large national debates even in European elections.

Political science literature on the democratic credentials of the Union is marked by some quite distinct views that can be summarized as follows: (1) the Union is not a state and hence is not in need of a classical democratic model; the existing model works quite well as its decision-making is sustained by output and not by input legitimacy (Majone 1998; Moravcsik 2002). (2) The Union rules over its members with considerable sway and thus the existing democratic system is insufficient in terms of control and accountability, and in terms of input as well as throughput legitimacy (Follesdal and Hix 2006). (3) Member states also show signs of democratic deficiency, therefore the transposition of national models will not be a remedy; in particular national party systems characterized by cartel parties are hardly beacons of good representation (Mair and Thomassen 2010). How, then, did citizens perceive these issues and what did they propose for their resolution in the Conference on the Future of Europe?

3.3 Citizens' ideas about representation in the Conference on the Future of Europe

On 9 May 2021 the European Union, at the initiative of the Commission, the Parliament and the Council, launched the Conference on the Future of Europe. The guiding idea was to give large numbers of citizens – potentially all citizens – a voice in the future development of the European polity. Citizens are called to present their ideas and indicate their preferences regarding a select number of topical issues, which European leaders promise to take into consideration. However, to what extent, and to what purpose will they be taken into consideration? To date it remains unclear how the European institutions are going to act on the conclusions of this supposedly grand process of participation. Will this eventually lead to a Convention negotiating a treaty change and/or to an intergovernmental conference, or simply to a solemn joint declaration that the three bodies will heed the citizens' ideas in their deliberations and eventual decision-making?

Moreover, was the conference really a success in qualitative or quantitative terms? An Interim Report (Kantar Public 2021) on participation from the opening of the Conference in May until November 2021 found that there had been

29,021 participants; 9,337 ideas presented; 16,017 comments made, and 3,658 events held. Whether this is satisfactory or not in a community of some 450 million citizens is subjective. Interestingly, 57 per cent of participants identified themselves as men and only 15 per cent as women, while the rest remained silent about gender. If these figures are accurate, it would be an astonishing result and require further gender-related analysis. Contributions came from all member states: Germany held the top position, but small countries were also well represented. In terms of age, citizens between 59 and 65 were the most active, closely followed by the 25–39 olds. Still, only more in-depth research could deliver robust figures on individual citizen participating in each of the various segments.

For this paper I focus on the Conference topic of 'European democracy' which, together with 'Climate change and environment' attracted by far the highest volume of contributions – this is in itself an astounding result. Within the 'European democracy' topic I am particularly interested in ideas and contributions on representation. We therefore need to know not only how many citizens participated in the wider debate on democracy, but also to tentatively evaluate the substance of their contributions in order to identify those relating to representation. As for the numerical part, so far, we count 1,233 participants; 6,274 'followers' of the topic; 3,225 comments; 19,788 participants in 618 events; and 1,443 ideas endorsed to varying degrees by a total of 9,577 citizens. In terms of content one major distinction can be made between those contributions endorsing further integration in a federalist or statist style, and those advocating the protection of sovereignty and subsidiarity. While there is hardly any direct mention of representative democracy, many ideas can be read as classical approaches to a representative model for the EU: (1) the reconstitution of the Union as a 'United States of Europe' – it is argued that its federalization would allow it to reach its full potential, to gain more credibility and influence at the global level, and would overcome Euroscepticism. This is often accompanied by arguments for further economic and fiscal powers being delegated to the EU, as well as a European army. (2) The realization of a fully-fledged parliamentary and party system at EU level, including support for the right of initiative for the EP, a single electoral system, and transnational lists (although support for the *Spitzenkandidaten* model is rather muted). (3) The direct election of the Commission and/or European Council President as well as the fusion of these two functions (giving the Union a single face is the implicit concern). (4) The transformation of the Council into a senate, implying the end of the rotating Council presidency and the abrogation of veto powers by extending qualified majority voting. These four proposals explicitly or implicitly address the representation conundrum. Interestingly, the federalist idea is often accompanied by a strong support for a Constituent Assembly tasked with developing a European Constitution and defining key elements of a democratic federation. If we took this position as representing a majority of European citizens, it would belie the mantra of many political actors as well as academic

scholars who time and again declared the death of a European constitution after the Constitutional Treaty was rejected in the referendums of 2005. However, that such an assembly should be needed to define key elements of European democracy demonstrates the public's lack of clarity about democracy in general and democracy in its supranational context in particular.

Those who prefer a greater role for member states or subnational entities seek to preserve the power of national parliaments and party systems, and thus seem to confine representative democracy to the domestic context. The fear of over-centralization and the will to preserve national identities are key in such arguments. However, there are also voices in favour of direct democracy by means of which citizens would express their preferences via digital tools, an increase in mandatory European wide referenda, and the creation of citizen assemblies. Finally, while we see quite vigorous calls for better representation of generational groups (youth and elderly) there is hardly any focus on gender- or minority-specific representation. This is puzzling even if we consider the latter topics as subsumed in the general advocacy for citizens equality. However, gender equality and minority rights appear in the chapters on 'Values, Rights, Rule of Law, Security' as well as on 'A Stronger Economy, social justice and jobs', where the problem of pay gaps and unfair taxation is debated.

A recurring theme is language or rather the need for a common European language: while most of the participants advocate the use of English, a minority argues in favour of more utopian ideas such as Esperanto or Latin. Intriguingly, nobody seems to sustain the current practice of multilingualism and translation. Still, what transpires from these proposals is a concern with communication problems in the Union, not only between institutional levels, but also horizontally among citizens. This chimes well with ideas about creating a European media. It goes without saying that representation – and its corollaries such as elections and appointments, ex-ante and ex-post accountability, justification of and responsibility for political and legal acts – all rely on communication between representatives and represented.

3.4 Conclusions

If this preliminary reading of the positions on democracy voiced as part of the Conference is correct, the next step would be to ask some questions about the feasibility and desirability of these ideas: feasibility in terms of political interests and the power relations of member states as the ultimate 'arbiters of the treaties', and desirability in light of representation theories and relevant empirical work on the development of representative democracy in the Union, but also in national contexts. As for feasibility, these ideas depend on their potential effects: do they imply treaty change or can they be realized within the existing constitutional framework? Most recent research on positions and preferences of member states governments shows little willingness to engage in treaty change, let alone to call on a new Convention and to ratify the results in referendums. One argument

against treaty change is that existing treaty provisions allow for many policy changes without further amending the texts. Hence, there is no need to engage in a process that could stir up anti-European sentiments and thus to risk derailing the constitutional settlement. However, the wish to avoid treaty change does not necessarily mean that member states are willing to implement more moderate changes. In any case, as long as EU institutions shun the presentation of a clear purpose about what will be done following the Conference conclusions, this remains guesswork.

As for desirability we also need to take into account the findings of the critical literature on the praxis of representative democracy in general. For better or for worse Union democracy also mirrors national democracies. National democracies suffer from deficiencies in their parliamentary workings, in representation through party systems, in their checks-and-balances systems marked by the dominance of executives over legislators and encroachments upon the judiciary, in the collusion of power holders with the media and party sponsors. As a matter of fact, in some respects the Union's deficits are less marked or even non-existent. Rather than focusing only on the EU's democratic deficit, one could hold that there is a need to discuss reforms of representative set-ups in the European *and* domestic systems.

However, the more mundane – but important – question here concerns the future of the Conference's results. Announced by Ursula von der Leyen in 2019, during her opening statement to the European Parliament when she was a candidate for Commission President, the Conference was part of the chapter of her programme called 'A new push for democracy'. Therein the President promised the following: '[…] I want European citizens to play a leading and active part in building the future of our Union. I want them to have their say at a Conference on the Future of Europe […]' (European Commission 2019) But she was silent about whether, when and how this 'say' would translate into policy or institutional change. Representatives at all levels should keep in mind that there is nothing more detrimental to the legitimacy of a political endeavour than raising the expectations of the represented but then failing to take them seriously. In the interest of democratic legitimacy, they should at least offer some convincing justification about the use or neglect of citizens' ideas and proposals.

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4 Next Generation EU and national parliaments: Taxation without sufficient representation?[6]

Valentin Kreilinger

'No taxation without representation', an idea with medieval roots, served as an important principle over the centuries and became a powerful political slogan in the 18th century. Essentially it means that governments must not spend or raise taxes unless a proper representative assembly approves it.

The multi-level governance of the EU puts an additional layer above nation states and potentially constrains representative institutions at lower levels, for instance with respect to budgetary decisions. Despite some notable tensions in the euro crisis, European integration had a long period in the past in which European budgetary constraints and national budget procedures coexisted, with only occasionally strained relations.

Next Generation EU (NGEU) and its Recovery and Resilience Facility now create a situation where there is a greater risk of insufficient representation. Both the European Parliament and national parliaments have distinct roles to play, but their involvement in NGEU is rather limited. The European Parliament does not have co-decision power and can merely conduct 'recovery dialogues' with the European Commission. Preliminary evidence on the involvement of national parliaments in National Recovery and Resilience Plans (NRRPs) suggests that most of them are likewise playing only a marginal role. From a democratic scrutiny point of view this is very worrying, therefore this essay puts forward proposals for strengthening the involvement of parliaments.

As for the future, the proposal to repay NGEU debt by means of EU taxes further increases the risk of insufficient (parliamentary) representation. At the same time, parliamentary involvement should not be perceived or conceptualised as a

one-way street which creates an ever-greater number of veto players. The fallback option is that the NGEU debt would be paid back from the EU's ordinary budget from 2028 onwards, seriously restricting the EU's ability to spend money in its different policy fields. Extending NGEU or making it permanent would require a unanimous decision by member states – just like the introduction of EU taxes. The decision-making process should not be too cumbersome but should nevertheless have sufficient parliamentary involvement. National parliaments should thus become more active throughout the lifetime of NGEU, starting immediately, and the European Parliament elections of 2024 and 2029 are two important rendezvous with the EU's financial future, too.

This essay proceeds as follows: the first section describes how European integration and national budgetary procedures co-existed in an occasionally strained relationship in the past. Building on that, the second section reviews the present structure of NGEU and shows that national and EU-level budgetary procedures are now more deeply intertwined. The third section turns to the future, and the prospect of EU taxes to repay NGEU debt. This means that representation must be appropriate and proportionate depending on the level and nature of that taxation, over the entire lifetime of NGEU, and that scrutiny intensifies at all parliamentary levels, and even looks beyond borders.

4.1 The past: an occasionally strained coexistence of European integration and national budget procedures

The relationship between government and parliament in the budget procedure depends on constitutional arrangements and inter-institutional practices. Budgetary powers can be limited by debt and deficit rules that partly disempower policy-makers. In the case of European integration, such rules have occasionally led to tensions between the EU level and an individual member state or between member states. Regarding the involvement of parliaments in the national budget procedures of EU member states, no common pattern but rather great variance can be observed.

4.1.1 Legislatures in the budget process

'No taxation without representation' has been a powerful mantra over the centuries. But legislative involvement in the budget procedure meets an important challenge: with respect to fiscal discipline, does 'responsiveness to political constituents trump responsibility?' (Posner and Park 2007, 20). In the 20th century, parliamentarians in legislatures of many countries did not trust themselves to make responsible financial decisions and voluntarily yielded budgetary power to the executive (Schick 2002). Fiscal rules that impose numerical limits on budget aggregates such as the fiscal balance, total revenues, total expenditures and/or debt can also limit the role of parliaments and governments (Lienert 2010). They are a common feature of budgeting in the 21st century.

Parliamentary involvement in the budgetary process differs greatly across representative democracies around the world. In some countries, the government's budget proposal is approved upon presentation, possibly except for a small fraction of the budget. In other countries, parliament cannot add new expenditure. Formal procedures of budget-making can also mean very little legislative participation in practice. Yet there are possibilities for parliaments to regain an effective voice in the budget cycle (Schick 2002). Although an annual budget process with greater legislative control might potentially risk eroding fiscal discipline and government efficiency, it will enhance democratic accountability (Posner and Park 2007). The government formation is another channel through which parliamentary involvement occurs via the parties constituting the governing coalition.

4.1.2 Two modes of EU economic governance

European integration limits the budgetary powers of EU member states by imposing debt and deficit rules (Schmidt 2020). This does not operate as a single system; there are two very different modes of EU economic governance.

On the one hand, a mostly regulatory mode of addressing fiscal and economic policy via the European Semester, whereby non-binding country-specific recommendations are issued to member states. The existence of a common currency (with the need to limit spill-over effects and to ensure convergence) justified the creation of tools like the Stability and Growth Pact, but a major concern regarding the role of national parliaments in fiscal and economic issues has been that rules and orders from the supranational level would shrink their decision-making space in these areas. The coordination and surveillance of fiscal and economic policies makes it even more difficult to have influential parliaments than under normal circumstances.

Alongside as the Stability and Growth Pact, EU fiscal rules are set out in the Treaty on Stability, Coordination and Governance that provides for the introduction of balanced-budget rules in the national legal orders of Eurozone member states and others who have chosen to opt in.

On the other hand, there is the emergency mode of EU economic governance. National governments and parliaments have tied their hands by signing up to fiscal and economic surveillance mechanisms. In the euro crisis, the common currency has been saved at the cost of democracy (Crum 2013, 2018), because rescue packages have disempowered parliaments of euro area countries (Kreilinger 2019) insofar as recipient countries were obliged to undertake severe reforms to receive loans. Both the parliaments of recipient countries and creditor countries witnessed a lack of involvement. This mode of EU economic governance has put governments against parliaments (Puntscher Riekmann and Wydra 2013) and is much more intrusive into national political systems than the normal, regulatory EU economic governance mode of the European Semester (Kreilinger 2018).

4.1.3 No blueprint for parliamentary involvement in the European Semester

National parliaments have been unevenly involved in the euro crisis (Auel and Höing 2015). Their scrutiny in the European Semester varies greatly, as cross-country comparisons of parliamentary involvement in Stability or Convergence Programmes and National Reform Programmes illustrate (Hallerberg et al. 2018). The same is true for bailout packages under the European Stability Mechanism (Kreilinger 2019).

National parliaments can oversee the European Semester through their relationship with the government or try to make a broader contribution (Lord 2017). Minimum standards for parliamentary participation might be a possibility (Lord 2017; Kreilinger 2018). However, there is no zero-sum game between parliamentary involvement and compliance, as the example of Denmark indicates. The creation of a 'National Semester' alongside the European Semester sets a model for parliamentary involvement: at specific junctures in the timetable of the European Semester, joint committee meetings of the European affairs committee and the Budget committee of the Danish *Folketing* allow for scrutiny and debate of certain key documents (Kreilinger 2016).

More broadly, if fiscal institutions force parliamentarians 'to fix prudent aggregate parameters and to focus debate on allocative choices within a hard budget constraint' (Wehner 2010, 141), legislatures can be powerful *and* fiscally responsible, even in EU economic governance.

4.2 The present: Next Generation EU recovery funding and national budget procedures are inextricably intertwined

The EU's instruments for the post-pandemic economic recovery differ in many ways to those used before, during and after the euro crisis. In July 2020 the European Council agreed an unprecedented €750 billion recovery fund – Next Generation EU. Subsequently adopted by the co-legislators, the new fund amounts to about 3% of the EU's annual GDP. The EU raises debt on the financial markets to finance grants and loans to member states which submit recovery plans. These plans must be largely aimed at supporting Europe's 'twin transition' towards a green and digital future. Member states agreed to repay the joint debt that covers the grants via EU taxes or 'own resources' which have yet to be adopted.

Yet, the functioning of NGEU also makes it difficult to attribute responsibility for decisions on recovery spending and prevents both national parliaments and the European Parliament from properly holding executive decision-makers to account. This reflects long-existing problems of multi-level governance (Crum 2018; Curtin 2014; Papadopoulos 2021). The national governments which draft recovery plans and the Council of the EU which collectively assesses them are representative institutions, but NGEU nevertheless suffers

from insufficient representation: preliminary empirical evidence indicates that national parliaments were rarely involved in or consulted during the drafting of the recovery plans and most of them did not have the opportunity to debate and vote on them either.

4.2.1 Next Generation EU

NGEU is the centrepiece of the EU's response to the economic crisis which followed the COVID-19 pandemic and the measures to prevent the spread of the disease (Jones 2021; Kreilinger 2020). It was subject to a specific decision-making and ratification process. The initial breakthrough came at the European Council meeting of 23 April 2020, when member states asked the Commission to develop a recovery fund. The Commission then presented its proposal on 28 May 2020. The European Council reached an agreement on the multiannual financial-framework (MFF) and on the NGEU package at its meeting from 17 to 21 July 2020. Subsequently, the Council of the EU and the European Parliament voted in favour of the legislation to put it in place. All member states approved the 'own resources' decision following their constitutional rules, i.e. usually after a positive vote of the national parliament. The European Commission could only start borrowing money to finance the grants and loans after the notifications from all 27 member states had been received by the Council Secretariat on 31 May 2021.[7]

Large-scale debt borrowing (up to €750 billion) by the EU on the financial markets and a large share of grants (up to €390 billion) – i.e. real financial transfers to member states – alongside loans (up to €360 billion) are unprecedented steps. Although the total amount represents less than 3% of the EU's annual GDP, the shares received by some member states will represent a higher share of their GDP. The allocation of these funds involves distributive choices between member states and economic sectors (Crum 2020).

Driven by economic necessity, the EU has removed obstacles to spending, enabled flexibility and transferred additional money to member states (Schmidt 2020; Jones 2021). Contrary to the way in which it dealt with the euro crisis, the EU has taken real steps towards creating what had been called a 'macroeconomic union' (Hix 2014), although arguably still towards one with a democratic deficit.

4.2.2 National Recovery and Resilience Plans

The European Semester and its country-specific recommendations are the main institutional framework for governing NGEU (Vanhercke and Vedun 2022). But given that NGEU sets clear economic policy objectives for the entire EU,

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[7] There were doubts as to whether all national parliaments would be able to complete the process quickly. In Finland in particular, approval was not certain, as the Constitutional Committee of the Parliament considered a two-thirds majority in plenary necessary in view of a transfer of competences by Next Generation EU. On 18 May 2021 the Parliament voted in favour by 134 votes to 57, clearing the way for Finnish ratification.

the non-binding governance structure of the European Semester which was 'never set up for the purpose of monitoring the allocation of funds' (Crum 2020, 10) might not be the ideal toolkit to steer NGEU.

While linked to the European Semester, NGEU completely revamps this annual cycle of fiscal and economic policy coordination and surveillance. The non-binding country-specific recommendations for national economic reforms have up until now largely been ignored by member states. The new regulation gives a real boost to these recommendations by establishing a clear link between them and the financial resources of NGEU funding. On paper, both Commission and Council gain influence via the assessment criteria upon which the progress of a country is assessed (Bekker 2021, 183). How this plays out precisely, remains to be seen.

Member state governments submit national recovery and resilience plans (NRRPs) in which they present economic reforms and public investment projects. Thus, national and European procedures have become even more 'intertwined' (Fasone and Lupo 2016, 14) and 'most of the choices about how the EU funds will be spent are delegated to the Member State level' (Crum 2020, 12). The process of drafting, assessing and deciding on NRRPs does not offer opportunities to anchor pan-European elements into these national plans. These can only be written into the Annual Sustainable Growth Strategy which continues to set overall economic policy objectives for the EU. On the continuum between conditionality and rubber-stamping, NRRPs are 'meant to be a contract whereby money is intended to serve certain goals, and the EU checks that the conditions to achieve them are in place' (Pisani-Ferry 2020).

Member states might squabble internally as well as in the Council about recovery plans (Kreilinger 2021), for instance in the process of disbursing funds (Rubio 2022). But it seems equally possible that the process of disbursing NGEU money becomes technocratic and uninfluenced by politics. The question of whether the rule of law mechanism is activated, and if so how and when, is quite crucial in this regard, and will determine how politicised NGEU will become at the EU level.

4.2.3 Preliminary evidence on parliamentary involvement in 2021
The involvement of national parliaments in the preparation of national recovery and resilience plans is not mandatory but based on national provisions. As shown below, the information that the national parliaments received from their national governments on the draft plans varied considerably, as did actual parliamentary involvement.

Procedurally, the NRRPs are closely aligned to the European Semester. But there is currently little evidence for a real emphasis on integrating parliamentary involvement. The role of the European Parliament is limited; national parliaments

are not mentioned at all (Bekker 2021, 182). Consequently, the relationship between the three longstanding logics inside the European Semester – national parliamentary involvement, surveillance mechanisms and ownership (Kreilinger 2016) – is redefined in the newly-designed NGEU governance: On the one hand, parliamentary involvement is still not prescribed or recommended while the surveillance component by the European Commission (non-binding in the Semester) is modified through the introduction of milestones and targets to be met before further disbursements. On the other hand, ownership, notably by national governments, is enhanced compared to the European Semester.

In practice only few national parliaments have been actively included by their governments in the NRRP process: less than half of national parliaments/ chambers in the EU replying to the 35th Biannual Report of COSAC indicated that their government presented the plan to them, and in only four of them did the presentation take place *before* the draft was adopted (COSAC 2021, 12). Just three national parliaments/chambers had been involved in the actual drafting of the plans (COSAC 2021, 13).
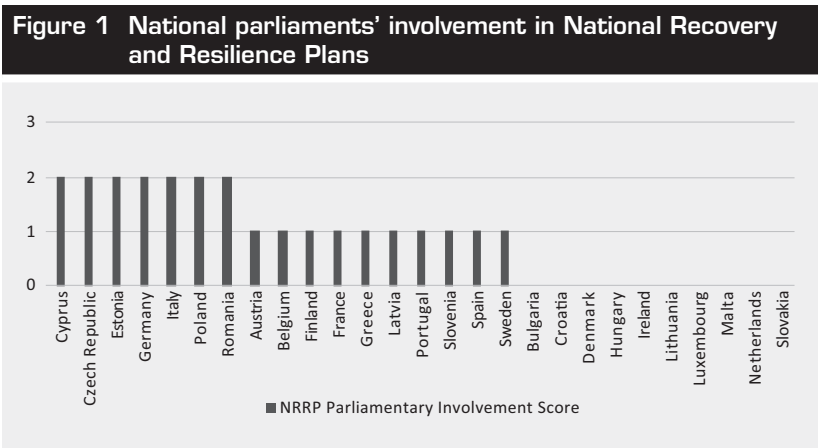
However, a total of 16 parliaments/chambers responding to the survey had scrutinised the respective NRRP at some point, either ex-ante or ex-post, often at their own initiative (COSAC 2021, 13). Six parliaments/chambers had adopted a resolution or opinion on the document. But national parliaments did not adapt institutionally to the NGEU procedure: none of them has set up an ad-hoc parliamentary committee or a technical unit, and none was planning any changes to their rules of procedure (COSAC 2021, 15). More recently, the Portuguese *Assembleia da República* has set up a specific body devoted to NGEU and the NRRP; it remains the only national parliament to have done so (European Parliament 2022, 7).

Data from an ECPRD survey of national parliaments allows a more nuanced preliminary assessment of their involvement into NRRPs (European Parliament 2021a, Oireachtas 2021). Involvement covers three categories: the submission of preliminary directives and priorities by the government, the submission of a draft version of the NRRP by the government and submission of the final version. States are allocated a score of either 1 or 0 in each of the categories. No national parliament achieves the maximum overall score of 3 (see Figure 1).

National parliaments in seven member states (Cyprus, the Czech Republic, Estonia, Germany, Italy, Poland and Romania have seen a medium level of involvement in the NRRP. They reach a NRRP parliamentary involvement score of 2 out of 3. National governments submitted a draft version of the NRRP to all of them. In four countries (Cyprus, Estonia, Italy and Poland), parliaments previously received preliminary directives and priorities for the NRRP; in the other three countries, governments formally also submitted the final version of the plan after parliaments had already received a draft.

In ten member states (Austria, Belgium, Finland, France, Greece, Latvia, Portugal, Slovenia, Spain and Sweden) the involvement of the national parliament was low. These countries have a NRRP parliamentary involvement score of 1. Most of these countries have a form of *ex ante* involvement by the national parliament (either preliminary directives and priorities or a draft version of the NRRP). However, the national parliaments of Austria and Belgium were only involved *ex post*.

In the ten remaining countries, parliaments were either not involved, have not replied to the survey or governments had not sufficiently progressed with their plans by April 2021.

Figure 1   National parliaments' involvement in National Recovery and Resilience Plans

Source: Own elaboration, data from an ECPRD survey completed in April 2021 (COSAC 2021, Oireachtas 2021).[8]

4.2.4 Why more parliamentary involvement is necessary and what it could look like

There is a clear case for closer parliamentary scrutiny of NRRPs, compared to the National Reform Programmes under the European Semester, because more is at stake. As the NGEU is at the heart of the EU's COVID-19 response, it should also be at the centre of parliamentary activities. Parliaments are vital places for debating the redistributional choices that these measures involve. They are battlegrounds for shifting electoral majorities and their involvement, particularly via plenary debates, should be perceived that way. The thus far limited involvement of national parliaments 'is all the more worrying because

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[8]   The figure shows the 'National parliaments NRRP involvement score' (own elaboration) composed of national parliaments' responses to the following questions:
    Has your government submitted to parliament (by 12 April 2021) preliminary directives and priorities for the NRRP?
    Has your government submitted to parliament (by 12 April 2021) a draft version of the NRRP?
    Has your government submitted to parliament (by 12 April 2021) the final version of the NRRP?

the European Parliament has no real say either' (Witteman and Teffer 2021). Furthermore, the mostly low levels of national parliaments' involvement during and immediately after the drafting of NRRPs, suggest that parliamentary scrutiny of the execution of NGEU is unlikely to increase – even though this responsibility clearly seems to be a task that the EU level cannot undertake alone.

The European Parliament has been clearly side-lined in the response to COVID-19 (Bendjaballah and Kreilinger 2021). Nobody could vote for these measures in the European Parliament elections of May 2019, less than a year before the pandemic. Very few parties campaigned on a manifesto which included such far-reaching ideas as expanding the budget in this way, and nothing of this kind was the subject of any high profile debate during the electoral campaign. The policies and measures that are now being put in place, were therefore not supported by a majority of voters in May 2019 though naturally one cannot presume that they would have been rejected, either. True, COVID-19 was unforeseeable and the crisis required a quick and decisive response. But from the point of view of the democratic legitimacy of those decisions, this is worrying. In view of its huge redistributive effects, the EU must ensure that its response to COVID-19 is sufficiently legitimate, and seen to be so.

The impact of NGEU and how it works in practice remain to be seen. It will depend, in part, on how provisions that are vague or open to different interpretations are used and how the European Commission intends to enforce them. Important in this respect is that there will be Council oversight of the Commission's assessments. The possibility of rejecting plans and disbursements with reversed qualified majority is a non-parliamentary, intergovernmental control instrument.

It is therefore more necessary than ever to remedy the structural and procedural weaknesses of both the European Parliament and national parliaments through new Euro-national parliamentary procedures that are 'intertwined' (Fasone and Lupo 2016, 14). The objective would be to reduce the information asymmetries and create an 'exchange of information and best practices [...] with a view to foster their individual and collective ability to scrutinize' (Fasone 2019, 7). National parliaments and the European Parliament must start to see each other as allies in addressing the joint task of democratically controlling these new instruments. This includes strengthening the Interparliamentary Conference on Stability, Economic Coordination and Governance and enhancing their individual scrutiny tools.

Specifically, parliamentary involvement in NGEU could be fostered along five broad lines simultaneously:
- First, the European Parliament must be properly involved in NGEU and have the power and the capabilities to scrutinise and influence its different elements (Crum 2020).

- Second, going beyond previously existing practices in the European Semester (Kreilinger 2016), the European Parliament must become a public forum where national decision-makers are required justify their NRRPs, and explain their progress (or failure) towards meeting milestones and targets.
- Third, national parliaments must ensure that their role in the budget process remains intact and that recovery money receives the same amount of scrutiny as ordinary national budgets – this would be in their own self-interest as well as in the interest of the European Parliament and other national parliaments.
- Fourth, national parliaments must look beyond their own borders at other recovery plans and cooperate with other parliaments to exchange best practices and develop collective scrutiny mechanisms.
- Fifth, decision-makers at the national level must increase their awareness of positive and negative spillover effects that national policies have on other member states. Beyond fiscal policies, industrial policy, the environment and technology are areas in which national parliaments could strengthen their cooperation in order to better take interdependencies between member states and recovery plans into consideration.

These five ways of strengthening parliamentary involvement seem to be the most promising avenues, because the chain of delegation in the EU's multi-level system makes it impossible for the European Parliament to hold national decision-makers to account, and national parliaments have the same problem when it comes to the European Commission (Papadopoulos 2021).

The case for strengthening the European Parliament (Crum 2020) and adopting minimum standards for national parliaments in the European Semester and NGEU (Lord 2017; Kreilinger 2018) is still overwhelming. The consequence of this would probably be more politicised governance of NGEU: political parties would be able to publicly and visibly contest NRRP spending priorities, economic reforms and country-specific recommendations. There was some evidence of this at plenary debates on the European Semester in France and Germany before the pandemic: opposition parties contested the way in which the government involves parliament and contested policy choices by the government, while governing parties resorted to criticising the European Commission (Kreilinger 2018). A side-effect of strengthening parliamentary involvement with NGEU, but still another important consequence, would be a stronger connection to citizens who see their preferences represented in the national and European parliamentary arenas when they act as public forums to debate (national) economic policy choices. After all, parliaments are not unitary actors, but majority and opposition are 'two distinct agents of the electorate' (Auel 2007). The European Parliament is, in a similar way, shaped by cleavages between its political groups.

Furthermore, adopting what the EU calls 'own resources' as described in the roadmap – i.e. introducing certain new taxes on certain goods or services – to repay the debt created for NGEU calls for linking the above-mentioned lines of fostering parliamentary involvement to the actual level and impact of taxation in order to ensure that there is 'no taxation without (sufficient) representation'.

4.3 The future: ensuring representation appropriate and proportionate to the nature and level of taxation

The EU has been strongly intervening into core state powers (Genschel and Jachtenfuchs 2014). Increasingly, taxation is one of them. The future of EU spending after NGEU is closely linked to the funding and taxation that the EU receives from 2028 onwards (Tarschys 2022). Unlike in the case of the euro crisis, it is foreseen that taxes will be raised at the EU-level to repay the debt from NGEU. This issue will form part of the negotiations on the next medium-term financial framework of the EU. Although strictly speaking neither EU debt nor EU taxes are new, the EU will have/need an unprecedented amount of them. Arguably, this further aggravates the lack of representation. The different elected representatives gave their consent to €750 billion debt of which €390 billion in grants are supposed to be repaid via not-yet-existing taxes. This itself illustrates the risk of taxation without sufficient representation.

4.3.1 Bringing parliaments in while NGEU is rolled out

The key to achieving a sufficient level of representation lies with representative scrutiny throughout the entire lifetime of NGEU. The first months have seen serious loopholes, but there is still time to put scrutiny mechanisms in place. It will be too late if this only happens when money is already (mis-)spent. And obvious cases of mis-spending would torpedo all chances of assigning new 'own resources' to the EU.

Currently, the low level of parliamentary scrutiny of NRRPs at the national level and the limited involvement of the European Parliament increases the uncertainty about if, when and how (i.e. with which taxes) the debt of NGEU will be repaid. Therefore, sufficient representation needs to be ensured particularly during the spending period of NGEU from 2021 to 2026.

National parliaments should therefore immediately intensify their scrutiny, consider looking at their neighbours and generally dedicate enough time and resources to NGEU. If this is the case, inserting moments for political evaluation in the monitoring procedures would be useful and NRRPs should be understood as 'living documents' that can be revised and adjusted, subject to parliamentary approval, when economic circumstances change.

Furthermore, the electoral campaigns to the European Parliament in 2024 and 2029 with a high turnout and with clear policy platforms regarding

'own resources' and the future of NGEU would add an additional layer of representation to NGEU, and the taxation question. The EU's institutional toolkit provides useful tools such as *Spitzenkandidaten* and transnational lists that might prove useful in this respect and would also stimulate the emergence of a European public sphere.[9] The taxation question also offers the possibility of some politicisation regarding which taxes the EU should adopt.

4.3.2 Repaying Next Generation EU
Above all, NGEU will have long-lasting implications on the EU's finances, because it is funded through a public debt programme. The debt created for NGEU grants is supposed to be repaid by new 'own resources' of the EU between 2028 and 2058. These taxes to repay the debt have not been identified or implemented yet, and agreement on new financial resources is anything but easy (Jones 2021). While the EU institutions have agreed a 'roadmap', the question of the repayment of NGEU will be a contentious element of the negotiations on the next medium-term financial framework for the EU.

NGEU has brought the EU, even if it 'has not yet crossed the Rubicon, [...] right up to its banks' (Fasone and Lindseth 2020, 29). Importantly, NGEU does not lead to a Europeanisation of taxation authority. In the absence of any unanimous agreement on new EU-wide taxes, the EU's common budget will be used for repaying the debt. The debt could also be rolled over, but that would go against the spirit and the letter of the agreement to create a temporary and exceptional instrument.

One can imagine a situation in which the EU obtains taxation authority and the European Parliament participates fully. This is not the case with NGEU as it stands now but could be created in the next medium-term financial framework. Finally, although the Commission acquired a new task as debt manager, it is worth remembering that EU debt issuance is by no means a new phenomenon.

4.3.3 Appropriate and proportionate representation
There has been wide-spread public support for the recovery plan: 60% of respondents to a 2021 Flash Eurobarometer survey agree that NGEU projects will help their country to overcome the economic and social damage brought about by the coronavirus pandemic and a similar proportion (59%) thinks that the projects will help their country to be better prepared for future challenges (European Parliament 2021b). However, one of the lessons from the euro crisis is that the risk of a public backlash against fiscal measures is big, both in creditor and recipient countries. Such a constellation had already briefly emerged with the 'frugal four' group of Austria, Denmark, the Netherlands and Sweden, when these countries initially opposed the idea of grants in the recovery fund.

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[9] See the contribution by Ben Crum in this volume.

The 'no taxation without representation' principle offers some guidance for ensuring representation that is appropriate and proportionate. The basic idea is that any taxation must be backed up by representation that meets certain criteria according to the nature and level of taxation. The representation required depends on the nature and amount of the 'own resources'. There is a wide range of options – for example the digital revolution could facilitate EU funding (Tarschys 2022) – and certain taxes will be less controversial and less exposed to national vetoes than others.

The baseline for representation would be a proposal by the European Commission, consultation of stakeholders, unanimous approval by the Council, consent from national parliaments and co-decision by the European Parliament. There are certain kinds of taxes for which many would consider meeting this (low) threshold of representation as sufficient.

In addition to its other tasks, the Conference on the Future of Europe should have been a place where the decisions that were taken in response to the crisis were openly discussed.[10] When it comes to follow-up decisions, for instance the one on which 'own resources' to create for the EU and how exactly to design such new taxes, the Conference could inspire a future citizens' panel that involves citizens in the question of future EU-wide taxation and does not reduce them to spectators of intergovernmental bargaining about the next medium-term financial framework. A citizens panel on 'own resources' would add a directly-democratic strand of representation.

But the longstanding difficulties in agreeing 'own resources' unanimously with veto power for all member state governments and parliaments create a situation in which even a low level of representation could possibly (and even seems quite likely to) lead to gridlock. The fallback option is then the repayment of the debt starting with the next medium-term financial framework, seriously limiting the financial means under the EU's ordinary budget from 2028 onwards. Under this scenario, the EU would simply have less money to spend in policy areas such as agriculture, research or security.

This suggests that even the current low level of parliamentary involvement might be unsustainable due to the risk of gridlock and insufficient representation. Could one aim for having a higher overall level of representation while at the same time having a higher probability of reaching an agreement?

Possibilities exist for more representation through the channels of national parliaments and European Parliament elections in the coming years. European citizens might resent rolling over the debt in 2027/2028. Does this offer an opportunity to facilitate agreeing on new 'own resources'? If designed and

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[10] See the contribution by Sonja Puntscher Riekmann in this volume.

communicated carefully, EU taxes could be possible. After all it is not only a theoretical and legal question, but one in which politics plays a major role. In late 2020, when NGEU had to be approved unanimously together with the rule of law mechanism, Poland and Hungary eventually dropped their vetoes. More representation during the spending period of NGEU could justify less representation and overcoming or forcing a unanimous agreement on new EU taxes in the future. After all the mere take-it-or-leave-it situation in case of the EU's 'own resources' decision or other areas like trade agreements shows that this way of involving national parliaments is far from ideal.

There are several aspects that make representation appropriate and proportionate: first, stronger involvement by both national parliaments and the European Parliament. Second, parliamentary scrutiny throughout the lifetime of NGEU. And, third, considering the 'taxation' question: Which specific 'own resources' are to be adopted? What is the impact of the fallback option (debt repayment from the ordinary EU budget under the next medium-term financial framework)? And how could direct citizen involvement via a citizen panel, inspired from the Conference on the Future of Europe, and the European Parliament election of 2024 (and possibly 2029) strengthen representation as regards the taxation question?

4.4 Conclusion

This essay concludes that in the first two years since NGEU was proposed national parliaments and the European Parliament have failed to meet the principle that there should be 'no taxation without representation'. However, they can still step up their scrutiny and ensure that Commission, Council and governments are properly held accountable for their actions and spending. No future development – new EU-wide taxes, repaying the debt from the EU budget, rolling over the debt or making the recovery fund permanent – can work without proper involvement by the European Parliament and by national parliaments.

Their involvement is particularly necessary during the drafting and revision of recovery plans and during their implementation: national parliaments need to agree beforehand and later monitor milestones, targets and execution of NRRPs. Up until now, as confirmed by a recent survey (European Parliament 2022), serious loopholes exist.

Considering that most NRRPs were written in 2021 and that the economic situation is rapidly evolving (i.e. deteriorating) in reaction to Russia's war against Ukraine, the notion of parliamentary scrutiny throughout the entire lifetime of NGEU becomes important. There have been calls for (more) flexibility in spending and priorities are shifting to phasing out fossil fuel imports from Russia more quickly, building new energy infrastructure, and supporting the defence industry. Besides ideas to use the NGEU blueprint for another fund to tackle

the challenges arising from Russia's war, one could also re-conceptualise NRRPs as 'living documents' that can be modified and adapted in response to changing (economic) circumstances. In this case, national parliamentary scrutiny would be even more important as a democratic safeguard.

The benefits of involving national parliaments at these stages go beyond the immediate positive effect of more democratic legitimacy for NGEU processes: first, it could facilitate agreeing new 'own resources' by reducing the risk of a sudden backlash against NGEU in one country – be it because of a Eurosceptic government or parliamentary majority or because of serious NGEU spending mismanagement in one or more countries. And second, it could even justify less parliamentary involvement or forcing the hands of a national government or parliament on the decision for EU taxes to repay NGEU.

There are ways to ensure sufficient representation without exacerbating the risk of gridlock on the taxation question. This essay developed some thinking in that direction and proposed five measures that would make parliamentary scrutiny work better and improve budgetary policies. Of course, risks remain. Contestation within national parliaments, notably by opposition parties, and squabbling or clashes between member states are just two risks that one should have in mind (Kreilinger 2021; Rubio 2022).

It was argued here that it is normatively desirable and necessary to have greater parliamentary involvement. At the same time, scrutinising NGEU also seems to be in the institutional self-interest of national parliaments as rational actors, governing and opposition parties. The time and resources available are constraining factors for parliamentary involvement. But today's opposition is tomorrow's government and NRRPs can neither be overturned, or redrafted or resubmitted easily.

It is disappointing that NGEU did not take a parliamentary turn at its start in 2020. If it had, the system in which national parliaments and the European Parliament are involved into NGEU could be conceived as 'next generation parliamentarism' in EU affairs. However, this can still be remedied. Parliamentary involvement into NGEU is one essential element of making EU representative democracy fit for the future.

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5 Populism and externalities. Two challenges to refounding representative democracy

Christopher Lord

1989 was once believed to have been a landmark year in human government. John Dunn (2005, 19) would later ask 'why is it that for the first time in the history of our still multi-lingual species there is for the present a single world-wide name for the legitimate basis of political authority?' Nowadays it is more common to see democracy as struggling to survive. One threat is populism. A second threat is the failure of democracies to resolve how they should be 'internationally ordered' (Pettit 2012) to deal with externalities between them and provide essential collective goods. The abstract nature of that second challenge means that it is much less understood than the present and immediate dangers of populism. Yet, I argue, the two threats feed off one another. The real crisis in contemporary democracy is that the two threats are hard to solve simultaneously.

The European Union exemplifies that predicament. Without some form of European Union – though not necessarily the one we have – to manage externalities and provide collective goods between themselves, European democracies are likely to struggle to meet their most basic obligations to their own publics to secure rights, justice, identities and standards of democracy itself. Their citizens are also likely to be constrained in how easily they can use their democracies to accord one another rights and control their own laws as equals. So, the internal autonomy of European democracies has come to depend on how they manage their interconnectedness.

For sure, solutions may need to be more international than the European Union. Yet European democracies may best enter into wider commitments to manage externalities and provide collective goods by using institutions, norms and laws at the European level to co-ordinate, monitor and enforce their contributions to international agreements (Cook and Sachs 1999). Moreover, whether just working together at the European level or using the European Union to agree and deliver more international commitments, the Union has developed distinct institutions, law, commitments – and, therefore, political authority –

for managing externalities and providing collective goods between its member state democracies (Joerges 2006). To be a member state of the EU is to be a different kind of state: namely, a state that is organized for membership of the EU (Bickerton 2012). Even core state powers (Genschel and Jachtenfuchs 2014) are coordinated through the Union where that helps manage externalities and provide collective goods.

Yet, populism is also a conspicuous feature of contemporary European democracies. Populism threatens to turn European democracies in on themselves as each pursues its own 'will of the people'. That cannot help manage externalities between democracies. As Ivan Krastev (2007, 3) puts it, populism is 'the view that society falls into two homogenous and antagonistic groups: "the people as such" and "the corrupt elite"' – a definition widely supported in subsequent scholarship (Mudde and Kaltwasser 2017; Müller 2017, 20; Weale 2018, 5; Urbinati 2019, 113). Populism is the opposite to representation. Populists believe the real will of the people is obvious. It needs no representation. Worse, populists regard representation as self-negating: representation itself transforms representatives into unrepresentative elites.

Populism has deep roots in contemporary democracy and society. It is a powerful new cleavage that merges threats to cultural values with economic insecurities (Norris and Inglehart 2019). It feeds off inequalities of opportunity that follow from the combination of an information society with wide differences in skills and education (Sobolewska and Ford 2020, 326). It is also a many-headed hydra in its challenge to contemporary democracies. Populists aim for power and, where they achieve power, they typically use it to secure their dominance (Urbinati 2019). Yet, even where populists do not enter government, they often affect how other parties govern or compete for power. For many democracies, populism is also a part of their international environment. Outside populisms feed inside populisms as part of a 'populist international' (Mudde 2021). Above all, we will see how populism makes it harder to solve the problem posed at the beginning of this contribution, namely, how should democracies be 'internationally ordered' if they are to combine interconnectedness with internal autonomy?

So, a core challenge in making EU representative democracy fit for the future is one of meeting the sometimes conflicting demands of managing externalities between member democracies and countering populism within them. In making that argument I proceed as follows: section 1 argues there can be no European Union without representation. Section 2 identifies problems in contemporary representative democracy. Section 3 discusses what is so wrong with populism that any representative democracy must be what populism is not. Section 4 argues that overcoming populism will, however, not be enough without also meeting the very different challenge of managing externalities between member democracies such that those democracies can meet their obligations to their own publics to secure rights, justice and standards of democracy itself. Section 5

argues for a refounding of representative democracy that responds to dangers of populism within European democracies and externalities between them.

5.1 No European Union without representation

Let me start with three 'musts' that will need to be respected in making EU representative democracy fit for the future, regardless of how solutions are distributed between, on the one hand, democratic institutions and politics at the Union level, and on the other connecting the Union more closely to democracy in its member states: i) the EU must be democratically controlled; ii) the EU must be based on representative democracy, and iii) the EU must be a form of compound representation that includes some representation of other systems of representation.

The EU must be democratically controlled. The Union can develop as a democracy in its own right or it can be democratically controlled by its component democracies without itself being a democracy. But, one way or another, it must be democratically controlled. As John Stuart Mill (1972 [1861], 228) put it, public control can take many forms, yet publics must have it in 'all its completeness'. Only where citizens can control the authoring, amendment and administration of *all* their own laws can there be no coercively enforced law (except where citizens effectively coerce themselves into compliance with laws they themselves control). Only if citizens can do all that as 'equals' can there be no rule of the rest of the people by just some of the people (Estlund 2007, 37). And only if democratic majorities are, in turn, required to justify collectively binding decisions can democracy itself be more than just another form of domination. So, to be justified as democratically legitimate, any political order must include a) public control, with b) political equality (Beetham 1994, 28), and c) rights to justification (Forst 2007), always and everywhere, in all public bodies, without exception, the European Union included.

The EU must be based on principles of representative democracy. Nor, to use the terms of the Treaties, can the EU avoid being based on principles of representative democracy. If publics are to control all powers and laws of the Union as equals, they will need to be represented in some system of public control, whether that representation is at the level of the Union itself, its component democracies, or some combination of the two. Representation is the only form of democratic control available to societies and polities of any size and complexity (Dahl 1970). Indeed, the fallacy of populism is that there can be no will of the people independent of agreed ways of representing the will of the people (Weale 2018). Even direct forms of democracy such as referendums require specification and implementation through forms of representation.

The EU must be a representation of systems of representation. The Union is no less unavoidably a form of compound representation (Fabbrini 2007). For sure, the Union could eventually develop its own full system of democratic politics,

complete with its own elections, parties, media and Parliament capable of structuring deliberation and a competition for the people's vote around choices relevant to the exercise of the Union's own powers. But, at least for now, the EU depends heavily on democratic structures within its member states – even for the election of its own Parliament. Moreover even a fully federal European Union would presumably require significant representation of member state democracies in Union decisions. So, the Union is likely to continue to depend on those whose claims to represent are not established in the European arena itself, nor on the basis of election campaigns in which the powers of the European Union feature heavily (or at all). Much rests on the assumption that, alongside election at EU level, election within member state democracies can be sufficient to legitimate the exercise of the Union's powers by representatives.

5.2 Representation as paradise lost

There is something else that needs acknowledging in making EU representative democracy fit for the future. If the EU can only secure its democratic legitimacy by operating as a representation of other systems of representation, the Union will naturally be especially vulnerable to a crisis in contemporary democracy that is largely one of representation. Even problems of participation are often problems of participation in elections for representative institutions. Otherwise new forms of participation and debate are, arguably, amongst the few areas of hope and innovation. For sure the public sphere often seems 'post-truth' and even 'post-public'. Fragmentation of public debate into echo-chambers of the like-minded challenges democracy as a form of public reason that requires at least some willingness to hear the other side (*audi alteram partem*). Yet, the largely self-organised parts of the public sphere – such as new electronic media – seem spontaneous and 'wild' (Habermas 1996, 307) enough to play their role in getting new questions and problems onto the political agenda. They are also unforgiving in their criticisms of power-holders.

In contrast, mass political representation seems to be the 'paradise lost' of democratic politics. It was all supposed to be better. Representation would fuse democracy as an ideal with democracy as a form of government. It would deliver freedom and equality through the simple and easily-understood means of 'one person, one vote' in choices of government by representatives. Government by representatives elected in competitions for the equal votes of the people (Schattschneider 1960) would work a quadruple alchemy. First, citizens would have equal control over the making, amendment and administration of their own laws through representatives they themselves elect. Second, citizens would have meaningful choices over the directions in which their economies and societies develop over time. Third, combining the last two points, citizens would have equal power to shape the overall package of institutions, laws, policies and opportunities under which they live their lives; and how well that package hangs together as a fair or just scheme of cooperation (Rawls 2003). Fourth, representation would allow democracy to scale up. Democracy would no longer

be limited to deliberations in face-to-face communities. It could operate in polities of many sizes.

So what went wrong? A standard critique is that representatives have themselves eroded the choice and political competition on which any contest for the people's vote depends. Cas Mudde and Christóbal Kaltwasser (2017) have written of a narrowing of 'options' offered to voters as representatives have 'abdicated' powers to 'markets, supranational institutions and technocratic bodies'. Worse, representative democracy often seems thoroughly bought. Competition for the money needed to win votes seems more important than competition for votes themselves. All this has made representative democracy vulnerable to the defining claim of populism that politics and society are based on a fundamental opposition between people and elites, with everything loaded to maintaining the power and resources of the latter. That some elites call themselves 'representatives' merely completes the fraud on the people.

5.3 Post-populist representation

Yet, as said, representation remains essential to any large-scale democracy. Even populism only proves the point, since, as also said, there can be no will of the people independent of agreed means of representing the will of the people. So representation needs rethinking, redesigning or even refounding. I discuss below how making EU representative structures fit for the future can make an indispensable contribution. However, that contribution will need to answer, and not aggravate, the further challenge of populism. This section will, therefore, start by explaining why strengthening representation requires identifying what is so very wrong with populism as much as identifying why representation has disappointed the once high hopes put in it. Why is populism so wrong that any representative democracy should aim to be what populism is not? Crucial here is that populism develops within democratic politics. It is a particular strategy for winning power democratcially (Urbinati 2019) whilst subverting and pathologizing democratic practices and principles in the following ways.

Pathological democratic community. As we have seen, populisms claim to identify some obvious, 'authentic' and 'directly ascertainable' will of the people (Weale 2018, 5). Only those who share in that will are part of the 'real people' (Müller 2017, 80). But that, as Urbinati (2019, 112) observes, amounts to a 'radical partiality in interpreting the people and the majority'. It turns those two key components of democratic rule into the exclusive 'possession' of only that 'one part' of 'the people that populism 'depicts' as legitimate'. Any 'majority' favoured by populists 'is not one majority among others; it is the true majority, whose validity is not merely numerical but primarily ethical (moral and cultural), autonomous from and superior to voting procedures' (Urbinati 2019, 119–20). Any democratic political community is no longer open, inclusive and pluralist. It is no longer one of self-determining equals, whose views count equally so long as they do not contradict democracy itself. For populists only some of the people

are the people. Jan Müller gives the example of Nigel Farage's claim that the Brexit referendum was a 'victory for the real people'. So, Müller asks, does that mean that the '48 per cent of the British electorate who had opposed taking the UK out of the European Union' was 'somehow less than real?'

Pathological public sphere. Democracy is full of paradoxes and predicaments that can only be resolved through the fair representation of beliefs in debate, and not just fair votes in the election of representatives. The majority must get its way (Dewey), since majority voting is the decision rule that delivers strict political equality (May 1952). Still, a majority is only a majority at one moment, at one level of aggregation and according to one method of counting votes. It is not the people. It is only a part of the people (Rosanvallon 2008). Nor does being in the majority confer knowledge. Democracy needs an answer to Plato's (1955 [c. 360 BC], 249–50) jibe that it is a form of government which absurdly supposes that those who know less should make the decisions – as if the sailors, rather than the navigator, should steer the ship. Such predicaments are eased by a democratic public sphere that *aims at* truth and justification. The right of a majority to decide for all the people does not alter the right of all to a justification for those decisions (Forst 2007). Claims about democracy, knowledge or truth are less likely to conflict for those who understand what is common to all three. They all depend on free and equal public debate (Talisse 2009) aimed at mutual understanding (Habermas 1996) and at testing all opinions in relation to one another (Mill 1972 [1861]). Hence, we can see how deeply subversive of democracy are populist assumptions that only some of the people have a right to a justification, that only some opinions are valid, and that truth is based on deeper truths about the true will of the people rather than something established in free and open public debates.

Pathological constitutionalism. As we have seen, the obvious fallacy in populism is that the will of the people needs itself to be established by democratic procedures, rules, laws and rights (Weale 2018, xii). All democracy, therefore, presupposes a democratic constitution. For sure, citizens must be able, as equals, to define, change or control that democratic constitution (Bellamy 2007). But, without procedures, rights and law that are democratic and democratically agreed, any will of the people is indeterminate or arbitrary. It is no more than populists say it is. Hence, by conjuring up some will of the people independently of democratic procedures, rights and rule of law, populists steal democracy in the name of democracy.

Pathological multilateralism. The foregoing are all well-known objections to populism. However, there is a further way in which populism pathologises democratic politics that is often intuitively understood without being fully thought through. Since 'individuals will not be free' (Pettit 2012, 77) if their own democracy is externally dominated, this piece began by asking how interconnected democracies should be 'internationally ordered' in ways that allow them internal autonomy. As will be seen, democracies need at least *some* shared

rules if they are to combine interconnectedness with internal forms of self-rule that allow their publics to control the authoring, amendment, administration and interpretation of their own laws. Some shared rules between democracies are conditions for their internal autonomy and not just constraints on it. Yet few democracies can shape shared rules unilaterally, and attempts to do that may risk democracy-on-democracy domination. Multilateralism is therefore needed if democracies are to have fair representation in forms of rule-making beyond the state that enable or constrain their internal autonomy. Multilateralism between democracies is as important as constitutionalism within them. In a moment I will sketch an account of inter-democracy externalities which I hope will make explicit just how far individual democracies depend on multilateralism for their internal delivery of rights, justice and democracy itself. For now, note that populist shouts of 'America first' or even some ways in which single democracies might seek to 'take back control' can be subversive of the multilateral frameworks on which those democracies themselves depend for their internal democracy.

5.4 Beyond the populist challenge: crises and externalities in contemporary democracy

However, a need to rethink and refound representative democracy goes further than the need to respond to populism. Countering populism within democracies cannot be enough without also managing externalities and providing collective goods between them. There is a pattern to the serial crises recently experienced by representative democracies: the financial crisis; the migration crisis; the geopolitical crisis; the COVID-19 crisis and the climate crisis all demonstrate the limited capacities of single-state representative democracies to solve collective action problems and manage externalities between themselves in matters of the most fundamental importance to their citizens. Managing externalities is a core justification for government; and those who lack means of managing externalities can lack an important capacity to govern themselves (Mansbridge 2014).

Much confusion, though, has been caused by understanding the management of externalities as a rather thinly instrumental justification for government. Consider David Hume's famous remark that 'bridges are built, ramparts raised, canals formed, fleets equipped and armies disciplined everywhere under the care of government' (Hume 1978 [1739], 538–39). 'Political society', Hume continues, can 'remedy' the 'difficulty' that individuals will seek to 'free' themselves of the 'trouble and expense' of providing some goods by laying 'the whole burden on others'. Thus, political authority is one way of solving free-rider problems involved in managing externalities and providing collective goods.

Still, useful though bridges and lighthouses might be, it might be objected that only the most fundamental obligations to secure justice and enforce rights so that the freedom of each is compatible with the freedom of all (Kant 1970 [1797], 133–34) can justify anything as morally problematic (Beetham 2013, 3) as the exercise of political power by some people over others. However, there is no

real quarrel here. It is not just that the welfare gains from being able to manage externalities involved in providing collective goods can be hugely important to people's lives. Managing externalities is anyway something that democracies need to be able to do in the course of securing rights, justice and democracy itself. If legitimacy is justified political power, then the justification of political power by that which it secures – rights, values, democracy and identities – depends on managing externalities.

To understand all that, we do need to start by identifying the (dys)functional characteristics of externalities. Externalities are uncompensated harms or benefits that are not reflected in rewards to those who produce them (Laffont 2008). They are negative where actors do not pay the full cost of harms they impose on others. They are positive where actors do not receive the full benefits of their own actions. Negative externalities will be over-produced. Public goods – which function as 'very strong positive 'externalities' (Begg, Fischer and Dornbusch 1984, 352) – will be under-produced. So, too much will be done which contributes to create climate change (a negative externality) and too little will be done to clean up climate change (a positive externality). Too little will be done to provide stable systems of human security and economic exchange (positive externalities) and too much to create financial risks that put entire economic systems at risk (negative externalities).

Democracy may even make things worse (Grant and Keohane 2005). If any one national democracy has an interest in imposing harms on its neighbours or in free-riding on the efforts of others to maintain economic, ecological or security systems, then its own electorate and parliament will also have an interest in behaving in those ways. If voters are purely self-regarding, electoral competition within any one democratic state may only be in 'equilibrium' (where those competing for power have done everything possible to win votes) at precisely the point that maximises negative externalities and free-riding between democracies. Inter-democracy externalities may mean that democracy itself becomes a means of democracy-on-democracy domination.

Yet, without some means of managing externalities between themselves, democracies will be systematically less likely to meet their most basic obligations to their own publics to secure rights, justice, democracy and identities.

First, take rights. Both positive and negative externalities may mean that closely interconnected democracies may struggle to provide their own publics with rights against polluters, monopolists, tax-evaders, terrorists, traffickers or discriminators if the sources of those forms of arbitrary domination are located in other states.

Second, take justice. If externalities mean that some 'goods' and 'bads' are systematically under- or over-produced, it will be hard for any one democracy

to co-ordinate on any concept of justice that involves those 'goods' and 'bads'. Recall John Rawls' (2003) idea that justice is a question of how well the overall structure of institutions, laws, and social and economic opportunities under which citizens live their lives all 'hang together as one' more or less 'fair system of co-operation'. But economic and social opportunities will often be shaped and constrained by inter-state and inter-democracy externalities. So will institutions and laws. How fairly, then, institutions, laws and opportunities all hang together in any one democracy will become inseparable from externalities between states and democracies.

Third, take democracy itself. If it is an ideal of democracy that citizens should be able to 'define the terms of their living together as equals' (Bohman 2007, 2), democracies will need means of managing inter-state externalities for citizens to have much chance of influencing choices in matters as vital to the 'terms of their living together' as controlling pandemics, providing collective security, avoiding systemic risk in financial systems or fighting climate change.

Fourth, take identities. Politics is also a living together, a cultivation together, an interpretation together, an enjoyment together of shared identities. People value having units of government, and forms of political community that express, protect and provide recognition for identities, and which enable them to act, make rules, share resources and deliberate on rights and values with those with whom they share identities. All that permits a 'common mutual sympathy' (Mill 1972 [1861], 359) and a willingness to accept sacrifices on a basis of reciprocation. Identities can, therefore, be what makes collective action possible where there is some element of redistribution or non-simultaneous performance. But, notwithstanding all those familiar observations about identity, democratic political community is a unique form of mutual obligation (Miller 2007) that evaporates where citizens cannot define rights and obligations as equals. Inter-democracy externalities can create huge inequalities within democracies in the according, enforcement and evasion of rights and obligations. Hence, externalities can corrode national democratic political communities as sources of mutual sympathy and of democratically defined mutual obligation.

We can now see the full force of the argument that if legitimacy is justified political power, then justification of their own powers by the rights, justice, democracy and identities it secures can depend on highly interconnected democracies also being represented in the means of managing inter-state and inter-democracy externalities. Without that, they will be unable to meet their own obligations to their own publics. Citizens will not be able to use own democracies to accord one another rights and obligations as equals. Inter-democracy externalities will risk democracy-on-democracy domination. There will, then, be an inescapable problem of how to make the autonomy of each democracy compatible with the autonomy of other democracies.

5.5 The refounding. Making EU representative democracy fit for the future

Now, it could be that representing citizens in the management of externalities between their democracies need not amount to much. National democracies could conceivably manage externalities by just bargaining between themselves without much need for shared political authority, institutions or even shared norms (Coase 1960; Buchanan and Tullock 1962). But bargaining follows power. Citizens may feel that they have a right to some rights as a matter of right, and not of power or bargaining. Hence representation in some form of shared political authority and shared process of legitimate law-making – that goes beyond inter-democracy bargaining – may be the only non-arbitrary way of managing some externalities that are key to the obligations democracies owe their own publics. As we have seen, it may also be the only way citizens can use their own democracies to accord one another some rights and obligations.

Here we can begin to identify a distinctive contribution that the Union can make to strengthening representative democracy in Europe. If managing externalities and providing collective goods between democracies requires representation in some shared law-making and shared political authority – and not just representation in bargaining between national democracies – then the EU has plainly gone further in that direction than any other non-state, multi-state, multi-democracy body that exercises power beyond the state. The Union has developed a political and legal order that makes twenty-to-thirty per cent of all laws in its member democracies (Brouard et al. 2012; Töller 2010); that claims supremacy and direct effect for its laws; that is structured as a legislator and not just as an arena for inter-state bargaining, and that has at least attempted a system for the representation of both individual voters and whole democracies in co-legislation.

However, improving representation and law-making in that shared authority as part of a process of making EU democratic representation fit for a future of interconnectedness, externalities and collective action problems between democracies raises huge difficulties as well as possibilities. Those possibilities and difficulties are best understood by returning to earlier discussions of how to respond both to populism and to mainstream critiques of what may have gone wrong with representative democracy. Starting with the latter, there is more to the voiding of representative democracy than restricting political competition and choice within single democracies. We might imagine any number of 'within-democracy' solutions. Perhaps a rediscovery of political competition through voter rebellion against cartel parties (Katz and Mair 1995). Maybe innovative ways of linking representation to the direct participation of citizens in decisions and deliberations. Perhaps new ways of combining democracy, knowledge and expertise by multiplying ways in which epistemic claims made in political competition can be challenged in debate. Perhaps a more political and less legal constitutionalism which retreats from an over-constitutionalisation of economic

and social choices by relying more on political competition itself to define core rights and rules of democracy (Bellamy 2007).

Yet so much of what has been said so far demonstrates how it cannot be enough to revive democracy within the state in all those ways without changing things between democracies. Rethinking and refounding representative democracy – in ways that rediscover political choice and competition for the people's vote within democracies – will not be enough if externalities and collective action problems between democracies limit how single democracies can make choices over rights, values, identities and standards of democracy itself. Reviving political competition within democracies, could, as we have seen, even worsen domination and externalisation of problems between democracies.

That, though, suggests a predicament. Managing externalities and providing collective goods seems to require both power *over* national democracies and control *by* national democracies (Lord 2017, 2021; Lindseth 2010). Enough control *over* national democracies to prevent them imposing negative externalities or free-riding on the provision of positive externalities in ways that, in turn, limit their own ability to meet their own obligations to their own publics to provide rights, justice, welfare, non-domination and democracy itself. Yet enough control *by* national democracies will also be needed if citizens of each democracy are to retain control of their own laws as equals. Probably the only solution is for the control of each democracy to centre precisely on the means by which it periodically (re)commits itself to ways of managing externalities between democracies. That could combine ambitious forms of continuous scrutiny by individual democracies (see Lindseth 2010) with periodic opportunities to review, recall or exit from shared laws and authority aimed at managing externalities between democracies (Lord 2021).

However, all of this might seem a singularly implausible – even disastrous – way of dealing with populism. Binding member state democracies to shared ways of managing inter-democracy externalities would only make it easier for populists to portray representatives as elites eager to collude internationally to remove powers from the control of their own publics. Even *periodic* opportunities to review, recall or exit would imply *periods* of constraint by shared institutions, laws or authority aimed at managing inter-democracy externalities. Populists can easily depict all of that as a frustration of the 'will of the people', not least because – for periods at least – that is exactly what it is supposed to be. For sure, self-binding may be the only way closely interconnected democracies can make certain choices at all. But populist portrayal of representation as a fraud on the people by elites who use representation for their own purposes makes it harder to distinguish 'self-binding' by legitimate processes of representative democracy from 'sell-outs' by elites. It is not hard to anticipate a downward spiral. Representation in joint means of managing externalities between democracies would be at permanent risk of being undermined by populist opposition in just

some of those democracies. Meanwhile, even short-term constraints on how far policies and laws aimed at managing externalities between democracies can be varied may limit political competition and voter choice within democracies. That will, in turn, make it harder to defeat populists by simply demonstrating that they do not represent electoral majorities.

5.6 Conclusion

I have argued that a fundamental challenge to European democracies is how they should be internationally ordered if they are to combine their interconnectedness with their internal autonomy. Without managing externalities and providing collective goods between them, democracies will struggle to meet their own obligations to their own publics to provide security, welfare, rights, justice and democracy itself. Many of the recent problems experienced by European and other democracies – banking crises, migration, geopolitical challenges, pandemics and climate change – have had the same structure. All involve structural under-provision of positive externalities and over-production of negative externalities in the absence of shared law and authority – or even coordination – between democracies between democracies. Nor to be forgotten is that – without solutions to inter-democracy and inter-state collective action problems – citizens will struggle to use their own democracies to accord one another rights or to control their own laws as equals. So, autonomy within democracies will be constrained without managing externalities and providing collective goods between them.

This collection of papers asks how EU representative democracy can be made fit for the future. One distinctive answer is that it can represent citizens and democracies in shared law-making and authority aimed at agreed ways of dealing with a likely future of interconnectedness, externalities and collective action problems between European democracies; and between European democracies and all other states and democracies. Representative institutions at the European level would then be justified insofar as they are needed for member state democracies to secure legitimacy, rights and obligations and autonomy within them, and for the management of externalities between them.

I have only had space to sketch the main principles of the argument. I have not been able to say much about means of institutional realisation, save occasional remarks about the Union as a distinctive form of shared law-making and authority for managing externalities and providing collective goods. I also flagged possibilities of continuous scrutiny and periodic review by national democracies of commitments to shared law-making and authority aimed at managing externalities and providing collective goods through the Union.

I have, however, been able to identify one huge problem. Challenges of populism within democracies and externalities between them are likely to be hard to solve simultaneously. Yet, if my analysis is correct, they are also twin threats to the survival of closely interconnected democracies. Note, however, that the view of

representation I have sketched here also creates problems for populists. If my argument is correct, it corrodes distinctions between arguments for democracy within the state and democracy beyond it. Citizens of any one democracy may have obligations to citizens of other democracies and to all other persons. Yet the analysis here shows how obligations national democracies owe their own publics can be *sufficient on their own* to justify forms of representation beyond the democratic state needed to manage externalities between democracies. So we can assume that managing externalities between democracies is, indeed, needed to deliver core obligations democracies owe their own publics to secure rights, justice, welfare, democracy, human security, and economic systems, not to mention survival in a world of pandemics and climate change.

That already implies a need to supplement received understandings of what has gone wrong with representation and what to do about it, including, one supposes, in making EU representative democracy fit for the future through some combination of changes at the national and Union levels. It cannot be enough to revive political competition and voter choice within democratic states if that is not combined with management of externalities and provision of collective goods between democracies. Without taking that further step, even 'representation friendly' solutions are at risk of the same introversion as populism. Both would fail to grasp just what it is about the contemporary world that constrains democracy within the state in the absence of certain kinds of relationship between states. Each democracy needs at least representation in bargaining between states over the management of externalities. Yet, bargaining follows power. So, interconnected democracies may also need to develop some shared norms, law, institutions or authority if they are to ensure non-arbitrary ways of delivering their own obligations to their own publics; and if their own citizens are to be autonomous in using own democracies to accord one another rights and control their own laws.

So maybe even statists and communitarians are committed to representation in means of managing externalities between democracies and beyond the democratic state. The very identities, rights, values and mutual obligations that they believe justify their democratic states and make them so valuable may themselves require cooperation between states and democracies over the management of externalities. Statists and communitarians should, then, be as loud as those of more cosmopolitan disposition in opposing populist claims that all representation beyond the democratic state can only be one more elite fraud on the people. They should also be as vociferous in insisting that populism is a pathological form of democratic community; of democratic political debate; of democratic constitutionalism, and of democratic relations between democracies. Linking all that up with a need to revive political competition and choice within democracies, I find it by no means counter-intuitive that EU and other democracies should compete more internally over how they should cooperate externally over the management of externalities. Yet, within that competition, it should not be

assumed that populists will align sustainably with statists or communitarians or even draw support from statist and communitarian arguments. Rather, policy disasters from unmanaged externalities may align statists and communitarians with forms of cooperation between states and democracies needed to deliver their own understandings of their own democracies as communities of mutual obligation. Populism within the democratic state may yet turn out to be as lonely as it is empty.

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Sammanfattning på svenska

Artikel 10 i fördraget om Europeiska unionen slår fast att unionens sätt att fungera ska bygga på representativ demokrati. Den representativa demokratin står dock inför hot och utmaningar, både interna och externa, och institutionella frågor har återigen hamnat på EU:s politiska dagordning – dels i form av den återupplivade debatten om att "bredda" och "fördjupa" EU, dels i samband med Konferensen om Europas framtid. Mot den bakgrunden diskuterar denna antologi hur EU:s representativa demokrati kan rustas för framtiden.

I inledningen frågar sig *Göran von Sydow* och *Valentin Kreilinger* vad EU:s representativa demokrati är och varför vi bör uppmärksamma den. De diskuterar ett antal teman som är gemensamma för alla bidrag och sätter frågan i samband med den pågående politiska debatten och bredare historiska utvecklingslinjer.

Därefter följer ett bidrag av *Ben Crum*. Han framhåller att debatterna om Europeiska unionens demokratiska underskott har en lång historia och att det i alla diskussioner är möjligt att urskilja två huvudsakliga argument. Det ena kan kallas "offentlighetsargumentet" och handlar i första hand om att stärka de valda institutionerna och den offentliga sfären på ett sätt som bidrar till att dessa institutioner fungerar väl. Det andra kan kallas "deltagarargumentet", som istället fokuserar på nya kanaler för deltagande, utanför de valda institutionerna. Deltagarargumentet – som alltså utgår från att det behövs något mer än representativ demokrati inom EU – är av gammalt datum men har på senare tid fått ny aktualitet. I detta bidrag undersöker författaren hur deltagarargumentet har utvecklats och vilka delar det består av. Som en form av gensvar analyserar han offentlighetsargumentets logik och reflekterar över dess giltighet i dag. Därefter granskar han ett antal förslag till institutionella reformer och diskuterar hur de kan bedömas utifrån de båda perspektiven: alleuropeiska folkomröstningar, medborgarförsamlingar för behandling av förslag till EU-lagstiftning, transnationella listor för val till Europaparlamentet, direktval av ledamöter i EU:s verkställande organ samt ett permanent lagstiftande ministerråd.

I nästa kapitel diskuterar *Sonja Puntscher Riekmann* det komplexa med demokratisk representation i EU och hur denna komplexitet påverkar medborgarnas uppfattningar om unionen. Hennes utgångspunkt är att kritiken om ett demokratiskt underskott beror på det kniviga problemet med olika representationsmodeller som kan stå i konflikt med varandra. Problemet har sina rötter i den särpräglade horisontella och vertikala maktfördelningen i den nya politiska enhet som har vuxit fram ur mellanstatliga fördrag under flera årtionden. I det nödtillstånd som uppstod i kölvattnet av flera svårhanterliga kriser, som finans- och statsskuldkrisen och pandemin, har frågor om demokratisk representation blivit än mer framträdande, menar författaren. Hon frågar sig

hur det har gett avtryck i Konferensen om Europas framtid, där EU bjöd in medborgare att formulera idéer för unionens utveckling och anslog en särskild del åt frågor om överstatlig demokrati. En första bedömning av de relevanta bidragen till konferensen visar enligt Puntscher Riekmann att de många idéerna pendlar mellan centralisering och decentralisering – mellan fördjupning av det gemensamma beslutsfattandet och upprätthållande av det nationella självstyret. De som argumenterar för gemensamt beslutsfattande stödjer ökade befogenheter för Europaparlamentet, enhetliga valbestämmelser, direktval av kommissionen och/eller Europeiska rådets ordförande, ett gemensamt språk och europeiska medier, medan de som förespråkar nationellt självstyre anser att det ska tryggas med hjälp av subsidiaritetsprincipen och en starkare roll för de nationella parlamenten.

I det tredje kapitlet vänder *Valentin Kreilinger* blicken mot EU:s ekonomiska styrning. Han skriver att frågan om demokratisk kontroll aktualiserades med EU:s plan för återhämtningsinsatser efter covid-19-pandemin – Next Generation EU (NGEU) som omfattar lån och bidrag om totalt 750 miljarder euro. Även om Europaparlamentet och de nationella parlamenten har specifika funktioner att fylla så har deras medverkan i NGEU nämligen varit ganska begränsad. I sitt bidrag beskriver Kreilinger det tidigare förhållandet mellan den europeiska integrationen och nationella budgetprocesser, vilket stundtals präglades av spänningar. Eurokrisen och den europeiska planeringsterminen tillhör också denna period. Men trots en del allvarliga sammandrabbningar präglades den ekonomiska styrningen under denna tid inte av spänningar. Vad som händer när återhämtningsplanen antas är att medlemsstaternas budgetprocesser blir mer sammanflätade med budgetprocessen på EU-nivå. Ändå tycks de nationella parlamenten spela en marginell roll i fråga om medlemsstaternas återhämtnings- och resiliensplaner. Författaren menar att detta är mycket oroväckande ur ett demokratiskt perspektiv och formulerar därför förslag om hur parlamentens roll kan stärkas. Riskerna med otillräcklig (parlamentarisk) representation i budgetprocesserna kan dessutom öka i framtiden, eftersom det kan komma att införas EU-skatter för att betala av NGEU-lånen. Det är därför nödvändigt att representationen når upp till vissa trösklar, utifrån nivån och karaktären på framtida EU-skatter. Denna representation ska dock inte uppfattas eller utformas som en enkelriktad process där allt fler aktörer får möjlighet att lägga in veto. Författarens slutsats är att det krävs en stark och meningsfull demokratisk kontroll under hela den tid som NGEU omfattar. Kontrollen bör utövas på alla parlamentariska nivåer, börja omedelbart och ha en transnationell dimension.

I det fjärde och sista kapitlet intar *Christopher Lord* ett kritiskt perspektiv på utmaningarna med att omforma den representativa demokratin. För 30 år sedan, skriver han, nådde historien sitt förmodade slut med en seger för demokratin som den enda legitima formen av styre. Idag är det vanligare att se demokratin som en styrelseform som kämpar för sin överlevnad, och det gäller särskilt den representativa demokratin. Ett hot stavas populism. Ett andra hot bottnar i

att demokratier har misslyckats med att komma fram till hur de ska "ordna sig internationellt" i syfte att producera nödvändiga kollektiva nyttigheter och hantera sin påverkan på varandra, så kallade externa effekter. Detta andra hot är abstrakt och därför svårare att förstå än de aktuella och omedelbara farorna med populism. Enligt Lord hänger de två hoten emellertid samman och den samtida demokratins verkliga kris är att de två hoten är svåra att hantera samtidigt. Europeiska unionen är ett exempel på det. Utan någon form av europeisk union som kan framställa kollektiva nyttigheter och hantera externa effekter skulle Europas demokratier troligen få det svårt att fullgöra de mest elementära skyldigheterna gentemot sina medborgare, skyldigheter som till exempel har att göra med rättigheter, rättvisa, identiteter och demokratiska standarder. Hotet från populismen är dock att den lockar europeiska demokratier att vända sig inåt för att uppfylla "folkets vilja", vilket i sin tur gör att de inte kan hantera ömsesidiga externa effekter. För att rustas för framtiden drar författaren slutsatsen att EU:s representativa demokrati måste hugga huvudet av båda drakarna.

Dessa fyra bidrag visar att det inte finns några enkla lösningar. Att göra EU:s representativa demokrati rustad för framtiden kräver en balansakt mellan olika idéer till institutionella reformer och en avvägning mellan deras för- och nackdelar, vilket *Ben Crum* framhåller. De olika inspelen till Konferensen om Europas framtid pekar i mycket olika riktningar. Men som *Sonja Puntscher Riekmann* visar gäller det att fokusera på verktygens och förslagens implikationer: leder de till en förstärkning av Europas "offentliga sfär" eller till ökat deltagande? En ny utmaning för EU:s representativa demokrati utgörs vidare av EU:s återhämtningsplan Next Generation EU (NGEU), vilket *Valentin Kreilinger* pekar på i sin analys av (den otillräckliga) omfattningen av de nationella parlamentens översyn av NGEU. Om den parlamentariska granskningen inte utökas under den tid som återhämtningsplanen omfattar finns en risk för det som sammanfattas med devisen "ingen beskattning utan representation". Den representativa demokratin står emellertid inför fler – och större – hot: populism och externa effekter, vilka analyseras i det sista bidraget av *Christopher Lord*. De är svåra att lösa samtidigt, men det är just den uppgift EU står inför. Rysslands invasion av Ukraina har endast ökat betydelsen av att unionen lyckas med det.

'What should a multi-level representative democracy look like in the EU? What possibilities should it offer? […] This volume does not provide a common set of recommendations – instead it hopes to stimulate thinking about EU representative democracy, what it is and what it could be.'