



## Renationalisation vs. Europeanisation

Thierry Chopin - 10 October 2013

Either European leaders respond to criticisms that the EU lacks legitimacy or they risk that EU citizens will retreat to national affiliations, which they feel constitute the only safeguard of their political rights

Damian Chalmers' Policy Network paper Democratic Self-Government in Europe is stimulating. Given the format of this article, which does not allow me to discuss the numerous ideas Chalmers' paper entails, it may be better to get to the heart of the matter: the European Union is facing a legitimacy crisis and the way to remedy this consists, according to Chalmers, in strengthening national institutions' control - notably that of national parliaments - when it comes to European decisions. European decisions' legitimacy would thus stem from a (re)nationalisation process of political legitimacy<sup>1</sup>.

To fulfil this objective, Chalmers proposes a set of reforms that could be achieved without EU Treaty change. Unfortunately, the length of this article does not enable me to discuss in detail each reform, so I would like to focus the analysis on two of them and then to discuss the question of principle that lies at the heart of his argument: does the resolution of the EU legitimacy crisis exclusively require a (re)nationalisation of political legitimacy and the strengthening of national control over European decisions or does it require the strengthening of political and democratic legitimacy at the European level?

Damian Chalmers' propositions relate firstly to the strengthening of the subsidiarity principle's control by national parliaments. Their originality appears to be relative insofar as they simply aim at consolidating the "early warning mechanism" introduced by the Treaty of Lisbon - already under the United Kingdom's influence - by raising the threshold above which the mechanism can be triggered<sup>2</sup>.

Furthermore, as regards the functioning of the “early warning mechanism”, the threshold issue – placed in the centre of Damian Chalmers’ analysis – appears in fact to be secondary in important respects. If a significant number of national parliaments, for instance from the most populated countries, issue reasoned and justified opinions, it seems likely that the Commission will take these into account, regardless of whether the first or the second threshold is crossed or not. In case the Commission did not do so, the national parliaments in question would intervene with their governments to ask them to oppose or to substantially amend the Commission’s proposal. Last but not least, it should be noted that the acknowledged role of national parliaments as well as the subsidiarity control mechanism contribute to strengthening the power of the less populated member states within the EU institutional system, which thus can potentially lower the influence of “large” member states.

Secondly, in order to protect certain national democratic values and traditions, the author proposes that citizens should have the right to petition a national Constitutional Court, if the European legislation violates those values or traditions. If an EU law is disapplied by a national parliament or by a Constitutional Court, a majority of other parliaments, on the basis of an independent report, may petition the European Council to mediate, if the costs on other citizens are excessive or there is no violation of national democratic value or traditions.

Beyond the complexity of the envisaged scheme, here again, I would like to question the added value of Damian Chalmers’ scheme compared to already existing packages.

Let us first recall that the Treaty of Lisbon introduced a mechanism of referral to the Court of Justice – albeit indirect – through which each member state can transmit a submission on the grounds of violation of the subsidiarity principle in the name of its national parliament. Each member state is entitled to freely organise this referral, that remains indirect but that can be automatic, should the state so decide.

Furthermore, and crucially, concerning the referral to a national Constitutional Court, the example of the German Constitutional Court’s watchful jurisprudence on European affairs proves that jurisdictional possibilities to control national democratic values and principles in the framework of European construction are already effective. In the “Solange” judgments I and II (1974 and 1986), the German Court did not follow the ruling of the CJEC that recognised the unconditional primacy of Community law over national law, specifying that the European communities were not entitled to harm the founding principles and the constitutional identity of the Federal Republic of Germany, notably the guarantee of fundamental rights. This way, Karlsruhe’s Court keeps the option to control Community law. Moreover, in its judgment on the Maastricht Treaty (1993), and then on the Lisbon Treaty (2009), the German Constitutional Court did not confine itself to maintain the existence of a

competence in principle on fundamental rights towards Community law; the Court also clarified how the European construction should be associated with the maintenance – guaranteed by the German Basic Law – of a national democratic life, while simultaneously presenting the conditions of the European integration's future developments in terms of democratic requirements.

It is thus not apparent to what extent the creation of such a petition right would strengthen the protection of national democratic values and constitutional identities.

In spite of this critical analysis, I do not think that the status quo is satisfactory; solutions must be brought along so as to solve the EU legitimacy crisis.

I agree with Damian Chalmers that it should be ensured that the EU effectively meets the conditions of democratic legitimacy. This implies that national parliaments be involved and that they fully play their role. This is how they are able to bolster the European Union's legitimacy. That is particularly true at the very moment that the European institutions are seeing their competences extended and are being called to take decisions in sensitive areas that lie at the heart of parliamentary and democratic sovereignty, as is the case in budget matters. Decisions related to national budgets being at the heart of European parliamentary democracies, progressing towards greater integration of budgetary and economic decision-making between the European countries will require a greater involvement of national parliaments, of which the role today considerably varies depending on the member states.

However, if the democratisation of European Union functioning resides – in part – in the strengthening of national parliaments' control over European decisions, their added value does not lie so much in a "negative" control of Community standards projects but rather in a constructive approach to European issues. To fulfil this constructive approach to European issues, the Convention has demonstrated its effectiveness by bringing together in the same forum complementary legitimacies: national parliamentarians, members of the European Parliament, governments' representatives and members of the European Commission. The Convention method, which was provided by the Lisbon Treaty for certain cases of treaty revision, could be more often used for political purposes and not anymore solely as part of treaty revision. A more frequent use of the Convention method would enable the intelligent involvement of national parliaments, which are too often restricted to the role of the European integration's censors. They would constitute a genuine driving force for propositions; what is more, they would not be disconnected from national public opinion. Here lies a way that should be further explored and would overcome the problem of "veto democracy".

In fine, the economic and social crisis in Europe revealed the shortcomings of political organisation at the EU level that has not been able to evolve and keep pace with the growing interdependence of European national economies or to create the institutional and political conditions for a genuine democratic legitimacy at the European level. Yet, EU political fragmentation has a cost: not only did it amplify the economic divergences between the member states instead of facilitating their re-absorption, but it also fosters political tensions between the states and between peoples. Solutions to the crisis will not be durable without remedying this contradiction; and the mere strengthening of the national institutions' control power will not suffice to overcome it.

The European Union is certainly a Union of states but it is also a community of citizens. Solving the EU legitimacy crisis must necessarily involve the unity of the European political entity. Overcoming this legitimacy crisis requires to transfer, even partially, Europe's source of legitimacy from the states to the citizens so as to rebalance both legitimacy sources. This is what is at stake in the current debate on "Political Union" to strengthen democratic legitimacy as well as accountability. This debate must respond to the following requirements: overcoming the "executive deficit" and strengthening European political leadership; involving national parliaments in European economic and budgetary supervision; strengthening the legitimacy and the role of the European Parliament; and as regards the states belonging to the Eurozone, giving greater democratic legitimacy to the Eurogroup's decisions and to the Eurozone's summit.

The crisis and the growing levels of mistrust on the part of the European citizens towards the European institutions but also the reform currently being implemented are a major challenge for the European Union. Either European leaders are able to agree on sufficiently concrete proposals to respond to criticisms formulated vis-à-vis its legitimacy deficit, or they risk greater euroscepticism as long as progress on integration does not come hand in hand with sufficient democratic control and decision-making capacity, not only at the national level but also at the European level. In that case, there would be a high risk that many Europeans will retreat to national affiliations, which they feel constitute the only safeguard of their political rights. This would be a mistake.

Thierry Chopin, director of studies of the Robert Schuman Foundation in Paris, Visiting Professor at the College of Europe (Bruges) and associate expert at the Centre for International Studies and Research (CERI-Sciences Po).

1 Democratic legitimacy firstly results from the democratic definition of the institutions' political objectives. It implies the democratic vote on the legislation that enables fulfilment of these objectives. Finally, it requires the democratic control of the implementation of that legislation.

2 Let us remember the rules currently in force: When over 1/3 of national parliaments oppose a proposal, the Commission is required to re-examine its proposal but is free to confirm it regardless, should it so chose. This would not be the case anymore in the system developed by Damian Chalmers since the new “test of democratic responsiveness” would require from the Commission, if 1/3 of the national parliaments propose either that legislation be reviewed or that new legislation should be proposed, to make a proposal to this effect. Furthermore, over half of negative opinions, if the Commission decides to maintain its text, the European legislators, i.e. the Council and the Parliament, are seized and must come for a decision, whereas the text would not need to be presented to the Council in the system imagined by Damian Chalmers, unless two thirds of the national parliaments indicate their support for a measure.

This is a contribution to Policy Network's work on The politics of European integration