
DISCUSSION PAPER

The rise of post-national democracy: Macron, Brexit and the electoral reform of the European Parliament

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Emmanuel Macron is the first European leader to be elected on a platform that embraces the electoral reform of the European Parliament (EP). He supports proposals to create a pan-European constituency for the election of a certain number of MEPs from transnational lists. Those lists would be the creature of the EU-level political parties which would, for the first time, be given a real role in the conduct of the election campaign for the Parliament. Macron is convinced that the EP needs greater legitimacy if fiscal integration is to deepen within the eurozone, and that such legitimacy will only come if the relationship between the Parliament and the electorate gets to be closer and more direct than it is at present. Until now European elections in France have been strangely alien affairs: neither national lists nor regional lists have sparked genuine interest among voters, and once elected French MEPs have been left marooned by their national political parties and distant from the voter.

The last significant electoral reform of the European Parliament happened in the mid-1990s when proportional representation was introduced in both France and Britain. The Treaty of Lisbon left the EP with greatly increased powers and two important rights of initiative: one to propose the reapportionment of seats between member states according to the principle of degressive proportionality; the other to make the electoral procedure more uniform. In a nod to the concept of EU citizenship, the Lisbon Treaty also redefined the role of MEPs from being "representatives ... of the peoples of the States brought together in the Community" into being "representatives of the Union's citizens".¹ Accordingly, federalist elements in the Parliament have made several efforts to introduce transnational lists for pan-European seats, but until lately these efforts have stalled in the face of divisions within the mainstream groups and outright hostility from British MEPs and nationalist forces. Even today, therefore, nearly forty years after the introduction of direct elections by universal suffrage, the Parliament is still elected by many disparate national electoral systems.

Spitzenkandidaten

Frustration at the blocking of European lists before the 2014 elections led Parliament to push for the experiment of *Spitzenkandidaten*, champions of the EU-level political parties who, although they could not head lists for election to the House, nevertheless attempted to add personality and spice to the election campaign by competing for policies and votes. The success of the experiment, albeit patchy, surprised even its authors, with the result that Jean-Claude Juncker became President of the Commission and Martin Schulz President of the European Parliament. Distress in the European Council at Parliament's apparent takeover of

the process for the election of the Commission President led it, in June 2014, to commit to reviewing the matter before the next elections. But David Cameron, who objected most fiercely to Mr Juncker, is no more, and the current leaders of the EU 27 are likely to reconcile themselves to repeating the experiment in 2019, albeit better prepared further in advance of polling day.

Mathematical formula for seat apportionment

Another spat in the European Council about how many MEPs should be accorded Croatia when it joined the EU in 2013 led the heads of state and government to commit to finding a mathematical formula for the allocation of seats between states, also in time for the 2019 elections.² The habit of bartering seats between states, often late at night at the end of an intergovernmental conference to revise the treaties, is morally unseemly and democratically flawed. It has resulted in the current distribution of seats being an abuse of the principle of degressive proportionality, thereby putting the EU in breach of its own Treaties.

In 2011 the European Parliament's Constitutional Affairs Committee (AFCO) gathered Europe's specialist mathematicians and political scientists in Cambridge to devise a formula. Now known as the Cambridge Compromise (CamCom), this formula gives a base of 5 seats to all states supplemented by a number of seats relative to its population, rounded upwards.³ What this exercise has done is to show that it is the middling sized states that are at the moment over-represented in the House, most notably Hungary, and that both smaller states and the largest (Spain and France in particular) are under-represented. CamCom is fair, simple, straightforward and transparent and meets the European Council's requirement of facilitating technical adjustments between each parliamentary mandate to deal with population shifts and the accession or secession of member states.

Council voting weights

A related matter concerns the voting weights in the Council. Another group of academics from Jagiellonian University in Cracow have suggested that a formula based on the square root of population (JagCom) would result in a better democratic balance between the two chambers of the Union's legislature. This shift would in turn favour the interests of the smaller and middling member states against the current predominance of Germany, France and Italy. Reform of the Council will have to await until the next Convention that will be called in the early 2020s to amend the EU Treaties, but I mention it now so that it will not be forgotten.

The Union is built of its states and its citizens. Its constitutional order needs to conform to a balance between its institutions. The legitimacy of the European Parliament and Council rests on the Union's historic compromise between the democratic principle of 'one man one vote' and the federal principle of equality between member states.⁴ So a shift of decision-making power within one chamber necessitates a review of decision-making power within the other. Europe's emerging federal polity will not work unless it has achieved a robust constitutional settlement between the interests of its larger and smaller states.

The German threshold

There is one more complicating factor that needs to be addressed. Germany is left relatively unscathed by any reapportionment of seats in the EP because its national contingent is capped (in a non-mathematical way) at 96 MEPs, but it is troubled by the question of thresholds. Thresholds apply in Germany for national and even regional elections and until 2009 also for European elections. National thresholds of a maximum of 5% are permitted by the relevant EU legislation at the discretion of the member states.⁵ But the German Federal Constitutional Court has twice ruled that, in the absence of a mandatory threshold under a uniform electoral procedure sanctioned by EU law, the imposition of a national threshold in Germany is unconstitutional.

The persistent (if somewhat exaggerated) fear in German politics that extremists can get elected has led the mainstream parties to demand a change to EU law to address the situation. Because the German threshold issue has become something of an *idée fixe*, the European Parliament has tentatively proposed that, for states

with more than 26 MEPs, a mandatory threshold should be introduced of not less than 3% and not more than 5%. Moreover, it is clear that a pan-European constituency could do with a threshold of, say, 3%.

Reform before 2019

Our main question today is: do the circumstances exist to introduce European lists for the Parliament in time for the May 2019 elections? Brexit now removes at least one major obstacle to the political reform of the Union and the strengthening of the Parliament. President Macron will add his considerable weight in Council to the cause, which is already being strongly advanced by the tireless Italian Europe minister, Sandro Gozi, and supported by Belgium. The big game-changer, of course, is that we now have 73 ex-British seats to play with. So CamCom can be introduced to guarantee degressive proportionality without causing any member state, even Mr Orban's, to lose a seat. France and Spain could be offered a sweetener of a number of extra 'national' seats. But the bulk of the ex-British seats – say 50 of them – could easily be filled from the first transnational list for the first pan-European constituency.

In November 2015 the European Parliament finally voted to support the idea of a joint list.⁶ An annex to the resolution spells out the basic legislative changes needed in EU primary law to give effect to the introduction of a transnational list.⁷ Meanwhile, AFCO advances its own work on the formula for seat apportionment.⁸ Parliament's most recent Brexit resolution makes reference to its intention to complete the adventure.⁹ The Commission is thought to be sympathetic in the relevant forms of Mr Juncker and Frans Timmermans, First Vice-President. It is unfortunate but not disastrous that the European Council makes no mention of what to do with the 73 seats in its Brexit guidelines: but it is Parliament, after all, that enjoys the right of initiative on this dossier.

The time for such a radical reform is now. The introduction of European lists would at a stroke Europeanise the European elections and re-invent the Parliament. It would put the EP back on the right side of EU law in so far as its composition would respect the principle of degressive proportionality. It would install a genuinely uniform element in Parliament's electoral procedure and properly reflect the function of the MEP as representative of all the Union's citizens. European lists coupled with CamCom would settle the controversy over seat apportionment. The *Spitzenkandidat* experiment would be saved for 2019 and reinforced. The Germans could have their threshold. The European political parties would come of age, followed by the media.

Electors in 2019 would be offered two ballot papers on entering the polling station: one for their traditional national or regional constituency, the other for the European. Many would be amazed; some would be confounded; but most would enjoy their first material prize from the privilege they enjoy as European Union citizens. European democracy would be refreshed. Mr Macron would have delivered.

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Endnotes

- 1 Article 14(2) TEU and Article 223(1) TFEU. Parliament makes a proposal to the Council which decides by unanimity having received the consent of Parliament, acting by an absolute majority. The reform enters into force once ratified by all states.
- 2 European Council decision of 28 June 2013 and EP resolution of 13 March 2013, P6_TA(2013)0082.
- 3 See Note on *The Composition of the European Parliament*, February 2017.
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583117/IPOL_IDA\(2017\)583117_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583117/IPOL_IDA(2017)583117_EN.pdf)
- 4 I discuss these matters further in *Pandora, Penelope, Polity: How to Change the European Union*, John Harper, 2015; and in *Post-national democracy and the reform of the European Parliament*, Notre Europe Policy Paper 42, 2010 (EN/FR).
- 5 Article 3, 1976 Act introducing Direct Elections.
- 6 EP resolution 11 November 2015, P8_TA(2015)0395.
- 7 For a full example of a revision of the 1976 Act to install both CamCom and a European constituency, see Protocol No. 3, The Spinelli Group & Bertelsmann Stiftung, *A Fundamental Law of the European Union*, 2013.
- 8 Rapporteurs Danuta Hübner and Pedro Silva Pereira.
- 9 EP resolution 5 April 2017, P8_TA(2017)0102.

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