Democracy at the EU level: Folly or necessity?
More work for a directly elected European Parliament

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Abstract
It is often argued that the European Union needs legitimation by its Member State democracies. However, there is also a reverse dependence in which Member State democracies need some kind of European Union if they are to manage externalities between themselves in ways that are needed to deliver their most fundamental obligations to their own publics to secure rights, justice, freedom from arbitrary domination and democracy itself. I argue that reverse dependence provides an additional justification for a directly elected European Parliament: namely, as an aid to national democracies in their oversight of Union decisions. The future of Europe debates should consider a directly elected Parliament as a means of connecting national democracies to the Union and not just of building representative institutions at the European level.

1 | INTRODUCTION

For some, attempts to ensure the democratic control of the Union through a directly elected European Parliament (EP) have been one huge mistake of institutional design. On that view, the future of Europe debates need to correct and not compound an error repeatedly made since the 1970s. Once, from 1979 onwards, the EU had its own directly elected Parliament, each subsequent round of major Treaty change assumed that expanding the powers of the EP was the solution to any democratic deficit. If the democratic deficit was caused by taking powers away from national parliaments and giving them to the European Union, the deficit could be cured by empowering a directly elected Parliament at the European level. By the time of the Lisbon Treaty (2009), Article 10 of the Treaty on European Union claimed the Union had a dual system of representation in which ‘Citizens are directly represented at Union level in the European Parliament’ and ‘Member States are represented in the European Council by their Heads of

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State or Government and in the Council by their Governments, themselves democratically accountable either to their national parliaments or to their citizens.

Such a dual system of representation would hardly be innovative within a single state. But the European Union is a multi-state, multi-democracy, multi-people political order that exercises powers from beyond the state without itself being a state. Which other political order that exercises powers beyond the state has a directly elected parliament? And where else do governments that associate together beyond the state then share their powers with a parliament separately elected by their own citizens, so much so that the EP now has significant co-decision of the Union’s laws, budgets and the political leadership of the Commission?

Yet, for critics, the idea that the European Union could develop its own system of democratic representation beyond the state is more of a folly than an act of originality. In their view, it was a mistake to have ever supposed that the Union belongs to that category of political order capable of developing its own system of democratic representation. Democracy requires a state. Democracy requires a people. The European Union has neither.

Attempts to ignore those basic conditions for democracy and democratic politics have, critics continue, only produced a ‘Potemkin village’; or, in other words, an illusion of how citizens can control the authoring, amendment and administration of EU laws through representatives they themselves elect to the European Parliament. European elections have failed to stimulate a competition for the people’s vote structured around choices relevant to the exercise of the Union’s own powers. Preoccupied with building grand cross-party coalitions amongst themselves and grand cross-institutional coalitions with the Commission and Council, sheltered from much linkage between their chances of re-election and their own record in the last parliament or their own promises for the next parliament, yet anxious to please national parties who control their careers, Members of the European Parliament form just the kind of supranational parliament that might be expected of a Europe of cartel parties. They limit the choice, contestation and the publicly visible debate needed for continuous interaction between represented and representatives if politics is not to be technocratic.

Worse than a mistake, it risks domination. To attempt democratic politics at the Union level peopled by Euro-citizens, Euro-parties, a European Parliament and Euro-media participating, aggregating, compromising and deliberating together to make binding decisions, is to assume what is in question: namely, that a shared democracy at the Union level can add legitimacy or even be legitimate at all. The decision-rules that form the core of what the Union takes to be its own representative system—qualified majority in a Council representing national democracies and Co-decision with a Parliament representing citizens—assume that a Union purporting to represent a non-existent democratic people or demos can legitimately bind the real demos of Member State democracies. Such an imposition risks being a source of democratic deficit rather than a solution to it. Or at least that would be the case if the Union did not sensibly qualify its pretensions to have developed an ambitious and original form of representation beyond the state by seeking, after all, to align its policy and law with what its Member State democracies represent to be their preferences. On that understanding, the real work of legitimating the Union is not done by its Potemkin village of shared representative politics at the Union level. Rather it depends on what Peter Lindseth calls ‘national legitimating mechanisms’ and especially the representation of national democracies through the intimate participation of their own elected governments in Union decisions. Even accepting that the Union needs to be democratically controlled, it simply does not follow that it needs to be a democracy, as opposed to a political body that can be controlled by its component democracies.

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2Majone, above, n. 1.
5Qualified majority voting is the main decision rule of the Council of Ministers of the European Union used in around 80 per cent of legislation. As specified by Article 16 of the Treaty of European Union, a Qualified Majority normally requires 55 per cent of Member State Governments representing 65 per cent of the population.
6Majone, above, n. 1, at 25.
7P. Lindseth, Power and Legitimacy: Reconciling Europe and the Nation State (Oxford University Press, 2010), at 14.
Rather than perpetuating an illusion that the Union can be legitimated by directly elected representative institutions and politics of its own, then, the Union needs to ‘come out’ as a system that really depends on its Member State democracies for legitimation. As Richard Bellamy\(^8\) puts that argument, the problem is not a democratic deficit but a democratic disconnect. The Union cannot be in deficit to some ideal of representative democracy it was never feasible, desirable nor necessary it should attain. But it could be better connected to its Member State democracies. On that interpretation, the future of Europe debate should focus on better ways of involving Member State democracies in the democratic control of the Union; and on creating a clear expectation in each Member State public that it should be able to use its own democracy to control Union decisions.

To my mind that argument has one great strength and one great weakness. Its strength is in supposing that the Union remains in need of significant legitimation by Member State democracies. Its weakness, though, is in under-estimating a reverse dependence of Member State democracies on some form of European Union that, in turn, has representative institutions of its own. I make that argument in three steps. Section 2 develops an understanding of what is required from any democratic control of the Union and from any indirect legitimation of the Union by its Member State democracies. Section 3 argues Member State democracies depend, none the less, on some kind of European Union to manage externalities between themselves in ways needed to meet their most fundamental obligations to their own publics to secure rights, justice, freedom from arbitrary domination and standards of democracy themselves. That, Section 4 argues, means a directly elected European Parliament should even be a part of any legitimation of the Union via its Member State democracies. Improvements in how Member State democracies are connected to the public control of the Union are likely to work better with a directly elected European Parliament than without one.

2 | LAW, VALUES AND DEMOCRATIC CONTROL

A political order can only comply with liberal democratic principles of freedom and equality if citizens are, indeed, free to control all laws as equals. For sure, there can be good reasons for delegating powers to institutions that are independent of the normal process of democratic competition. But no public body can be outside any form of democratic control. John Stuart Mill\(^9\) put the point well. Public control can take many forms, yet publics must have it in ‘all its completeness’. Only if citizens can control the authoring, amendment and administration of all laws and all the policies and institutions that contribute to all laws can there be no coercion except where citizens coerce themselves in ways needed to secure the rights of all\(^10\) or to act together to solve collective problems.\(^11\) Only if citizens can do all that as ‘equals’ can it really be said there is no rule of the rest of the people by just some of the people.\(^12\) And only if democratic majorities of equals are, in turn, required to justify collectively binding decisions can it really be said that even democracy is not just one more form of domination. So, to be justified as democratically legitimate, any political order must include: (i) public control with; (ii) political equality;\(^13\) and (iii) rights to justification,\(^14\) always and everywhere, in all public bodies, without exception, the European Union included.

Of course, the EU could get around that by claiming some other form of legitimacy. Technocratic legitimacy would be the obvious alternative. But that would require more than a claim to better knowledge. It would also presuppose a claim to better ethical and moral understanding. Such a claim would be as preposterous as it is obnoxious. It would deservedly fail.

\(^8\)R. Bellamy, A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU (Cambridge University Press, 2019), at 12.
\(^12\)D. Estlund, Democratic Authority, a Philosophical Framework (Princeton University Press, 2007), at 37.
Still, some may find the foregoing a strange mix of the obvious and the utopian. Democratic realists tell us that we cannot expect very much from democracy: perhaps just the occasional opportunity to ‘throw the bastards out’ or a form of government that encourages the powerful to treat the dominated with some politeness.\textsuperscript{15} But that is hardly the point. A political order can fail to meet a standard of fundamental normative importance even where there is no prospect of that standard ever being realised in some ideal form. A political system can fail to meet the best of the feasible ways of meeting that standard.\textsuperscript{16} So, in answer to the question, ‘should we further democratise EU decision-making?’, the answer is ‘yes’ unless we think that all decisions of the Union already do enough to satisfy realistic standards of: (i) public control; with (ii) political equality; and (iii) rights to justification in its law-making.

Others, though, who have written about democracy and the European Union have made a somewhat different argument. For them, the Union needs to be democratically controlled not so much because it makes coercively enforceable law; but, rather, because it makes decisions about values.\textsuperscript{17} The Union is not and cannot be a kind of pareto-improving paradise, or, in other words, a win–win game in which all its decisions can make everyone better off as they themselves determine by whatever they take to be their own preferences. At least the EU cannot be that for everyone and all the time, even if there are likely to be many gains from co-operation. Given the responsibilities assigned to it, many Union decisions create winners and losers. They shape who gets what. They entail large-scale choices about economy and society. They define rights. They affect identities. They redistribute resources between Member States, regions, social groups and generations. They pre-empt what Member States can subsequently do.\textsuperscript{18} They involve indivisibilities, or, in other words, ‘lumpy’ decisions that can only be made in a limited number of ways. They also involve irreversibilities, or at least path dependencies that constrain subsequent choices.\textsuperscript{19} In short, the Union shapes ‘authoritative allocations of values’: or, in other words, the overall way in which political authority is used to make decisions about what is good or right.

Yet there is no quarrel to be had here. Its making of coercively enforced law and its making of decisions of value both need to be a part of any complete understanding of why the Union needs to be democratically controlled. The two are complementary in suggesting different ways in which the Union exercises power: by telling people what they can and cannot do in one case; and what they can and cannot have in the other. One way of understanding why the Union’s role in making coercively enforceable laws—and its role in allocating values and opportunities—needs to be combined into a single conception of why the Union needs to be democratically controlled is to think of John Rawls’ idea of justice as a matter of how well the ‘overall structure’ of ‘laws’, ‘rights and duties’, ‘political and social institutions’ and ‘advantages’ under which people live their lives all ‘hangs together’ to form a more or less ‘fair scheme of co-operation’.\textsuperscript{20} Law and the role of political institutions in allocating values are both a part of that ‘overall structure’, which, for EU citizens, is the joint product of Union decisions and those of Member States. The Union makes around 20–30 per cent of law in force in Member States.\textsuperscript{21} Those laws—in matters such as free movement, the Single Market and Monetary Union—then enable and constrain other choices of economic and social systems in ways that make them profoundly important allocations of value and of life chances. In sum then, citizens need to be able to control Union decisions as equals if they are to control both laws and allocations of value that contribute to the justice of their social arrangements.

Still, as said, it is one thing to demonstrate that the Union needs to be democratically controlled. It is another to identify how far it needs to be a democracy with its own system of representation. Maybe any concept of the European Union which presupposes its legitimacy depends at least in part on its Member State democracies. Even a

\textsuperscript{15} J. Dunn, Setting the People Free: The Story of Democracy (Atlantic Books, 2005), at 174.
fully federal Union would be one in which the legitimacy of member democracies making law together and the legitimacy of making law apart presuppose and constrain one another. At least the following arguments are part of any full understanding of why member democracies remain important to the Union’s legitimacy.

First are arguments of feasibility. Consider the long and demanding set of conditions that may be needed for representative democracy to work. They might include: (i) freedoms of speech and association; (ii) free and fair elections; (iii) appointment of leading legislature and executive positions by popular vote; (iv) a form of political competition that allows voters to control the political system; (v) a civil society in which all groups have equal opportunity to organise to influence the polity; (vi) a public sphere in which all opinions have equal access to public debate; and (vii) a defined demos (or democratic people) with agreement on who should have votes and voice in the making of decisions binding on all.

Achieving all those conditions simultaneously may be hard for the EU, given that it is a multi-state, non-state political system that operates from beyond the state. The capacity of the state to concentrate power, resources and legal enforcement has historically been useful in all kinds of ways to democracy, in ensuring that the decisions of democratic majorities are carried out; in guaranteeing rights needed for democracy; in drawing the boundaries of defined political communities; and in motivating voters and elites to participate in democratic political competition for the control of an entity which manifestly affects their needs and values. Key ingredients and infrastructures of democratic representation—parties, organised interests, social movements, parliaments and elections—have only developed patchily beyond the state. Nowhere are those elements so fully and evenly developed beyond the state that they fit together to form a complete system of representation in the same way as their equivalents within the state.

Second are arguments of value. Any need for beyond-state bodies to draw legitimacy from democratic states may be more than a second-best solution in an imperfect world where it is hard to reproduce conditions for democracy beyond the state. Citizens may value existing democratic states and communities. As Jürgen Habermas has argued, citizens may value, and seek to preserve, the achievements of a democratic-constitutional-welfare state in which each of those hyphenated terms depends on the other.

Third are arguments of right. Even universal rights need specification, application and interpretation. People can only determine for themselves as equals how rights are to be specified, applied and interpreted through procedures that require democratic states and forms of political community associated with democratic states. The no-demos argument may even understake the difficulty. There may also be a no-kratos problem in so far as democracy requires stateness.

3 | REVERSE DEPENDENCY

What, though, is needed if the Union is to be legitimated by its Member State democracies? The normal answer is their consent. Yet, consent can be wrongly given or wrongly withheld where it does not fit other obligations. Hence the Union should count as legitimated by its Member State democracies where it has received their consent and where it helps them meet their own obligations to their own publics. But can some form of a European Union (though not necessarily the one we have) really help Member State democracies meet obligations to their own

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22See, for example, W. Scheuerman, ‘Postnational Democracies without Postnational States? Some Skeptical Reflections’, (2009) 2 Ethics and Global Politics, 41–63. As Scheuerman argues, “the state’s monopoly on legitimate violence has repeatedly helped guarantee the fairness of democratic procedures and the effective enforcement of policies generated by them”, at 46.
25Bellamy, above, n. 8, at 42–44.
26Etymologically, the two roots of democracy are, of course, demos (people) and kratos (power). In democratic theory kratos often refers to a democratic system of government and demos to a people that understands itself as a people who share a democracy.
27Estlund, above, n. 12.
publics that, in turn, justify them as democratic states? Yes, very much so. Democracies as interconnected as those of the EU may need to manage externalities between themselves if they are to meet their own obligations to their own publics, and their own citizens are to meet their own obligations to their co-citizens. And it is here, I now argue that national democracies may have a reverse dependence on some form of European Union with representative institutions.

The problem of externalities is familiar. Externalities are uncompensated harms or benefits that are not reflected in rewards to those who produce them. Simply summarised, externalities 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—will be under-produced. So, too little will be done to clean up climate change (a positive externality) and too much to create climate change (a negative 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).

Without managing externalities between themselves, democracies may be systematically less likely to meet their most basic obligations to their own publics to secure rights, justice, freedom from arbitrary domination and standards of democracy itself. They 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. As Laura Valentini puts it: ‘We can no longer assume that each state is uniquely responsible for securing domestic social justice. States’ ability to do so depends on what happens beyond their borders’. If externalities mean that some ‘goods’ and ‘bads’ are systematically under- or over-produced between democracies, it will be hard for any one democracy to co-ordinate on any concept of justice that involves those ‘goods’ and ‘bads’. If, finally, it is an ideal of democracy that citizens should be able to ‘define the terms of their living together as equals’, democracies will need means of managing inter-state externalities if citizens are 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.

However, democracies also have procedural obligations to their own publics. Indeed, they only have substantive obligations to manage externalities between themselves in so far as they also have procedural obligations to their own publics. Any obligations to their own publics that justify co-operating with other democracies need to be specified and agreed by procedures that ensure public control with political equality and justification within their own democracy. Any one way of managing externalities between democracies must be justified in relation to its alternatives. So, any one way of managing externalities through the EU needs to be justified in contrast to, or in combination with: (i) more global solutions; (ii) other forms of co-operation in the European region other than the EU; and (iii) other ways of configuring the powers, policies or institutions of the Union itself to the management of externalities. Choices between those alternatives must then be ones that each member democracy can control—and continue to control—if the Union is indeed to be legitimated by its member democracies.

But that implies a predicament, even a contradiction. Managing externalities and providing collective goods seems to require both power over national democracies and control by national democracies. 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 for any co-

32J. Bohman, Democracy across Borders from Demos to Demoi (MIT Press, 2007), at 2.
operation over the management of externalities to meet the procedural obligations of each democracy to its own public all within the framework of the democratic state.

4 | EUROPEAN PARLIAMENT AND NATIONAL DEMOCRACY

The predicament set out in the previous section is, however, a familiar one. How can people and peoples bind themselves whilst continuing to exercise control over the very institutions to which they bind themselves? At least since Madison, that has been understood as a central challenge of institutional design. It is in helping them bind themselves to means of managing externalities whilst retaining control over the means of binding themselves that I argue a directly elected European Parliament can also help Member State democracies.

The main day-to-day means by which Member States control the means by which they bind themselves is through the intimate participation of their own elected governments in most Union decisions from conception to implementation. Voting in the Council of Ministers demonstrates just how far the Union strives for the agreement of all its Member States to all its decisions, even where qualified majority voting (QMV) is possible. Moreover, once made, Union decisions are often further adapted in real time to what Member States are willing and able to implement on the ground. Striving for the highest level of agreement of all Member State democracies is structurally required if the Union is to aim at the highest possible co-operation of Member State governments in implementation.

Hence, I would go further than Lindseth’s observation that Member State governments retain high levels of collective control. They even retain remarkable levels of individual control. Yet, Lindseth surely is right to observe that it is the distinctive balance between collective and individual control of Union decisions that helps member governments strive for the highest possible level of individual control and agreement consistent with the management of externalities between themselves. The individual control of Member States is not so complete that the Union is altogether blocked from managing externalities. QMV remains possible, and, of course, where it is used, it gives vetoes to combinations of governments, working in multiple and variable blocking minorities, not to single governments. Moreover, a norm that Member State governments should do everything possible to accommodate one another cannot include the accommodation of opportunities to externalise harms or to free ride. Those are preferences that one Member State can only have at the expense of other Member States. Hence a need to manage externalities can plausibly be a standard for determining where mutual accommodation should end and QMV should be used.

For sure, Member States may end up with unwanted decisions. They may also have to subject themselves to collective judgements on what are undesirable externalities. Yet a mixture of QMV as the formal voting rule, with an informal norm that QMV should be avoided right up to the point that a member government fails to convince the rest that it is not promoting undesirable externalities, has advantages for Member States that need to bind themselves to rules for managing externalities whilst retaining the greatest possible control over the rules and practices by which they bind themselves. Not only can they collectively change the rules or exit the Union individually. But, away from high dramas of treaty changes or exits, everyday decisions get to include deliberations on whether the preferences and behaviours of each can be justified, given their external effects on others. Christian Joerges argues that that even helps remedy the constitutional defect in the democratic state that it does not include the externally affected in its own decision-making. All that within a process in which: (i) managing externalities is largely pareto improving;

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35 Lindseth, above, n. 7, at 12.
(ii) any protection from the externalities of others is reciprocal; and (iii) to repeat, individual members can retain high levels of control right up to the point that they cannot convince others that their positions involve undesirable externalities. Such arrangements plausibly allow high levels of control by each member government without removing all possibility of control over national democracies needed to manage externalities.

Yet there is a catch. The foregoing depends on the close participation of elected national governments in Union decisions. What, however, some see as ‘collective oversight by national executives’ others see as executive domination of Union decisions to the exclusion of public contestation, debate or parliamentary supervision. Instead of supervising Union decisions on behalf of their publics, governments may use international bodies to take decisions in ways their own publics and parliaments find hard to control. Moreover, to be a Member State of the EU is to be a different kind of state. Even the core powers of Member States are exercised in ways shaped by Union membership. What needs democratic control and legitimacy is not just the Union itself. Rather, it is the entire structure of power relations shaped by Union membership. That includes those powers and practices of Member States that are reconfigured by membership itself: notably, the huge empowerment of national executives through their intimate and everyday participation in the exercise of the Union’s powers and the making of its laws.

Hence, Union decisions aimed at managing externalities will need more than oversight by national executives. They will also need to be embedded in the wider democratic institutions and democratic politics of each Member State. But that seems to take us back to square one. If any one national democracy has an interest in imposing harmful negative externalities on its neighbours or in free-riding on the efforts of others to provide positive externalities in ecology, economy or security, 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.

Yet, once again, Lindseth has an answer. Oversight can work just by exposing inadequate justifications and weakening the credibility of insufficiently justified policies. Poor justifications by governments of their contributions to Union decisions can feed through to wider domestic processes of political choice, competition and control. That does not require Member State democracies to have vetoes on single Union decisions aimed at managing externalities.

Yet it is on questions of oversight that we can begin to see where a directly elected European Parliament can be helpful to democratic control at the national level. First, though, we need to say some more in general about the EP as a form of representation. What is perhaps a little unfortunate with the Article 10 formulation of dual representation through the EP and (European) Council is that, to some degree, the EP is itself a form of dual representation. For sure, it is primarily organised into European party groups which bring together at the Union level the mainly left–right ideologies and party families found in most Member States. However, the practices of the EP mean that it is also a representation of its 200 or so national party delegations. The groups depend on the disciplines of the national party delegations for their own cohesion. They attempt to decide voting instructions by a consensus of the national party delegations. Sure, conflicts between national party delegations and party groups are rare. But, where they do occur, MEPs are four times more likely to vote with their national parties than their European party groups. Elected in Member States and comprised of national party delegations as well as European party groups, the EP needs to be included in any complete account of how national democracies are represented in EU
law-making. That point was not lost on the German Constitutional Court in its ruling on the Lisbon Treaty: ‘as seats are allocated to the Member States, the EP remains a representation of the Member States ... designed as a representation of peoples’.46,47

As that suggests, a directly elected EP can contribute to the representation of other possible majorities within Member State democracies than governing ones. Majorities are not the people. Indeed, they are only majorities at one particular moment, at one level of aggregation, and according to just one method of counting votes.48 A directly elected EP—rather than, say, a European Assembly formed out of national parliaments—means that opinion within each national democracy is more likely to be represented differently in the EP, the (European) Council and its own parliament. Only parties of government get access to the Council. In contrast, representatives of national parties of opposition are structurally likely to form the larger part of an elected EP—49—and to be more numerous in the EP than in their own national parliaments—so long as the EP is elected in somewhat second-order contests50 that do not coincide with most national electoral cycles.

To return though, to oversight of Union decisions by Member State democracies, a huge problem in any democratic oversight is asymmetries of information that favour the very bodies that need to be overseen.51 A European Parliament can help national democracies overcome asymmetries of information in their oversight of EU decisions and of the contributions of their own governments to the exercise of the Union’s powers. Scrutinising Union decisions requires expertise specific to the institutions and policies of the Union. Moreover, the Union sometimes depends on an experimental form of decision-making in which ‘actors have to learn what problem they are solving, and what solution they are seeking, through the very process of problem solving’.52 Hence, oversight may need to be continuously updated as EU policies aimed at managing externalities—as well as justifications for those policies—evolve in response to experience with the policies themselves. There is also an opportunity cost for national representative institutions. Time they spend monitoring Union decisions is time not spent following domestic decisions. In contrast, a directly elected European Parliament, specialised, and full-time in following EU decisions, can itself be a positive externality in providing information and scrutiny from which national democracies cannot be excluded and to which they can be structurally linked through the high overlap between national party delegations in the EP and parties in national parliaments.53

A directly elected EP can also help in the discovery of externalities and of solutions to them. Shared forms of representation can help make people(s) aware of themselves as mutually affected by externalities.54 Especially helpful may be forms of representation that involve debate between political parties, given their competing understandings of how markets, security policies and ecological problems create externalities and with what implications for values of fairness, non-domination or democracy. A supranational parliament can also help member democracies overcome a huge problem in achieving the optimal management of externalities. It is hard to discover what everyone is prepared to pay to eliminate negative externalities and provide positive externalities where anyone has incentives to over-state the costs and under-state the benefits of co-operation.55 In the case of a multi-democracy co-operation, that problem often takes the form of governments over-stating the domestic political costs to themselves of shared commitments to manage externalities. A directly elected European Parliament reduces that risk. As seen, it has the effect of directly including national parties of opposition in any EU law-making aimed at managing

48 P. Rosanvallon, La Légitimité Démocratique: Impartialité, Réflexivité, Proximité (Seuil, 2008).
externalities. Extensive co-decision of laws between the Council and EP and the EP’s practice of building the largest possible majorities means that representatives of national parties of opposition are included in most compromises on most legislation. National party delegations in the EP must at least take a position, even if it is only to abstain on legislation. Hence, the views of national parties of opposition can be directly tested and even accommodated. That limits scope for government to misrepresent dangers of domestic opposition to legislation aimed at managing externalities.

A directly elected European Parliament can also help safeguard against collusion by Member State governments to evade rules on managing externalities their own democracies have agreed. Recall the Council decision in 2003 to suspend the Stability and Growth Pact aimed at limiting fiscal externalities within a shared monetary union. As the European Central Bank’s Chief Economist put it, ‘potential transgressors’ may not be the best people ‘to pass judgement on actual transgressors’. Governments may help one another avoid political inconvenience or embarrassment in keeping to rules. National democracies seeking to manage externalities between themselves may need, therefore, to avoid giving the club of governments monopolies over rule changes. In the case of the EU, one solution is to require co-decision of rule changes with a European Parliament whose strong representation of national parties of opposition gives it no obvious interest in changes motivated only by the political convenience of some governments.

If politics and parliamentary representation are useful to discovering solutions to externalities, they are even more important to legitimating any laws aimed at regulating them. A form of parliamentary representation at the European level that is also to some degree of representation of national democracies can contribute to the ‘norming of laws’ aimed at managing externalities. By that I mean the specification of the rights and values that should guide and constrain what would otherwise be very technical rules. The very argument that managing externalities between democracies might be needed for the deeply normative tasks of securing obligations, values and rights within and across those democracies, implies that confining any shared law-making to executive actors may be a category error. There is likely to be reasonable disagreement over the definition and management of externalities. Whether and how political authority should be used to manage externalities are political and moral choices and judgements. It is not obvious that political authority should treat all externalities. An imperfect world in which many externalities go unmanaged may be preferable to one in which political authorities aim at the optimal internalisation of externalities. Such a political authority would need to be perfectionist, technocratic and interfering, and not just occasionally but continually. Preferences ‘drift’ and people continuously discover new ways of externalising costs or free-riding on benefits.

Yet, the specification of the exact obligations, values and rights that laws should secure and respect requires a specifically parliamentary form of representation. Here I assume what Habermas calls the ‘parliamentary principle’. Only parliamentary deliberation ensures: (i) representatives elected on a basis of one person, one vote can; (ii) test justifications for laws during the process of law-making itself within; (iii) a public forum where all views can be tested in relation to one another; and (iv) an institution that can subsequently scrutinise, control and even sanction the application of those laws. Unless the Union is prepared to pass laws through national parliaments, and transfer powers to censure the Commission to some combination of national parliaments, it is hard to see how the requirements in (i)–(iv) could be met in full without a directly elected European Parliament. Then, of course, all those subject to a shared system of law they co-author through representatives have rights to justification of each of those laws. That might not be impossible to arrange as a deliberation between national parliaments. But, if my analysis is correct, even deliberation between national parliaments can benefit from a directly European Parliament.

57 I. Shapiro, The Moral Foundations of Politics (Yale University Press, 2003), at 63–64.
59 Mill, above, n. 9, at 239–241.
5 | CONCLUSION

I have argued that the European Union needs to be democratically controlled in so far as it makes coercively enforced law and it reallocates values. I have also argued that Member State democracies may need some kind of European Union that can make collectively binding laws if national democracies are to manage externalities between themselves in ways that are needed for them to meet their most fundamental obligations to their own publics to secure rights and core values of justice, freedom from arbitrary domination and democracy itself. A directly elected European Parliament can contribute to all of that. Quite apart from arguments for and against building democracy at the European Union level, a directly elected European Parliament can help connect national democracies to EU decisions. The future of Europe debates could do worse than consider how national democracies might make better use of their representation in the European Parliament.

That conclusion is reinforced by two implications of this article. First, the focus here on externalities is certainly only one of many arguments that democracy at the national level depends on structures and rights agreed at the European level. Maybe European history tells us that democracy within European states requires a European and international order that allows European states to operate as democracies. Maybe values or benefits of nationality and statehood depend on nations and states using their European and international commitments to tame themselves so that states do not abuse states, and states or nations do not abuse citizens. Maybe, indeed, democracies can commit to rights domestically by committing to rights internationally. Yet an understanding of inter-democracy externalities adds something much more to each of those familiar arguments. Where there are externalities between democracies in delivering rights, justice and non-domination within democracies, there will be an inescapable problem of how to make the autonomy of each European democracy compatible with the autonomy of all European democracies. That problem could conceivably be solved by national democracies just bargaining between themselves over the management of externalities and the provision of collective goods without much need for shared institutions or even shared norms. But bargaining follows power. Citizens of European democracies may feel that they have a right to some rights as a matter of right and not of power or bargaining. That leaves representation in some shared political process aimed at managing those inter-democracy externalities that are key to the obligations of European democracies to their own publics as the only non-arbitrary way of influencing the compatibility between the autonomy of each European democracy and the autonomy of all democracies. For sure, problems of interconnectness and of externalities go well beyond Europe. But they are denser in the European area than globally; and even contributing to managing global externalities may be best done by European democracies using institutions, norms and laws at the European level to co-ordinate, monitor and enforce their contributions to international agreements.

Second, the analysis here implies a distinctive relationship between national and European democracy, national and European parliaments. Only national democracies, parliaments and voters can identify any obligations they owe their own publics that would also justify some element of shared representation in a directly elected Parliament at the European level. Yet, if my argument is correct, a directly elected European Parliament can, in turn, contribute to the representation of national democracies in Union decisions, partly by helping national democracies overcome asymmetries of information in their own scrutiny and control, partly by including national parties of opposition in the European Parliament, partly by including national parties of opposition in the representation of national democracies in Union decisions, partly by helping national democracies overcome the European level. Yet, if my argument is correct, a directly elected European Parliament can help connect national democracies to EU decisions. The future of Europe debates could do worse than consider how national democracies might make better use of their representation in the European Parliament.

60I am grateful to an anonymous referee for making this point.
 democracies and solutions to them can be publicly deliberated, challenged and justified in one place by elected representatives. None of those roles for a directly elected European Parliament needs to exclude the idea that it should represent a European Union public of European Union citizens who make law together and solve collective action problems together through their representatives in the EP and not just in the (European) Council. The point is not that representation at the European level should be collapsed by making the EP one more representation of national democracies. But, rather, that the (European) Council does not—and should not—have a monopoly on representation of national democracies. A directly elected European Parliament can perform some roles in the representation of national democracies that national governments and national parliaments cannot.

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