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The European Parliament's quest for representative autonomy: An internal perspective

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3. The European Parliament: Potential, Powers and Structure

The present chapter introduces the main subject of this study: the European Parliament. The nature and functioning of this institution are often poorly understood. It is the only directly elected European institution, yet its legitimacy as a representative body and a relevant parliament is regularly questioned. This chapter sketches the historical development of the powers, the composition, and the internal organisation of the European Parliament. It is not intended as a comprehensive account. Instead, the spotlight is on the parliamentary nature of the institution and on its capacity to transform itself. The previous chapter has shown how those two aspects are intrinsically linked.

The structure of this chapter is as follows. Section 1 concerns the founding of the Common Assembly, and its transformation into the European Parliament. Paying attention to these historical roots is important, as they have determined Parliament's liberty to define its own power and status. Section 2 shows how the European Parliament has subsequently used this liberty to develop legislative, budgetary and oversight powers. As we shall come to see, this development has taken place at a strikingly rapid pace. Parliament's capacity to turn itself into an efficient organisation is generally regarded as a determinant factor in this regard. Therefore, section 3 focuses on Parliament's internal structure. It reveals the dividing lines along which the European Parliament has organised itself. Finally, section 4 marks the transition from studying what Parliament *does* to how Parliament shapes what it *is* and whom it represents.

1. The Potential of Political Representation

Accounts on the European Parliament often start in 1958 when it held its constituent session in March of that year. However, the European Parliament has manifestly built on the Common Assembly, which was set up six years earlier. Therefore, the births of both assemblies are the core of this section.

1.1. *The Set-Up of the Common Assembly*

On 9 May 1950, the French foreign minister Robert Schuman, motivated by economic and security concerns, advocated the setting-up of a supranational European

Coal and Steel Community (ECSC).¹ It was meant 'as a first step in the federation of Europe'.² Concretely, Schuman proposed the creation of two institutions, a High Authority and a Council of Ministers. The first would be attributed with far-reaching executive powers. The second, composed of ministers of each government of the participating member states, would be equipped with legislative and budgetary powers. The initial institutional set-up of the ECSC did not include a parliamentary assembly.

Notably, the German and the French negotiators were uncomfortable with the absence of a body representing citizens.³ Organising an institutional structure with popular legitimacy was deemed appropriate, and necessary, in order to successfully expand European cooperation into other areas in the near future. The negotiators then discussed two options. The first one was to outsource parliamentary oversight to an already existing parliament – the Consultative Assembly of the Council of Europe. This idea was abandoned due to the political and institutional complications that it would cause.⁴ The second option was the setting-up of a new parliament. The Benelux countries were initially not very supportive of the latter proposal, as they feared that a powerful separate body could hinder the efficiency of European decision-making, and potentially even interfere with domestic economic policies.⁵ In the end, a compromise was reached by giving the new parliament, called the Common Assembly, only powers of supervision. It could censure the High Authority, but was not provided with legislative and budgetary powers.⁶ As such, the Benelux negotiators expected the new parliament to play 'a negligible role in the Community's institutional set-up'.⁷

1.2. A Novum: Representing Citizens, Not States

There is widespread agreement among scholars that the Common Assembly started out as a rather powerless institution, in particular when compared with national parliaments.⁸ However, there is less agreement on the actual *potential* of the Assembly.

1 Raymond Vernon, 'The Schuman Plan: Sovereign Powers of the European Coal and Steel Community' (1953) 47 *The American Journal of International Law* 183.

2 This quote is an extract from his speech, held on 9 May 1950, in which he unfolded his plan. See also David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 27-29.

3 Berthold Rittberger, 'The Creation and Empowerment of the European Parliament' (2003) 41 *Journal of Common Market Studies* 203, 212.

4 Frederic Franssen, *The Supranational Politics of Jean Monnet: Ideas and Origins of the European Community* (Greenwood Press 2001) 129.

5 Berthold Rittberger, 'Institutionalizing Representative Democracy in the European Union: The Case of the European Parliament' (2012) 50 *Journal of Common Market Studies* 18, 26-27.

6 The composition and role of the Common Assembly are described in Articles 20-25 Treaty establishing the European Coal and Steel Community (ECSC Treaty). See also Guy Van Oudenhove, *The Political Parties in the European Parliament: The First Ten Years (September 1952-September 1962)* (AW Sijthoff 1965) 8-9; Judge and Earnshaw (n 2) 32-33.

7 Rittberger, 'The Creation and Empowerment of the European Parliament' (n 3) 213.

8 Simon Hix and Bjørn Høyland, 'Empowerment of the European Parliament' (2013) 16 *Annual Review of Political Science* 171, 172.

Was it indeed destined to play only a marginal role in shaping the institutional architecture of the European integration project? Or did it – from the start – have the potential to transform itself into a more powerful institution over time, and to contribute to societal change? As we have seen in Chapter 2, the creative potential of a parliament is linked to the free mandate of its members and the necessity to uphold the principle of separation of powers. Some scholars claim that even this rudimentary potential was initially absent. In their view, the Assembly was:

‘[N]ever designed or expected by the founding fathers of the European Community to play a momentous role in the promotion of the European integration.’⁹

Support for this conclusion was notably found in the method underpinning the Assembly’s composition. The 78 representatives were appointed by and from national parliaments. In their capacity as European representatives, they had no direct link with a self-standing electorate. The Assembly also had no competence to adopt new legislation and alter this situation. Therefore, the Assembly was regarded as ill-equipped to enforce institutional change. In this view, the Assembly was designed to depend on other actors for its development.

However, this reasoning overlooks an important aspect that explains why the Common Assembly was always at least an *embryonic* parliament. Article 20 ECSC is the crux. It defines the members of the Common Assembly as:

‘[T]he representatives of the peoples of the member States of the Community.’

This formulation defines the Assembly as a body representing *categories of people*. Its members are not delegates of national governments or of member states either. Neither are they only delegates of national parliaments. They are appointed by national parliaments, but should not act upon their instruction.

In his dissertation on the Common Assembly, Kapteyn rightfully points out:

‘One may assume that by this phrase, the modern idea of representation is incorporated in the Treaty.’¹⁰

9 Juliet Lodge, ‘Federalism and the European Parliament’ (1996) 26 *The Journal of Federalism* 63.

10 Paul JG Kapteyn, *De Gemeenschappelijke Vergadering Der Europese Gemeenschap Voor Kolen En Staal 1952-1958: Een Proeve in Europees Parlementarisme* (thesis, Leiden University 1960) (original version) 5.

Article 20 ECSC *implies* the existence of a free, representative mandate. Members have to act as they deem fit. The national parliaments function only as *Kreationsorganen*.¹¹ In this respect, the Common Assembly distinguished itself fundamentally from other international assemblies, such as the Consultative Assembly of the Council of Europe. The latter consists of representatives of each member state.¹² Hence, national parliaments not only determine the composition of the Consultative Assembly, but its decisions as well.

The existence of an *implicit* free mandate can also be concluded from the task that is attributed to the Assembly. It is empowered to evaluate the work of the High Authority. This Authority was charged with defending the *common* interest. In evaluating whether it had performed this task well, members of the Common Assembly, *through their function*, had to adopt the perspective of the joint peoples of the Community, rather than a strict national perspective. The fulfilment of their task thus required independence from national structures.¹³

The free mandate of the members of the Common Assembly was never formally expressed. Nevertheless, the special position of the Common Assembly as a body representing citizens (as opposed to states) was recognised from the start. This is revealed by the fact that the Assembly was requested to draft a blueprint for a future European Political Community (EPC). The need for an EPC had emerged during the discussions on the European Defence Community (EDC).¹⁴ Having a common defence policy and a common coal and steel market increased the need for a federal or confederal structure in which both communities could be incorporated. According to Article 38 of the European Defence Community Treaty, the new structure should be 'based upon the principle of the separation of powers and including, in particular, a bicameral representative system.' On the proposal of Alcide De Gasperi and Robert Schuman, the members of the Common Assembly were asked to design a draft treaty along those lines. It shows that the Common Assembly was regarded as the next best thing to a *constituent assembly*. On 13 September 1952, the Common Assembly accepted to play a leading role in the 'Ad-Hoc Assembly' that was formed for this purpose.¹⁵

When analysing the Common Assembly, a distinction can be made between its formal powers and its parliamentary potential. The first were initially very modest. They earned the Assembly the qualification of being 'toothless'.¹⁶ However, the second was more promising. Due to its composition and its responsibility to act on

11 Ibid 6.

12 Statute of the Council of Europe (adopted 5 May 1949, entered into force 3 August 1949) CETS No 001, para 25.

13 Berthold Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation-State* (Oxford University Press 2005) 100.

14 Berthold Rittberger, "'No Integration Without Representation!'" European Integration, Parliamentary Democracy, and Two Forgotten Communities' (2006) 13 *Journal of European Public Policy* 1211.

15 CA Resolution of 13 September 1952 on the communication from the President of the special Council of Ministers, OJ No 1 of February 1953 (in Dutch).

16 Hix and Høyland (n 8) 172.

behalf of the *sum* of the national peoples, the Common Assembly was designed as an institution that could contribute to constitutional change.

1.3. Raising Expectations about Parliament's Representative Capacity

The road towards a federal or confederal future turned out to be bumpier than envisaged. On 30 August 1954, the French National Assembly rejected the Treaty of the European Defence Community. This meant that there was no legal basis for the European Political Community. Consequently, the proposals of the Ad-Hoc Assembly were sidelined. After a period of reflection, the six member states of the ECSC decided on a new strategy of more gradual European integration. This strategy is generally referred to as 'functional' integration'.¹⁷ The idea is that cooperation in specific economic sectors will have spill-over effects in other areas. By addressing these effects step by step, an all-encompassing integration will be accomplished in a gradual manner. The plan for an all-encompassing political community was thus put on ice. Instead, the ECSC members agreed to create a European Economic Community (EEC) and a European Atomic Energy Community (Euratom) in two separate treaties.¹⁸ I will refer to them as the Treaties of Rome.

The institutional set-up of the new communities was remarkable. Each was equipped with an own Council and its own Commission, meaning that there were three of these institutions in total.¹⁹ In contrast, there was only one Assembly charged with all the responsibilities assigned to it by three different Treaties. A special convention ensured consistency between the different Treaty provisions.²⁰ In the Treaties of Rome, the Assembly was accorded the right to present amendments to the Commissions' proposals before the Councils of Ministers decided on them. This can be read as a minor involvement of the Assembly in the legislative process.²¹

The decision to keep one single Assembly, rather than setting up another two, was the result of an express request by the Common Assembly itself. The matter was addressed on different occasions, among others in meetings with the President of the

17 See for instance Antje Wiener and Thomas Dietz, *European Integration Theory* (Oxford University Press 2009) 2.

18 Treaty establishing the European Economic Community (Treaty of Rome); Treaty establishing the European Atomic Energy Community (Treaty of Rome).

19 This situation changed only in 1965, with the Treaty establishing a Single Council and a Single Commission of the European Communities (Merger Treaty).

20 Convention on certain institutions common to the European Communities (adopted 25 March 1957, entered into force 1 January 1958) 298 UNTS 267 (Treaty establishing the EEC).

21 Judge and Earnshaw (n 2) 32. See also Richard Corbett, Michael Shackleton and Francis Jacobs, *The European Parliament* (7th edn, John Harper Publishing 2007) 204.

Consultative Assembly of the Council of Europe and the Assembly of the Western European Union.²² According to the President of the Common Assembly, Furler:

'[I]t is barely possible to overestimate the significance of the fact that the control of the three Communities, and the parliamentary-political dynamic, is placed in the hands of a single Assembly.'²³

He points out that only a single Assembly has the capacity to *unify*.

Combining the Assemblies into one was a precondition for it to function as a general, a *political*, body; a change-maker. Having three different Assemblies in place would likely have led to either paralysing intra-parliamentary clashes, or an agreement between the representative bodies to limit themselves to the defined tasks and their formally assigned responsibilities. Such rules would have restricted, what Hannah Arendt terms, the 'boundlessness' of political action.²⁴ The Assemblies would have curbed their own creative potential, and reduced their flexibility to that of a kind of advisory board.

The likelihood that the new Assembly would develop into an elected parliament over time, was enhanced by a new and remarkable treaty provision.²⁵ This provision instructed the Assembly to design a uniform procedure for the election of its members by universal suffrage. The Assembly was thus given the right of initiative to structure itself, and the polity it was to represent. Many assumed that a direct link with a self-standing electorate would enhance the institution's legitimacy and its political authority further.²⁶ It would insert a 'democratic dynamic'.²⁷ As we shall see in Chapter 4, the first elections did not take place until 1979. However, that prospect alone sufficed to raise expectations that the Assembly was on its way to becoming a fully-fledged parliament. This in itself increased its capacity and potential.

The Assembly consciously stimulated the expectations, most notably through the adoption of a new name. In the Treaties of Rome, the institution is simply referred to as 'Assembly': a neutral label that was regarded as unsuitable and unappealing by many members. In one of the last reports by the Common Assembly, adopted

22 Franco Piodi, 'Towards a Single Parliament: The Influence of the ECSC Common Assembly on the Treaties of Rome, 1957-2007' (Archive and Documentation Centre (CARDIOC), Directorate-General for the Presidency, European Parliament 2007) 37 and 211; Umberto Tulli, 'A Salutory Shock? The 30-Years Struggle for the Introduction of European Elections.' [2015] SIS Working Paper Series <http://web.unitn.it/files/download/34070/2015_2_tulli.pdf> accessed 10 February 2016.

23 CA Debate of 28 February 1958 on the convocation of the European Parliamentary Assembly, OJ No 38 of May 1958 (in Dutch) Annex contribution Hans Furler.

24 Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958) 191.

25 This provision was inserted in all treaties. See new Article 21(3) ECSC, Article 138(3) EEC, and Article 108(3) Euratom.

26 See for example the comments of Tindemans in 1976: 'Direct elections ... will give this assembly a new political authority. At the same time [they] will reinforce the democratic legitimacy of the whole European institutional apparatus', in Judge and Earnshaw (n 2) 77.

27 *Ibid* 33.

during its closing session in February 1958, rapporteur Wigny recommended to its successor that it would rename itself.²⁸ The new name would have to adequately describe the essence of the institution and raise more expectations amongst the public. Wigny suggested using the name ‘European Parliamentary Assembly’. In his view, this reflected both the political ideal of a European federation and the political choice for a parliament. At the constituent session of the Assembly, in March 1958, the discussion continued. In particular the Dutch social democrat Kapteyn objected to Wigny’s proposal.²⁹ He disliked the word ‘assembly’, even in combination with the adjective ‘parliamentary’. The former word simply diminished the potential of the latter. Assemblies have the connotation of being mere talking-shops. Kapteyn’s counterproposal was therefore to use ‘European Parliament’ instead. The discussion led to a typical European compromise. While the Assembly was baptised ‘European Parliamentary Assembly’, it was accepted that the institution would be referred to as *Europees Parlement* and *Europäisches Parlament* in Dutch and German respectively.³⁰ The two names, European Parliament and European Parliamentary Assembly coexisted for four years. On 30 March 1962, the decision was taken to use the name ‘European Parliament’ in all languages.³¹

Several scholars have commented on this decision by Parliament. Some are dismissive, and consider the name change to be of limited real importance.³² Others recognise that symbols can be of major importance.³³ By means of its name change, the European Parliament explicitly presented itself as a representative, parliamentary body. The new name invites the public and the other institutions to compare the position and powers of the European Parliament to that of national parliaments, rather than to other international assemblies. As such, the decision contains a *representative claim*. It can be read as an attempt to lock-in other actors, and make it more appropriate that Parliament is attributed more competences and a direct popular legitimacy in the near future.³⁴ Well aware of these far-reaching implications, several governments vehemently opposed the new name. They continued, for more than

28 Pierre Wigny, *L'Assemblée Parlementaire Dans l'Europe Des Six* (Communauté Européenne du Charbon et de l'Acier 1958) 17-18. The Wigny report was adopted by the Assembly in the CA Resolution of 27 February 1958 on the revision of Treaty Establishing the European Coal and Steel Community, OJ No 9 of March 1958 (in Dutch).

29 EP Debate of 20 March 1958 on naming the Assembly, Minutes of the European Parliament of May 1958 (in Dutch), 92.

30 EP Resolution of 20 March 1958 on naming the Assembly [1958] Doc No 3, OJ No 1 of 20 April 1958 (in Dutch). In French, the official new name was *Assemblée Parlementaire Européenne*; in Italian, *Assemblea Parlamentare Europea*.

31 EP Resolution of 30 March 1962 on the renaming the European Parliamentary Assembly, OJ No 31 of April 1962 (in Dutch), 1045. The resolution was introduced, on 29 March 1962, by the presidents of the European political groups: Poher, Pleven and Birkenbach.

32 Bernard Steunenbergh and Jacques Thomassen, *The European Parliament: Moving Toward Democracy in the EU* (Rowman & Littlefield Publishers 2002) 2.

33 Judge and Earnshaw (n 2) 35.

34 As representative democracy is the widely acknowledged model in Western Europe, it is difficult and costly for the governments of the Member States to withhold a people’s representative important legislative, budgetary and supervising powers. Rittberger, *Building Europe’s Parliament: Democratic Representation Beyond the Nation-State* (n 13).

two decades, to refer to the institution as 'Assembly'.³⁵ It was not until the Single European Act of 1986, that the name European Parliament featured in the Treaties.

2. The Instruments to Develop Parliamentary Power

From the very beginning, the European Parliament had a parliamentary *potential*. Yet, its actual powers were initially limited. This section highlights how these powers were developed, and in particular the role of the European Parliament therein.³⁶ Section 2.1 describes the evolution of Parliament's legislative powers. Here, we witness the importance of a parliament having the right to regulate its own affairs and to adopt Rules of Procedure. Section 2.2 describes the development of Parliament's budgetary powers. It calls our attention to the relevance of inter-institutional agreements. Section 2.3 describes how Parliament acquired new supervisory powers. It indicates the role of the public for enforcing change.

2.1. Legislative Power – and Rules of Procedure

The European Parliament started off with no significant legislative powers. The Treaties of Rome put the right of initiative for legislative proposals firmly in the hands of the European Commission (except with regard to the electoral provisions).³⁷ The Council was made responsible for taking the final decisions. In some policy areas, the Council had to consult the European Parliament first, but it was not obliged to actually take notice of Parliament's views. In 1973, as part of an effort to improve its relations with the European Parliament, the Council expanded the number of proposals on which Parliament's advice was asked.³⁸ Moreover, the Council committed itself to informing the Parliament about the reasons for departing from Parliament's opinion, when legislation had important financial consequences or concerned other important matters. However, as we will see below, it was the European Parliament itself that developed bargaining powers through which it could force the Council to respond to its recommendations. Crucial for Parliament's actions in this regard, was its right to regulate its own affairs.³⁹ It could establish its own organisation and draw

35 Luuk Van Middelaar, *De Passage naar Europa: Geschiedenis van een Begin* (Historische Uitgeverij 2009) 384-385.

36 Other scholars have described and interpreted the development of Parliament's powers more extensively. See for example Simon Hix, 'Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam' (2002) 32 *British Journal of Political Science* 259; Henry Farrell and Adrienne Héritier, 'Formal and Informal Institutions Under Codecision: Continuous Constitution-Building in Europe' (2003) 16 *Governance* 577; Hix and Høyland (n 8).

37 To simplify matters, I will refer to the European Commission and the Council in the singular. However, it should be noted that until 1 July 1967, there were in fact three Commissions and three Councils (see above).

38 Corbett, Shackleton and Jacobs (n 21) 206.

39 Mark Williams, 'The European Parliament: Political Groups, Minority Rights and the "Rationalisation" of Parliamentary Organisation: A Research Note' in Herbert Döring (ed), *Parliaments and Majority Rule in Western Europe* (Mannheim Centre for European Social Research, Universi-

up Rules of Procedure. This right was given to the Common Assembly in Article 25 ECSC.⁴⁰

There are certain limitations to Parliament's right to regulate its own affairs. For example, it cannot decide on the location of its seat, as Article 341 TFEU stipulates that this is a competence of the governments of the member states. Evidently, many issues are *not* regulated in the Treaties. They can be dealt with by Parliament itself. The right to regulate its own affairs has proven a useful tool in the process of developing legislative powers, as can be illustrated by Parliament's reaction to the decision of the Court of Justice in the so-called *Isoglucose Decision*. Parliament then fully exploited the situation to its advantage.

The institutional issue at stake was the influence of Parliament's opinions. Did the Council have to await the adoption of Parliament's opinion before taking a decision on a piece of legislation when the Treaty required that this opinion was asked? Concretely, the case concerned a decision of the Council to revise a regulation on the market in isoglucose. The Council wanted this regulation to come into force on 1 July 1979 (for continuity reasons). The European Parliament had put the regulation on its agenda of the May plenary session, well in advance of the deadline. Subsequently, at that session, it decided not to take a final vote on the resolution. Instead, it referred the resolution back to the responsible committee, which would delay the procedure, most likely until mid-July. By way of its right to regulate its own affairs, Parliament was able to do so. However, this procedural manoeuvring threatened to lead to an extension of the Council's self-imposed deadline. In the face of this, the ministers took the decision not to await Parliament's final recommendations, and adopted the new regulation. This led a private company to file proceedings before the Court of Justice, supported by the European Parliament.⁴¹ The plaintiffs argued that an essential procedural requirement had been violated in the decision-making process. On 29 October 1980, the Court accepted this reasoning. It agreed that it was not sufficient for the Council to simply *ask* Parliament for an opinion.

'The consultation provided for in the third subparagraph of Article 43(2), as in other similar provisions of the Treaty, is the means which allows the Parliament to play an actual part in the legislative process of the Community, such power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly. Due consultation of the Parliament in the cases provided for by the Treaty therefore constitutes an essential formality disregard of which means that the measure concerned is void.'⁴²

ty of Mannheim 1995) 392; Ernst B Haas, *The Uniting of Europe. Political, Social, and Economic Forces, 1950-1957* (University of Notre Dame Press 2004) 411.

40 Nowadays, it can be found in Article 232 TFEU.

41 Case 138/79 *SA Roquette Frères v Council of the European Communities* [1980] ECR 3333.

42 *Ibid* para 33.

This ruling gave a boost to Parliament's self-confidence, credibility and power.

The latter was subsequently expanded further by Parliament's own actions. Just months after the *Isoglucose Decision*, the European Parliament amended its Rules of Procedure.⁴³ It codified the right of referral back to committee as a formal instrument. No time limit was set before which an opinion should be finalised.⁴⁴ It became theoretically possible to delay a procedure indefinitely.

The fact that the legal action leading to the *Isoglucose* decision had followed directly on the first European election, was not incidental. In their comprehensive book on the European Parliament, Judge and Earnshaw note that this first direct election led to an 'attitudinal change'.⁴⁵ The change was noticeable in members of the European Parliament, but also in other actors, such as the Court of Justice and third parties.⁴⁶ As the argument of the Court testifies, the European Parliament was increasingly recognised as a representative body with popular legitimation. Hence, its opinions could less easily be ignored. Ever since the election of 1979, the legislative powers of the European Parliament have substantially increased, to the detriment of the positions of the Council and especially the European Commission.

Several treaty amendments enhanced Parliament's position. The Single European Act (1986) was the first major revision of the Treaties. It extended Parliament's legislative involvement, notably by the introduction of the so-called cooperation procedure.⁴⁷ Under this procedure, the European Parliament could propose amendments to legislative proposals. If the European Commission supported these amendments, the Council could only reject them by unanimity. Otherwise, it could vote by qualified majority. The Council's new text, called the 'second reading', had to be put to a vote by the Parliament as well. If rejected, the Council could overrule this veto, but only with a unanimous vote and with the agreement of the Commission.⁴⁸

The 1992 Treaty of Maastricht further increased Parliament's involvement in the legislative process. It introduced the so-called co-decision procedure. This added a 'third reading' to the existing procedure.⁴⁹ If the Council and the European Parliament failed to agree in two legislative readings, they would enter in direct negotiations with one another in a conciliation committee. The equality suggested in this process was marred by the existence of a fall-back option that was available to the Council alone. The Council could at any moment reintroduce its original position and make Parliament a take-it-or-leave-it bid. When this happened, the only instrument remaining for the European Parliament was to block the proposal altogether.

43 Report on a General Revision of the Rules of Procedure of the European Parliament (Rapporteur: Rudolf Luster) (EP 1981, A1-0926/80 0010).

44 Rule 36(2) Rules of Procedure of the European Parliament – December 1981.

45 Judge and Earnshaw (n 2) 38.

46 *Ibid* 40.

47 The Single European Act introduced other procedures as well. It formalised the consultation procedure that had developed *de facto*, and introduced the assent procedure.

48 Thomas König and Mirja Pöter, 'Examining the EU Legislative Process' (2001) 2 *European Union Politics* 329, 330.

49 Thomas Beukers, *Law, Practice and Convention in the Constitution of the European Union* (thesis, University of Amsterdam 2010) (original version) 21-23.

This rule arguably made the Council the effective agenda-setter.⁵⁰ The European Parliament opposed the introduction of this ‘asymmetry into the relative powers of the Council and the EP’.⁵¹ In response, it turned to its right to adopt its own Rules of Procedure again, and introduced a new Rule 78. According to this rule, the European Parliament would *automatically* vote to reject the common position of the Council following a failure to settle in the conciliation committee.⁵² This decision reduced the chances that intra-parliamentary battles would arise from a decision on Council’s final bid. It made Parliament’s reaction a matter of safeguarding its institutional rights, and it shifted the burden of responsibility for a possible impasse to the Council if the latter used its formal advantage. Through its Rules of Procedure, the European Parliament thus effectively introduced ‘a de facto power of mutual veto’, as Hix and Høyland termed it.⁵³ Faced with this situation, the member states decided to eliminate the controversial third reading in the 1997 Treaty of Amsterdam.⁵⁴ In the 2009 Lisbon Treaty, the revised co-decision procedure has been renamed the ‘ordinary legislative procedure’.⁵⁵ It is nowadays the general rule for passing EU legislation.

This short story, describing Parliament’s development into a co-equal legislator, reveals the on-going dynamic between treaty texts and political action. Treaty texts are a source of power as well as a vehicle for change.⁵⁶ They can empower Parliament and simultaneously create new opportunities for it to move just beyond what was agreed. When this happens, the other institutions can try to push Parliament back in the position that it was given *de jure*, or they may accept the new situation *de facto*. In case of the latter, the existing treaties can be amended and come to incorporate the new reality. The European Parliament is well aware of this continuous dynamic and of its own role in it.

‘Parliament has traditionally taken the Treaties and tried to stretch them like a piece of elastic, in order to enhance the efficiency and democratic accountability of the Union. Of course, Parliament cannot contravene the Treaties in its Rules of Procedure, but the Treaties inevitably leave room for interpretation and imagination.’⁵⁷

50 George Tsebelis, ‘The Power of the European Parliament as a Conditional Agenda Setter’ (1994) 88 *The American Political Science Review* 128.

51 Adrienne Héritier and others, ‘The European Parliament as a Driving Force of Constitutionalisation’ (Policy Department C (Citizens’ Rights and Constitutional Affairs), Directorate-General for Internal Policies, European Parliament 2015) PE 536.467 17.

52 Hix and Høyland (n 8) 173.

53 *Ibid.*

54 Hix, ‘Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam’ (n 36) 259.

55 Article 294 TFEU.

56 Héritier and others (n 51) 6.

57 Report on the amendments to be made to the Rules of Procedure (Rapporteurs: Richard Corbett, Antoni Gutiérrez Díaz, Ana Palacio Vallelersundi) (EP 1999, A4-0070/99 0020) explanatory statement, adopted on 17 and 18 February 1999.

It is within the sphere of interpretation and imagination that the European Parliament has contributed to the extension of its prerogatives. It has exploited omissions or open-textured provisions in the treaties, and provided its own interpretation of rules. This course was supported with a strategic argument.

'[I]f Parliament were to organise its activities logically to cover a purely consultative and debating role, this evolution might be interpreted as the waiving of any right to (co-) decision, thus endangering the possibility of further development in that direction.'⁵⁸

Parliament therefore *claimed* to be a co-legislator, before it was given substantial legislative powers. It anticipated and invited these powers. Parliament's leverage, and thus the success of its actions, was helped by the commitment to representative democracy of member states.⁵⁹

2.2. Budgetary Power – and Inter-Institutional Agreements

The budgetary power of the European Parliament developed through incremental change as well. In this evolution, inter-institutional agreements (IIAs) are of primordial importance.⁶⁰ They have fundamentally overhauled the balance of power in between treaty-changes and following interstitial institutional change.⁶¹

The treaties initially only foresaw a limited involvement of the European Parliament in the budgetary procedure. The Treaties of Rome enabled Parliament to introduce amendments (within a very tight time frame). However, the Council was free to adopt or reject them by qualified majority voting, and to approve the budget that it wanted. Two consecutive budget treaties, signed in 1970 (in Luxembourg),⁶² and in 1975 (in Brussels),⁶³ marked a shift in this regard. They authorised the European Parliament to reject the entire European budget by a two-thirds majority. The new rules also instituted a distinction between compulsory and non-compulsory expenditure. Compulsory were those expenditures that followed from the treaties or from legislation, such as agricultural policy. As it had the last word on legislation, the Council was given the last word on this part of the budget. All other expenditure was labelled as non-obligatory. In this category, the European Parliament could

58 Roland Bieber, 'The Evolution of the Rules of Procedure of the European Parliament' in Wolfgang Wessels, Joseph Jamar and Rudolf Hrbek (eds), *The European Parliament on the Eve of the Second Direct Election: Balance Sheet and Prospects* (De Tempel 1984) 248.

59 See Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation-State* (n 13).

60 IIAs are binding to all contracting institutions. For more information about them, see Andreas Maurer, Daniela Kietz and Christian Völkel, 'Interinstitutional Agreements in the CFSP: Parliamentarization Through the Back Door?' (2005) 10 *European Foreign Affairs Review* 175.

61 Héritier and others (n 51) 9.

62 Treaty amending Certain Budgetary Provisions of the Treaties (CBP).

63 Treaty amending Certain Financial Provisions of the Treaties (CFP).

– within a maximum range – unilaterally increase or reduce budget constraints, and reallocate money between sections of the budget. The exact classification of each budget item was one of the many sources of conflict between the Council and the European Parliament.

Over the years, many budgets were adopted in a crisis atmosphere. In the absence of legislative competences, the European Parliament sought to enhance its influence on legislation through its budgetary powers. The acquisition of a popular mandate in June 1979 fuelled Parliament's demand for a greater say. This showed immediately. On 15 December 1979, just months after the first direct election, the European Parliament rejected the budget for the first time. The veto was repeated in December 1984.⁶⁴

Also the discharge procedure became a battleground. The European Parliament was responsible for evaluating the execution of the budget. It could approve or disapprove the manner in which the Commission had spent the money. In 1984, in relation to the financial year 1982, the European Parliament refused to grant a budget discharge for the first time.⁶⁵ In 1998, the European Parliament refused discharge for the second time, leading to the resignation of the Santer Commission on 16 March 1999.⁶⁶

In order to facilitate the relations between the two arms of the budgetary authority, the two institutions engaged in structured inter-institutional negotiations. On 30 June 1982, the Council, the Commission and the European Parliament signed a Joint Declaration 'on various measures to improve the budgetary procedure'.⁶⁷ Over the years, it was followed by six inter-institutional agreements (IIAs).⁶⁸ One of the most important IIAs was signed in 1988. It introduced a seven-year multiannual financial framework, referred to as the 'financial perspectives'. In the financial perspectives, *all* expenditure is divided in broad categories. Each has an own ceiling. The institutions cannot transfer money from one category to the other without modifying the agreement. The IIAs have enhanced the European Parliament's say

64 Parliament has voted against a budget on more occasions. However, in those cases, an agreement was negotiated shortly thereafter, and in time before the beginning of the next year.

65 Judge and Earnshaw (n 2) 37; Julian Priestley, *Six Battles That Shaped Europe's Parliament* (John Harper Publishing 2008) 7.

66 Héritier and others (n 51) 54.

67 Joint Declaration by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure [1982] OJ C194/1.

68 Interinstitutional Agreement of 29 June 1988 on budgetary discipline and improvement of the budgetary procedure [1988] OJ L185/33; Interinstitutional Agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedure [1993] OJ C331/1; Interinstitutional Agreement of 13 October 1998 on legal bases and implementation of the budget [1998] OJ C344/1; Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [1999] OJ C172/1; Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [2006] OJ C139/1; Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management [2013] OJ C373/1.

over the budget as it introduced '*de facto* co-decision powers for the entire budget, including compulsory expenditure'.⁶⁹

Its increased power made Parliament more responsible. As noted by Corbett et al., the European Parliament was rather 'opportunistic' in the early period (until 1988). Ever since, the Council and the European Parliament 'increasingly seek mutually acceptable outcomes based on a shared perception of each other's role, rather than Parliament attempting to use the treaty articles to impose its will on the Council'.⁷⁰

The Treaty of Lisbon has incorporated into primary law many elements that were first agreed in IIAs. It removes the distinction between compulsory and non-compulsory expenditure, and has transformed the multi-annual financial perspectives from a non-binding agreement into a binding one. Scholars fail to agree on whether Parliament's budgetary powers have been reduced or increased as a result of this codification. For the present thesis, it is not necessary to draw conclusions on that discussion. It suffices to note that the European Parliament has exploited the powers that it had from the start, and in particular since 1979. It interpreted the budget treaties in a 'maximalist' way, thereby partly compensating its lack of legislative powers.⁷¹ The popular mandate served as a catalyst in this respect. The IIAs have reduced the range of obstructive actions that the Parliament can undertake, in exchange for constructive power.

Only with regard to the Union's own resources, Parliament has not achieved any significant influence. This contrasts with national parliaments.⁷² Decisions on 'own resources' have remained a matter for the Council and for the member states.⁷³ In 2010, the European Parliament agreed to adopt the 2011 budget with the understanding that the Council and the Commission would consider reforming the system of own resources. However, the Council has not yet shown a willingness to increase Parliament's prerogatives in this area. It can be expected that this issue will be at the heart of future inter-institutional budget battles.

2.3. Supervisory Power – and the Role of the Public

A third key function of the European Parliament, as of any parliament, is oversight. Over the years, the European Parliament has acquired a range of supervisory powers, with varying impact. For instance, it can ask the Court to take action against the Commission or the Council when they violate (the spirit of) the treaties.⁷⁴ It can establish a temporary committee of inquiry to investigate violations by member states.⁷⁵ Members can put written or oral questions to the Council and the Commission.⁷⁶ And importantly, since 1952, the European Parliament has the power to

69 Héritier and others (n 51) 51 and 54.

70 Corbett, Shackleton and Jacobs (n 21) 250. See also Héritier and others (n 51) 46-59.

71 Héritier and others (n 51) 59; Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation-State* (n 13).

72 Judge and Earnshaw (n 2) 198; Priestley (n 65) 7.

73 Article 311 TFEU.

74 Article 263 TFEU.

75 Article 226 TFEU.

76 Article 230 TFEU.

censure the Commission (previously the High Authority).⁷⁷ The European Parliament has never adopted a motion of censure. In 1999, a vote on such motion was however only narrowly avoided when the Santer Commission decided to resign prior to the actual vote.

The European Parliament also plays a role in the *investiture* of the European Commission.⁷⁸ The investiture can be regarded as supervision through the front door. Parliament decides whether or not to express political confidence in the Commission President and his or her team. Over the years, Parliament's role in the investiture has evolved considerably. Important instruments to accomplish this were Parliament's right to regulate its own affairs, and an inter-institutional dynamic leading to the adoption of IIAs. But the fact that will be given particular attention at the end of this section is the role of the *public*. This has shown itself to be a third factor in the development of Parliament's powers.

Originally, the appointment of the Commission was a matter for the member state governments only.

'The members of the Commission shall be appointed by the Governments of Member States acting in common agreement.'⁷⁹

Approval by the European Parliament was not required.⁸⁰ On several occasions, the European Parliament expressed its desire to be involved in the investiture, but to no avail.⁸¹ After the first direct election in 1979, the European Parliament took a different approach. Once the President of the Commission, Thorn, was appointed, Parliament expressed its desire to 'hold a public debate in his presence ending with a vote of confidence ratifying his appointment'.⁸² Thorn decided to accept the challenge. In November 1980, he outlined his policy aims and priorities to the Political

77 Article 234 TFEU.

78 Many scholars have written about Parliament's efforts to increase its grip on the appointment of the investiture. Simon Hix and Christopher Lord, 'The Making of a President: The European Parliament and the Confirmation of Jacques Santer as President of the Commission' (1996) 31 *Government and Opposition* 62; Paul Magnette, 'Appointing and Censuring the European Commission: The Adaptation of Parliamentary Institutions to the Community Context' (2001) 7 *European Law Journal* 292; Tom Eijsbouts, 'The Barroso Drama: Campidoglio, Rome – 29 October 2004: How the Form Was Brought to Matter' (2005) 2 *European Constitutional Law Review* 155; Corbett, Shackleton and Jacobs (n 21) 266-271; Judge and Earnshaw (n 2) 209-212; Beukers (n 49).

79 Article 158 EEC.

80 Judge and Earnshaw (n 2) 204.

81 EP Resolution of 17 April 1980 on the relations between the European Parliament and the Commission of the Community with a view to the forthcoming appointment of a new Commission [1980] OJ C117/53; Report regarding the fusion of Executives of the European Communities (Rapporteur: Maurice Faure) (EP 1960, A0-0084/60 0010 (in French)).

82 EP Resolution of 17 April 1980 on the relations between the European Parliament and the Commission of the Community with a view to the forthcoming appointment of a new Commission (n 81) para 3.

Affairs Committee of the European Parliament. In February 1981, the European Parliament adopted a motion of confidence in his favour, even though it had no legal effect and lacked a legal basis. Eijsbouts qualified this vote as 'an extralegal remedy of constitutional testing'.⁸³

Parliament's successful invention was followed by other events. In June 1983, the member states promised to consult the Parliament's Bureau on the nomination of a new President.⁸⁴ One year later, they presented Delors as the envisaged President. Delors decided to make Parliament's ambitions work in his favour. The Commissioners awaited the approval of Parliament before they took their oath before the Court of Justice, thereby strengthening the political position of this collegium. The established practice was formalised in the Treaty of Maastricht. The European Parliament was given the right of consultation on the nomination of the President of the Commission.⁸⁵ Moreover, the appointment of the Commission as a whole was made subject to Parliament's vote of approval.⁸⁶ In a general revision of its rules, the European Parliament managed to build on these treaty changes. It added a new provision in order to expand its right of consultation concerning the Commission Presidency.

'Parliament shall approve or reject the proposed nomination by a majority of the votes cast.'⁸⁷

Moreover, it clarified that, should Parliament deliver a negative vote on a President-designate (and that person neither withdraws him/herself nor is withdrawn by the member state), it would block the investiture of the entire Commission.⁸⁸ Taken together, these decisions effectively changed Parliament's consultative vote into a one of confirmation.⁸⁹

When revising its Rules of Procedure, the European Parliament also introduced the possibility to interview candidate-Commissioners prior to their investiture.⁹⁰ It should be noted that the European Parliament was never given the right to reject *individual* nominees. It could only accept or reject the Commission as a whole. However, by means of 'US-style' hearings, the European Parliament has created an opportunity for itself to put individual Commissioners-designate to the test before voting on the entire European Commission. This maximises the control it has over

83 Eijsbouts (n 78) 164.

84 Solemn Declaration on European Union *Bulletin of the European Communities*, OJ No 6 of 1983, 24 para 2.3.5.

85 Article 158(1) EC.

86 Article 158(2) EC. See also Hix and Lord (n 78); Magnoste (n 78).

87 Rule 32 Rules of Procedure of the European Parliament – October 1993.

88 EP Resolution of 21 April 1994 on the Investiture of the Commission [1994] OJ C128/358. See also Héritier and others (n 51) 36-37.

89 Héritier and others (n 51) 35.

90 Rule 33 Rules of Procedure of the European Parliament – October 1993 (n 87).

the appointment of the Commission. Parliament has used its leverage to have individual candidates replaced, and occasionally forced the reshuffling of portfolios.⁹¹

The European Commission and the member states were initially not supportive of the introduction of public hearings. Beukers describes, in his thesis 'Law, Practice and Convention in the Constitution of the European Union', why Parliament's initiative was accepted nevertheless.⁹² Torpedoing it was simply too problematic, as that would conflict with what is considered an appropriate course of action in a representative democracy.⁹³ Even though there is still no legal obligation for Commissioners-designate to appear for the hearings of the parliamentary committees, it is politically unthinkable for them to fail to do so. This is 'convention'.

In recent years, the European Parliament also further developed its power to censure. The Treaties do not provide in a forced resignation of individual Commissioners as the Commission is a collegial body bearing collective responsibility. However, theoretically, Parliament can always threaten to force the entire Commission to resign if its demand regarding an individual Commissioner is not met. Therefore, the President of the European Commission and the European Parliament agreed in 2010, by way of an IIA, that Parliament may ask the Commission President to withdraw confidence in an individual member of the Commission. The President will then seriously consider this, and 'either require the resignation of that Member or explain his/her refusal to do so before Parliament in the following part-session.'⁹⁴ In practice, this means that the Commission President takes a big risk when he or she sides with a Commissioner who has fallen out of grace with Parliament.

The relevance of both this inter-institutional agreement and Parliament's right to regulate its own affairs for the enhancement of Parliament's power in relation to the investiture of the European Commission, seem obvious. Let us now turn to the crucial role that is played by the public: the electorate. It was highlighted before, that the existence of a public ideal of representative democracy has worked to the advantage of the European Parliament. This ideal entails that:

'[A]ssemblies of representatives elected by the people make and/or decide on the state's laws and budget, appoint state officials, and hold the executive accountable'.⁹⁵

Being an elected body, the European Parliament can claim that citizens are the direct source of its authority. This makes it costly for member states to reject Parliament's

91 Judge and Earnshaw (n 2) 208-209.

92 Beukers (n 49) 298-203.

93 See also Rittberger, 'Institutionalizing Representative Democracy in the European Union: The Case of the European Parliament' (n 5) 29.

94 Framework Agreement on relations between the European Parliament and the European Commission [2010] OJ L304/47, para 5.

95 Definition of Roederer-Rynning and Schimmelfennig, as cited in Rittberger, 'Institutionalizing Representative Democracy in the European Union: The Case of the European Parliament' (n 5) 29.

calls for more legislative, budgetary and oversight powers. However, the relation with a self-standing electorate is still relatively underdeveloped. Its development will foster the further empowerment of the European Parliament (see for an explanation of the interaction between empowerment and a direct link with the public Chapter 2, section 4.2). In particular in relation to the investiture of the Commission, one can see how Parliament continuously tries to develop and strengthen the electoral relationship – and so its own position.

High-profile hearings provide a good opportunity in this regard. This ‘invention’ has enabled Parliament to highlight the fact that its relationship with the European Commission is of a political nature, and not a merely technical one. Parliament has made ‘political trust’ a crucial parameter for the endorsement of Commissioners-designate. It no longer suffices that a candidate is considered technically capable to introduce legislation and ensure its implementation. Parliament wants to ensure that the future Commission will advance Parliament’s *policy* objectives in drafting legislation. Thereby, Parliament presents itself as the most appropriate representative body to defend the interests of citizens. On several occasions, the European Parliament showed its willingness to disapprove a Commissioner-designate when this political confidence was lacking. In the past, this has for instance thwarted the appointment of Buttiglione. This Italian candidate was proposed for a portfolio including civil liberties. However, his stance on women’s rights and equal opportunities raised doubts about his commitment to fight discrimination in a manner that the European Parliament very vocally demanded.⁹⁶ After a thrilling and very public showdown, Buttiglione’s candidature was withdrawn.

The relevance of the public in advancing Parliament’s position shows itself even more in the election of Juncker as President of the European Commission in July 2014. This decision was the result of a heated clash between the European Parliament and the European Council. Again, Parliament managed to stretch its *de facto* powers.⁹⁷

Formally, the European Council is the institution responsible for nominating a candidate Commission President.⁹⁸ This person must be proposed to the European Parliament, following consultations with the representatives, and taking into account the political results of the last European election. The decision to link the composition of the executive to the European election aims to enhance the European Union’s democratic credentials, and have a positive effect on voter turnout. The European Parliament’s ambitions reach even further. It wants to strengthen the position of European political parties, and foster a pan-European public space.⁹⁹ On 22 November 2012, the Parliament appealed to the European political parties to nominate ‘*Spitzenkandidaten*’ (leaders of each party’s electoral list) for the upcoming election. Most of them did.¹⁰⁰ The process of nominating candidates, and

96 See for an extensive account of events Beukers (n 49) 325.

97 Sara Hobolt, ‘A Vote for the President? The Role of Spitzenkandidaten in the 2010 European Parliament Elections’ (2014) 21 *Journal of European Public Policy* 1528.

98 Article 17(7) TEU.

99 ‘Elections to the European Parliament in 2014’ [2012] B7-0520/2012.

100 Hobolt (n 97) 1533. The Christian Democrats nominated Juncker; The Party of European Socialists nominated Schultz; The Alliance of Liberals and Democrats chose Verhofstadt as their

undertaking a joint election project, has indeed strengthened the relevance of European political parties.

With this turn of events, and the expectation that it raised, the European Parliament infringed on the Council's prerogative to nominate. Article 17(7) TEU only stipulates that the European election need to be 'taken into account' in the nomination process. It does not say that the winning party can deliver the nominee of its choosing.

However, opposing Parliament's claim became increasingly difficult for the Council, because it gained substance in the course of the campaign. Several debates were organised between the *Spitzenkandidaten*, of which nine were televised. Fifteen per cent of citizens (in 15 member states) claimed to have seen at least one of these debates.¹⁰¹ Voters could therefore be under the impression that the Council would nominate the candidate with most votes. Shortly after the elections, Parliament's Conference of Presidents met. It was clear that the Christian Democrats had become the largest group in the European Parliament, winning 221 of the 751 seats. Subsequently, the Presidents of Parliament's European political groups decided that the Christian Democrat *Spitzenkandidat*, Juncker, should be given the first chance to find a parliamentary majority for his election as Commission President.¹⁰² Governmental leaders, such as the British Prime Minister Cameron and his Hungarian counterpart Orbán, were horrified by Parliament's actions. Not only did they disagree with the political ideas of Juncker, but they also objected to the infringement on the European Council's privilege to nominate a candidate. However, the European Council was faced with a determined Parliament, willing to battle. For the Parliament to drop Juncker would have been a defeat and a setback for the influence of citizens in the European Union.¹⁰³ Like in the case concerning Buttiglione, Parliament won this historic confrontation. Juncker was elected by the European Parliament on 15 July 2014.

2.4. Comparison to National Parliaments

In the above sections, we have seen that the powers of the European Parliament have evolved at a remarkable pace. Particular momentum was gained after the first direct election. From an assembly with limited scrutinising powers, it has transformed into a parliament equipped with extensive legislative, budgetary and supervisory powers.¹⁰⁴ Nowadays, Parliament has the ability to amend, delay, and even veto

candidate; The European Green Party opted for a tandem: Bové and Keller; The Party of European Left endorsed Tsipras.

101 Ibid 1534.

102 Meeting on 27 May 2014 *press release* (27 May 2014) <<http://www.europarl.europa.eu/news/en/news-room/content/20140527IPR48501/html/Conference-of-Presidents-statement-on-Commission-President-election>>.

103 Héritier and others (n 51) 41. On 27 June 2014, the European Council nominated Juncker by a majority of votes.

104 Amie Kreppel, *The European Parliament and Supranational Party System: A Study of Institutional Development* (Cambridge University Press 2002) 4; Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation-State* (n 13) 2.

legislation. It shares more similarities with national parliaments than with other international assemblies.¹⁰⁵ This coincides with the self-perception of the European Parliament, and even its predecessor, the Common Assembly.

'If legitimate doubt arises with respect to a question concerning the status of this Assembly one must seek the solution in the traditional parliamentary law and not in the unfounded comparisons with commissions, assemblies or organizations of an international character.'¹⁰⁶

Today, the powers of the European Parliament are comparable to those of national parliaments. The setting in which it exercises these may seem more complex. This is above all the result of the fact that the architecture of the European Union is frequently, and step-by-step, revised. No blue-print has been designed from the ground up; instead, the adaptations build on what already exists and continuously amend or complement this. In addition, the fact is that the structures of the member states are still firmly embedded in societies. This complicates the search for straightforward alternative structures with substantial popular legitimacy.

Nonetheless, the political structure of the European Union can be equated to that of many states.¹⁰⁷ The European Parliament and the Council together form the legislative branch.¹⁰⁸ The European Parliament represents citizens – in their capacity as Union citizens –, whereas the Council, composed of members of national governments, represents the member states.¹⁰⁹ This bicameral legislature is similar to the American Congress and even more to the two houses of the German Federal Republic, the Bundestag and Bundesrat respectively. The Council and Parliament adopt EU legislation in conjunction. National parliaments hold the Council accountable,¹¹⁰ but they also have their own responsibilities in relation to the adoption of primary legislation.¹¹¹

Turning to the executive tasks, we see that they are performed by multiple actors as well. The European Council, Council and Commission are the main executive bodies. The European Council provides the 'general political directions and priorities', and can thus be seen as the more political part of the executive.¹¹² It shows that the European Union, like most states, does not have a system of neatly separated

105 Simon Hix, 'Legislative Behaviour and Party Competition in the European Parliament: An Application of Nominate to the EU' (2001) 39 *Journal of Common Market Studies* 663, 685.

106 Poher Report, November 1955, as cited in Eric Stein, 'The European Parliamentary Assembly: Techniques of Emerging "Political Control"' (1959) 13 *International Organization* 233, 238.

107 Tom Eijsbouts, *Rutte Onaardig, Onwaardig, Schaamteloos – En Meer over Crisis En Democratie in Nederland En de EU 2009-2014* (Hogendorp Centrum UvA 2014) 137-160.

108 Article 14 TEU.

109 Article 10(2) TEU.

110 Article 14(2) TEU.

111 Article 48 TEU.

112 Article 15(1) TEU.

powers, but rather a system of separated institutions sharing powers.¹¹³ This structure requires intensive intra-institutional and inter-institutional bargaining.

The position of the European Parliament does not only depend on the formal role that it is given; it can be expanded in practice. As we have seen, its success depends on open-textured provisions in treaties, the existence of competences in other areas on which it can build, on the willingness of other institutions to cooperate, and on normative notions about what is perceived to be the right course for action.¹¹⁴ In exploiting its room for manoeuvre, Parliament's internal organisation is evidently of vital importance. It determines Parliament's *capacity* to take action. How Parliament is internally organised is the subject of the next section.

3. Structuring Parliament's Diversity

The current European Parliament has a total of 751 members. They represent more than 500 million people, making it the second largest democratic electorate in the world after India. In sixty years, the institution has increased in size tenfold. Twenty-two new countries have joined the European project since the days of Jean Monnet. Members of the European Parliament represent a very heterogeneous mix of citizens with different cultures, languages, histories and religions. The number of national parties with elected representatives in the European Parliament has risen from 54 in 1979 to 209 in 2014.¹¹⁵ The proportion of women has risen steadily from one single member to about one in three members of the European Parliament. Moreover, while initially four languages were spoken in the European Parliament, currently there are 24 official languages used, making for a total of 552 possible language combinations.¹¹⁶ While the diversity is much more substantial than in national parliamentary bodies, Parliament's internal organisation is rather similar.

3.1. Building Majorities along Ideological Lines – European Political Groups

In most national parliaments, representatives organise themselves along the lines of parliamentary political groups. This can be explained by the existence of national parties, which serve as vehicles for election. Voters are generally well aware that their vote can be interpreted as support for a particular political programme. Hence, they will expect that representatives belonging to the same party, once elected, will

113 Philipp Dann, 'Looking Through the Federal Lens: The Semi-Parliamentary Democracy of the EU' (2002) 5 Jean Monnet Working Papers <<http://jeanmonnetprogram.org/archive/papers/02/020501.pdf>> accessed 29 October 2015; Simon Hix, 'The European Union as a Polity', *Handbook of European Union Politics* (SAGE Publications 2006) 147.

114 H eritier and others (n 51) 7.

115 'Building Parliament: 50 Years of European Parliament History, 1958-2008' (Office for Official Publications of the European Communities 2009) 50. Website VoteWatch Europe <www.vote-watch.eu> last accessed 1 February 2014.

116 The first official languages were Dutch, French, German, and Italian. Since then, the following languages followed: Danish and English (1973); Greek (1981); Portuguese and Spanish (1986); Finnish and Swedish (1995); Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovakian, and Slovenian (2004); Bulgarian, Irish, and Romanian (2007), and Croatian (2013).

form a coherent political group in parliament. The members of the European Parliament face a different reality. They are elected in different countries, on the ticket of *national* parties.¹¹⁷ Most of these parties have adhered to a manifesto of a European political party of which they are member, and are involved in a number of European activities. Nevertheless, most citizens will vote for a candidate on the basis of expectations that are shaped by the party's national activities. Irrespective of this, the European Parliament has chosen to streamline its activities through *European* political groups. It does not attribute any formal privileges to national groups. The reasons for this will be explained in Chapter 7. Also the role of European political parties will then be touched upon.¹¹⁸

The first three European political groups were formally recognised as early as 1953.¹¹⁹ Between 1965 and 1979, the number of political groups rose to seven. Since then, their number has remained stable between seven and nine, peaking at ten in 1989. The identity of the European political groups corresponds more or less with the main ideological divides existing in the member states. The traditional 'left-right' dimension that dominates many national parliaments is thus also found in the European Parliament.¹²⁰ Another dimension, specific for the European Parliament, is the attitude in favour or against European integration.¹²¹ Empirical evidence indicates that members of the European Parliament predominantly vote along *ideological lines*.¹²² A Dutch Socialist is more likely to vote with a French Socialist than with a Dutch Christian Democrat. Nationality is less important to predict voting behaviour. Parliament has been capable of maintaining its organisation along ideological lines despite the immense environmental changes that have taken place, such as the geographical enlargements of the European Union. The respective sizes of the groups vary widely. The Christian Democrat and Socialist groups are by far the largest groups. Over the years, they each held (almost) a third of the seats in the European Parliament. The other groups occupied the remaining third.¹²³

The European political groups are of central importance in the functioning of the Parliament. It is through these groups that committee positions are assigned, the agenda of the plenary is coordinated, votes are coordinated, and speaking time is divided (see further Chapter 7).

117 Allan Rosas and Lorna Armati, *EU Constitutional Law: An Introduction* (Hart Publishing 2010) 117.

118 Chapter 7, section 5.4.

119 They were the Socialist, the Christian Democrat, and the Liberal group. Simon Hix, Gérard Roland and Abdul Noury, *Democratic Politics in the European Parliament* (Cambridge University Press 2007) 22.

120 Simon Hix, Abdul Noury and Gérard Roland, 'Dimensions of Politics in the European Parliament' (2006) 50 *American Journal of Political Science* 494.

121 Tapio Raunio, 'Political Parties in the European Union', *Handbook of European Union Politics* (SAGE Publications 2006) 248.

122 Hix and Høyland (n 8) 181.

123 Hix, Roland and Noury (n 119) 26.

3.2. Specialisation and Legislation – Parliamentary Committees

Parliamentary committees are the second pillar of the European Parliament. Westlake has qualified the former as the legislative backbone of the European Parliament.¹²⁴ Even when European integration was confined to cooperation on matters of coal and steel, the Common Assembly set up no less than 7 parliamentary committees. They allowed members to discuss a wide variety of topics on a regular basis. Collecting specialised knowledge strengthened the representatives' (relatively weak) position in relation to the Council and the High Authority.¹²⁵ The committees became the locus of parliamentary debate. Due to the nature of the work, these debates are rather technical at times.¹²⁶

Over the years, the number of committees has grown, and has stabilised around the twenty committees we know today. Almost every member of the European Parliament is a full member of one committee, and a substitute member of another. The size of each committee differs, depending on its responsibilities and its popularity amongst members.¹²⁷ In principle, the composition of committees mirrors the composition of the parliament at large, which means that the relative size of the European political groups should also be reflected in the committees.¹²⁸ Balancing nationalities is less of a priority, as we will see in Chapter 7, but is not unimportant.

The tasks and influence of the committees have increased apace with the expansions of legislative powers of the European Parliament. Parliamentary reports that deal with proposals for legislation, along with budget amendments, by the Commission, and with members' own initiatives, are discussed and voted on in committee before being debated in plenary. Generally, there is one person per committee charged with writing the report. This person is called the 'rapporteur'. The other political groups each appoint from their midst a 'shadow rapporteur', who will follow the work of the rapporteur closely and propose amendments on behalf of their European political group. As there is no formal 'coalition' or 'opposition', the rapporteur, the shadow-rapporteurs and other members involved, are free to seek alliances – sometimes even per amendment. This means that proposals are more likely to be judged on their merits. It also means that, for the public, it is more difficult to recognise who is responsible for European decisions. The permanent negotiations between European political groups on very specific policy matters are a distinguishing feature of the work in the European Parliament. In this regard, it is more similar to the United States Congress than to many national parliaments in the member states of the European Union.¹²⁹

124 Martin Westlake and Leon Brittan, *A Modern Guide to the European Parliament* (Pinter 1994) 191.

125 Gail McElroy, 'Committee Representation in the European Parliament' (2006) 7 *European Union Politics* 5, 10.

126 Dann (n 113) 35.

127 Corbett, Shackleton and Jacobs (n 21) 128.

128 Judge and Earnshaw (n 2) 176; Corbett, Shackleton and Jacobs (n 21) 126-150.

129 Amie Kreppel, 'Understanding the European Parliament from a Federalist Perspective: The Legislatures of the United States and the European Union Compared' in Martin A Schain and

4. Conclusion

This chapter has explored the development of Parliament's powers. It showed that the legislative, budgetary and supervisory powers of the European Parliament have increased substantially, and within a relatively short period of time. Nowadays, Parliament is co-legislator in most areas, including the budget (expenditures). It is in the position to amend, delay, and veto legislation. The European Parliament also has a say in the investiture of the European Commission, and has the power to censure it. In short, in terms of powers, the European Parliament shares many similarities with national parliaments.¹³⁰

From the start, and even when they were still appointed, the members of the European Parliament were people's representatives.¹³¹ In contrast to the Consultative Assembly of the Council of Europe, the European Parliament was not the representative body of member states, but the representative assembly of the *peoples* of the member states. The direct election of 1979 established a direct link with a self-standing electorate, and since then members have an *explicit* free mandate. In this chapter, we have noted the effects of this. The European Parliament has become more self-conscious and assertive. Within months of the first direct election, the European Parliament caused a serious budget crisis and gained a larger role in the legislative process (*Isoglucose Decision*).¹³² The election also caused other institutions to increasingly value the actions by the European Parliament in the perspective of a developing representative democracy on a European level.¹³³ Parliament's attempts to gain more power are often seen as *appropriate*, or inevitable, in order to ensure popular legitimacy for the European project at large.¹³⁴ This validation has heightened Parliament's success.

Parliament's powers were partly attributed to it by 'the masters of the treaties' through consecutive treaty changes. To an important extent however, they were (also) *gained*, through a permanent dynamic between political action and events, and the amending of treaty texts. When treaties were amended, they immediately served as springboards for further change. Parliament's organisational autonomy, notably its right to draw up its own Rules of Procedure, has played a decisive role in this dynamic.¹³⁵ It enabled Parliament for example to invent hearings in order to scrutinise individual Commissioners-designate,¹³⁶ and to find a mechanism to delay European decision-making,¹³⁷ thereby enhancing its negotiating leverage.

Anand Menon (eds), *Comparative Federalism. The European Union and the United States in Comparative Perspective* (Oxford University Press 2006).

130 Hix, 'Legislative Behaviour and Party Competition in the European Parliament: An Application of Nominate to the EU' (n 105) 685.

131 Section 1.

132 Sections 2.1-2.2.

133 Rittberger, 'Institutionalizing Representative Democracy in the European Union: The Case of the European Parliament' (n 5).

134 *SA Roquette Frères v Council of the European Communities* (n 41) para 33. See section 2.1.

135 Section 2.

136 Section 2.3.

137 Section 2.1.

The development of the European Parliament's political representation and overall powers are intertwined (as of any parliament). The representative mandate brings with it the need to equip Parliament with adequate powers. In turn, these powers can only be justified when it is *recognised* by the electorate as an appropriate representative body. The need for increased popular legitimacy explains certain actions that were described in this chapter, most notably Parliament's efforts to make the nomination of the President for the European Commission a matter for European political parties. Parliament seeks to make the European elections more relevant and to draw more authority from these for its action.

In subsequent chapters, we will explore developments in which the European Parliament has followed a similar strategy to what we have seen above: stretching the rules, using already existing powers to foster new ones, and seeking a stronger engagement of the public to strengthen its legitimacy.¹³⁸ The difference between this introductory chapter (and the work of many scholars), and the bulk of this investigation, is found in the targets and objectives that are studied. The present research is not essentially about the development of Parliament's powers and what it can *do*, but about the development of its representative status and what it *is*.

Chapter 2 outlined that the representative status of a parliament is established by multiple representative *claims*. Amending these rules has likely been the *target* of parliamentary action: the *objective* for Parliament was then to make representative claims about itself and its electorate at its own discretion. In the coming chapters, this assumed Parliament's quest for *representative autonomy* will be further substantiated.

138 Section 2.