

European Parliament and national parliaments

Speech by Brendan Donnelly, Berlin, 13th June 2007

It is always a pleasure to be in Berlin at any conference of the SWP. The Bundesrat's plenary chamber is a particularly apt location in which to reflect on the role which national parliaments can and should play in the European Union. Because I am the first main speaker, I shall feel at liberty to range widely and under an obligation to be provocative. Refinement of insights and hard-won consensus should emerge at the end of a conference, not at its beginning.

In this spirit of wide-ranging provocation, I should like to begin by observing that I have distinctly mixed feelings about what is increasingly regarded by many commentators on the European Union as a self-evident truth, namely that the greater involvement of national parliaments in the legislative procedures of the Union is a necessary and desirable feature of a reformed and modernized European Union. In the legislative and indeed in the non-legislative aspects of the Union's activities, there is certainly much scope for a significant contribution from national parliaments. But in my view, that contribution should be offered primarily on the national stage, with national parliaments calling to account their national governments for their actions in the Council of Ministers, through parliamentary mechanisms which correspond to the differing parliamentary cultures of the member states.

Many national parliaments, among them the British Parliament, have made over the past decades a poor attempt to control their national executives in this way, but that is neither the fault of the European Union nor is there much which the European Union can do to change it. If national parliaments wish to make more of a contribution to the European Union,

the remedy lies largely in their own hands, individually and not collectively. Many national governments have relished the independence from parliamentary control which they have traditionally enjoyed at the European level. Indeed, it is not unduly cynical to see these governments as welcoming the current confused discussion about an enhanced role for national parliaments in the European Union. It is a convenient diversion from one real "democratic deficit" of the European Union, which derives from the unwillingness or inability of many national parliaments to develop a robust culture of scrutiny over their national governments on European issues. Partly as a result of this ambivalence, much of the current discussion about greater involvement of national parliaments in the European Union's processes is opaque and highly tendentious. Some at least of the of this discussion is even an attempt, consciously or otherwise, to redefine fundamentally the institutional structures of the European Union. There is of course no reason why individuals or governments should not argue for such a redefinition. But arguments about the role of national parliaments in the European Union are unhelpful surrogates for arguments about the underlying nature of the Union, surrogates used all too often used by those unwilling to acknowledge their real agenda.

A convenient starting-point for reviewing contemporary debate about national parliaments and the EU lies, as it does for many European institutional questions, in the European Convention, which produced a Protocol on national parliaments, which was then incorporated into the European Constitutional Treaty. Something along the lines of this text seems likely to figure in any successor document to the Constitutional Treaty. The Protocol

essentially gave national parliaments an enhanced right to challenge at the beginning of the legislative process on the grounds of subsidiarity or proportionality any legislative proposal from the European Commission. If a sufficiently large number of national parliaments (one third of the total) made such a challenge, the Commission would be obliged to reconsider, but not to withdraw its legislative proposal. The Protocol has been criticized from a number of different, sometime contradictory perspectives. Many have seen it as being too timid, limiting the scope and effectiveness of parliamentary challenge to the Commission. Others have feared that national parliaments were being encouraged by the Protocol to take on tasks more suitable for the European Parliament. Yet others, including myself, have wondered whether it is really at the national parliamentary level that the political difficulties are really located which increasingly overshadow the "permissive consensus" on which the process of European integrative construction has hitherto relied in the European Union's member states.

It is undeniable that European voters receive much of their information and many of their attitudes towards the European Union from their national political leaders, most of whom are members of national parliaments. The incoherent, partial and sometimes downright dishonest picture which many European national governments have painted of the European Union as "forcing" them to restore their national finances, "forcing" them to liberalise their economies, "forcing" them to accept new members of the Union from Eastern Europe and elsewhere has certainly contributed to the declining popularity of

the European Union and its institutions over the past decade. It has been all too tempting for national governments confronted with domestic criticism for unpopular but necessary measures to blame the European Union for these measures, while employing in the Council of Ministers a very different, frequently contradictory rhetoric. Even governments from member states which have traditionally played a central role in the European integrative project have on occasion painted to their electors the factually incorrect picture of powerless national governments forced by an intrusive and unelected European Commission to set aside their national interests in the pursuit of vague or questionable pan-European goals.

If this political opportunism has led, as it has in a number of member states, to uncertainty and disorientation among wide swathes of European public opinion, it is far from clear that national parliaments, as institutions, are at the heart or source of this disorientation. Indeed, it is much more likely that the resentful and even hostile attitudes towards the European institutions which can increasingly be seen among national parliamentarians are simply a consequence of wider political developments arising from the gathering pace of European integration and from the incapacity or unwillingness of too many national political leaders to give a coherent and satisfactory account of this process. A Eurosceptic analysis of this situation would of course argue that no such coherent or satisfactory account can anyway be given. European integration has proceeded on this view too far, too fast and the unhappiness of national parliaments is a natural outgrowth of this poisoned tree. There is an interesting coincidence of conclusions between this Eurosceptic analysis and the analysis of those, such as myself, who would rather stress the failure of national political leaders and the governments they head to explain to their electorates the unthreatening and beneficial nature of European institutional integration. Both for the rigorous Eurosceptics and for those on my side of the argument, the disquiet of increasing numbers of national parliamentarians about their role in the European process is a symptom of a wider and deeper malady. It is not something which can be cured by a small sticking-plaster affixed to the wounded institutional self-regard of national parliamentarians.

As in its discussion of so many issues, the Convention was attempting, when it considered the role of national parliamentarians in the European Union, to reconcile two diametrically opposed political philosophies of the Union itself. With only some over-simplification, these philosophies can reasonably be designated as the "federalist" and the "intergovernmentalist" approaches to the Union. What the Convention proposed in its Protocol on the role of national parliamentarians contained elements of both approaches, but in such a way that no coherent political principles emerge from the Protocol. It is possible with equal plausibility to argue that important new powers are given to national parliaments by the Protocol and the European Constitutional Treaty which followed it, and to argue per contra that either no new powers are given to national parliaments or that those which are given are ludicrously circumscribed and likely to be wholly ineffective. Given the divisions within the Convention such an outcome was wholly predictable. For the "federalists," parliamentary democracy in the European Union is essentially guaranteed by the directly-elected European Parliament. National parliaments seeking to play a substantial role at the European level are at best a diversion from this important reality. For the "intergovernmentalists", emerging doubts at both popular and political levels about the democratic legitimacy of the European Union prove the need to "reinsert" into the Union's structures the increasingly marginalised national parliaments, parliaments which are themselves supposedly the only real guarantors of the Union's democratic nature.

In addition to this philosophical divergence, the drafters within the Convention were confronted with another, more practical difficulty in considering an enhanced role for national parliaments within the European Union. The legislative structure of the European Union is already a complex and cumbersome one, a fact which itself is seen by many observers acts as a barrier between the Union and the sympathies of its citizens. To confer substantial new powers on national parliaments, whether in the form of a "third chamber" made up of national parliamentarians or in the form of a real power of veto on European legislation from national legislatures, could only have served to complicate yet further this already labyrinthine structure. In the same

way as French governments of the Fourth Republic supposedly favoured a German army that was bigger than the Red Army, but smaller than the French army, so the Convention was condemned to seek new powers for national parliaments that were substantial enough to reinforce their position within the institutional structures of the European Union, but not so substantial as to hinder necessary decision-making. The Protocol on national parliaments was the result.

The Protocol, it should be stressed, does not propose the direct involvement of national parliaments in the Union's legislative process. National parliaments have simply the right to comment on proposed legislation, not as to its intrinsic merits or disadvantages, but only on its conformity with the principles of subsidiarity and proportionality. Since these are primarily legal concepts, it is on the face of it surprising that political bodies such as the House of Commons or the Bundestag should be asked to opine on them. Neither the Council nor the Commission are by the Protocol forced to agree with the views of national parliaments on these subjects, and there is no question of a veto for national parliaments, whether individually or corporately. It is true that the Protocol stipulates that when more than a third of national legislatures express doubts about a proposed piece of legislation on the specified grounds (and only on these grounds) the Commission is enjoined to "reconsider" its position. How often, and to what effect any such "reconsideration" might or indeed should take place, and to what effect, must be a matter for considerable doubt.

As even the Protocol's most enthusiastic advocates accept, the modern European Commission rarely pursues anything that could fairly be described as a private agenda. It proceeds on the basis of painstaking political and expert consultation, during which any genuine fundamental doubts about the appropriateness of European legislation in any particular area will usually be discerned. If legislation is proposed by the Commission, it is almost invariably on the basis of a broad-based consensus among the member states that legislation is helpful and appropriate in the relevant field. Whether in any particular case the proposals of the Commission are well-drafted, reflecting all the sometimes conflicting interests of the parties, is another and more controversial issue. But

under the Protocol's provisions national parliaments are not invited to express an opinion on these politically challenging and delicate questions. Their role is essentially to prefigure the findings of the European Court of Justice if the government of any discontented member state decides to take the Commission to the Court. Such calls for judicial review by individual member states are far from unknown. It would, however, be surprising indeed if there were often within the member states a core of governments hostile to any European legislation on a particular topic, the existence of which only became clear to the Commission when the parliaments of those countries manifested their unhappiness at the moment of their consultation.

It is sometimes argued by sophisticated apologists for the Protocol on national parliaments that its importance lies not so much in its precise provisions, but rather in its opportunity for national parliaments to take stock of the role they wish to play in European decision-making and then implement at the national level whatever mechanisms they think most appropriate. Even if it only rarely happens that a substantial number of national legislatures agree in rejecting any particular piece of proposed European legislation on grounds of subsidiarity or proportionality, nevertheless national parliaments will derive from the Protocol's aspiration to involve them more closely in the Union's decision-making a deeper sense of identity with the Union's policies and legislation, which will find its expression in appropriately renewed interaction between national governments and parliaments on European matters. If such is the goal, the Protocol is a curiously indirect way of going about it.

There are already national parliaments, particularly in Scandinavia, which have devoted a great deal of thought and effort to constructing what they believe are appropriate structures of national parliamentary scrutiny on European issues. Their practice of "mandating" their governments in European negotiations, with these "mandates" being more or less constraining depending on the country involved, is considerably more sophisticated than anything involved in the Protocol. Scandinavian practice in this area has been widely studied and discussed by academics and commentators throughout the European Union. If other national parliaments had wished to follow the Scandinavian example, they would have

had ample opportunity to do so over the last decade. If they have not done so, it is essentially because they have concluded, rightly or wrongly, that the Scandinavian example is in appropriate to their own political systems. There are few national parliaments which in recent years have not wrestled with the question of what their role within the European Union's decision-making should be. If they have not always come up with a satisfactory answer to this question, it is surely over-optimistic to believe that the Protocol of the Constitutional Treaty on national parliaments will be the occasion for their doing so. There are objective constraints on the role of national parliaments in the European Union arising both from the nature of the European Union itself and from the radically different self-understandings of national parliaments. The Protocol is rather a reflection of these objective difficulties than any coherent approach to their resolution. Indeed, by creating a simulacrum of a new role for national parliaments in European decision-making, it will simply create expectations which cannot be met under anything like the current institutional structure of the European Union. In the United Kingdom, there is already lively criticism of the Protocol on national parliaments, on the ground that it gives national legislatures no formal powers which they do not already possess if they care to use them, and because when national parliaments do bestir themselves to complain to the Commission about supposed infringements of subsidiarity or proportionality, their complaint need not legally be heeded. The British government has attempted to present the Protocol on national parliaments as a major new accrual of power to Westminster, a renationalisation of parliamentary sovereignty. The government's critics are right to point out that it is no such thing. The fatal flaw of the Protocol and the thinking which underlies it is well reflected in the current British debate. The British Eurosceptics are not wrong when they claim that the Protocol appears to promise more than it can achieve for national parliaments. In my view, the error of the Protocol is not its failure to achieve, but its misleading suggestion that it is possible on any institutionally sustainable basis to integrate forty vastly different national legislatures directly into the European Union's system of decision-making.

In concluding my keynote address, I should like to defend myself against two possible misunderstandings. I am in no sense hostile

to the desire of national parliaments to play a larger role, especially individually, in European decision-making. But I believe that this role must primarily be an indirect one, through the scrutiny which national parliaments decide they wish to exercise over their national governments in the Council of Ministers. As I have already mentioned, I think much more can and should be done in this regard by a number of national parliaments, perhaps particularly in the larger member states. Equally, the exchange of views, ideas and best practice on European questions between national parliaments is a highly desirable and profitable development within the European Union over the past decade. My scepticism is directed exclusively towards the formalisation of any corporate role for national parliaments within the European Union's legislative and political structure. I believe that most of the drafters of the Protocol on national parliaments in fact shared my scepticism, but were inhibited from saying so, partly by institutional politeness and partly by the belief that the growing unease of certain national parliaments about their apparent marginalisation within the European Union is a political problem which needs in some way to be addressed, albeit in the tangential and restricted fashion of the Protocol. For the reasons set out above, I believe that the Protocol is more likely to be ineffectual and perhaps even counter-productive. In the long run, I believe that true courtesy towards national parliaments and their role in the Union demands a realistic and honest description of their potential contribution rather than the studied ambiguities of the Protocol.

The second and even more important misunderstanding I wish to avoid relates to parliamentarism and the European Union. It is sometimes claimed that the more direct involvement of national parliaments in the European Union's workings can or should (or both can and should) provide for the Union a political and more specifically parliamentary legitimacy which it lacks at the moment. I entirely agree that the European Union's parliamentary element is currently deficient and that this deficit is intimately connected with the problems of popular legitimacy with which the Union is increasingly confronted. But I am equally convinced that this deficit cannot, either practically or philosophically, be bridged primarily by the greater direct involvement of national parliaments in European decision-making. The legitimacy of

national parliaments derives from and has its appropriate focus in the national arena. The idea that the national legitimacies of national parliaments can be added together to produce a "European" parliamentary legitimacy is philosophically highly questionable, even if it were capable of practical implementation. It is in any event impossible to see what institutional expression this aggregation of national parliamentary legitimacies might find in the present structure of the European Union, short of a completely new institution based exclusively on national parliaments. Such a radical reformation of present structures is of course conceivable, but the political appetite to bring it about is non-existent within the twenty-seven current member states. Even if such an initial political impetus could be established, it would almost certainly founder upon widely differing views of the place to be occupied by this new parliamentary institution in relation to the existing elements of the Union's institutional structure.

I believe that another path needs to be explored to enhance the parliamentary legitimacy of the European Union. The European Constitutional Treaty contains important provisions on the role of the directly-elected European Parliament, extending its participation in the co-decision procedure and opening, albeit tentatively, the way for a more intimate connection between the results of the European Elections every five years and the identity of the President of the European Commission, whose endorsement in office is one of the newly-elected Parliament's first formal acts. This latter possibility if to my mind the more important avenue to explore. Formal powers and procedures of the European Parliament are of compelling interest to academics, commentators and certain, if by no means all, other parliamentarians. They are of less immediate interest to the voting public, a fact demonstrated by the declining turnout in European Elections over the past twenty-five years, despite the spectacular increase in the formal powers of the European Parliament over that period. The brutal truth is that for many, probably most European electors, it has been almost entirely unclear what were the consequences flowing from their votes cast in the European Elections. A European Election in which the identity of the next President of the European Commission was at stake, with all the major European political families naming their preferred candidates beforehand, would be a

qualitative shift in the parliamentary life of the European Union. For our modern European understanding of the term, "democracy" is inconceivable without elections in which political choices are made by the voters, and these choices have demonstrable consequences. It is in this latter area of parliamentary accountability that the European Union has proved itself deficient to many voters over the past two decades.

I am fully aware of the practical and political difficulties inherent in the setting up and running of the European political structures necessary to make a reality of Europeanised European Elections. In the long run, however, they provide the only genuine answer to the democratic and more specifically parliamentary deficit of the European Union. For reasons set out above, national parliaments will never be able satisfactorily to fill this deficit. "Europeanised" European Elections are an essential building-block, moreover, of an EU "demos." It should not be forgotten that for "democracy" to function, there must be a "demos" willing and able to regard itself as a political community. These political communities rarely emerge wholly spontaneously, but rather through the interaction of appropriate political structures and evolving public opinion, which may either embrace or reject these political structures. The Eurosceptics are right when they say there is as yet no "EU demos." They are wrong in their suggestion that nothing can or should be done to facilitate the emergence of such a "demos." The broadening scope of the European Union's activities demands today a broader basis of publicly legitimising support than was necessary twenty years ago. The underlying theme of this keynote speech has been to doubt whether it is national parliaments that will be able to play any leading role in providing that legitimacy. Whether today's European leaders have the vision and maieutic skill to shape tomorrow's EU demos is an as yet unresolved question. But it is that question they should be answering rather than retreating to simply national concepts of parliamentary legitimacy.