Continuity and change in parliamentarianism in twenty-first century European politics

Philip Norton (Lord Norton of Louth)

The nineteenth century was notable for the growth of national legislatures in Europe, both in number and in political significance. Although the development was not uniform – some nations lacked a legislature at the heart of their political system – parliamentarianism was nonetheless portrayed as a defining feature of the century (Sontheimer 1984). Legislatures were viewed, both descriptively and normatively, as institutions comprising men of independent judgement, chosen by a restricted but informed body of electors, capable of determining the laws of the land and the fate of governments.

However, this era is viewed as short lived. No sooner had the English journalist Walter Bagehot penned his classic The English Constitution (1867) than his concept of a ‘good’ Parliament was eroded by the growth of a mass franchise and the emergence of organized, mass-membership political parties. Cadre parties were transformed and new ones created. Commentators such as A. Lawrence Lowell (1896), Moisei Ostrogorski (1902) and, most notably, Lord Bryce (1921) were instrumental in identifying and decrying the growth of parties and the party caucus. According to Bryce, the effect of the growth of parties was that ‘the dignity and moral influence of representative legislatures have been declining’ (Bryce 1921: 391). He titled Chapter 58 of his book ‘The Decline of Legislatures’, and the perception stuck. As Loewenberg notes, ‘[w]riting just after the First World War, Bryce at once summarised the view of an entire generation of observers of representative institutions and provided a dogma for a new generation of disillusioned democrats’ (Loewenberg 1971: 7; see also Loewenberg 2011: 11–13). By 1968, Philip Williams was able to refer to the decline of parliaments as ‘an old story’: ‘It has characterised a century which, as Wheare has shown, has been hard on legislatures’ (Williams 1968: 1).

Throughout the twentieth century, legislatures were perceived as overshadowed by increasingly powerful executives; some were even cowed or abolished by authoritarian or military regimes. Even in enduring democracies, such as the United Kingdom, the legislature was seen as marginal to a powerful executive. In 1949, the politician Christopher Hollis published Can Parliament Survive?, which was followed by works such as Michael Foot’s Parliament in Danger! (1959) and the pseudonymous Hill and Whichelow’s What’s Wrong with Parliament? (1964). By 1979, the political scientists Jeremy Richardson and Grant Jordan were writing about ‘Post-Parliamentary Democracy’. 
Sighs toiling in the field of policy studies largely ignored legislatures in order to focus on the black box of the executive. The legislative process was not viewed as hidden within a black box, but rather as tantamount to a transmission belt, conveying the measures crafted by the executive into law. It is notable that when Michael Mezey published his typology of legislatures in 1979, the only major national legislature to be classified as an ‘active legislature’ – that is, having strong policy-making power and enjoying support at both mass and elite levels – was the US Congress (Mezey 1979: 37). A number had strong policy-making powers but lacked support (and hence were classified as ‘vulnerable’ legislatures). The remaining legislatures were divided among other categories. Mezey’s analysis served to reinforce the observations of Robert Packenham. In his study of the Brazilian legislature, Packenham concluded that ‘Specialists in legislative studies have not studied the functions of legislatures very much, but what knowledge we have suggests that the Brazilian case is much closer to the mode than the U.S. Congress’ (Packenham 1970).

In this analysis, parties have served as the bane of legislatures, party cohesion constituting a marked feature, the parties delivering usually what their leaders desire. As John Hibbing (2002: 35) has noted, ‘most objective observers would concede that party norms usually trump legislative norms – in the U.K. and in most other countries’. Political parties are essential in order to translate the popular will into legislative outcomes, but at the expense of independence on the part of the legislators.

However, we can identify two caveats to this hypothesis. The first is that it is overstated. Generally speaking, parliaments have never been quite as powerful as some commentators have made them out to be. In some cases, political parties were simply replacing monarchs or other notables as the controlling agents of the legislature. The second caveat is that it no longer applies, or certainly not to the extent implied in the theory of legislative decline. Legislatures have fulfilled a more significant role than popularly claimed – even Richardson and Jordan qualified their criticism of the British Parliament – and now, if anything, they are becoming more, not less, significant as political actors, certainly in the context of Europe.

Indeed, there is the argument that, far from legislatures declining in significance, we are witnessing a new age of parliamentarianism. There are more parliaments than ever before. Military regimes and dictatorships have given way to the creation of legislatures, even in the Middle East, the only part of the world to feature nations with no prior history of such institutions. However, the existence of a legislature is necessary but not sufficient; there must also be the acceptance of parliamentary norms. We presume that these norms include an acceptance that the ruling regime is beholden to the constitution and not the other way round, and that this entails a clear delineation between the executive, the legislature and the courts, an embrace of the rule of law, acceptance of the outcomes of democratic elections and recognition of opposition as legitimate. These we take as features intrinsic to a liberal democracy.

We can identify changes that transcend Europe as well as those that are particular to Europe. The last half of the twentieth century saw a notable rise in the number of freely elected national legislatures. At the start of the twentieth century, democracies were in the minority; by the end of the century, they were in the majority. However, liberal democracies were and remain in the minority. Some nations hold elections, but fail to meet the standards of competitive and free and fair contests. These are classified by Le Duc, Niemi and Norris (2010: 12) as electoral autocracies; the authors identified 65 such regimes in 2009. Some nations hold competitive elections, but they fail to protect rights or offer only limited protection, falling short of the requirements for liberal democracies. Le Duc, Niemi and Norris term these electoral democracies, identifying 32 nations as meriting the appellation. Their analysis determined that 88 nations, a plurality but not an absolute majority, constituted liberal democracies.
There has thus been a move towards national legislatures being chosen by electors on the basis of competitive elections. Not all nations have achieved that objective and, despite a clear progression, there has in some instances been a certain degree of regression or stalled development. In the case of Europe, we can identify a clear trend towards the consolidation of parliamentarism. This is a trend rather than a universal phenomenon, but is nonetheless quite marked. In the context of Europe, we can also identify both common challenges and opportunities. Individually, these may not be unique to legislatures in Europe, but taken together they are distinctive.

Consolidation

For much of the twentieth century, national legislatures in Europe differed markedly in their nature. Some were well-established institutions in mature democracies, whereas others were sickly creatures, sometimes short lived. Some European nations had little or no history of free and competitive elections. In the decades after the Second World War, there were clear-cut differences between nations in three parts of the continent.

Western Europe largely featured established, re-established or newly developing liberal democracies. There was some variety within this category – France in particular undergoing paradigmatic rather than evolutionary constitutional change – but free and competitive elections with the protection of rights characterized the region. Most legislatures fell within Mezey’s category of reactive legislatures; to a greater or lesser extent, they were able to limit the executive and serve as an important buckle between citizens (as individual constituents or as organized groups) and the executive. One can distinguish between legislatures within the region: some were more strongly reactive, or what I have characterized as ‘policy-influencing’ (Norton 1984), than others (Norton 1994), but all essentially belonged to the same family of legislatures.

Central and Eastern Europe, in contrast, were dominated by the Soviet Union and featured legislatures that, although elected, lacked the necessary characteristics to be deemed either democratic or liberal. Legislatures within non-democratic regimes can and variously do fulfil functions beyond that of simply assenting to whatever is placed before them (Allmark 2012). Of the legislatures within the Soviet Bloc, the Polish Sejm was notable for performing a number of functions, including interest articulation (see Olson and Simon 1982), but on the whole these institutions lacked popular acceptance as bodies that spoke for the people and could constrain the executive. They lacked what has been termed an equilibrium of legitimacy, whereby different forces within the polity recognize that they derive some benefit from the way the system operates and accept that others are also entitled to benefit (Norton 2001: 28; Norton and Olson 2008: xiv). Mezey classified these bodies as minimal legislatures, but this was to prove an inapt designation, given that it signified that they were more rather than less supported at both elite and mass levels.

Legislatures in Southern Europe in the twentieth century also largely existed within nations that fell outside the liberal democratic framework. There were usually parliaments, but no parliamentarianism. The Iberian Peninsula was dominated by authoritarian regimes. The colonels took over in Greece. Only Italy managed to survive as a democratic nation, albeit one characterized by tensions and frequent changes of government. Mezey classified the Italian legislature as vulnerable: enjoying strong policy-making powers but less rather than more supported.

The last decades of the century saw the political architecture of the continent undergo a fundamental transformation. The autocratic regimes of Southern Europe gave way to democracies with transformed and freely elected legislatures. This was followed by the rusting and demolition of the Iron Curtain and the emergence of new democracies in Central and
Continuity and change in parliamentarianism

Eastern Europe. Liberal democracies became the norm, albeit with significant variations. The new democracies of Central and Eastern Europe were offered assistance by a range of external sources, but the end of Soviet rule did not lead to the emergence of identical legislatures; rather, each legislature was shaped by its nation’s history and culture (Norton and Olson 1996). The extent of this influence is explicable in terms of the speed with which Soviet control had disappeared and the fact that there were already legislatures in place: ‘When the Soviet yolk was withdrawn, the constitution and the institutions of each country did not disappear with it. There was a legislature in place whose practices and structures could be drawn on’ (Norton and Olson 1996: 232). The existing legislatures were adapted to the new situation.

There was some variation in Central and Eastern Europe as well. Some nations had previous experience with free elections, but others did not. There was nonetheless a clear trend from these three distinct parts of Europe towards a common pattern of freely elected legislatures and recognition of the need to protect the rights of citizens. Indeed, it is notable that at the start of the twenty-first century the parliaments of the new democracies were more likely to have human rights committees than those of the established democracies (Norton 2005: 24). There was also an identifiable pattern regarding the relationship between parliaments and executives. First, in terms of form, parliamentary systems became the norm. Second, in terms of behaviour, there was a move that has been characterized as a shift from ‘legislation to legitimation’ (Leston-Bandeira 2004). This phrase was employed in the context of the Portuguese parliament, but it has a wider utility.

The use of a parliamentary form of government, as distinct from the presidential model (see Lijphart 1992), characterized Western Europe in the post-war years and was extended following the waves of democracy that engulfed the rest of Europe. Parliamentary government was not unique to the continent, nor did all nations in Europe employ it. In Western Europe, France moved from a parliamentary to a hybrid, or semi-presidential, model in 1959. Though the system created by the Constitution of the Fifth Republic was particular to France – it was, as Safran noted, ‘an eclectic document that incorporates monarchical, plebiscitary, and traditional republican features’ (Safran 1995: 9) – the concept of a hybrid system would be embraced by some of the new democracies of Central and Eastern Europe as well (Remington 1994: 13–14; see also Olson and Norton 1996), including Poland and Romania. Some veered more towards the presidential end of the model, the most notable example being Russia. Nonetheless, the emphasis was on accountability through a parliamentary form of government with free and competitive elections.

The extent of party formation and composition, as well as the design of the legislature (see Ostrow 2000), has affected the second development, namely the consolidation of a responsive, or policy-influencing, legislature (as opposed to an active legislature). Legislatures in the new democracies were initially active players in the process of nation-building, featuring vigorous debate and sometimes conflict with the executive over the determination of basic laws:

However, as primary problems are dealt with and society’s essential structure is established, the legislative function changes in nature. The need for general basic laws is substituted by the need for routine and detailed regulation, typically a government competence. Parliament does not have the time or the bureaucratic infrastructure to formulate that type of legislation.

(Norton and Leston-Bandeira 2005: 182–3)

The transition from being significant actors in creating basic laws to scrutinizing and endorsing proposals generated by the executive was smoother in Southern Europe (Leston-Bandeira 2005)
Philip Norton (Lord Norton of Louth)

than it was in Central and Eastern Europe (Olson and Norton 1996; Norton and Olson 2008). Most legislatures in Central and Eastern Europe have become fairly stable democratic regimes, some (such as Hungary) more akin to the Westminster model of government and others (such as the Czech Republic and Slovenia) more similar to the continental parliamentary model. However, there is greater variation and less stability in this region than in Southern Europe (Norton and Olson 2008: 153–85). Some post-Soviet parliaments, such as those in Russia and Moldova, have become president dependent, dominated by single-party leadership not derived from the legislature and, if anything, confirming a regression to an authoritarian regime. However, the general (if not uniform) trend indicates that policy-influencing legislatures are becoming the norm in Europe.

Challenges

We thus can see some element of consolidation in the twenty-first century in a manner that was not apparent in the preceding century. However, the legislatures in Europe face a number of challenges. Most of these are not peculiar to Europe, although the combination does render the position of the parliaments unique.

One dimension is international, encompassing challenges that are global in nature, and hence by definition not confined to Europe; the other is unique to the Europe setting – namely, membership in the European Union.

Globalization

The erosion of national borders in economic terms creates challenges for national legislatures. This situation is exacerbated in times of economic crisis. Nations may wish to maintain standards that are unsustainable in times of austerity or that may be challenged by the demands of aid providers. This creates particular problems for parliaments. They are not party to the deliberations of international financial bodies, such as the IMF or the World Bank, and so have no direct input into key decisions, yet they are the bodies that must give their assent to legislation resulting from the conditions attached to financial aid. The legislatures of nations with weak or vulnerable economies can find themselves in particularly difficult circumstances. The global economic downturn that began in 2008 hit nations such as Ireland, Greece, Portugal and Spain especially hard. The conditions attached to aid caused popular unrest; in some cases, people took to the streets. Popular unrest can put pressure on a nation’s constitutional fabric, especially in new democracies, where the institutional structure is fragile (Norton 2012a: 80). Although party cohesion may be sufficient to deliver commitments made by governments, there is a tension between what may be seen as the national interest and the views and desires of many (possibly most) of the citizens who comprise the nation. Tension can generate distrust in politicians and in national institutions, and may lead to demands for constitutional change (see Dalton 2004: 184–7).

The challenge for legislatures exists at two levels. One is located within the nation itself: ensuring that the voice of the people is heard. This may not result in changes in decisions; rather, it serves a safety-valve function. When there are public protests, they generally take place at the parliament, as people view the legislature as the institution whose purpose is to represent their interests.

The other challenge is at the international level. There are several bodies that draw together members of national legislatures, globally (such as the Inter-Parliamentary Union), on a trans-Atlantic basis (such as the NATO Parliamentary Assembly) or at the European level (such as
Continuity and change in parliamentarianism

the Parliamentary Assembly of the Council of Europe and the OSCE [Organisation for Security and Cooperation in Europe] Parliamentary Assembly, although membership in OSCE extends beyond Europe). These institutions provide forums for the discussion of matters of common concern, permitting legislatures some input into the organizations to which they are linked. There are two associated challenges in that, first, the bodies themselves meet infrequently and have no decision-making powers and, second, the members have limited means of engaging with their respective parliaments.

The Parliamentary Assembly of the Council of Europe (PACE), for example, meets four times a year for a week-long plenary session at the Palais de l’Europe in Strasbourg (although much of its work is done through committees). The NATO Parliamentary Assembly and the North Atlantic Council meet annually to discuss matters of common interest. In 2013, for example, the meeting addressed NATO’s priority issues for the year, including defence capabilities and Afghanistan. Though such sessions can be useful, they may be seen as marginal activities in relation to the organization’s executive body. The NATO Parliamentary Assembly, for example, does not feature prominently on the NATO website; indeed, it is only locatable using the site’s not insubstantial index. Similarly, the OSCE Parliamentary Assembly receives only a passing mention in the OSCE’s factsheet about its operations (OSCE 2014).

Following the sessions of these parliamentary bodies, members have limited opportunities to report back to their home parliaments. There is little available evidence of systematic engagement with home institutions, either in terms of discussing what to communicate to the international parliamentary body or reporting back on the deliberations. In the UK Parliament, for example, ‘[m]embers serving on inter-parliamentary organisations are expected to report on their activities in the course of relevant debates and other proceedings although there is no formal mechanism for doing so’ (House of Lords, Written Answer, 13 Nov. 2012, col. WA280).

Certain opportunities exist for some delegations to report back to interested members of parliament, but there is no structured means of engaging at the institutional level. Members of the British–Irish Parliamentary Assembly promoted a debate in the House of Commons in 2012, but that was exceptional. Reports from meetings are placed on websites, but the onus is on interested parliamentarians to access them.

The challenge for national parliaments is thus to make greater use of the limited resources that currently exist and to address the mechanism by which national parliaments can collaborate in scrutinizing and influencing those international organizations that take decisions affecting the constituencies that these legislatures represent.

This constitutes a vexed problem for national legislatures on a global scale. Economic crises serve to highlight a similarly global ‘democratic deficit’. For most national legislatures in Europe, there is a challenge, and a perceived democratic deficit, that is unique to Europe.

Supranational decision-making

The challenge facing most European legislatures is how to adapt to the existence of supranational decision-making. The creation of the European Communities (EC), now the European Union (EU), has resulted in a unique situation for national legislatures, one that has changed as the supranational institutions have developed and acquired new powers through successive treaties and as the number of member nations within the EU has grown.

Three stages can be identified in the response of national parliaments to membership in the EC. The first stage involved limited or no engagement. The national parliaments had no formal role in the process of EC law-making and did not exhibit much inclination to assume a structured role in relation to the EC. The second stage was one of partial engagement, especially on the
part of new member states. The parliaments of Denmark and the United Kingdom were keen to maintain their involvement in the policy-making process and consequently established committees dedicated to considering proposals for EC law. Some other national parliaments followed their lead, but the most important impetus for change – representing the third and most significant stage – was the publication and adoption of the White Paper on the Completion of the Single Market and the ratification of the Single European Act (SEA). The White Paper and the SEA extended the role of the EC far beyond its previous reach, expanding its jurisdiction into sectors that had previously been the exclusive preserve of national governments. The SEA also generated a shift in power among the institutions of the EC and in the relationships between those institutions and the member states. There was an elected parliament at the EC level, but it was still formally titled the ‘European Assembly’ and was not yet a fully fledged legislature.

National parliaments responded in three distinct ways: through greater specialization (by the 1990s, EC committees were the norm), additional activity (increased scrutiny of proposed directives) and attempts to integrate MEPs into their activities (for example through joint committees) (Norton 1996a: 177–82).

Since that time, national parliaments have been attempting to keep pace with the developments resulting from subsequent treaties – Maastricht (creating a three-pillared European Union), Amsterdam, Nice and Lisbon (creating a unified EU) – and to respond to the complaints of a democratic deficit within the EU. Perceptions of this deficit underpinned the recognition of the role of national parliaments in a declaration appended to the Maastricht Treaty (see Norton 1996a: 183–4) and a protocol of the Amsterdam Treaty, although neither accorded any formal role in decision-making to the parliaments. In 2001, the Laeken Declaration, which was designed to bring the institutions of the EU closer to the people, led to the Lisbon Treaty and the ‘yellow card’ and ‘orange card’ procedures. These enabled national parliaments to refer back proposals deemed to conflict with the principle of subsidiarity (requiring that decisions be taken at the most appropriate level). According to the ‘yellow card’ procedure, if one-third or more of national parliaments (or one-quarter, in the field of cooperation in criminal matters) submit reasoned opinions to the effect that a proposal violates the principle of subsidiarity, the institution initiating the proposal must review it with a view to withdrawing, amending or maintaining it. (Each parliament has two votes, one each in the case of bicameral institutions.) If more than half the member states submit opinions, and the institution decides to maintain the proposal, it must then submit a reasoned opinion in support of its position to the Council of Ministers and the European Parliament (EP), either of which can strike down the proposal (the ‘orange card’ procedure). The Treaty also sought to reinforce the position of the Conference of Community and European Affairs Committees (known by its French acronym, COSAC), a body consisting of members drawn from the European committees of national parliaments and from the EP that meets twice a year to discuss matters of mutual interest.

National parliaments have thus moved from a detached and formally advisory role to a position offering the potential to regularly engage in the scrutiny of proposals for EU laws, as well as some degree of leverage under the Lisbon Treaty. A number of legislative chambers, notably the Polish Senate and both Houses of the British Parliament, have been active in examining proposals and submitting reasoned opinions (Norton 2013: 162). Some analysts have taken the view that the new procedure gives national parliaments the capacity to serve as forums for debating the merits of proposals, collectively influencing policy, and forging closer links with EU citizens. Indeed, Cooper has advanced the argument that they may constitute what amounts to a virtual third chamber of the European Parliament (Cooper 2012: 441–65; see also Winzen 2012).
In practice, however, not all parliaments take an interest in scrutinizing proposals. Furthermore, the protocol to the Lisbon Treaty covers only the principle of subsidiarity, and very few proposals fall foul of that principle. By mid-2013, only one proposal (on striking a balance between the right to strike and the rules of the internal market, in May 2012) had received a yellow card. Far more significant and problematic is the principle of proportionality. There is also the concern that examining proposals for subsidiarity entails devoting resources to proposals that are already at an advanced stage in the legislative process; some argue that the time of national parliaments would be better spent engaging at the gestation stage, influencing thinking within the EU before fixed positions are taken.

Relative to the intentions enshrined in the 2001 Laeken Declaration, the provisions in the Lisbon Treaty are modest, and there is little evidence that the yellow and orange card procedures are doing much to reduce the EU’s democratic deficit (see European Scrutiny Committee, House of Commons 2010: 7; Rasmussen 2012: 112; Norton 2013: 164). Beyond the provisions of the Lisbon Treaty, the more significant opportunities for national parliaments to address this deficit – explored on pp. 341–2 – have yet to be exploited.

**Development of a rights culture**

One can identify different views of rights, not least between the natural law and the positive law traditions. However, there has been a tendency towards convergence in the acceptance of individuals enjoying some degree of autonomy and the idea that members of a society have some degree of responsibility to others in the society. Recognition of a degree of autonomy introduces the potential for tension between individual freedom and democracy, ‘in that the creation of a sphere of private autonomy, and the work of the courts in policing it, prevents normal democratic decision-making processes from operating in that sphere’ (Feldman 1993: 33).

Within post-war Europe, two levels of division over the issue of human rights can be identified. First, there was the division between liberal democracies in the West and the Soviet Bloc in the East. In the former, there was the further potential for tension between legislatures (representatives of the people) and the courts (protectors of rights). In the latter, there was no such division, as rights were subordinate to the will of the regime; legislatures and the courts served only to endorse that will.

The first fundamental division disappeared at the end of the century with the dissolution of the Soviet empire and the emergence of the new democracies. The issue of how legislatures should address the protection of rights thus became common to all European nations. The legislatures have operated within a basic framework provided by the European Convention on Human Rights (ECHR, more formally the European Convention for the Protection of Human Rights and Fundamental Freedoms). Promulgated under the auspices of the Council of Europe, the ECHR entered into force in 1953. The signatories to the Convention increased with the emergence of the new democracies. All 47 members of the Council of Europe now recognize the jurisdiction of the European Court of Human Rights (ECHR). There is thus a pan-European mechanism for protecting rights, complementing the means that exist within each member state. The challenge for the legislatures of the member states has been to determine to what extent they will engage in the protection of rights and to what extent they will defer to the courts, not least the ECHR, in the protection of such rights.

Three models can be identified with respect to this relationship (Norton 2012b). The first is the respective autonomy model, in which the executive and the legislature decide what the law should be, but leave it to the courts to interpret and determine the application of the law (including
the provisions of the constitution). The second is the competing authority model, in which there is a relationship between the legislature and the courts, but it is adversarial. The legislature may not necessarily accept judgements of the courts that conflict with the views of the people. The third is the democratic dialogue model, in which there is constructive engagement between the legislature and the courts (Young 2009). Under this model, the two branches of government share the role of protector.

Legislatures throughout Europe have therefore faced the challenge of determining their relationship to rights – in effect, to what extent they recognize and indeed seek to protect the liberal component of a liberal democracy. Whereas legislatures in established liberal democracies may feel no need to burnish their credentials by helping to protect rights, leaving such protection to the courts, new democracies have been more conscious of the need to protect (and to be seen to be protecting) the rights of citizens (Norton 2005). As we have noted, these institutions are twice as likely as legislatures in established European democracies to have created a dedicated human rights committee.

In Lithuania, for example, the Seimas has a Committee on Human Rights that can both prepare and consider drafts of laws and other legal acts, as well as proposals on issues related to the guarantee of civil rights and the regulation of relations between the nationalities living in Lithuania. It also has the power to present recommendations and proposals to ministries, state institutions and other organizations, including other parliamentary committees, on issues concerning the protection of civil rights and the improvement of relations between the nationalities.

The tendency in the new democracies has thus been to adopt elements of the third model, by attempting to play some part in the protection of rights. Although this is a challenge faced by the new democracies, it is not exclusive to them. This motivation can also be seen in some of the established democracies, such as the United Kingdom, where the doctrine of parliamentary sovereignty is well entrenched, and Italy, where the demarcation between politics and the law is not as well established as it is in other nations of Western Europe.

The practice in established democracies has been more varied; parliaments have tended to fall into either the first or third category, although greater rights awareness has at times produced some tensions. In the UK, for example, Parliament and the government have been reluctant to accept a ruling by the European Court of Human Rights that the country’s blanket ban on prisoners voting is incompatible with Convention rights. Nonetheless, Parliament has leaned more towards the democratic dialogue model than the others. There has been far more active engagement following the incorporation of most provisions of the ECHR into UK law under the Human Rights Act 1998 (Norton 2013: 182–95) than was the case previously, when disputes were taken directly to the ECHR in Strasbourg. In 2001, Parliament established a Joint Committee on Human Rights, and references to human rights have become a feature of parliamentary discourse, especially in the years since 2005 (Hunt et al. 2012).

Legislatures in Europe have thus sought to adapt to the rights culture engendered by the ECHR. As former UK Home Secretary Jack Straw has noted, this has had an impact on both ‘old and new Europe’ (BBC Radio 4, World This Weekend, 7 July 2013). The nature of the adaptation has varied. Former Soviet legislatures have appeared to encounter the most difficulty – Russia standing out in terms of the number of violations adumbrated by the ECHR – but the pattern has still reflected more adaption than confrontation. However, in times of international crisis and economic austerity, tensions can arise, with the demands of the majority sometimes coming into conflict with the rights of minorities. The models we have advanced are idealized forms of legislative-judicial relationships. The democratic dialogue model may be seen as that to which most legislatures aspire, although the route to realization may at times be fraught, even for liberal democracies.

336
Demands for greater engagement

The most pervasive challenge facing European legislatures has been that of meeting popular expectations. As the IPU/UNDP Global Parliamentary Report *The Changing Nature of Parliamentary Representation* (2012: 4) observed, public pressure on parliaments is greater than ever before. This pressure has taken various forms. Citizens look to the institution to fulfil collective tasks, such as critical scrutiny of the government, and to individual members to act on behalf of citizens, through grievance resolution, delivery of benefits to individuals and support of local interests: ‘Constituency service is now seen as central to the ideas of parliamentary representation by the public and politicians’ (IPU/UNDP 2012: 6). The expectations encompass not only greater activity, but also higher standards of behaviour. There are now more opportunities to watch parliaments in action, and the emergence of the new European democracies has increased the potential for openness, but citizens continue to demand greater transparency:

Transparency became an important debating point in Europe especially after the European Union’s battle over ratification of the Maastricht Treaty highlighted the need for greater openness as a means of achieving more democratic legitimacy. Nordic countries, in particular, place a strong emphasis on transparency, and Denmark and the Netherlands, among others, have been vociferous in demanding that the European Union take openness as seriously as the most transparent member states do.

(Rekosh 1995: 1)

Parliaments in Europe have become more open (Rekosh 1995), but there is still pressure to continue these efforts. Many legislatures face a conflict between effectiveness and transparency (Norton 1998: 203–5). A number of legislatures, especially those in the continental parliamentary tradition, place emphasis on decision-making in committee. Germany and Italy are notable examples, the former being characterized as a ‘working parliament’. Committees are seen as the sites of bargaining between parties, with secrecy being an essential component of successful negotiations. As Didier Maus observed of French practice:

In France we have adopted the principle of making some committee meetings public . . . Yet it is plain that it is possible to deliberate more calmly in camera. Representatives of successive opposition parties have assured me that, on occasions, they had suggested that a bill be worded in a certain way, safe in the knowledge that their contribution would not be publicised.


The practice of holding committee meetings in private, and indeed allowing some votes to be secret ballots, conflicts with the growing demand for greater transparency and the desire of electors to be able to see what their representatives are doing in their name. Although certain legislatures, including those in Belgium, Germany and Portugal, have taken steps to ensure that some committee deliberations will be public (Norton 1998: 204), others nevertheless continue to stress the value of legislators being able to conduct negotiations behind closed doors. Achieving a balance between effectiveness and transparency thus constitutes a challenge that is likely to become more rather than less pronounced over time.

Public expectations extend beyond transparency. People look to parliamentarians to be active on their behalf and to listen to their concerns. The Internet has provided unprecedented opportunities for contact, and legislatures have generally taken advantage of this. Almost all
national legislatures now have websites. Legislators also make use of the Internet individually, creating their own blogs and in some cases utilizing Facebook, YouTube and Twitter:

This is true even of systems not based around the concept of the constituency MP, such as Finland, Italy, Germany and Portugal, where representatives are increasingly using individual web tools. In Germany, for instance, there has been a boom in the use of social media tools, with Saalfeld and Dobmeier showing that 71 per cent of the Bundestag representatives utilise Facebook and/or Twitter to support their parliamentary work.

(Leston-Bandeira 2012: 517)

Although the use of the Internet is now widespread among parliamentarians, it tends to be utilized as a means for transmitting information from the legislature or the legislator to the voter. It is a one-way flow, with limited opportunity for comment and response. A study of some European legislatures found they recognized the importance of the Internet revolution and invested resources in the technology:

A growing amount of information about parliamentary institutions and the legislative process is being made available on the Internet. This makes the Internet arguably more important and effective than any other type of communications technology in history, in making the parliament a transparent institution. It is not an exaggeration that the parliamentary website has already become a virtual face of the parliament.

(Dai and Norton 2008: 138–9)

However, another finding was that 'both institutional and individual websites largely serve the purpose of information provision, rather than interactive engagement of citizens' (Dai and Norton 2008: 140). In the United Kingdom, for example, research showed that rather than utilize the technology in an innovative way, MPs were employing it to pursue the party model of political representation, rather than a representative or delegate model (Norton 2007a: 354–690):

MPs use it to promote their own cause and that of their parties, essentially as an extension of what they already do: it is used as a medium for making speeches, press releases and details of the MPs’ activities available to constituents. Few MPs reject it, or seek to use it to bolster an independent status or to discover the collective views of their constituents. Perhaps for those reasons relatively few people appear to be interested in Members’ websites.


The emphasis, in Leston-Bandeira’s terminology, has been on dissemination (Leston-Bandeira 2007: 418). On occasion, even this dissemination has been limited, in that in some parliaments many members fail to make use of websites. The 2010 election in Hungary acted as an impetus for members of parliament to utilize websites, but even after a notable acceleration the proportion of members with websites was only 52 per cent (Ilonszki and Papp 2012: 345).

There have been notable advances in recent years, and some social media offer opportunities for interaction, but the Internet continues to be used to promote parliamentarians, usually through the prism of the parliamentarian’s political party, rather than bypassing the party and enabling individual members to interact directly with the electors.

As we have seen, there are major challenges facing legislatures. Those that we have identified have a common theme, namely the need for legislatures and legislators to hear and give voice to the views of the people and to let citizens know that their concerns have been heard.
Continuity and change in parliamentarianism

Opportunities

Although legislatures face considerable challenges, it is possible to identify opportunities available to them that can be especially significant in times of tension. Based on the nature of the challenges, we can group these opportunities under two generic headings: engagement with electors and collaboration between parliaments.

Engagement with electors

As we have seen, there are demands for greater engagement. Engagement can, as noted above, be limited to parliamentarian-to-elector contact with no possibility of interaction. However, there are increasing opportunities that not only enable parliamentarians to reach electors, but also facilitate interaction with them.

In terms of elector-to-parliamentarian contact, in many systems there are long-established instruments at the individual level, whereby citizens can write to or meet their members of parliament (especially in constituency-based systems; see, e.g., Norton 2012c: 403–18; Saalfeld and Dobmeier 2012: 321), as well as at the collective level, through petitioning.

Petitioning is well established in many nations, although its effect has been variable (Hough 2012: 479–95). Fundamental to this instrument’s effectiveness are, first, the ease of petitioning and, second, what the legislature does with the petition once it has been submitted. In some nations, petitioning is not permitted or the procedures for petitioning are rarely used; countries falling into this latter category include France, Italy and Hungary (Hough 2012: 483). In France, petitioning has declined because citizens have the opportunity to directly approach the ombudsman regarding matters of public administration (Costa et al. 2012: 305). In some countries where petitioning is more regularly employed, citizens can petition the parliament directly; in other cases, the petition must go through a member of parliament.

What we have witnessed in recent years has been an increase in the number of legislatures enabling petitions to be submitted, which in large part is a consequence of the growth of new democracies and – a key opportunity afforded by the Internet – the ability to sign and submit petitions electronically (e-petitions). Some parliaments, such as that of Germany, have seen significant increases in the number of petitions submitted, in this case the increase pre-dating electronic submission systems (Saalfeld and Dobmeier 2012: 325–9), with e-petitions now replacing some of the paper petitioning. In other cases, e-petitioning has been the driving factor in the increase of the instrument’s use. About two-thirds of petitions lodged with the Scottish Parliament, for instance, begin as e-petitions (Hough 2012: 485).

Once citizens petition the parliament, what happens next? In most cases, petitions are submitted to a petitions committee. This committee may be empowered to consider the petition and/or to refer it to another committee. In some cases, the petitions committee is well established and capable of influencing the government. A notable example is the Dutch Committee for Petitions and Citizens’ Initiatives, which may ask another committee to investigate, but otherwise will consider admissible petitions. The committee asks the relevant minister to respond, and the petitioner then has four weeks in which to reply. The committee then reports to the House:

On average, the committee concludes in favour of the petitioner in a third of the reports. In such cases it is rare for the House not to endorse the report, and for the government not to act upon it. If the government does not redress the grievance despite the
recommendation of the House, this would be reported back to the committee. The House would then have to decide whether the government’s refusal constitutes sufficient grounds to censure the minister. These petitions can therefore have a significant impact.

(Andeweg 2012: 373–4)

These established committees have been complemented in other legislatures by electronic submission systems. In the UK, e-petitions achieving 100,000 signatures are passed to a committee (the Backbench Business Committee) that may then choose to schedule a debate on the subject matter of the petition. Although there must be support from MPs to allow a debate, the committee does not necessarily confine itself to petitions passing the 100,000 mark; in the past, it has scheduled debates based on petitions with fewer signatures. In practice, petitions reaching 100,000 signatures have invariably been debated, in some cases attracting considerable media and public interest. In the National Assembly for Wales and the Scottish Parliament, petitions are referred for consideration to a dedicated petitions committee.

The Internet also serves to facilitate more immediate and direct engagement between electors and legislatures, not least through the use of online consultations. The UK Parliament has been a leader in such consultations, which have been employed to inform parliamentarians on a range of issues, including domestic violence, hate crimes in Northern Ireland, flood management, family tax credits and electronic democracy (Norton 2013: 270–1). Some of these consultations, as in the case of domestic violence, have enabled people to submit input who otherwise might not have been able or willing to contribute to a parliamentary inquiry. Nearly 1,000 messages were received from the survivors of domestic violence, some of whom were ‘voices largely unheard by hon. Members, including Irish women travellers and Bangladeshi women’ (House of Commons, *Hansard*, 6 Nov. 2001, col. 108). A crucial point to bear in mind is not just how many people engage in these consultations, but the wider recognition by citizens that such an opportunity exists. Nor has this engagement been confined to online consultations; it has also taken the form of the use of Twitter in committee work. During a recent seminar with leading members of the scientific community, the chair of a committee posted the questions under discussion on Twitter and invited responses.

The UK Parliament is not alone in having committees that employ the Internet to engage with electors, but, as Griffith and Leston-Bandeira observe, it is in the minority. The global study they analysed found that, of the legislatures that responded, only 34 per cent featured committees that had websites, and only half of these (18 per cent) made use of them to solicit the comments of citizens (Griffith and Leston-Bandeira 2012: 499).

The UK House of Commons has also experimented with the ‘Public Reading’ process, an initiative to give members of the public the opportunity to express their views on Bills before Parliament. The government ran pilot public readings on two Bills (the Protection of Freedoms Bill and the Small Charitable Donations Bill) before the House of Commons ran its own pilot experiment with the Children and Families Bill early in 2013. Again, the UK House of Commons is not unique as a legislative chamber in engaging in such consultation, but it is in the minority. As Griffith and Leston-Bandeira report, only 16 per cent of legislatures utilized e-consultation for the consideration of bills (Griffith and Leston-Bandeira 2012: 503).

The above examples are illustrative of the opportunities available when the facilities afforded by the Internet for direct and immediate communication are combined with a willingness to adapt procedures. Other legislatures are undergoing similar adaptation. Almost all (97 per cent) now have websites (Griffith and Leston-Bandeira 2012: 499), but there are also more imaginative options for deploying web-based resources to engage with citizens. These are substantial, but they are far from being fully exploited. As Griffith and Leston-Bandeira observe, however, there
is growing recognition of the potential. Of the eight methods of communication under consideration by parliaments, six were interactive, 'suggesting that parliaments are giving thought to the use of more engaging means of communication' (Griffith and Leston-Bandeira 2012: 505–6). However, as the authors go on to note, only 25–30 per cent of legislatures were considering such action. Nonetheless, the trend would seem to be clear.

**Collaboration between legislatures**

Above, the opportunities for parliaments to interact with citizens have been described; however, a much-neglected dimension involves interactions with other legislatures, not least for the purposes of scrutinizing and influencing decision-making at the regional or global level. As Karlas has observed in the context of the EU, '[t]he involvement of national parliaments can enhance the performance of EU policy making, since the inclusion of a wider range of actors can help governments in addressing the various needs of the constituencies’ (Karlas 2012: 1095; see also Tans et al. 2007).

A national legislature is limited in its ability to challenge decisions taken by national governments at the international level. A parliament may play a role in ratifying treaties, but there is rarely engagement in the deliberative process leading up to the treaties or in other decisions taken at an international or global level; effectively, it is an outsider to the process. As we have seen, there are forums for sharing best practices between legislatures, but there is limited opportunity for these institutions to come together to discuss or have an impact on decision-making.

The opportunities for collaboration that have been provided, most notably in the case of the European Union, have essentially come from the top down. In the EU, this has taken the form of initiatives for gatherings of members drawn from parliaments; there is now also the formal role of legislatures through the yellow and orange card procedures, as well as greater recognition of the role of COSAC. Various inter-parliamentary conferences are held on particular issues (usually in the country holding the Council presidency), and there are meetings for the chairs of particular committees (such as home affairs and agriculture) (see European Union Committee, House of Lords 2013: 20–1). There is also the possibility of sharing information electronically. As the result of a decision by the Conference of the Speakers of EU Parliaments, a scrutiny website (IPEX) was created in 2006, providing a platform for the electronic exchange of EU-related information between national parliaments. Although this site is somewhat inefficient and under-used, it is nonetheless a useful tool for information-sharing and an indication of the value of collaboration.

However, the opportunities for national parliaments to build on these formal mechanisms appear to be limited: 'A greater collective role for COSAC with the possibility of making binding decisions in the future would however be problematic for the legitimacy of national parliaments’ (Rasmussen 2012: 106). There seems to be little chance of extending the yellow or orange card procedure to create a 'red card', giving national parliaments veto power. This would be seen as encroaching on the role of the existing EU institutions, especially the European Parliament. For the same reason, there appears to be little scope for implementing the other institutional proposal advanced as a partial solution to the democratic deficit: the creation of a second chamber of the European Parliament, comprising members drawn from national parliaments (Norton 2004: 6–7).

Given these restrictions, the greatest opportunities for influence by national parliaments exist at a more informal level, stemming from a bottom-up approach to decision-making (see Tans et al. 2007). There has been some bilateral sharing of information between national parliaments.
Philip Norton (Lord Norton of Louth)

in the EU, with certain European committees contacting or collaborating with other committees on particular Commission proposals. The more such contact occurs, especially at an early stage, the greater the potential to influence outcomes: ‘The more collaboration there is between national parliaments on issues they regard as significant – rather than simply waiting to react to Commission proposals – the greater the potential to have an impact on EU policy’ (Norton 2007b: 217). Although limited in extent, such contact exemplifies the opportunities available to national parliaments through informal collaboration derived from shared interests. The national parliaments in the EU do have European committees, but their scrutiny practices vary (see Karlas 2012; Rasmussen 2012), as do their attitudes towards such scrutiny: not all are actively engaged in resource-intensive critical scrutiny, some viewing it as a matter for the European Parliament. The onus is thus on those institutions that take a particular interest in working with like-minded chambers to exert influence at an early stage.

Such a bottom-up approach has greater potential to be productive in the immediate future than the more top-down approach adopted by the EU (Tans et al. 2007). It also indicates the way forward in relation to the challenges facing all national legislatures with respect to globalization. Little has been done by national parliaments to extend beyond, or to build upon, the inter-parliamentary bodies that exist. The fundamental relationship of a national parliament is to its national government, but in that relationship knowledge is a necessary condition for critical scrutiny and influence. National parliaments have been limited by their lack of knowledge regarding the information possessed by other parliaments. Some sharing has taken place through inter-parliamentary bodies, but it has been limited by time constraints and also the intervals between meetings. There have been few opportunities to share information on issues as they arise at the national or international level. This works to the disadvantage of parliaments. It is not always clear to members of one parliament that their concerns are shared by members of other parliaments in other countries (see Norton 2007b: 212). Sharing information also reduces costs, in that if one legislature already possesses certain data there is little point in others expending effort to obtain the same data.

This potential was aptly expressed by a British parliamentarian in a recent debate on the activity of the EU Committee of the British House of Lords:

We do not have as many meetings as we might have with other parliamentary bodies or with our own European parliamentarians – we have three meetings a year in the House of Commons. However, that does not seem to me sufficiently to embrace the public. I should like to speculate and suggest that we might communicate with the public to find out which issues give rise to the greatest concern . . . We could have a special meeting open to stakeholders who are particularly exercised by what they understand to be the problem with Europe or the way the Union is moving. We could then include these thoughts in our scrutiny and researches, however unfocused they may be, and we could answer them directly and possibly engage in a continuing dialogue.

(Lord Maclennan of Rogart, Lords Hansard, 30 July 2013, col. 1691)

The opportunities for national parliaments to collaborate are considerable, and the imperative to do so is arguably greater than ever before. However, unlike the opportunities for greater engagement with citizens, the instruments of collaboration are still very much in their infancy. There is greater scope, currently realized to some extent, with respect to interactions among national parliaments in the EU, but even these developments are at no more than an adolescent stage, if that.
Conclusions

Parliaments in Europe have come together in the twenty-first century to form a more coherent family of legislatures. There is considerable variation within this family, but they operate almost exclusively within a democratic (predominantly a liberal democratic) framework, representing a drastic change from the preceding century. These institutions are crucial to their respective polities, but they face considerable challenges, not least with respect to the increasing amount of decision-making taking place beyond their borders and the greater emphasis within their borders on rights and public participation. There are also significant new opportunities available to them, both for greater engagement with citizens and for collaborations with other parliaments. The former has been more extensively developed in recent years than the latter, but both represent crucial opportunities at a time when the need for parliaments to fulfil a safety-valve function and to convey the views of citizens to decision-makers is particularly acute.

Bibliography

Philip Norton (Lord Norton of Louth)


Continuity and change in parliamentarianism


