

# National Representation in European Democracy: Seat Apportionment in the European Parliament

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## Abstract

Despite an increasing interest in legislative malapportionment in comparative politics literature, there has not been a significant attempt at theorizing *the politics of reapportionment*. Although lower chambers are typically *malapportioned*, the extent to which one-person-one-vote principle is violated in favor of political unit representation in the composition of legislative assemblies is an important matter for the study of democracy. Unlike the translation of party votes into party seats, the discrepancy between the shares of seats in a legislature and the shares of population held by geographical units has rather been treated as a mathematical problem than a political one. This article traces the apportionment of the seats in the European Parliament. The research goal is to disentangle the origins of malapportionment and uncover the reasons for its rise or decline over time. Following a historical institutionalist approach the study finds three basic modes of apportionment: *default*, *accommodation*, and *redistribution modes*. The study finds that these modes follow a historical pattern that reveals the institutional grids within which *democracy* is negotiated in the EU. The accommodation mode (AM) creates new seats for new member states while avoiding loss of seats for the existing members. Data shows that in most cases AM increased malapportionment. In redistribution mode (RM) the number of seats for all member states is open to negotiation. The article finds that RM had always brought population-based representation to the fore. Following these findings, the article argues that different trends observed in AM and RM can be attributed to the difference between the nature of accession negotiation bargains and institutional reform bargains.

Keywords: European Parliament, Seat Apportionment, Representation, Malapportionment, Democratization, Lower Chamber, Degressive Proportionality, Value of a Vote

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## Introduction

*History attests to the mathematical inventiveness of politicians when seats in a legislature are at stake.*<sup>1</sup>

Malapportionment is defined as “the discrepancy between the shares of legislative seats and the shares of population held by geographical units”.<sup>2</sup> The desire to secure fair representation for diverse populations often interferes with the ideal of ‘one-person, one-vote’. Therefore, the act of apportioning seats among political or territorial units in a legislative body ultimately requires a decision on the degree of deviation from the principle of democratic equality. Bicameral systems conventionally deal with this dilemma by institutionalizing ‘population-based’ and ‘state-based’ representation in separate entities. In such systems, ideally, the upper chamber provides protection for minority groups or citizens of small states, while the lower chamber represents the overall population. Most legislatures are malapportioned. However, in studies of democratic institutions, lower chambers have rarely been investigated for this problem.<sup>3</sup> If the upper chamber already provides overrepresentation to disadvantaged groups, “there is no normative justification for malapportionment in the lower chamber” to violate citizens’ equality.<sup>4</sup>

Malapportionment in electoral systems is a common occurrence especially in newly-democratized countries.<sup>5</sup> The European Parliament (EP) elected directly since 1979 is one of the most malapportioned lower chambers in the world -along with mainly Latin American lower chambers<sup>6</sup>. Today, about 14 per cent of the total number seats in the EP are malapportioned, significantly exceeding the world average for lower chambers in advanced industrial democracies, which is around 4 per cent.<sup>7</sup> The 751 members of the EP (MEPs) represent the second-largest democratic

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<sup>1</sup> Michel L. Balinski and H. Peyton Young, *Fair Representation: Meeting the Ideal of One Man, One Vote* (New Haven: Yale University Press, 1982), 10.

<sup>2</sup> David Samuels, and Richard Snyder, “The Value of a Vote: Malapportionment in Comparative Perspective,” *British Journal of Political Science* 31, no. 4 (2001), 652.

<sup>3</sup> The literature on the history of malapportionment in the U.S. House of Representatives seems to be an exception: e.g. Malcolm E. Jewell, *The Politics of Reapportionment* (New York: Atherton Press, 1962); Balinski and Young, *Fair Representation*; Robert Dahl, *How Democratic is the American Constitution?* (New Haven: Yale University Press, 2003). Jeffrey W. Ladewig, and Mathew P. Jasinski, “On the Causes and Consequences of and Remedies for Interstate Malapportionment of the U.S. House of Representatives,” *Perspectives on Politics* 6, no.1 (2008): 89-107.

<sup>4</sup> Richard Snyder and David Samuels, “Devaluing the Vote in Latin America,” in *Electoral Systems and Democracy*, ed. Larry Diamond, and March F. Plattner (Baltimore: Johns Hopkins University Press, 2006), 169.

<sup>5</sup> Samuels and Snyder, “The Value of a Vote,” 662.

<sup>6</sup> A 20 per cent of the seats in the Ecuadorean National Assembly, a 17 per cent of the seats in the Bolivian, a 15 per cent of the seats in the Chilean, and a 14 per cent of the seats in the Argentine Chamber of Deputies are malapportioned whereas the world average for lower assemblies without the inclusion of Latin America is only 6 per cent and the lower house in the US is only 1 per cent. Richard Snyder and David Samuels, “Devaluing the Vote in Latin America,” *Journal of Democracy* 12, no. 1 (2001): 146-159.

<sup>7</sup> Snyder and Samuels, “Devaluing the Vote,” 2001, 148.

electorate after the Parliament of India and the largest transnational electorate in the world. As the only transnational parliament in the world with substantive legislative powers affecting 507 million Europeans, its democratic equality deserves attention especially given its 38-year experience with direct democratic representation. Interestingly enough, the apportionment of parliamentary seats in the EP is perhaps the most understudied part of the study of the EU legislature.<sup>8</sup> The issue does have a significant place in the field of ‘Mathematics and Democracy’.<sup>9</sup> However, the focus is mostly on the advantages and disadvantages of several apportionment formulas for the EP and the field, overall, aims at providing a liable formula that can ultimately allow for automation and constitutionalization of reapportionment. Despite the merit of this literature in showing alternative ways to reach “representative fairness”, insofar as democratic regimes are concerned what counts as “fair” is a political problem, not a mathematical one. In fact, historically speaking many statesmen devised apportionment formulas as Alexander Hamilton and Thomas Jefferson did in the late 18<sup>th</sup> century for the distribution of seats in the United States House of Representatives. The frequent involvement of politicians in apportionment debates speaks to the political nature of numbers because once the seats are apportioned, “the effects can be of consequence”.<sup>10</sup> In other words, seat apportionment is too important to be left solely to the mathematicians.

Despite the distinction provided between member state representation and European people’s representation in the founding treaties, the Council of Ministers (the Council) has never applied voting weights based on full equality of member states, and the EP has never apportioned seats strictly proportional to overall European population.<sup>11</sup> While the voting weight distribution of the Council had been an issue of balance of power among member states and less problematic from democratic perspective compared to upper chambers that firmly applies full equality, the distribution of seats in the EP, because of the EP’s mandate to represent Europeans, has often been handled as an issue of democracy at the EU level. Despite having been designed as a transnational assembly, the seats of the EP have been distributed in part as a multi-national assembly from the beginning. This rule of thumb has been resilient over time even though political groups in the EP

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<sup>8</sup> See for an exception: Jonathan Rodden, “Strength in Numbers?: Representation and Redistribution in the European Union,” *European Union Politics* 3, no.2 (2002): 151-175. His work focuses on the study of the effects seat distribution in the EP along with voting weights in the Council on fiscal redistribution.

<sup>9</sup> Some examples: Henri Theil and Linus Schrage. “The Apportionment Problem and the European Parliament,” *European Economic Review* 9, no.3 (1977): 247-263. Jan Florek, “A Numerical Method to Determine a Degressive Proportional Distribution of Seats in the European Parliament,” *Mathematical Social Sciences* 63 no.2 (2012): 121-129., Victoriano Ramfrez-Gonzalez, “Seat Distribution in the European Parliament according to the Treaty of Lisbon,” *Mathematical Social Sciences* 63, no.2 (2012): 130-135.

<sup>10</sup> Balinski and Young, *Fair Representation*, 2-10.

<sup>11</sup> Francis Jacobs, Richard Corbett, and Michael Shackleton. *The European Parliament*. Boulder: Westview Press, 1992, 21.

have “sat, worked, and voted by party groups rather than national delegations” since they were officially recognized in June 1953.<sup>12</sup>

The article inspects the *emergence* and *resilience* of member state representation in the EP since 1950s until today by measuring quantitatively the change in level of malapportionment in the EU’s lower chamber and applying an in-depth qualitative analysis through process-tracing. The research goal is to draw attention to the dominant concerns and interests of actors behind the decision of seat apportionment in the EP (See *Table 1* and *Table 2* ). Every time a change in the distribution of seats in the EP was discussed, the actors had to take a stance on certain issues. Their responses to malapportionment varied depending mainly on three elements: (1) the actors involved in the discussion at a given time; (2) the reason for reapportionment: *enlargement, institutional reform* or *population change*; (3) the level of flexibility of actors in changing the total number of seats in the EP. The debates surrounding the moments of institutional choices provide a fertile case to see how democratic equality is negotiated. By relying on primary and secondary sources the article also focuses on the motives behind agreeing to improve democratic equality in two occasions in the history of European integration: institutional reforms negotiated for the introduction of direct elections in 1979, and the German reunification in 1990.

This article finds that the most efficient way to decrease malapportionment in the history of the EU was prior to the introduction of limits to the size of the EP and in the form of institutional reform with the active involvement of both national executives (NE) and the EP in the decision-making process. Enlargement-driven reapportionments, which are negotiated almost exclusively by member state executives, have almost always increased malapportionment unlike reform-driven reapportionments. This article argues that the direction of change in malapportionment can be attributed to the difference between the nature of accession negotiation bargains and parliamentary reform bargains and the different actors involved in these bargaining processes. The accession negotiations, by discussing an EU-level institutional change at the intergovernmental setting, encourages malapportionment. The reform bargains, on the other hand, by creating an intra-community discussion, provides a more elaborate consideration of the bigger picture and puts population-based representation to the fore. This finding provides an alternative explanation to democratic bargaining: *bargaining setting has been consistently more influential on the bargaining outcome than other variables such as country size (small vs. large states) or partisan orientations (“left-right” or “anti-/pro-EU integration” dimensions).*

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<sup>12</sup> Michael Palmer, *The European Parliament* (Oxford: Pergamon Press, 1981), 21.

## 1. Modes of Apportionment

The historical change in the distribution and in the total number of seats of the EP reveals a pattern, which I will refer as ‘modes’ throughout the article. There have been three modes of reapportionment for the seats in the EP: (1) a legally defined default mode; (2) an accommodation mode; (3) a redistribution mode.

The default mode is when the basis for apportionment of seats among member states for a particular parliamentary term matched the provisions as enshrined by the treaty in force. This mode has been particularly rare in the EU with consecutive waves of enlargement kept interrupting the EP’s composition. The accommodation mode refers to an increase in the total number of seats in order to create new seats for new members while avoiding loss of seats for the existing members. The negotiations in this mode are marked by their simplicity because they aimed at accommodating new members of the EP (MEPs) without causing distress among the existing MEPs. Lastly, redistribution mode, refers to the instances of seat apportionment renegotiation for all member states. In this mode, the existing structure might be altered in a way that a member state could gain or lose seats pursuant to the negotiations. This mode has exhibited itself in two ways in the EU: (1) *redistribution that increased the total number of seats* and (2) *redistribution that decreased the total number of seats*. The period prior to the enlargement of Central and Eastern European states in 2004 in which the total number of member states reached 25 in the EU is characterized by a continuous increase in the total number of seats. Following the largest intake of member states in the EU’s history, the reapportionment among the member states mostly resulted in a decrease in the total number of seats.

While the accommodation mode, by definition, has always been applied in response to instances of enlargement, the redistribution mode was applied for a variety of reasons, including enlargement. These included concerns for the cap size to have an effective working parliament, demographic changes within existing member states as well as in comparison with other member states, and prospective member states. The accommodation and redistribution modes can also be categorized as default modes once the provisions for the upcoming elections for the next parliamentary term *de jure* include the changes introduced in these two revisionary modes (See [Table 3](#)). The debates leading to these modes of change show that apportionment was a continuous discussion in the history of institutional choice in the EU with regards to democracy.

## 2. Measuring Malapportionment

Dahl argues that ‘one-person-one-vote principle’ is a necessary condition for democracy.<sup>13</sup> In a perfectly apportioned system, every citizen’s vote should weigh equally. Malapportionment, however, is a common feature of democracies at present and it is largely ignored in the study of comparative electoral systems. There are only a few lower chambers in the world that satisfies Dahl’s criterion.<sup>14</sup> In other words, lower chambers are typically malapportioned. To what extent they are malapportioned matters. Malapportionment as a pathology in electoral systems is, therefore, a matter of degree.

Samuels and Snyder proposed a useful way to compare electoral systems in terms of their degree of malapportionment. They altered the Loosemore-Hanby index of electoral disproportionality - *which measures disproportionality based on the share of political parties to their shares of votes* - in order to calculate legislative malapportionment- *which measures the discrepancy between the shares of legislative seats and the shares of population held by geographical units*: “one takes the absolute value of the difference between each district’s seat and population shares, adds them, and then divides by two.”<sup>15</sup>

$$M_{AL} = (1/2) \sum |s_i - v_i|$$

In this formula, “sigma stands for the summation over all districts  $i$ ,  $s_i$  is the percentage of all seats allocated to district  $i$ , and  $v_i$  is the percentage of the overall population (or registered voters) residing in district  $i$ ”.<sup>16</sup> The authors compared legislatures across seventy-eight countries by using this index. This article, however, takes a longitudinal approach and focuses on the modes (or patterns) of change in the index of malapportionment over time.

The entire sample of apportionment/ reapportionment through time in the EP is composed of 19 observations, which includes institutional creation, subsequent reforms, adjustments for new member states and temporary arrangements altering the allocation of seats awaiting reapportionment. In this article, all districts are member states and the changes in the populations of each member state at a given time for each observation are accounted for. From 6 to 28 member states, at 19 different points in history from the creation of the European Coal and Steel Community (ECSC) to the EU as of today, I identify the reasons to which there was a change or a decision to proceed with the previous allocation for all parliamentary periods from 1952 until 2014

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<sup>13</sup> Dahl, *How Democratic is the American Constitution*.

<sup>14</sup> e.g. Israel and Netherlands, for more details see: Samuels and Snyder, “The Value of a Vote,” 654.

<sup>15</sup> Samuels and Snyder, “The Value of a Vote,” 655.

<sup>16</sup> Ibid.

including the unelected predecessors of the EP and the directly elected EP (See *Table 3*).

Before starting to investigate the conditions under which actors have incentives to support or oppose a certain way of distributing seats at each point of change, we need to know what the adopted formula did to previous apportionment. Therefore, this article, by calculating the MAL<sub>L-H</sub> Index of the EP from 1952 until 2014, aims to clarify the magnitude and the direction change in the dependent variable, i.e. the level of malapportionment (See *Table 4*). By using the population of each member state and their number of seats in a particular period, it is possible to find to what degree the seats were malapportioned for that period and how different the overall level was compared to the previous arrangement.

In doing so, the findings reported in *Table 4* not only shows a pattern among increases and decreases, they also provide this article a focus which informs my in-depth qualitative analysis of institutional creation and change. The score reveals that, in 1952, 18.6 per cent of the seats in the EP were allocated to member states that would not have received those seats if there had been no malapportionment. An 11.7 per cent of the total seats was malapportioned in the 1957 arrangement which suggests us that 6.9 per cent of the seats were reallocated in a way that favors citizens' equality compared to the previous arrangement. The modes of change suggested in the previous section when read with the scores show a pattern in line with the change in the scale of malapportionment. After the institutional creation, the change in the level of malapportionment has not always been significant. In fact, the per cent change in malapportionment score was less than 1 per cent for 10 out of 19 time points analyzed in this article. The scores fluctuated over time and accommodation mode was almost always detrimental to the principle of equality of citizens. It means that the EU accommodated new member states only at the expense of misrepresentation. Although the sign of these slight changes mostly support the general trends, the main argument of this article relied primarily on changes that decreased malapportionment more than 1 per cent, which happened twice in history. Malapportionment in the EP was at its lowest once the seats were renegotiated for the first direct democratic elections (8.4 per cent), and when the German reunification brought the idea of population representation to the fore with the inclusion of East Germany in the EU (9.5 per cent). Therefore, the window of opportunity for democratization was more prevalent in redistribution mode before 2004. The EP reached a very high level of discrepancy with the largest enlargement of its history (14.2 per cent). After the EU exceeded 25 member states, redistribution mode has not been effective in adjusting discrepancy.

In short, the quest to enhance democratic equality was far from being a linear process. Although a German citizen is represented more fairly as a European citizen at the EP today than at the Common Assembly in 1952, the seat allocation in 1979, for example, was fairer for Europeans

compared to today. There were cyclical patterns of increases and decreases in malapportionment at various points. The democratic electoral institutional choices, which can also be called moments of progressive reapportionment, however, were rare and reversible in this supranational assembly.

### 3. Decision on Apportionment

There are several decisions to be made in order to apportion seats among constituent populations during the phases of institutional creation and institutional change:

1. *The number of representatives*: What is the total number of seats to be apportioned?
2. *The basis of representation*: “Should representation be apportioned to voters only or to the total number of persons in each state?”<sup>17</sup>
3. *Reapportionment*: “How should shifts in population be accounted for as a nation grows?”<sup>18</sup> Are there specific guidelines for periodic revisions? Who is responsible for drafting these guidelines?
4. *Thresholds of apportionment*: Are there minimum and maximum number of seats each state should receive?
5. *Proportionality*: What method should be applied to assign seats to large and small member states?

Depending on the negotiated responses to these questions, the level of malapportionment changed over time. Yet, the main sources of bias that have been constant in the allocation of seats in the EP include (1) the differences in the constituency size of states with the same number of seats due to the group based allocation of seats; (2) the guarantee of minimum representation for states with small constituency; and (3) the length of time that can elapse between reapportionment due to population changes within constituencies<sup>19</sup> and with enlargement. While the most important determinant in the early era proved to be the accession of new countries in the EU that required rather frequent reapportionment of seats, the issue of the total number of seats has been the most pressing concern in the later years of integration given the concerns about the practicality and efficiency of an enlarged parliament. However, it is the guarantee of minimum representation for small states that persisted the inequality of seats among member states. The increase in the number of small states in the EU over time also aggravated the impact of threshold on citizens’ equality. Despite the resilience of these biases engrained in the electoral system, the level of malapportionment sometimes decreased. Under what conditions the decision-makers could mitigate the impact of these biases to improve democratic equality? What is unique about those

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<sup>17</sup> Balinski and Young, *Fair Representation*, 6.

<sup>18</sup> *Ibid.*, 7.

<sup>19</sup> Peter J. Taylor and Ron Johnston, *Geography of Elections*, (New York: Routledge, 1979), 345.

moments?

Given that the lower chambers of newly democratized countries exhibit higher levels malapportionment than their counterparts in advanced democracies, it is important to see how early democratization makes malapportionment almost a necessary measure. Why do more populated districts initially give away concessions to disadvantaged districts? Does the answer lie in state-building, nation-building or regime-building? Is malapportionment a must to establish the democratic regime in the first place by securing the support of small districts? Can we claim that malapportionment is always a problem for democracy or are there occasions that it might work as a remedy, perhaps, for the stability of the regime? Although this article does not claim to have found answers to all of these questions, investigating the roots of malapportionment in the EU can provide us a unique opportunity to observe the change in the politics of representation over time.

#### 4. The Evolution of Malapportionment in the EP

##### 4.1. Point Zero: Default Mode

The design of electoral institutions often reflect the “prevailing background conditions at the time of the constitutional convention, or during transitions to democracy”.<sup>20</sup> The most important legacy of the first legally defined default was the way the question of proportionality between states was handled. The move from the equality of states in international relations to the equality of similarly sized states in the ECSC created a path dependence during which trajectories have been difficult to reverse. However, the troubling part of this legacy was not the over-representation of small countries *per se*, it was the enforcement of artificial categories for countries that were very dissimilar in size. The discrepancies between small, medium, and large member state categories was also prevalent within the categories themselves. This practice made national representation engraved in European democracy in the long term because the system that provided advantageous position for Luxembourg also worked favorably for France vis-à-vis Germany.

Despite the fact that Germany became the most underrepresented nation in the 1952 apportionment, the real catalyst for such an arrangement was Adenauer’s astonishment at Monnet’s idea of that France and Germany should stand as equals. Monnet mentioned in his memoirs: “Clearly, he could not believe that we were really proposing full equality; and his attitude was still marked by long years of hard negotiation and wounded pride.”<sup>21</sup> A rather generous offer

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<sup>20</sup> Martín Ardanaz and Carlos Scartascini, “Why Don't We Tax the Rich?: Inequality, Legislative Malapportionment, and Personal Income Taxation around the World,” *Inter-American Development Bank Working Paper Series* 282, (2011): 5.

<sup>21</sup> Jean Monnet, *Memoirs*, trans. Richard Mayne (London: Collins, 1978), 309.

by France “at a time German rearmament threatened to transform the balance of power in Europe”<sup>22</sup> was not welcome by all domestic political forces in Germany. The German Socialists led by Kurt Schumacher prioritized German reunification over any integration project unlike Adenauer who thought that a European solution to the problem of German reconstruction could help Germany reclaim its independence and equality on the international scene.<sup>23</sup> In a situation when the most populated country was also the most vulnerable actor in the post-war order, the equality with France was a reward, rather than a punishment.

This historic proposal for a Franco-German alliance under the supervision of a ‘high authority’ aimed, first and foremost, at an alliance of two major powers.<sup>24</sup> This bilateral vision set the tone for further negotiations. The issue of supranationalism, the very cornerstone of the project, caused intense reactions once the project took a turn to a multilateral direction. Before the start of the negotiations among the Six opened in Paris on 20 June 1950, the British announced their firm opposition to the idea of a supranational authority and withdrew from the negotiations after they were deprived of an option to negotiate the very principle of the project. The Benelux countries wanted to take part in the negotiations and accepted to submit themselves to a supranational authority, however, given their size and power, they “had every intention of limiting the supranational powers of the High Authority”.<sup>25</sup> Italy was more concerned about the dominance of France and Germany in the ECSC, rather than the dominance of the High Authority *per se*. Italy requested to be on equal footing with France and Germany to protect its steel industry from Franco-German “super-cartel” and needed assurances to choose Schuman Plan instead of the proposed Franco-Italian customs union.<sup>26</sup>

Although Italy with a population of 49 million was the second largest country in the early integration period after Germany (54 million), the allocation of equal number of seats for Germany and France (44 million) was not questioned for France being the main actor behind the integration process and having the upper hand vis-à-vis Germany in the post-war setting despite its smaller size compared both to Germany and Italy. Therefore, being treated as equals was a concern in Italy because the initial proposal only secured the equality between France and Germany. While the equality of Germany and France was thought to be necessary to initiate the negotiations, the consideration of Italy as an equal partner was a battle won at the negotiation table. The negotiators of small-sized states were less interested in the distribution of power among themselves than vis-

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<sup>22</sup> Ibid., 354.

<sup>23</sup> Ronald Irving, *Adenauer: Profiles in Power* (London: Pearson Education Limited, 2002), 172.

<sup>24</sup> Robert Schuman, “The Schuman Declaration,” Speech presented at Quai d’Orsay, Paris, May 9, 1950.

<sup>25</sup> Dirk Spierenburg and Raymond Poidevin, *The History of the High Authority of the European Coal and Steel Community: Supranationality in Operation* (London: Weidenfeld and Nicolson, 1994), 13.

<sup>26</sup> Ibid., 26.

à-vis the big states because unlike Italy they had fewer reasons to fear their own group members.<sup>27</sup>

Dirk Spierenburg negotiating for the Netherlands in alliance with Maximilien Suetens negotiating for Belgium wanted to introduce an intergovernmental representation of states in a Council of Ministers given that the draft treaty provided an omnipotent status of the supranational structure of the High Authority and its independence from the member states. They convinced the rest, in his words, “with great difficulty and under a sustained barrage of criticism”<sup>28</sup>, to introduce a Council of Ministers whose jurisdiction over intergovernmental matters stands as an exception to the mandate of the High Authority. Albert Wehrer of Luxembourg pressed for establishing a Court given that it would serve the interests of individual countries, especially small countries like Luxembourg, if the High Authority were ever to abuse its powers. Monnet negotiating for France, despite being hesitant about the creation of an assembly for its being yet another limit on the power of the High Authority, had to address concerns raised at home by French Socialists about the lack of democratic control and included an assembly to the first draft of the treaty.<sup>29</sup> The fact that it was a “democratic” control<sup>30</sup> over the High Authority was less of an issue given that the heads of delegates worked more aggressively towards the introduction of an intergovernmental and a judicial control over the supranational authority than a parliamentary one. Although the German delegate led by Walter Hallstein made a plea for a supranational assembly for reasons beyond “control competencies vis-a-vis the High Authority” such as the need for representing the entire community to balance the weight of member state representation<sup>31</sup>, designing the Assembly based on the equality of individuals was not an immediate concern.

It is important to mention that the genesis and institutionalization of early European integration movements were intertwined.<sup>32</sup> The negotiations leading to the arrangement of seats for the Common Assembly of the ECSC of 1952 was inspired by the Consultative Assembly of the

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<sup>27</sup> One exception to this was when Belgium requested more weight in the Council of Ministers than the Netherlands and Luxembourg. They did not have a similar request for the Assembly which was not designed for national representation *per se*. Spierenburg and Poidevin, *High Authority*, 24.

<sup>28</sup> Address by Spierenburg, Commission of the European Communities, *Proceedings of the Symposium Building the Future Together Organized by the European Commission to Mark the 40th Anniversary of the Declaration of 9 May 1950 Brussels, 8 May 1990* (Luxembourg: Office for Official Publications of the European Communities, 1991), 19.

<sup>29</sup> Anne Boerger-De Smedt, “Negotiating the Foundations of European Law, 1950–57: The Legal History of the Treaties of Paris and Rome,” *Contemporary European History* 21, no.3 (2012), 341.

<sup>30</sup> The Assembly, in other words, was desired mainly as another channel for member states to control the High Authority and its main power was designed specifically in relation to this institution. The Assembly was endowed with the capacity to force the members of the High Authority to resign if a motion of censure was adopted by two-thirds of its membership.

<sup>31</sup> Berthold Rittberger, “The Historical Origins of the EU’s System of Representation,” *Journal of European Public Policy* 16, no.1, (2009): 56.

<sup>32</sup> Cohen, Antonin. “The Genesis of Europe,” in *Transnational Power Elites: The New Professionals of Governance, Law and Security*, ed. Niilo Kauppi and Mikael Rask Madsen, (New York: Routledge, 2013), 112.

Council of Europe. The numerical part of apportionment in Consultative Assembly was, of course, not identical to that of the Common Assembly given that there were 87 representatives for ten founding member states in the Council of Europe as opposed to 78 representatives for six founding member states in the ECSC. However, the principle for apportionment was the same: “breaking away from the principle of strict equality between States”<sup>33</sup> and grading member states in groups based on the approximate size of member state populations. In the Consultative Assembly, France and Italy (18 seats each), Belgium and the Netherlands (6 seats each) and Luxembourg (3 seats) were grouped separately.

The distribution of seats for the first Common Assembly also grouped these countries in the same manner with the addition of Germany to the large member category, and with an increase in the number of seats for mid-size and small member state category: Germany, France and Italy got 18 seats each, Belgium and the Netherlands got 10 seats each and Luxembourg was assigned 4 seats. The gradation of countries based on similarity in size was a method that was accepted before by all the five negotiating parties to establish a parliamentary body for a separate international organization. Germany was not a founding member state in the Council of Europe yet agreed to this structure by acceding to the organization in 1950. In other words, the negotiators knew that it was possible to reach a consensus on this method.

This did not prevent the German delegation from working on an alternative method for the distribution of seats and votes in all ECSC institutions based on countries’ total coal and steel production levels.<sup>34</sup> Monnet visited Adenauer to remind him the implications a weighted system favoring Germany would mean for the survival of integration. He also offered Adenauer an absolute equality in *all institutions* of the Community between the two states, not a conditional one, “whether France be a member on her own or with the French Union of overseas dependencies, and whether Germany be the Federal Republic or a future reunified State”.<sup>35</sup> As a result of the normative pressure and the guarantee of absolute equality, Adenauer withdrew “any suggestion of an economic weighting system” made by his representatives.<sup>36</sup>

During the negotiations for the composition of the ECSC institutions, which started only six days before the actual signing of the treaty on 18 April 1951, the fear of the supremacy of the High Authority left its place to the fear of Franco-German domination in the institutions. France and Germany insisted on applying the same seat distribution in Consultative Assembly of the Council of Europe to the future Common Assembly of the ECSC. Schuman argued that the total number

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<sup>33</sup> Ibid.

<sup>34</sup> Spierenburg and Poidevin, *High Authority*, 24.

<sup>35</sup> Monnet, *Memoirs*, 354.

<sup>36</sup> Ibid.

of seats for the Benelux countries should be increased to 18 to match the number of seats for each of the three largest member states because the Consultative Assembly model would have provided 15 seats in total to the Benelux countries. So, that would make the alliance of three small states equal to the share of one big state.<sup>37</sup> At the insistence of Benelux countries, the three countries walked away with 24 seats in total. Luxembourg was given 4 seats for all domestic political forces to get a chance to represent themselves in the Assembly, which made its share incredibly disproportionate to its size. Given that the apportionments of seats in the assembly was discussed during the same conference by the same delegates who discussed the appointment of members to the High Authority and to the Court of Justice and the weighting of votes in the Council, it was unlikely that the discussion for the Assembly would have yielded a form of distribution that was not based on member state representation. In fact, it took years for the issue of apportionment in the EP ever to be an issue of peoples' representation.<sup>38</sup>

The seats of the Common Assembly were apportioned for the first time through *ad hoc* negotiations between member states. The composition of institutions was just an extension to intergovernmental bargaining and the major concern was to make all parties sign the treaty. There was no specific guideline provided for the Community institutions to revise the number of seats in the future. The Article 77 of the ECSC Treaty kept the issue a matter of intergovernmental bargaining: "the seat of the institutions of the Community shall be fixed by common agreement of the governments of the member States."<sup>39</sup> The Common Assembly, however, became involved in the discussions on the distribution of seats, only a year later, when it was assigned the task of drafting "Europe's First Constitution" to create a European Political Community (EPC).<sup>40</sup>

The Treaty establishing the European Defense Community (EDCT) was signed on 27 May 1952 by the same six member states signing the ECSC Treaty. The EDCT mentioned of an assembly that would mirror the composition of the Common Assembly of the ECSC "with three extra seats each for France, Germany and Italy, to reflect that in the EDC the larger countries would have greater weight than in the market for coal and steel"<sup>41</sup> This proves that the underrepresentation of

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<sup>37</sup> Spierenburg and Poidevin, *High Authority*, 25.

<sup>38</sup> The principle of member state representation in the institutional design was appreciated as evident in the address given by Joseph Bech, Luxembourg Foreign Minister, to the Luxembourg Chamber of Deputies on the ratification of the ECSC Treaty: "We have a population of only 300,000 compared with the 150 million people in the all countries participating in the Plan. Our steel output is not even one tenth of that of the entire group. The same is true of our ore production, and we do not produce even a single tonne of coal. However, if we were able to secure a representation greater than that indicated by these proportions, it is on account of the principle of the legal equality of States and the other argument which is unique to our country, the dominant influence of our iron and steel industry in our general economy"

<sup>39</sup> Treaty Establishing the European Coal and Steel Community (Paris, 18 April 1951).

<sup>40</sup> Richard T. Griffiths, *Europe's First Constitution* (London: Kogan Page, 2001).

<sup>41</sup> *Ibid.*, 59.

large countries -or overrepresentation of small countries- was less of an issue in low politics than in high politics. Although this adjustment would have provided better representation for “Europeans”, the motivation for readjusting the number of seats was not to get closer “one-person-one-vote” principle. The purpose was to represent larger member states more accurately in national security matters.

Following the creation of the ECSC and prior to the ratification debates of the EDCT, the six foreign ministers wanted to create an *ad hoc* Assembly<sup>42</sup> in which a Constitutional Committee would work on drafting a new set of political institutions for a projected European Political Community (EPC). The national executives believed that the creation of a joint army necessitated first and foremost a political authority with democratic control. The mandate assigned to the Committee required the design of the draft treaty instituting a EPC to be federal or confederal in its organization, but supranational in its structure with a bicameral legislature. Despite the dominance of pro-European integrationists in the Committee, there were several disagreements concerning democratic equality.<sup>43</sup> Having a federalist vision did not mean a concomitant support for population-based representation. They still had to devise a solution that is acceptable to all parties. Therefore, the final draft was more balanced in its approach to European integration as Spaak summarized in his speech while handing over the draft to the six ministers of Foreign Affairs: “...the document which we now submit to you is the work neither of the maximalists nor of the minimalists in this Assembly”<sup>44</sup>

The draft proposed creating a separate upper house called the Senate elected by national parliaments and a lower house called the People’s Assembly elected directly by citizens. Yet, territorial representation was provided in both chambers. In all discussions regarding apportionment, a need for democratic concession was hinted in order to reach a common ground for further integration, such in the report written by Dehousse: “The distribution of seats in the Peoples’ Chamber ... is not, of course, proportionate to the respective populations of the Member States. The balance of the Community would be better ensured if the larger countries were required to make some sacrifice in the matter of representation.”<sup>45</sup>

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<sup>42</sup> The ECSC Assembly of 78 with the addition of 9 representatives chosen from among the Representatives to the Consultative Assembly of the Council of Europe who were not already members of the ECSC Assembly constituted an “Ad Hoc Assembly”.

<sup>43</sup> Rita Cardozo, “The Project for a Political Community (1952-54),” in *The Dynamics of European Union* ed. Roy Pryce (London: Croom Helm, 1987), 55.

<sup>44</sup> Ad Hoc Assembly instructed to work out a draft treaty setting up a European Political Community, Session of January 1953. Report of the Constitutional Committee. Paris, 20 December 1952, available at [http://aei.pitt.edu/991/1/political\\_union\\_draft\\_treaty\\_1.pdf](http://aei.pitt.edu/991/1/political_union_draft_treaty_1.pdf)

<sup>45</sup> Report on the Institutions of the European Community, by Fernand Dehousse (The Hague, 8–10 October 1953)

The first proposal suggested the distribution of member state seats in the ECSC to be multiplied by 3 for France, Germany and Italy and by 2 for the smaller countries in the EPC, numbering 210 seats in total to match the workload of a deeper integration model. The Senate would keep the distribution of seats assigned to the EDC Assembly based on a higher distribution of seats for the large member states. In the end, instead of using the ECSC Assembly (18, 18, 18, 10, 10, 4) as a model, which provided a lower number of seats for large member states than the EDC assembly had provided (21, 21, 21, 10, 10, 4), and instead of following the first suggestion to use different multipliers for large (3X) and small countries (2X), they decided that both the lower and upper chamber should adopt the EDC model as its basis providing a better representation for large member states both in the lower and upper houses, and that the multiplier for the amount of seats in the lower chamber should be equal for all member states (3X) providing a better position for the small states in the lower house. One exception to the rule that the People's Chamber should be three times the size of the Senate was the addition of 7 seats for French overseas departments and territories. A possibility of increase in the number of seats in the event of reunification of Germany was mentioned, but left aside as it was a problem for the future. France has never been able to get more representation than other large member states except in this draft EPCT, but the Assembly was the first institution that acknowledged the need to make adjustments based on population change. The Ad Hoc Assembly finally adopted the Draft Treaty embodying the Statute of the European Community on 10 March 1953. This final draft provided a Senate of 87 members (21, 21, 21, 10, 10, 4) and a People's Chamber of 268 (63, 63, 70, 30, 30, 12). Although this arrangement kept member state representation in the lower chamber, it was novel for reflecting a compromise based on considerations that were constitutional in nature: such as the functioning and workload of the assembly, the balance between two chambers in terms of small and large member state representation and the accommodation of a prospect for population change.

During the first round of IGC to discuss the Draft Treaty, it was apparent that the executives of member states were going to take the draft treaty as a slight suggestion. With the rejection of the EDC by the French National Assembly on 30 August 1954, the plans for an EPC, the creation of which required stronger will than a European army, died as well along with the first draft constitution of Europe.<sup>46</sup>

The design of a democratically elected bi-cameral parliament was the first significant challenge

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<sup>46</sup> While the Dutch delegation disagreed with a directly elected parliament without a transitional period, the delegations to Belgium, France and Luxembourg avoided seat apportionment discussions to keep the distribution that was already agreed for the EDC Assembly despite its small size. The German delegation was sympathetic to the allocation in the Draft Treaty while the Italian delegation demanded a representation in the lower chamber that is more proportionate to each state's population. The stances on the apportionment issue did not change much in the second round of the IGC.

handled by the members of the Common Assembly. The institutional structure for a European integration was discussed for the first time by “parliamentarians in a public assembly rather than by diplomats working behind closed doors”.<sup>47</sup> The rapporteurs<sup>48</sup> who were involved in the draft Statute of the *ad hoc* Assembly was present in the Common Assembly for many years to come and dealt with institutional questions with the memory of a stillborn constitution. The discussions on the EP’s powers, direct elections, and seat related issues in later years explicitly stated that they used extracts from the Draft Treaty for EPC. In future attempts at apportioning seats, the actors in European institutions always had to keep in mind that the allocation and the size had to be justified to national executives in the Council of Ministers, and to national parliaments if the change takes the form of a treaty.

The predecessors of the EP and the EP discussed seat apportionment primarily as a constitutional matter. This continued during the further integration attempts for a single market and Euratom following the failure of EDC and EPC. The main position of the Common Assembly regarding negotiations leading to the signing of Treaties of Rome establishing the EEC and Euratom was the creation of a single assembly common to all three communities, ECSC, EEC, Euratom by replacing the ECSC assembly in existence. The creation of a single assembly was also desired to prevent the multiplication of regional assemblies in Europe.<sup>49</sup> The three regional assemblies requested a hearing from the six foreign ministers to discuss the specifics of the new Assembly for further integration. Mr. Dehousse justified the necessity of the involvement of regional assemblies in the discussion on the grounds that the new Assembly would have an impact on the mandate and functioning of the existing assemblies. Yet, their suggestions went beyond these issues and touched upon member state representation in the new single Assembly for the three Communities.

The initial proposal by the three ‘Bureaux’ of the Assemblies expected an increase in the number of seats in total to match the workload of further integration and questioned if overrepresentation of small states was justified in a bigger parliament.<sup>50</sup> The discussions to increase the size of the

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<sup>47</sup> Cardozo, “The Project for a Political Community”, 50.

<sup>48</sup> The questions on the political institutions of the EPC were studied separately under the chairmanship of Mr. Teitgen, a Deputy from Popular Republic Movement in France, along with two rapporteurs: Mr. Azara, a Senator in Italy from Christian Democratic Party; Mr. Dehousse, a Senator in Belgium from Belgian Socialist Party. Several members of the *ad hoc* Assembly including Mr. Dehousse and Mr. Spaak also took part in drawing up a report to be submitted to the Council of Europe and a report submitted by the European Movement.

<sup>49</sup> These were the Common Assembly of ECSC, Consultative Assembly of the Council of Europe and the Western European Union Assembly.

<sup>50</sup> Minutes of the joint meeting of the Bureaux of the ECSC Common Assembly, the Council of Europe Consultative Assembly and the Western European Union Assembly of 2 February 1957, available at Franco Piodi, *Towards a Single Parliament: The Influence of the ECSC Common Assembly on the Treaties of Rome* (European Parliament, 2007), 228. [http://www.europarl.europa.eu/pdf/cardoc/plmt\\_50ans\\_en.pdf](http://www.europarl.europa.eu/pdf/cardoc/plmt_50ans_en.pdf)

house always brought about a discussion on the minimum number of seats for small states. Securing one seat for all political forces in Luxembourg to be represented in the Assembly was less of a concern in a bigger parliament, which opened the debate for adjustments to malapportionment. However, in adjusting discrepancy between the size of a country and its number of seats, Mr. Furler, speaking for the Bureaux of the Common Assembly, mentioned that the formula suggested by the ministers (60, 60, 60, 20, 20, 5) was problematic. Instead, he proposed an increase in the number of seats for smaller member states (60, 60, 60, 27, 27, 6) than envisaged in the Ministers' proposal and increase the number of seats from 225 to 240. Although the increase in the share of small member states was a concern raised usually by national executives, this time, it was mainly the members of the Common Assembly who vouched for a more disproportionate representation. However, they still had democratic concerns in mind while trying to keep the total size as close as possible to the Ministers' proposal. The argument mentioned in the minutes of the discussion that the large states should be represented in line with "the principle of voting parity": "The purpose of this modification would be to set aside the - albeit rather notional - possibility that a bloc formed by two large countries might have recourse to an absolute majority in the Assembly, while at the same time preventing it from being placed in a minority."<sup>51</sup>

This arrangement would again equalize the share of three small countries to one big member state and avoid the possibility of an absolute majority formed only by two member states. In the end, the final treaties of Rome created an assembly of 142 (36, 36, 36, 14, 14, 6), which was both a violation of the principle of voting parity and the equality of Benelux to one big member state despite an increase in the number of seats for each member state. The doubling of seats for large members and a smaller increase in the number of seats for small member states adjusted the malapportionment in the ECSC assembly to a certain extent (from 18 per cent to 11 per cent) in favor of large member states. However, the seat percentage of the Benelux countries increased 40 to 50 percent. However, it seems that there was a background condition that makes all of these relative weight debates less significant. A report prepared by the Belgian Chamber of Representatives prior to ratification of the treaties provided a convincing evidence why the member states might have preferred a formula close to doubling the size. Each country was represented one permanent and one substitute team parliamentarians. Considering the absolute need to increase the number of seats in the new assembly of the three new Communities, they wanted match the total number of permanent and substitute representatives available at the Consultative Assembly "in order to permit the appointment of one set of European

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<sup>51</sup> Minutes of the hearing accorded to the delegation from the Bureaux of the three European Assemblies by the six Ministers meeting in Conference at Val Duchesse, Brussels on 4 February 1957 in Piodi, *Towards a Single Parliament*, 221.

parliamentarians.”<sup>52</sup> The practicalities seemed to have played a more significant role in 1957 than in 1952. This was due to the emerging understanding of the difficulties associated with dual mandate among the parliamentarians serving at regional assemblies simultaneously.

This was a formula negotiated and approved by the member states’ executives. The input from the ECSC assembly for the composition of the common assembly for all three institutions of the European integration was largely ignored. Nevertheless, the drafters foresaw the possibility of opening the discussion of apportionment again due to the path set for the direct elections.<sup>53</sup> The mandate that was given to the Common Assembly concerning the election by direct universal suffrage also guaranteed that the Assembly was going to be involved in the debates of reapportionment because any attempt at an electoral choice would require a decision on the distribution of seats. This mandate made the Common Assembly a direct partner in the debate with no need for a special invitation from the member states, as it was the case in the EPC debates and no need to justify their request to be heard during the debates for a single assembly. This decision can be interpreted as that national executives developed a sense of trust in the Assembly’s potential in designing institutions. Although it took almost two decades for the mandate of the Common Assembly to matter in the debate on reapportionment in preparation for direct elections, the founders could not have anticipated that the formula they put in place was going to last for two decades.

## 4.2. Redistribution Mode before the Fixation of the Number of Seats

### 4.2.1. *Representing Europeans Directly*

Although the first enlargement was the first official change to the composition of the EP, the first consideration of reapportionment of seats for all parties in the absence of an enlargement was during the discussions of the introduction of direct elections. The debates before the approval of direct elections, which took place before the first enlargement, were more focused on theoretical discussions of representation and the total size. The debates after the agreement were focused more on the distribution of seats among member states in a way it allows for political parties and ethnic or regional groups to be represented at the EU level.

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<sup>52</sup> Eric Stein, “The European Parliamentary Assembly: Techniques of Emerging ‘Political Control’.” *International Organization* 13, no.3. (1959), 235.

<sup>53</sup> In fact, the need to reexamine the distribution of seats in the event of the introduction of direct elections was mentioned during the ratification debates in German Bundestag which hints that the reform was accepted with the hope of changing it soon. *Ibid.*, 237.

Right after the establishment of the new parliament for all three communities in March 1958, the Committee on Political Affairs set up a Working Party whose members studied the issue of elections and consulted dozens of experts and politicians on their so-called “fact-finding missions”<sup>54</sup>. Under the dual mandate system, appointing too many parliamentarians was perceived as a challenge for national assemblies and political parties which in turn limited the size of an appointed EP. In the case of direct elections, however, there was an agreement over the fact that the default legislation needed to be changed. Mr. Faure, who was responsible to write a report specifically on the composition of the EP, tied this necessity to the change in the source of legitimacy: “It would have been illogical to assume that the number of members agreed upon for an assembly put together by the national Parliaments by indirect suffrage had to be maintained for one recruited in a totally different way”<sup>55</sup>. Given that 100 million voters out of a 170 million inhabitants was going to be called upon to vote after a massive electoral campaign to create a small parliament would be absurd the MEPs thought which “..would rob the polls of all significance.”<sup>56</sup> There was also a belief in that the EP would play a more important role once it is elected, that is, “a circumstance that justifies widening its membership.”<sup>57</sup> Another point mentioned in the report was related to the image of the EU and the EP in general. The prevailing opinion was that if people knew that they were voting for a large parliament, they would have more faith in the representation of diversity of interests in the Six. However, how much of an increase in the total number of seats was appropriate stirred a lot of debates.

The parameters for discussion among the MEPs regarding the magnitude of the increase were the following: “(i) the need for the closest and most frequent contacts possible between electorate and representatives, and (ii) the need to avoid constituencies so vast as to be practically inhuman.”<sup>58</sup> Some wanted to double the membership while others requested a four-times increase. The Working Party finally decided to make a compromise between the solutions proposed the two camps and agreed on a multiple of 3 because too much of an increase would be meaningless before its powers were increased. An assembly of 426 representing 170 million Europeans, they argued, would be close to the size of the US House of Representatives of 435 representing 180 million at the time.

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<sup>54</sup> Report on the representation of the overseas countries and territories within the elected European Parliament (Explanatory statement to the Declaration of Intent) by Mr. Ludwig Metzger, Rapporteur in European Parliament, *The Case for Elections to the European Parliament by Direct Universal Suffrage* (Directorate-General for Parliamentary Documentation and Information 1969), 41.

<sup>55</sup> Report on the composition of the elected Parliament (Explanatory statement to Chapter I of the draft Convention) by Mr. Maurice Faure, Rapporteur” in European Parliament, *The Case for Elections*, 41.

<sup>56</sup> *Ibid.*, 41

<sup>57</sup> *Ibid.*

<sup>58</sup> Mr Faure in Debates of 11 May 1960, European Parliament, *The Case for Elections*, 80.

The basis of representation was also discussed at length. The explanation to the draft Convention stated that the most reasonable approach was to stick to the distribution of seats as between states:

“It is all too easy to argue that the present proportions are somewhat undemocratic... The rather rough-and-ready weighting established by the Treaties of Rome could only really be remedied within the framework of a two-chamber system. What is certain is that if we reopen this issue we shall come up against almost insurmountable difficulties. After all, our Community does not aim at abolishing States. It aims, not at merging them, but at bringing them into association; even the most ardent federalists have never gone farther in their political in their ambitions or in their plans. Consequently, we must continue to be reasonable and retain the present system of weighting.”<sup>59</sup>

Throughout the debates leading to the approval of 1960 Draft Convention on the direct elections, the principle of “one person, one vote” was tied to the creation of a bicameral system because the MEPs clearly did not see the EP as the lower chamber. This is perhaps because the Council was not viewed as the upper chamber at the time-not even until recently- because it had executive functions such as implementation as well as legislative ones and they were indirectly elected members of the governments of their own countries, not the senators chosen to work on Europe-related matters. However, the previous bicameral system designed for the EPC also did not provide equal representation for citizens in the People’s Chamber which brings us to the second point mentioned by the rapporteur, which is the resilience of nation-states brought together in the Community.

The report was written with the memory of the past and with the concern of its approvability by member states. Many MEPs would have designed a more supranational assembly than the one they worked for. They were already aware that they were moving away from member state representation with the way they socialized in the EP as one urged his colleagues to consider the interesting developments in the EP: “the monotony of the daily round and the sedate atmosphere of our discussions should not blind us to the emergence in our Parliament of what may be described as European parties. In this House political, rather than national, considerations prevail.”<sup>60</sup> This point of view would make member state representation less of an issue for the creation of a supranational assembly despite the existing weighting, but not for the equal citizen representation as one MEP said: “What matters at present is not the parties but the elector.”<sup>61</sup>

Some argued for citizen representation to put their national identity to front at times. Mr. Michel Habib-Deloncle, a French MEP from European Democratic Union said in 1969:

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<sup>59</sup> Ibid, 272.

<sup>60</sup> Mr. Droscher of the Socialist group, Debates of 12 March 1969, European Parliament, *The Case for Elections*, 260.

<sup>61</sup> European Parliament, *The Case for Elections*, 274.

“..Now the French would not put up with being worth half a Belgian, Dutch or Luxembourg electors... So I hope that a choice will be made between universal suffrage and weighting, and not for both together because to me they appear to be incompatible. All the principles of the 1789 Revolution, all the principles that led to the introduction of universal suffrage, are opposed to this inequality.”

Mr. Habib-Deloncle proposed an amendment claiming “all citizens of Europe must carry equal weight”.<sup>62</sup> One argument warned that the application a rigid one-man-one vote principle does not always mean more democracy and that it “can be very anti-democratic when combined with an electoral system that is not fair and proportional”.<sup>63</sup>

Those who favored weighted representation viewed it either as a protection of the sovereignty of the small member states or as a protection of minority groups and the regions they represent. The latter stance represents a very familiar fear to that of national democracies: tyranny of majority. The crushing weight of the larger states would risk minority groups. Unlike the rhetoric during the institutional creation, the MEPs who agreed or disagreed with member state representation approached the issue mainly from a democratic point of view.

The Draft Convention of 1960 suggested 426 seats (108,108, 108, 42, 42, 18) and the distribution was in line with the equality of similarly sized member states as instigated by the Treaty of Rome. After 9 years of the Council dragging its feet to consider the Draft Convention to introduce direct elections, Mr. Dehousse drafted a report in 1969 to call the Council to act on the issue, which was interpreted by some as a way for the EP “to prevent any unwarranted decline in its prestige.” The discussion on direct elections was revived in 1969 and the most heated debate was on apportionment *method*. The prospect of enlargement was not considered much in 1960 debate.

The 1974 Draft Convention prepared by the Political Affairs Committee not only changed the 1960 formula but also departed from the equality of similarly sized member states. Schelto Patjin, the rapporteur on direct elections, explained the new formula for 355 seats (71, 67, 66, 65, 27, 23, 17, 13, 6) as “the best possible compromise between the Parliament’s functional efficiency and maximum representation, without taking the existing situation as a general point of departure.”<sup>64</sup> This was a serious attempt to challenge the path dependency. The 1974 draft, also by stating explicitly what criteria resulted in the numbers they suggested, can be considered the first attempt

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<sup>62</sup> Ibid., 272.

<sup>63</sup> Mr. Leninhan, the Sitting of Thursday, 14 January 1974, Convention introducing elections to the European Parliament by direct universal suffrage (Doc. 368/74) in European Parliament, *Elections to the European Parliament by Direct Universal Suffrage* (Secretariat Directorate-General for Research and Documentation, 1975), 113.

<sup>64</sup> Explanatory statement to the 1974 Draft Convention by the Political Affairs Committee, Rapporteur Mr Schelto Patjin in European Parliament, *Elections*, 32.

at providing a constitutional basis for representation in the EP.

The distribution of seats amongst the individual Member States is based on the following criteria:

- the highest degree of proportionality should be achieved between the number of inhabitants of a State and the number of its representatives in the European Parliament;
- all the important political forces of a State should be represented in the European Parliament;
- the new distribution of seats should not lead to a reduction in the present number of any State's representatives.

These criteria can be applied fairly accurately by adopting the following system:

- (a) Up to a population of 1 million each State receives 6 seats. (b) States with a population between 1 million and 2.5 million are given 6 further seats.
- (c) Up to a population of 5 million, each State receives 1 further seat for each additional 500 000 inhabitants.
- (d) For a population between 5 million and 10 million each State receives 1 further seat for each additional 750 000 inhabitants.
- (e) For a population between 10 million and 50 million each State receives 1 further seat for each additional 1 million inhabitants or part thereof.
- (f) For a population exceeding 50 million, each State receives 1 further seat for each additional 1.5 million inhabitants or part thereof.<sup>65</sup>

Although the 1974 Draft was very specific about the size and the distribution of seats, the Resolution, which called upon the European Council to discuss the issue at their next summit, was more flexible in their language setting the number “at between 350 and 400, a necessary prerequisite for a balanced representation of the people and their minorities in the various countries and regions”<sup>66</sup>

The numbers accepted at the European Council meeting on 12 July 1976 was a compromise. It decreased the weighting of member state representation while keeping the status quo of the equality of the similarly sized states (81, 81, 81, 81, 25, 24, 16, 15, 6). The insistence of French both in the EP and in the European Council on citizen representation due to the rejection of the protection of small states was compensated by the fact that they kept an equal status despite being the smallest among the large states -Germany, Italy and the UK. In other words, they favored keeping their equality with large states instead of interfering with the overrepresentation of small states.

Britain was more focused on the total size of the EP in order to secure enough seats for Scotland and Wales because these groups insisted on as many seats as less-populated Denmark and Ireland.

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<sup>65</sup> Ibid., 32.

<sup>66</sup> Resolution of 16 June 1976 (OJ C 159 of 12. 7. 1976, p. 23) in European Parliament, *Elections*, 157.

The fact that the debates for Devolution legislation for Scotland and Wales coincided with the debates on the number of seats in the EP made Britain more concerned about regional politics because of the possibility of irrelevance of London for these regions after the establishment of close ties with the EU.<sup>67</sup> Given that the small states were overrepresented in the EP provided an opportunity for regional groups to ask for the same treatment from their government.

The French decided on a national list to prevent overrepresentation of minority groups as the Bretons, Alsatians and Corsicans and to avoid the EP being an ‘international forum’<sup>68</sup> to raise their concerns which also explains why they did not insist on a higher number of seats than provided for their overseas territories either as they did for the EPC constitution.

There was one interesting divergence from the status quo. The equality between Belgium and Netherlands and the equality between Denmark and Ireland were ended when Belgium ceded the 25th seat to Denmark. Denmark requested this extra seat “to accommodate the demands by the population of Greenland for their own representative”<sup>69</sup> and Belgian Prime Minister Tindemans volunteered to sacrifice one of the earned seats to avoid a deadlock in the Council of Ministers. His initial reasoning was to provide equal representation for Flanders and Wallonia but at the end 13 seats was reserved for Dutch-speaking candidates and 11 seats were reserved for French speaking candidates which made the small German speaking part of Belgium very critical of the Prime Minister’s “present for the Eskimos” as the population of Greenland (45,000) was much lower than that of the German-speaking community (64,000).<sup>70</sup> This arrangement created a lock in for Denmark always having one seat more than Ireland in the history of apportionment. Belgium was only able to get the lost 25th seat back for 1994 elections when the apportionment was renegotiated for all states with the reunification of Germany but it never became on equal footing with Netherlands again.

The discussion on the redistribution of seats for the first direct elections provided ample opportunities for regional, national, and supranational politicians to express their opinions on the issue within the Community. The demand of regional actors for representation necessitated an increase in the total number of seats, which automatically reduced the overrepresentation of small member states to a certain extent. At the national level, it made a difference that every state negotiating for apportionment was also a member of the EU- unlike during the Treaty of Rome

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<sup>67</sup> Christian H. Huber, “Approaches to European Elections”, *The European Parliament: Towards a Uniform Procedure for Direct Elections* edited by Christoph Sasse, David A. Brew, Jacques Georgel, Geoffrey Hand, Christian H. Huber, and Guido Van Den Berghe (Florence: European University Institute, 1981), 150.

<sup>68</sup> *Ibid.*, 114.

<sup>69</sup> *Ibid.*, 93.

<sup>70</sup> *Ibid.*

negotiations and unlike the negotiations for enlargement. The issue of European elections was, by definition, a matter of Europe, which required a different approach than securing one's position at the supranational level.

The supranational level also helped framing the issue as a European issue, which required a European solution. The EP set the debate over the course of 19 years to allow for a diverse representation of populations by showing the possible implications of a small or a large assembly, and different bases of representation. The communication of these considerations also changed the bargaining among member states to the extent that a member felt the need to cede one seat for a population of another member.

Although the member states did not adopt the exact formula, the final formula they agreed upon was very similar to that of the EP in its attempt to decrease the weight of member state representation. The EP had 14.9 per cent malapportioned seats after the first enlargement, and the first redistribution mode decreased this ratio to 8 percent, which has been the lowest malapportionment in the history of apportionment in the EP. Despite the initial success of this first redistribution of seats, the fact that the formula was not tied to a specific procedure made the EP vulnerable to malapportionment with each intergovernmental negotiation because the entering states had the power to negotiate their own seats in the absence of a constitutional procedure for reapportionment in the community. This made the change less sustainable.

#### *4.2.2. East Germany: Accession vs. Population Change*

The integration of the German Democratic Republic (GDR) into the Federal Republic of Germany (FRG) was a significant change not only for Europe, but also for the EC. After the fall of Berlin, three alternatives emerged for the EC to establish a relationship with the GDR: signing an accession agreement with a new member state, signing an association agreement with a non-member state or negotiating a treaty revision in the case of unification so that the Treaties would allow for such a big territorial expansion/annexation of an existing member state.<sup>71</sup> The unification of Germany was completed under Article 23 of Basic Law, which anticipated unification and only required a unilateral declaration by the East Germany of its accession to the West German state. Given that signing an accession or an association agreement was no longer an option, the EC had to decide if this unification required a treaty revision or not. The Commission and the EP after long discussions agreed that there was no need for a treaty revision. This did not mean that there

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<sup>71</sup> Mark Birchen, "The European Parliament and German Reunification", *Cardoc Journals* 5, (2009), 17.

were no institutional questions that needed to be addressed. Given the concerns about German domination in European institutions with the addition of 17 million people, the FDR agreed not to request any more Commissioners or an increase in its voting power within the European Council.<sup>72</sup> Nonetheless, it did demand a reapportionment in the European Parliament to represent the new Germany more proportionate to its population. The EP was very much involved in the process with the temporary committee it set up on the question and with its Legal Service. The Legal Service also mentioned that transitioning period until the next election would also be problematic for representation of the former GDR.

“it would be incompatible with basic democratic principles if, following German reunification, the 17 million inhabitants of what had been the GDR were to be represented in the European Parliament, for a considerable period of time, by Members they did not help to elect”.<sup>73</sup>

The GDR’s insistence on an increased German parliamentary representation at the supranational level and the EP’s systematic and constitutional elaboration of the issue helped other actors to see GDR’s representation as a democratic matter. Given the difficulties inherent to the change in the composition of a directly elected parliament before the end of its term, the Committee on Legal Affairs and Citizens’ Rights in the EP proposed that the former GDR be represented by non-voting observers. With an internal change in the Rules of Procedure, the EP welcomed 18 observers “elected by the citizens of the GDR but nominated by the Bundestag, to the Parliament”.<sup>74</sup>

The reapportionment issue was brought up again during the negotiations for the Treaty of Maastricht. The EP was very much involved in designing formulas. The strict proportionality to population was ruled out with a resolution: “the development of a federal type of European Union has not reached a sufficiently advanced stage”.<sup>75</sup> If Germany continued with extra 18 seats - the number of observers- it would result in a very large parliament, which could not have accommodated more parliamentarians in the case of future enlargement. However, the EP still proposed a distortion from a strict equality of large member states and the European Council agreed on the distribution of seats provided by the EP at Edinburgh European Council in 1992. Yet once enlargement focused negotiations started both Austria and Sweden got one more seats

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<sup>72</sup> Ibid.,20.

<sup>73</sup> Ibid., 21.

<sup>74</sup> European Parliament Resolution of 24 October 1990 on the Community and German unification, OJ of 26 November 1990, No C 295, pp. 31-35 in Ibid., 21.

<sup>75</sup> European Parliament Resolution of 10 June 1992 on a uniform electoral procedure: a scheme for allocating the seats of Members of the European Parliament, OJ C 176, 13 July 1992, p. 72 in Centre Virtuel de la Connaissance sur l'Europe (CVCE), Changes in the number and distribution of seats, available at [http://www.cvce.eu/obj/changes\\_in\\_the\\_number\\_and\\_distribution\\_of\\_seats-en-db0a51da-99ac-4b35-a3c8-78b542b22861.html](http://www.cvce.eu/obj/changes_in_the_number_and_distribution_of_seats-en-db0a51da-99ac-4b35-a3c8-78b542b22861.html)

than the recommended number of seats suggested by the EP.<sup>76</sup>

The German Reunification was again a moment in which the EP set the parameters of the debate and convinced the member states for what it is best for democratic representation in a non-federal entity. This adjustment, just like the one for the introduction of direct elections, was first communicated at the EU level. If the GDR decided not to unify with the West Germany and applied to become an EC member by negotiating an accession treaty, the EP was not going to be heavily involved in this reapportionment. The GDR was probably given about 25 seats to match the number of seats the Netherlands have because of their similar size and the member states were not going to consider the redistribution of seats among themselves to have a better representation in the light of a population change.

The total number of malapportioned seats did not change much with the reform for the 1994 elections following the reunification of Germany (around 54 malapportioned seats in 1990 and 1994). Yet, the newly added 49 seats for the 1994 elections were reallocated in line with democratic equality lowering malapportionment proportionately. The addition of 59 seats for the fourth enlargement to include the representatives of Sweden, Finland, and Austria just a year later in 1995 increased malapportionment raising the number of malapportioned seats to around 72. In other words, the impact of an addition of a fairly large number of seats on malapportionment is not straightforward because it decreased malapportionment in one case and increased it in another case. Although the decrease in the percentage of malapportionment from 10.5 to 9.5 for reunification is not highly significant mathematically, the reform for population change in Germany sticks out as a moment reapportionment was directed towards democratic equality. The redistribution mode before the fixation of the total number of seats was a case of progressive reapportionment.

#### 4.3. Accommodation Mode

All enlargements in the EU have been concluded with accession treaties. These accession treaties replaced the existing apportionment rule with a new one until a treaty of a constitutional nature is negotiated. Although the main changes in the institutional design are made through treaties reforming the EU, accession treaties provide a quick institutional accommodation for the new member states.

Enlargement has usually been discussed regarding its impact on the EU and on the acceding

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<sup>76</sup> Ibid.

member states in political, social or economic terms before or after accession. There is a lack of interest on the question of enlargement and its ramifications for European democracy. Despite a fair amount of literature on the impact of enlargement in the EU institutions, it usually focuses on the change in the balance of power among member states with the change in the voting weights in the Council, which is, as mentioned before, less problematic from democratic perspective for the Council being the upper chamber.

Although the major treaty reforms attracted a lot of scholars who are interested in democratization and constitutional change, accession treaties did not instigate large theoretical debates and were seen as a mere manifestation of the approval of membership, rather than as a set of negotiations altering the institutional structures in a way that matters for democracy in the EU. The obsession with rejected referendums for major EU treaty reforms made the ratification process the center of attention in the EU treaty literature. The rarity of rejection of a negotiated accession treaty attracted less attention as compared to major treaty reforms. We see that accession treaties usually create a path-dependent process that becomes apparent in major treaty revisions as well.

The principle of member state representation was reiterated in 1967 with the Merger Treaty: “all the member states must be represented in every community institution and body. The Community must also remain consistent and avoid any appreciable shift in the existing balance of power between member states”.<sup>77</sup> The need to protect the existing institutional balance of power ensured the resilience of institutional status quo even in the case of enlargement regardless of its democratic implications for the EU. When the goal of keeping the institutional balance of power intact is coupled with the intergovernmental nature of accession negotiations, the issue of finding the most democratic form of representation in the EP becomes less relevant.

The accession negotiations include the following:

“...conferences of an intergovernmental character held separately between the EU and each of the applicants, with regular meetings at the level of ministers (normally foreign ministers) or their deputies (with the rank of ambassadors: for the applicant countries their chief negotiators, and for the EU members their permanent representatives in Brussels)”<sup>78</sup>

The bilateral nature of enlargement negotiations shaped actor positions in a way that it produced different results on democratization than that of reform driven bargains. Despite the Commission’s

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<sup>77</sup> Treaty Establishing a Single Council and a Single Commission of the European Communities (Merger Treaty), (Brussels, 8 April 1965) Official Journal L 152, 13.07.67.

<sup>78</sup> Graham Avery, “The Enlargement Negotiations” in *The Future of Europe: Integration and Enlargement*, ed. Fraser Cameron, (London: Routledge, 2016), 39.

increasingly influential arbitration role between member states and applicant countries, accession negotiations rendered the supranational institutions of secondary importance. The use of individual accession conferences might also have contributed to the increase in the level of malapportionment in two ways. First, as the system prevented the applicant countries to have a common position vis-à-vis the EU, the fear of other candidates getting a better deal might have made the applicant country more insistent on arrangements that eventually led to an increase in malapportionment. Second, the EU's individual treatment of each country based on "*the principle of differentiation*" may have encouraged each applicant to ask for a special treatment.<sup>79</sup> This way of doing things may have restricted the actors to short-time horizons without much considerations of long-time horizons.

The first instance in the accommodation mode is the first enlargement in the Communities to the UK, Ireland and Denmark and Norway following the double veto by Charles de Gaulle. After De Gaulle's resignation, given the political nature of even the acceptance of negotiations by the EC and the shadow of the Gaullist fear of the UK ruining the European integration project, the institutional issues were very much tied to keeping the status quo as much as possible. Therefore, the Treaty of Accession for the first enlargement did not alter the representation of the six original member states (36, 36, 36, 14, 14, 6). Instead, it provided a delegation of 10 for each entering small member states (Ireland, Denmark and Norway) and a delegation of 36 to the UK. While the UK joined the large member club, a new small member category was created for the other three countries.

Although Article 10 of the Act of Accession of 1972 provided 10 seats for Norway, the rejection of accession by a referendum held in 1972 in Norway reduced the total number of seats of 208 by 10 without altering the negotiated numbers of representation in the EP for the existing and incoming member states. This shows that the apportionment was not determined solely based on the ratio of population size of each country to overall population size of 'Europe'.

The first enlargement increased malapportionment of the EP. However, as the previous section showed, once these states became a part of the EC, they agreed to the reduction of member state representation for the first direct elections. In other words, there was nothing during the negotiations that indicated the presence of a position of an acceding country that favored increasing malapportionment in the EP. It was the nature of bilateral agreement that favored the negotiation of number seats vis-à-vis other countries' seats. This particular way of apportionment of seats completely overlooked the EP's overall representative structure with the first enlargement and this

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<sup>79</sup> Ibid.

created a lock-in for the nature of apportionment during enlargements.

After the decrease in malapportionment with an internal institutional reform through redistribution mode, the Greek accession in 1981 showed that the seats were still going to be distributed through ad hoc negotiations in the cases of enlargement without taking into account the prior considerations for the best form of representation that was debated for 19 years for the introduction of direct elections. The Greek accession increased malapportionment again (8.4 per cent to 9.6 per cent) by an allocation of 24 seats. The accession of Spain (60 seats) and Portugal (24 seats) in 1986 caused a decline in malapportionment by 0.03 per cent. The accession of a large country adjusted the overrepresentation of the small member states slightly, but at least it did not result in a significant increase in malapportionment like the subsequent enlargements did.

Greece, Spain and Portugal became members after the introduction of direct elections but they missed the EP elections for the existing parliament at the time. Therefore, each country that entered the EC as part of the Mediterranean enlargement had to hold direct elections individually at their convenience and was not allowed to wait for the next EP elections to replace their national parliamentarians who filled the country seats until their countries could organize a direct election for the remaining term of the parliament in power. This became the rule of thumb for the successive enlargements because the date of accession never matched the date of EP elections because these two spheres were negotiated separately.

As the previous section showed, the representation of East Germany was negotiated in redistribution mode as a population change rather than as an enlargement -which would have been the case if it was decided that the GDR was entering the EC. Although the reunification of Germany also enlarged Europe by 17 million in 1990, the EU only granted observers with no voting power in mid-term. They had to wait until the next EP elections, which happened 4 years later than their unification.

After the abolition of the equality of large member states by granting more seats to Germany than any other large member state, the total number of seats in the EP changed from 518 to 567, and only 12 out of new 39 seats were added to the representation of Germany which meant a 20 per cent increase in its representation. The apportionment for 1994 elections was carefully designed in an intra-community setting. Only a year later in 1995, the Act of Accession of Austria, Finland and Sweden altered the formula by simply adding seats for these countries (21, 16, 22 respectively) without a consideration of its impact on the representativeness of the EP.

This enlargement caused an immense increase in the total number of seats, which started to bring the question of the total size to the fore for two reasons. The first one is that the end of Cold War

and the reunification of Germany required the EU to consider enlarging further to accommodate the newly democratizing countries of the Central and Eastern Europe. Moreover, the commitment to the path for further political integration with the Single European Act in 1986 and the Maastricht Treaty in 1993 required an increase in the powers of the EP to provide popular legitimacy, which could justify an increase in size but not to the point of making the EP dysfunctional.

The original treaties only identified the agent of change for apportionment, i.e. the member states, not a set of objective criteria. The flexible and arbitrary nature of apportionment has been useful at times because it allowed for the peculiarities of each enlargement and the workload that was assigned to the EP given its increasing powers and the increasing population it represents. It was not certain which countries were going to be a part of the Union and with which sequence they were going to be eligible to join if they ever did become eligible. Even in the event of completion of accession negotiations and finalization of decision on the size of the parliament to include an acceding member, it was uncertain if the last negotiated composition was ever going to be practiced. The population size of the incoming members and their size in comparison to existing countries represented in the parliament at the time of their accession might have created arithmetical inconsistencies if a rigid cap with a rigid formula was to be applied. From the EU-6 to EU-28, it has been impossible to take into account every potential change in the size of the EP. Therefore, the size of the parliament along with the distribution of seats has mainly been changed by individual accession treaties for new member states rather than via electoral reforms. Each change introduced in an accession treaty for a specific country or a set of countries was short-lived, by definition, and was doomed to last until the accession of next prospective member state. Before the prospect of enlarging the EU's borders beyond 15 member states, 'the question of how large future assemblies should be' was a practical concern not an existential one.

#### 4.4. Redistribution Mode after the Fixation of the Number of Seats

The reason why the apportionment to accommodate the Central and Eastern countries is considered in redistribution mode rather than in accommodation mode in this article deserves attention. The eastward expansion of Europe was the first major enlargement in the history of the EU, which did not only pose political and economic challenges but institutional ones as well. The negotiations for accession treaties would not suffice to solve main institutional issues such as apportionment on the eve of influx of ten new member states. In the previous enlargement negotiations, the acceding states had to adapt to the EU institutional structure and the size of membership in the EP allowed for additional seats. With the 2004 enlargement, the EU had to adapt itself to the realities of the expansion of its membership.

The EP had 626 seats for 15 member states for almost 9 years. It was already a big parliament and any future enlargement would risk the functioning of the EP. The Treaty of Amsterdam set the cap to 700 in 1997, but the IGC preparing the Treaty could not deal with other pressing institutional questions for the expected enlargement including voting weights in the Council and reapportionment in the EP while trying to reform competences and inter-institutional balance of the EU institutions. The Treaty of Nice dealt with “institutional left-overs” of Amsterdam.

After the conclusion of accession negotiations between the EU and ten candidate countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia) on 12-13 December 2002, at the European Council in Copenhagen, the countries officially acceded on May 1, 2004. A total of 162 seats was provided for the new member states in the Treaty of Nice and in the Accession Treaties as well- which meant a reduction in the number of seats for some of the existing member states because simply following the accommodation mode in order not to challenge the existing composition would have increased the size of the EP to 788. As the next EP elections was scheduled for June 10-13, a month after their accession, the EP had to have 788 members for about a month because it could not have forced the elected representatives of the member states losing seats with the next election out of office before the end of their term. The earned right of democratic representatives came before the functionality. After the 2004 EP elections, the Nice formula was applied and it reduced the number of seats to 732 for 25 member states already violating the cap set at 700 in Amsterdam.

Although some claim that large states are more influential in IGCs leading to “history-making decisions” with treaties, “it is impossible to quantify Member State influence in IGCs”.<sup>80</sup> The inner-workings of an IGC is claimed to be more complicated than the traditional large vs. small state cleavages. There are also a lot of dynamics at play that range from negotiating actors’ knowledge about the EU institutions to the existing member states’ level of content with the existing institutional structure. There are also contextual constraints such as the agenda of negotiations -which conditions the bargaining priorities of member and prospective member states- and the length of negotiations- which speaks to the necessity to form a common position and avoiding deadlock. The negotiations in IGCs are conducted behind closed doors, excluding outside observers. However, sometimes the experts or politicians who took place in the negotiating team of a country share their experience about the dynamics of negotiations. Several people who observed the negotiations on seat apportionment mentioned that it was another venue to fight for voting weights in the Council or to ask for compensation if they lost the battle for the Council.

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<sup>80</sup> Mark Gray and Alexander Stubb, ”Keynote Article: The Treaty Of Nice - Negotiating a Poisoned Chalice?”, *Journal Of Common Market Studies* 39, no.1 (2001): 7.

During the last days of the IGC, the seats and votes were exchanged like “casino chips”.<sup>81</sup> As the seats of all member states were open to debate, compared to previous enlargement negotiations, the Central and Eastern European states had more leverage in claiming for more seats because the EP was a malleable institution in its entirety.

The fixation of the total number of seats has been primarily a mathematical challenge: i.e. the addition of millions of people to the pool of representation; the small size of the incoming states while guaranteeing each of their political forces at least a seat to compete for, the increased discrepancy between the number of people represented by per MEP etc. Yet, it has also been a political challenge. The traditional fear of small states of being underrepresented is coupled with the fear of new member states being underrepresented compared to similarly sized old member states. With the loss of prospect of creating new seats for future members -as it was almost the rule of thumb in accommodation mode- every existing member state could potentially lose one or more of their seats unless they adopted harder bargaining strategies during enlargement negotiations. The entire system of allocation was not discussed to reform representation but to accommodate enlargement at the risk of 'giving in' to 'better negotiators'. In other words, the limits introduced to the size of the EP eradicated the possibility of those sporadic moments of integrative bargaining in the history of reapportionment.

## 5. The Politics of Reapportionment in the European Union

The level of malapportionment, i.e. the dependent variable, is measured at 19 time points which constitutes the entire sample of reapportionment in the history of European integration (See *Table 5*). After the institutional creation, the change in the level of malapportionment has not always been significant. In fact, the percent change in malapportionment score was less than 1 per cent for 10 out of 19 time points analyzed in this article. Although the sign of these slight changes mostly support the general trends, this article relied primarily on changes that ranged from at least 1 per cent to about 7 per cent. If the historical narrative and the direction of significant changes in malapportionment are put together, we end up with two clear pathways: the path that consistently increased malapportionment, and the path that consistently decreased malapportionment (See *Figure 1*).

The only anomaly to these paths is the use of redistribution mode in 2004 for enlargement purposes mainly by national executives which ultimately caused an increase in malapportionment. However, the historical evidence shows that the need for discussing the seats for all member states in an enlargement related framework was due to the limit introduced to the size of the EP. In order to

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<sup>81</sup> Ibid.

make room for new-comers, the member states had to open their seats to debate not to reform representation in the EU, but to ensure maximum gain or at least minimum loss for their country.

The introduction of the first cap size in 1997 with Treaty of Amsterdam can be considered a turning point for the future of these two historical pathways: first, the addition of new seats for incoming members, i.e. the use of accommodation mode, is no longer a possibility and second, the redistribution mode is now a matter of enlargement, rather than of reform, and it will continue being one until an automatic system of reapportionment is in place.

Both the vote apportionment in the Council and the seat apportionment in the EP have long exhibited malapportionment to high degrees. Although the issue has often been handled in political circles or in press as the overrepresentation of a Maltese citizen or the underrepresentation of a German citizen, the historical narrative above showed us that the main determinant of the rise and the decline of malapportionment has not been the clash between small states and large states, it has been the bargaining setting.

The EP started as a highly malapportioned and weak pseudo-lower chamber. Its first apportionment was not at the heart of integration negotiations and it was not discussed from a strictly democratic point of view. It worked as a protection from Franco-German domination which is in fact comparable to measures taken in traditional democracies against the risk of tyranny of majority taken in traditional democracies. Although Pierson argues that “the current functioning of institutions cannot be derived from the aspirations of the original designers”, their decisions can conditions the array of possibilities for the actors to choose from.<sup>82</sup> While the equality of the number of seats for similarly sized states in the ECSC assembly in the default mode was a must in order to proceed with integration in the early era, it created a path dependence during which trajectories have been difficult to reverse. The act of grouping countries was not necessarily a must for further integration in the later years, but once the notion was in place and became a habit, it was easier for those who benefited from the existing institutional arrangements to sustain the institutional status quo actively. However, the fact that small states are the beneficiaries of a malapportioned chamber does not automatically suggest that they are the only status quo supporters in the system as a bloc. The historical evidence showed that small states allowed for a decrease in malapportionment in institutional reform debates. Belgium and the Netherlands, the original beneficiaries are the least overrepresented states among a sample of 22 and France is now the most underrepresented country in the EP. In other words, the actors changed but the rule stayed in place.

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<sup>82</sup> Paul Pierson, “The Path to European Integration,” *Comparative Political Studies* 29, no. 2 (1996): 123-163.

## Conclusion

The increase in the number of small states in the EU over time aggravated the impact of threshold on citizens' equality. In the default mode, the decision on the total number of seats of the EP did not precede the allocation of seats among the member states. Although the size of the EP has always been the part of the apportionment debate, the early drafters were rather flexible in their commitment to a certain size. The flexibility regarding the size was rather a testament to the uncertainties of the integration project. The basis of representation was not merely the size of population -not just voters- but the relative power of each country had at the bargaining table. During the debates on apportionment, power sometimes exhibited itself in material terms (the production/consumption of coal and steel, population size etc.), and sometimes in more abstract and convoluted terms.

Although the issue of apportioning seats among member states in the EP has not always been as contentious as the debate on the apportionment of votes in the Council, the EP's gradual increasing powers -especially vis-à-vis the Council, added to its significance over time. The first evident change has been a significant increase in the number of actors involved in the seat apportionment debates. While the issue was discussed exclusively among high-ranking national executives in the beginning, the EU institutions, especially the EP, claimed an authoritative position over time in setting the parameters for the actual negotiations among member state executives. Particularly after the 2004 enlargement, however, there has been a systematic pressure by multiple actors, - regional political groups, scholarly conventions (Cambridge Convention), and lately the German Constitutional Court- on the decision-makers to change and automatize reapportionment based on a fairer formula. This article found that the widespread recognition of the subject as a significant problem that needs an urgent solution coincided with the halt of EP's expansion.

The impact of accession treaties has been consistently detrimental to the principle of equality for two reasons: first, due to the tendency of entering states to maximize their self-interest while negotiating their memberships, and second, due to the negligence of the existing member states to the change in the weight of their citizens' votes as long as they don't lose an actual seat. These findings do not suggest that widening impedes democratic deepening, it just shows that when the issue of democratic deepening is not discussed in community setting, it might be left aside because the expertise the EP provides has fewer chance to socialize new member states into the idea of a democratic Community.

Malapportionment was adjusted until 2004 mostly by enlarging the pie in a community setting and mainly by the policy drift caused by pro-integrationists in the EP. This method is no longer an

option not only because of the EP's fixed size, but also due to the shift of the venue of redistribution to enlargement negotiations. Redistribution mode after the fixation of the total number of seats is marked by recurring deadlocks followed by constant numerical adjustments. Whether one perceives the problem of reapportionment as the manifestation of a general trend observed in the EU or not, the absence of a sound political road map will continue depriving the EU from committing to a particular form of democratic representation. The danger in perceiving representation in the EP mainly as a "fixed pie to be divided" is a significant challenge for European democracy.

The 'who's got what' approach is no longer sustainable given the historical experience. The solution has to be 'European' as the solutions resulting from redistribution for reform purposes proved to be better in adjusting malapportionment. Neither the equality of individuals nor the equity of states is democratic in and of itself. A good formula of apportionment can be a compromise between negotiating parties, but it should rely on a careful consideration of European integration history and politics.

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## APPENDIX

Table 1: Distribution of Seats in the European Parliament (1952-1999): ECSC- Reunification of Germany

Member States	Joined	Population (2014)	1952	1957	1973	1979	1981	1984	1986	1989	1994
Germany	1951	80767463	18	36	36	81	81	81	81	81	99
France	1951	65835579	18	36	36	81	81	81	81	81	87
Italy	1951	60782668	18	36	36	81	81	81	81	81	87
Netherlands	1951	16829289	10	14	14	25	25	25	25	25	31
Belgium	1951	11203992	10	14	14	24	24	24	24	24	25
Luxembourg	1951	549680	4	6	6	6	6	6	6	6	6
United Kingdom	1973	64351155			36	81	81	81	81	81	87
Denmark	1973	5617345			10	16	16	16	16	16	16
Ireland	1973	4605501			10	15	15	15	15	15	15
Greece	1981	10926807					24	24	24	24	25
Spain	1986	46512199							60	60	64
Portugal	1986	10427301							24	24	25
Total		378408979	78	142	198	410	434	434	518	518	567

Table 2: Distribution of Seats in the European Parliament (1995-2014): Fourth Enlargement- 8th Parliamentary Elections

Member States	Joined	Population	1995	1999	2004	2004	2007	2009	2011	2013	2014
Germany	1952	80,767,463	99	99	99	99	99	99	99	99	96
France	1952	65,835,579	87	87	87	78	78	72	74	74	74
Italy	1952	60,782,668	87	87	87	78	78	72	73	73	73
Netherlands	1952	16,829,289	31	31	31	27	27	25	26	26	26
Belgium	1952	11,203,992	25	25	25	24	24	22	22	22	21
Luxembourg	1952	549,680	6	6	6	6	6	6	6	6	6
United Kingdom	1973	64,351,155	87	87	87	78	78	72	73	73	73
Denmark	1973	5,617,345	16	16	16	14	14	13	13	13	13
Ireland	1973	4,605,501	15	15	15	13	13	12	12	12	11
Greece	1981	10,926,807	25	25	25	24	24	22	22	22	21
Spain	1986	46,512,199	64	64	64	54	54	50	54	54	54
Portugal	1986	10,427,301	25	25	25	24	24	22	22	22	21
Sweden	1995	9,644,864	22	22	22	19	19	18	20	20	20
Austria	1995	8,506,889	21	21	21	18	18	17	19	19	18
Finland	1995	5,451,270	16	16	16	14	14	13	13	13	13
Poland	2004	38,017,856			54	54	54	50	51	51	51
Czech Republic	2004	10,512,419			24	24	24	22	22	22	21
Hungary	2004	9,877,365			24	24	24	22	22	22	21
Slovakia	2004	5,415,949			14	14	14	13	13	13	13
Lithuania	2004	2,943,472			13	13	13	12	12	12	11
Latvia	2004	2,001,468			9	9	9	8	9	9	8
Slovenia	2004	2,061,085			7	7	7	7	8	8	8
Estonia	2004	1,315,819			6	6	6	6	6	6	6
Cyprus	2004	858,000			6	6	6	6	6	6	6
Malta	2004	425,384			5	5	5	5	6	6	6
Romania	2007	19,947,311					35	33	33	33	32
Bulgaria	2007	7,245,677					18	17	18	18	17
Croatia	2013	4,246,809								12	11
Total	2014	506,880,616	626	626	788	732	785	736	754	766	751

Table 3: *History of Reapportionment of Seats in the European Parliament and Modes of Apportionment*

Year	Occasion	Seats	Nature of Change	Modes
1952	ECSC-Treaty of Paris	78	N/A	DM
1957	Treaties of Rome	142	Increase in the total number of seats	RM w/ # of seats ↑
1973	Enlargement (UK-Denmark-Ireland)	198	New seats added for new member states	AM
1979	First Direct Elections in EU-9	410	Increase for all member states	RM w/ # of seats ↑
			Transfer of 1 seat from Belgium to Denmark	
1981	Enlargement (Greece)	434	New seats added for the new member state	AM
1984	Second Direct Elections in EU-10	434	N/A	DM
1986	Enlargement (Spain-Portugal)	518	New seats added for new member states	AM
1989	Third Direct Elections in EU-12	518	N/A	DM
1990	Reunification of Germany	518	No change despite a population change	DM
1994	Fourth Direct Elections in EU-12	567	Complete redistribution due to demographic change	RM w/ # of seats ↑
1995	Enlargement (Sweden-Austria-Finland)	626	New seats added for new member states	AM
1999	Fifth Direct Elections in EU-15	626	N/A	DM
2004	Enlargement (Central/Eastern Europe)	788	New seats added for new member states	AM
2004	Sixth Direct Elections in EU-25	732	Complete redistribution of seats to meet the cap set with Treaty of Nice	RM w/ #of seats ↓
2007	Enlargement (Romania-Bulgaria)	785	New seats added for new member states	AM
2009	Seventh Direct Elections in EU-27	736	Complete redistribution of seats to meet the cap set with Treaty of Nice and enlargement	RM w/ #of seats ↓
2011	Transitional Provision to reflect Lisbon	754	Increase of seats for a few members in mid-parliamentary term to meet the cap set with Treaty of Lisbon (Also, German exception)	RM w/ # of seats ↑
2013	Enlargement (Croatia)	766	New seats added for the new member state	AM
2014	Eighth Direct Elections in EU-28	751	Complete redistribution of seats to meet the cap set with Treaty of Lisbon	RM w/ #of seats ↓

Table 4: Malapportionment in EP and the modes of apportionment

Year	Membership	Modes of Apportionment	MAL L-H INDEX
1952	ECSC-6	Default Mode	0.186
1957	EC-6	Default Mode	0.117
1973	EC-9	Accommodation Mode	0.149
<b>1979</b>	<b>EC-9</b>	<b>Redistribution Mode w/ # seats ↑</b>	<b>0.084</b>
1981	EC-10	Accommodation Mode	0.096
1984	EC-11	Default Mode	0.095
1986	EC-12	Accommodation Mode	0.092
1989	EC-12	Default Mode	0.092
1990	EC-12	Default Mode	0.105
<b>1994</b>	<b>EC-12</b>	<b>Redistribution Mode w/ # seats ↑</b>	<b>0.095</b>
1995	EC-15	Accommodation Mode	0.115
1999	EC-15	Default Mode	0.114
2004	EU-25	Accommodation Mode	0.140
2004	EU-25	Redistribution Mode w/ # seats ↓	0.144
2007	EU-27	Accommodation Mode	0.143
2009	EU-27	Redistribution Mode w/ # seats ↓	0.142
2011	EU-27	Redistribution Mode w/ # seats ↑	0.145
2013	EU-28	Accommodation Mode	0.149
2014	EU-28	Redistribution Mode w/ # seats ↓	0.142

Table 5: Explaining Changes in the Level of Malapportionment Over Time

Year	Occasion	Main Actors	Size of the EP	Mode	MAL <sub>L-C</sub>	%Change <sub>1</sub>	Reason for Change
1952	ECSC-Treaty of Paris	NE <sup>2</sup>	Flexible	DM	18,6% <sup>3</sup>	0%	Institutional Creation
1957	Treaties of Rome	<b>NE + EP</b>	<b>Flexible</b>	<b>RM</b>	<b>Decreased</b>	<b>-7%</b>	<b>Reform</b>
1973	Enlargement (UK-Denmark-Ireland)	<b>NE</b>	<b>Flexible</b>	<b>AM</b>	<b>Increased</b>	<b>+3%</b>	<b>Enlargement</b>
1979	First Direct Elections in EU-9	<b>NE + EP</b>	<b>Flexible</b>	<b>RM</b>	<b>Decreased</b>	<b>-6%</b>	<b>Reform</b>
1981	Enlargement (Greece)	<b>NE</b>	<b>Flexible</b>	<b>AM</b>	<b>Increased</b>	<b>+1%</b>	<b>Enlargement</b>
1984	Second Direct Elections in EU-10	NE	Flexible	DM	Decreased	<1%	Slight Pop. Change <sup>4</sup>
1986	Enlargement (Spain-Portugal)	NE	Flexible	AM	Decreased	<1%	Enlargement
1989	Third Direct Elections in EU-12	NE	Flexible	DM	No Change	0%	No Change
1990	Reunification of Germany	<b>NE</b>	<b>Flexible</b>	<b>DM</b>	<b>Increased</b>	<b>+1%</b>	<b>Population Change<sup>5</sup></b>
1994	Fourth Direct Elections in EU-12	<b>NE + EP</b>	<b>Flexible</b>	<b>RM</b>	<b>Decreased</b>	<b>-1%</b>	<b>Reform</b>
1995	Enlargement (Sweden-Austria-Fin.)	<b>NE</b>	<b>Flexible</b>	<b>AM</b>	<b>Increased</b>	<b>+2%</b>	<b>Enlargement</b>
1999	Fifth Direct Elections in EU-15	NE	Rigid	DM	Decreased	<1%	Slight Pop. Change
2004	Enlargement (Central/Eastern)	NE	Rigid	AM	Increased	<1%	Enlargement
2004	Sixth Direct Elections in EU-25	<b>NE</b>	<b>Rigid</b>	<b>RM</b>	<b>Increased</b>	<b>+3%</b>	<b>Enlargement</b>
2007	Enlargement (Romania-Bulgaria)	NE	Rigid	AM	Decreased	<1%	Enlargement
2009	Seventh Direct Elections in EU-27	NE	Rigid	RM	Decreased	<1%	Reform
2011	Transitional Prov. to reflect Lisbon	NE	Rigid	RM	Increased	<1%	Reform
2013	Enlargement (Croatia)	NE	Rigid	AM	Increased	<1%	Enlargement
2014	Eighth Direct Elections in EU-28	NE+	Rigid	RM	Decreased	<1%	Reform

<sup>1</sup> This is the change in the level of malapportionment for each point in time compared to the previous level of malapportionment

<sup>2</sup> National Executives

<sup>3</sup> 18.6 % of the seats in the EP were allocated to member states that would not have received those seats if there had been no malapportionment

<sup>4</sup> The change in the level of malapportionment is not due to reapportionment; it is due to the slight changes in population in member states.

<sup>5</sup> This reflects a significant change in the population of Germany with no change in apportionment.

Figure 1: Two historical pathways changing the level of malapportionment in the EP

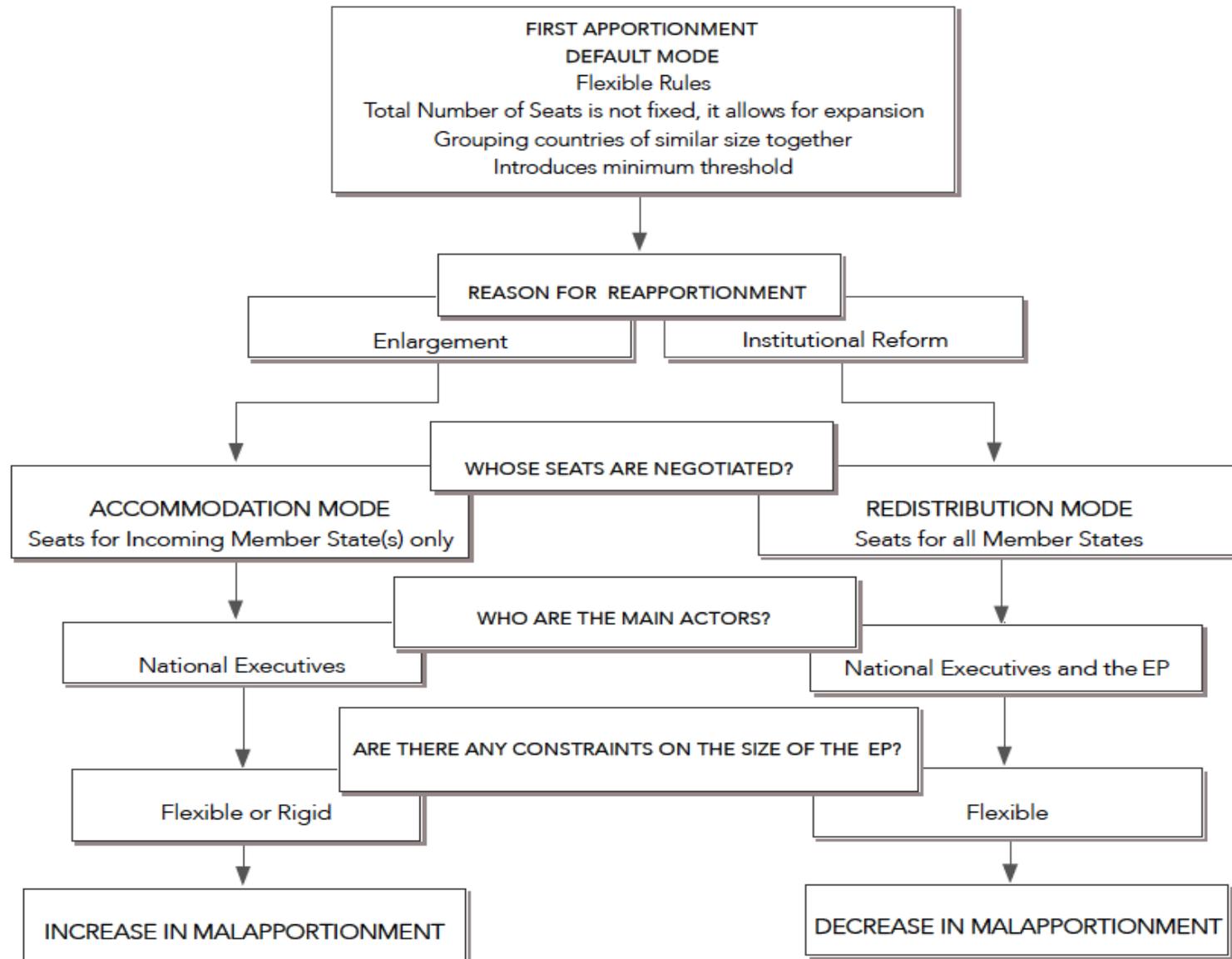


Figure 2: Changes in the Level of Malapportionment in the EP

