Introduction: EU democracy and the Committee of the Regions

This book explores the ways in which the Committee of the Regions (CoR) shapes the European Union’s (EU) policymaking by forging links with other EU institutions and by influencing the way in which policies are framed and debated. Our argument is that the influence of the CoR goes well beyond what can be measured by looking at the formal impact of CoR opinions on EU legislative decision-making (McCarthy 1997, Tatham 2008) and that this influence can only be detected if observation is extended to the networks of formal and informal relations that the CoR builds with other EU, national or subnational institutions and with other organisations and networks that are involved in EU policymaking (see also Carroll 2011, Hönnige and Panke 2013). Based on this observation, we argue that the way in which this influence is developed and exerted reveals the CoR’s contribution to establishing a new type of multilevel democracy at EU level (cf. Möllers 2011). It is a form of democracy that has at its core the two fundamental activities that together define democracy – channelling voice and exerting control – without, however, relying on the conventional chains of delegation and accountability found in parliamentary democracies. As we elaborate in Chapter 1, these activities are part and parcel of what Nadia Urbinati (2006) calls the formation of judgment, which indicates the activities connected with both voice (that is, activating and proposing) and control (that is, receiving and surveilling), as contrasted to the mere expression of will, which denotes the exercise of formal powers.²

¹ Since 2015, the Committee of the Regions refers to itself as the ‘European Committee of the Regions’. Since our work largely pre-dates this decision, we continue to use the previous denomination, Committee of the Regions (CoR).

² We here depart slightly from Urbinati’s terminology. She indicates with ‘voice’ both the active and the passive components of judgment, while we find it clearer to indicate with ‘voice’ the active component of activating and proposing and with ‘control’ the passive components of receiving and surveilling.
Voice and control constitute essential ingredients of any democratic polity. The novel ways in which these two fundamental functions are exercised in the European Union are best detected by studying an apparently ‘minor institution’ like the Committee of the Regions rather than by focusing on other institutions that have a formal role in EU decision-making processes. To place this minor EU ‘institution’ at the centre of our investigation is not a quirky curiosity, but serves a methodological purpose. It aims at addressing broader democratic questions that may paradoxically become more easily obscured if reflection is based on the more formally powerful institutions such as the Council of the European Union (Council), the European Parliament (EP) or the European Council. Because of their stronger role in decision-making, these institutions suffer from the legitimacy deficit that derives from their unconventional position in the formal EU architecture. Because their stronger powers cannot be accommodated in any conventional model of democracy, and yet the scope of the decisions they take continues to expand by design or by default, these institutions are consequently frequently the object of democratic critiques.

The Committee of the Regions, on the contrary, is a consultative body that finds itself in the paradoxical situation of not having the power to be formally and directly involved in EU decision-making and consequently of not having to take direct responsibility for making or blocking any decisions. This does not mean, however, that the CoR is without powers. Its powers are more subtle and are aimed at orienting the debate, framing the issues, suggesting policy solutions and supporting the creation of consensus in other institutions – in a word, exercising voice – thus facilitating decision-making through the force of good arguments and the activation of territorial and political alliances. Once a consensus is built in different institutions and across territories and parties, it becomes almost irrelevant to determine which institution or which governmental level exerts final or overwhelming power over the formal decision. While this type of discursive influence is not easily captured through the conventional tools of formal delegation and accountability, the voice of subnational authorities and their constituencies is nevertheless constructed by weaving a discursive web across territories, parties and institutions.

Control, too, is exerted in a novel way. Since the Treaty of Lisbon, the CoR has acquired the right to monitor EU legislation and to
bring presumed cases of breaches of the principle of subsidiarity (and proportionality) before the European Court of Justice. The definition of this principle has been, in turn, refined by the Treaty and the Protocol on the Application of the Principles of Subsidiarity and Proportionality that has been attached to it. In its application, however, subsidiarity remains a fairly loose term that lends itself to several interpretations. National parliaments, which have also been given a role in guarding subsidiarity (Art. 12b TEU), interpret the concept as limiting EU legislative activity to those areas in which national legislation clearly cannot attain better results. Subnational governments, in their turn, claim that decisions should be taken as close as possible to the ultimate receivers of the policies (which, in practice, often means at regional or local level). While not unequivocally justiciable, the principle of subsidiarity is symptomatic of a new form of surveillance, where accounting for having made a decision at the inappropriate level is not predefined by a static division of competences, nor decided once and for all by procedural choices, but needs to be decided case by case on the basis of good arguments and convincing evidence. Moreover, the Committee of the Regions also contributes to \textit{ex-ante} surveillance by alerting the European Commission (Commission) and the European Parliament of possible breaches of subsidiarity, or other democratic flaws, of proposed legislation even during the elaboration and discussion of legislative proposals.

The book will argue that the CoR is a fundamental component of EU multilevel democracy by describing its evolution and interpreting its voice and control functions in accordance with the recent theoretical debate on EU democracy. In other words, our aim is not only to produce a state-of-the-art description and account of this supposedly minor EU institution, but also and principally to provide a challenging interpretation of its role and significance for EU democracy, and thus advance the debate on democracy in transnational settings. We structure the book in seven chapters.

The first chapter elaborates the new notion of representative democracy that, we believe, is most appropriate for transnational, interconnected settings like the European Union. We believe that it is inappropriate to apply to the European Union standards of democracy elaborated with exclusive reference to national settings, since so many of the defining traits of the nation-state are absent (and are not likely to emerge at EU level in the foreseeable future)
and the institutional architecture of the Union remains sui generis. Yet we believe that the notion of representative democracy, as reconstructed by Urbinati (2006) and as theorised by Hanna Pitkin before her (1967), is fully applicable to the European Union. In referring to this revised notion of representative democracy we make ample use of the terminology proposed by Urbinati, and in operationalising the conceptual tools that she elaborates and in applying them to the reality of the Committee of the Regions we hopefully do not depart too much from Urbinati’s original theorization. By adopting a notion of representative democracy that gives full relief to the formation of judgment, above and beyond the expression of will, we want to draw attention to this very important democratic activity, particularly in interconnected settings. We are comforted in this operation by the works of other political theorists, such as for example James Bohman (2007) and Pierre Rosanvallon (2008), who also stress in their work the importance of contributing to the formation of judgment in both its active and passive components.

The second chapter sets our argument against the background of the existing literature on the Committee of the Regions. This literature has mostly underlined the very limited powers and complex composition of the CoR and has portrayed it as a would-be representative body which, however, could never quite achieve that institutional standing that would allow it to exert real decision-making powers. The most scathing critique of the CoR is that it is an internally divided consultative body that only serves to produce advice that none of the EU institutions is likely to listen to and that could therefore easily be ignored. We start from this conventional wisdom to build a different reading of the creation and evolution of the CoR and to suggest that its particular composition in fact gives this apparently weak ‘institution’ the opportunity to overcome its many divisions and upgrade the representation of subnational constituencies. We therefore propose to look at the unique contribution that the CoR can make to the construction of a new type of multilevel representative democracy.

The remarkable institutionalization of the Committee of the Regions is reconstructed in Chapters 3 and 4, where we highlight the way in which the CoR has gradually equipped itself with the structures and procedures necessary to make a fundamental contribution to the formation of judgment in both its active and passive components.
Chapter 3 looks particularly at the internal institutionalization of the CoR: the development of rules of procedures that allow it to engage in early dialogues about future legislative proposals with the Commission and to work in close cooperation with the relevant EP committees on the elaboration of EU-level legislation and to build a network of contacts with other organizations and institutions. These are fundamental tools to be able to contribute the active components of judgment – activating and proposing – which we interpret as describing the CoR’s contribution to setting the decision-making agenda and alerting, where necessary, the other institutions about the specific territory-related issues that deserve the attention of the Union. Since some of the decisions to which the CoR contributes its opinions must be periodically renewed – like, for example, decisions related to successive programming rounds of cohesion policy – these activities of the CoR are linked to the passive components of judgment – receiving and surveiling – analysed in later chapters.

Chapter 4 looks instead at the ways in which the CoR builds the institutional capacity necessary to exert the passive component of judgment, which we interpret as implementing decisions on the ground, assessing their effectiveness (receiving) and as standing guard over the potential and actual breaches of treaty-enshrined principles such as ‘territorial cohesion’, subsidiarity and proportionality, and democracy (surveiling). In this chapter we therefore illustrate the ways in which the CoR has structured its workings and created tools so as to be able to carry out these important reception and surveillance functions. We particularly look at the potential breaches of subsidiarity, but also more generally at the CoR’s activity in assessing the territorial impact and in overseeing the democratic quality of important decisions, even if they do not belong to the formal remit of the CoR.

The following two chapters illustrate how the CoR performs these important democratic functions in the realm of cohesion policy (Chapter 5) and of euro crisis management (Chapter 6). These are two rather different policy areas, the former being the core area of CoR influence and the latter being an area in which the CoR formally has no competence at all. In Chapter 5 we reconstruct the way in which the CoR contributed to shaping and pushing through a particular interpretation of which regions deserve to receive structural funds, and we also peruse the channels through which the CoR worked in contributing ideas and principles that inspired
the 2014–2020 programming period and the elaboration of new governance arrangements aimed at better attacking the problems of relatively underdeveloped regions. In Chapter 6 we illustrate the way in which the CoR spoke up against the differential territorial impact of the measures implemented to counter the euro crisis and the insufficient consultation on the part of the Commission and Council with the CoR (and the EP) on measures that would have a major impact on the regions and their citizens, leading to a de facto (though not de jure) breach of the subsidiarity principle. In both areas the active and the passive contribution of the CoR to the formation of judgment will become apparent, thus relatively de-emphasizing the importance of holding a formal right of approval or rejection (expression of will), which is instead normally at the centre of power politics analysis.

In the concluding chapter we suggest in what direction the Committee of the Regions might want to further develop its institutional capacity and which battles it may want to pick in order to promote what we consider a more appropriate vision of representative democracy in the highly interdependent context of EU multilevel governance. We would want our analysis and suggestions to inspire not just CoR members, but all those who care about democracy in the European Union, and more generally in Europe, and who think that the exercise of voice and control matter at least as much as the expression of will. In particular, we want to emphasize the very important role that subnational levels of government, and the constituencies therein represented, can play in shaping policy in the highly interconnected setting of the Union and of the globalized world. We hope that our analysis may inspire the future evolution of this minor, but democratically crucial EU institution at a moment when its twentieth anniversary has given rise to manifold reflections about its role and future.