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The European Union: Democratic Legitimacy in a Regional State?

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share “work in progress” before formal publication. It includes papers by the Department’s teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschaftswissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

The 'democratic deficit' represents a greater problem for EU member-states individually than for the EU as a whole. Legitimacy for the EU is problematic mainly if it is contrasted with a national democracy such as the US, which has finality as a nation-state and legitimacy predicated on government 'by, of, and for the people' as well as 'with the people'. Instead, the EU is best considered as a regional state, with divided sovereignty, variable boundaries, multiple levels and modes of governance, composite identity, and an incomplete democracy in which government *for* and *with* the people is emphasized over and above government *by* and *of* the people. This puts special burdens on national politics and demands better discourse to legitimize the changes in national politics.

Zusammenfassung

Das ‚Demokratiedefizit‘ der EU stellt für die einzelnen EU-Mitgliedsstaaten ein größeres Problem dar als für das EU-System insgesamt. Die Legitimität der EU ist nur insofern problematisch, wenn sie mit nationalstaatlich verfassten Demokratien wie etwa den Vereinigten Staaten verglichen wird, deren Legitimität auf dem Grundsatz des Regierens ‚durch, von und für die Bürger‘ sowie ‚mit den Bürgern‘ beruht. Stattdessen scheint es angebracht die EU als Regionalstaat zu betrachten, in dem die Souveränität geteilt ist, die Grenzen variabel und Identitäten gemischt sind, es multiple Ebenen und Formen des Regierens gibt, und in dem die Demokratie unvollständig ist, da das Regieren ‚für und mit den Bürgern‘ über die Herrschaft ‚durch und von den Bürgern‘ gestellt wird. Diese Art der Regierungsform belastet die nationale Politik und erfordert einen besseren Diskurs, um die Veränderungen auf nationaler Ebene legitimieren zu können.

Keywords

Discourse, Democratic Deficit, EU, EU member-states, legitimacy, regional state, comparison US-EU.

Schlagwörter

Diskurs, Demokratiedefizit, EU, EU-Mitgliedsstaaten, Legitimität, Regionalstaat, Vergleich USA-EU.

General note on content

The opinions expressed in this paper are those of the author and not necessarily those of the IHS
Department of Political Science

Notes

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While everyone has been talking about how to alter the architecture of the EU to fix the democratic deficit, they have all been using definitions of democracy appropriate for the nation-state to remodel the EU into something that is decidedly not a nation-state and that can never attain the kind of democratic legitimacy of the nation-state – although it may achieve a different kind of legitimacy in its own right as a ‘regional state’. I use the term ‘state’ for the EU region deliberately here for two reasons: First, I seek to redefine the concept of the state as applicable to something other than the ‘nation’-state rather than trying to find some other less satisfying term which either fails to reflect the regional characteristics, such as proto-state or postmodern order, or which becomes yet another term to define, such as regional polity – which has all the same problems and more than state; or regional ‘empire’, which has enthused some – but doesn’t reflect the democratic self-governing nature of the EU. Second, I expect to show that the EU as a regional state is analyzable according to the same criteria as a nation-state, but with different results on questions of international organizations and state sovereignty, territoriality and boundary lines, governance structures and rules, culture and identity construction, and democracy and legitimacy.

In developing this argument, I contrast the EU with the nation-state that matches it best in terms of size, economic profile, potential power, and even governance system – the United States. The US is defined by its finality as a nation-state, with indivisible sovereignty, fixed boundaries, established government, clear identity, and democratic legitimacy. The EU is better conceptualized as a regional state in the process of development, with sovereignty divided between national and supranational levels, boundaries variable with regard to policy and not as yet fixed with regard to geography, governance multi-level in terms of organization and multiple in terms of modes of governing, and identity composite in terms of culture and nationhood.

Moreover, the EU does not fit the United States’ definition of nation-state democracy as ‘government *by* the people’ through citizen participation, ‘government *of* the people’ through citizen representation, ‘government *for* the people’ through effective government, and what I call ‘government *with* the people’ through consultation with organized interests. Instead, the EU mainly provides democracy ‘*for* the people’ and ‘*with* the people’ – leaving to its member-states government *by* and *of* the people. With such an incomplete democracy, legitimacy has been in question. But this is because the EU is compared to the ideal of the nation-state, and necessarily found wanting. Were it to be reconceived instead as a regional state, and were the democratic status of its nation-states-turned-member-states added into the equation, the problems of the democratic deficit at the EU level would turn out not to be as great as they are sometimes made to appear. However, the problems for national democracy within the context of the EU remain, because national politics suffers from the lack of politics at the EU level, and because national leaders have so far failed to generate ideas and discourses that serve to reconceptualize their national democracies in the context of a regional European state.

In what follows, I consider in turn the EU's move to regional sovereignty from nation-state sovereignty, the variability of the EU's regional boundaries, the multi-level and multi-modal nature of EU regional governance, the composite character of EU identity, and the incompleteness of the EU's democracy. I end with a discussion of the real sources of the democratic deficit in the EU, linked to the lack of politics and discourse.

1. From Nation-State Sovereignty to Regional Sovereignty

Although it began as a regional trade association of nation-states, the EU has gone much farther than any other such associations toward a formal governance system with jurisdiction over a wide range of issues and areas. Among regional associations, only the EU has developed a single currency, a single market, a single voice in international trade negotiation, a single anti-trust authority, common policies on environmental protection, worker safety and health, and even the beginnings of a common foreign and security policy. The EU is in fact no longer just a regional trade association made up of nation-states. It has variously been characterized as 'less than a federation, more than a regime' (Wallace, 1983); as '*un objet politique non-identifié* (an unidentified political object) in former Commission President Jacques Delors' words (cited in Schmitter, 1996: 1); and as something which may be 'the first truly postmodern international political form' (Ruggie, 1993: 139-40). The EU is never characterized as a nation-state even though it is often compared to one when considering questions of power and sovereignty.

Nation-state sovereignty can be seen as being constituted by four main attributes: international recognition from other states; autonomy with regard to the exclusion of external authority; control over activities within and across their borders; and exclusive power to organize authority within the polity (Krasner, 1999). The EU has none of these attributes on its own, although it shares them to varying degrees and in various ways with its member-states which, having 'pooled' their sovereignty in the process of European integration (Keohane and Hoffmann, 1991), accepted limits to all four types of nation-state sovereignty. For example, in international trade negotiations, EU member-states gave up their individual recognition by other states when they agreed to have their interests represented by the EU commissioner for international trade. In the monetary arena, they ceded their autonomy of decision-making to the independent authority of the European Central Bank while in the single market they gave up individual control over what goes on in the national territory by agreeing to joint action initiated by the Commission. What is more, across policy areas, EU member-states have given up their exclusive authority to organize the polity in the process of accepting the precedence of EU institutions in setting policy and in judging compliance in an ever-widening array of domains.

In short, the sovereignty of EU member-states has increasingly become 'divided' or 'shared' through the transfer of nation-state competencies to different EU institutions. Sovereignty needs to be seen as divided. However, if we assume the concept to be a rigid construct, it needs to be seen as indivisible, and an attribute of the nation-state alone, as do most realists in international relations theory. If we were to consider it instead as 'socially constructed' and evolving over time (Biersteker, 1999), then the EU could be seen as constituting a new kind of regional sovereignty. Here, as authority has drifted upward in the process of European integration, as the countries making up the EU have moved from 'sovereign nations' to 'member-states' (Sbragia, 1994: 70), the EU itself has been transformed from a federation of sovereign nations to a new kind of sovereign regions which will continue as such so long as it is accepted on the inside by its own sovereign member-states and is recognized on the outside by other sovereign nation-states.

Sovereignty inside the EU is the product of the continuous negotiations among member-states and with EU institutions over when, how, and in which domains to allow decisions to be taken at the EU level as an act of regional sovereignty. It is important to note, however, that any such formal shift of sovereignty to the EU level has a different significance for each of the member-states, depending upon when and how the decision affected it. In the monetary policy arena, for example, although member-states' sovereignty in terms of monetary autonomy was in principle diminished for all once they joined the European Monetary System (EMS) in 1979 and abandoned with the European Monetary Union (EMU) in 1999, for France, the critical juncture came in 1983 with the 'great U-turn' in monetary policy; for Germany it came only with the abandonment of the Deutschmark; it has not yet occurred for the UK; while for Italy, one could argue that acceding to EMU actually constituted, if anything, a reinforcement of sovereignty.

Sovereignty from the outside, moreover, largely results from the recognition by other sovereign nation-states of EU sovereignty if EU member-states have so decided. In this sense, sovereignty is not just 'socially constructed', it is 'relational', in that it is realized 'through participation in the various regimes that regulate and order the international system' (Chayes and Chayes, 1995: 27; Slaughter, 2001: 285; Keohane, 2002: 748). Thus, for example, the US tacitly accepted the EU as a sovereign region in international trade negotiations when it agreed to the EU Commission's exclusive role representing EU member-states beginning with the Uruguay Round, or in competition policy decisions, even when these scuttle mergers between American companies. However, the US also sees that the EU is far from sovereign in security and defense policy, where the different approaches to sovereignty of the two powers – unitary in the US's external authority, multiple for the EU – are at the source of serious potential problems between the two (Keohane, 2002) – as illustrated in the case of the Iraq war.

It is perhaps fitting that Europe, as the birthplace of the modern nation-state and of the concept of sovereignty, should build on its own inventions by becoming the birthplace of the

sovereign regional state. But as a regional state, the EU's sovereignty is much more contingent than that of the nation-state since it depends not only upon external recognition policy area by policy area but also upon internal acceptance by its member-states.

2. A Regional State with Variable Boundaries

Nation-states tend to be defined also by their territoriality and their fixed boundaries. The EU's regional state, by contrast, has been expanding with no clear end in view on what those territorial boundaries may ultimately be. Questions abound regarding whether Turkey will become a member and, if it does, what about the Ukraine, and even Russia? The EU's boundaries are not only not fixed in terms of territory, they also vary in terms of policy arenas, with differences in membership with regard to the Schengen group of countries, the Eurozone countries, and even ESDP (European Security and Defense Policy), which encompasses all current member-states other than Denmark, but where decisions on troop deployment (and mostly everything else) remain sovereign decisions of member-states and therefore highly variable as well.

The variability of policy boundaries may increase even further if 'enhanced cooperation' allowing groups of member-states to go forward on their own becomes truly viable – enabling, for example, the harmonization of welfare state policies for member-states with similar kinds of pension systems or allowing member-states with common interests to move forward in foreign and security policy. But this sort of differentiated integration or 'variable geometry', whether based on these or other means, has not yet gotten terribly far (De Búrca and Scott, 2000). This is the result of two interconnected objections: First, a 'two speed' Europe is problematic because where there is an advance group there are always also those who take up the rear. Second, uniformity is assumed good for its own sake because it promotes integration whereas anything else could represent moves backward into fragmentation and 'dis'-integration (Scharpf, 2002a). Both such objections have been present in particular in the Commission, with the view that for the EU to advance, it would be best served by doing so together at the same pace in the same way. Opt-outs, therefore, are seen as regrettable exceptions, e.g. for the British and the Danes in the Maastricht Treaty – the first breach of uniformity – and not to be repeated if at all possible. Where the nation-state is the ultimate 'finality', as in the US, such an emphasis on uniformity is perfectly reasonable. It is less so for the EU. In both cases, in any event, the emphasis on uniformity can be problematic where uniform solutions are imposed by the majority on reluctant states or when individual states are left alone to deal with problems that can no longer be adequately solved at the state level, and which might find better solution if addressed together cooperatively rather than individually and often in competition with neighboring states (Scharpf, 1999; 2002a).

But whatever the EU's future variability in terms of policy geometry, and however far the extension of the EU's territory, the EU has already undermined the coherence and coincidence of the territorially-based boundaries of its nation-state members not only in terms of policies but also in terms of culture, economics, governance, and military. Europeanization has been a 'process of nation state *boundary transcendence*, resulting in a process of *de-differentiation of European polities*' after a history of five centuries of progressive differentiation into nation-states (Bartolini, 2002). And for older nation-states, such as the UK and France, such a process of boundary transcendence is arguably more difficult to countenance than for younger ones, such as Germany and Italy.

3. A Regional State with Multi-Level Governance and Multiple Modes of Governing

Just as the EU has no finality in its territorial borders or policy boundaries, so it also has none so far in its governance structures and rules, although the current Constitutional debate is concerned with creating just such institutional 'finality'. The architecture of the EU has been a constant work in progress with regard to structures and rules, which have periodically been up for renegotiation. By way of contrast, the United States has had a kind of structural 'finality' for over two hundred years, given that decision-making still occurs within the parameters established by the founding fathers. It is the unfinished quality of the EU, and its need for continuing adaptability, that explains why some have resisted the 'finality' of a written Constitution (see Weiler, 1999).

But how, then, does the EU's 'regional' governance system compare to the nation-state government of the United States? The EU's institutional structures, like those of the US, follow the general outlines of a federal system, since it has a vertical division of powers between central and sub-national units and a horizontal division of powers between executive, legislature, and judiciary. But in the EU, the vertical division of powers is much less tipped in favor of the center than in the US, given the greater independent powers of the member-states at EU and national level, while the horizontal division of powers is much less separated, given the 'dynamic confusion of powers' between the various branches of EU governance (Schmidt, 1999a). As a result, governance in the quasi-federal EU is more fully 'multi-level' (Marks et al., 1996) as well as more 'multi-centered' (Nicolaidis, 2001) than in the federal US. The member-states in the EU have more independent powers than America's federal states both in the policy formulation process, to shape as well as to veto legislation, and in the policy implementation process, given their role in transposing EU directives and in administering them (along with the regions).

In this multi-level, quasi-federal system, moreover, the governance rules also bear some resemblance to those found in the United States, but again with significant differences. In the

EU, as in the US, there are three main modes of governing: executive action, delegated authority, and joint decision (see Scharpf 2001; 2002a).

The differences between the US and the EU are the greatest in the first mode of governing, in which the executive takes action on its own. Whereas in the US a single executive, essentially the President, has tremendous powers to act unilaterally in a restricted number of domains, e.g., in foreign policy or when legislating by executive decree, in the EU a multiple executive made up of member-state executives can only act multilaterally in the European Council and Intergovernmental Conferences. In this 'intergovernmental' mode, while the EU may show great initiative when its member-states can agree, where they do not, it has little power to act, for example, in the case of the lack of thorough-going reform of EU institutions in the Amsterdam and Nice Treaties, or on Iraq.

In the second governing mode, in which certain authorities have delegated powers to act independently – in both US and EU systems the list includes central banks, competition authorities, regulatory agencies, and supreme judicial courts – the differences between the US and the EU are the least significant. In the EU's 'supranational' mode, however, the delegated authorities have, if anything, more power than those of the US authorities, given the European Court of Justice's 'entrepreneurial' activism, which has gone way beyond anything like that of the US Supreme Court; the European Central Bank's independence, which has been much greater than that of the Federal Reserve Bank; and the Competition Directorate's interventionism, which has been more extensive than that of the Anti-Trust Division of the Justice Department or the Federal Trade Commission.

In the third governing mode, in which a wide range of governmental and non-governmental actors and authorities are engaged in joint action, the similarities between the US and EU systems are also high, although in the EU it is the civil service at the hub of the pluralist process rather than the legislature, with a much greater role for expert committees. In the EU's 'joint decision' mode, however, the process is even more complex than that of the US, given the comitology system (Joerges and Vos, 1999), with arguably more veto points. The wonder, therefore, is that so much legislation has successfully emerged. Had it not been for the presence of certain 'conflict minimizing negotiation practices' in which member-state participants concede on minor political issues in order to be allowed to hold out on provisions with high national political salience, little legislation would have in fact been passed (Scharpf, 2002a). The very complexity of the process, however, makes for real problems with regard to access and transparency.

A fourth mode has recently emerged in the EU which has no equivalent in the US and which is not strictly speaking a governing mode but rather a mode of coordinating action among member-states. The 'open method of coordination' (OMC) relies on member-states' willing cooperation in non-binding agreements that set targets for change in areas such as employment and social policy, with benchmarking exercises in which countries learn from

one another's 'best practices' and are 'named and shamed' if they fail to meet their self-set targets (de la Porte and Pochet, 2002; Trubek and Mosher, 2001). OMC has great potential for moving member-states forward in areas where no intergovernmental, supranational, or joint decisions are possible, although the vagueness of its targets and the self-reporting nature of the exercise could mean that much of it may just be smoke and mirrors.

With these different modes of governing among multiple levels of governance, the EU clearly has one of the most varied and complex of governance systems. And this is only made more complicated by the fact that EU member-states' government systems themselves vary greatly, and have been differentially affected by their participation in the EU governance system. Some member-states' governments largely resemble EU governance in their multiplicity of levels and modes of governing, with horizontal and vertical divisions of power and an emphasis on joint decision, as in federal Germany and regionalized Italy. These member-states have added another level of governance without much disruption to traditional structures and rules (although after some negotiated readjustment in powers in federal states). Other member-states, by contrast, have experienced more disruption, given traditionally greater concentration of power in the executive and greater emphasis on executive action, as in unitary France and Britain (Schmidt, 1999a; 2001). As a result, EU governance is not only multi-level and multi-modal, it is also multi-form, with a differential impact on its member-states.

4. A Regional State with a Composite Identity

Nation-states are also often defined by their sense of 'nationhood', or which binds them through ties of collective identity, shared culture and values, common language(s), historical memories, myths of origin, a sense of membership, and a sense of common destiny. On these grounds, the EU is far from becoming, let alone being, a nation-state. Europeans by all opinion polls identify much less with Europe than with their nation-state or region. Only 4 percent of citizens put European as their primary sense of identity in 1999, as opposed to 45 percent who identified themselves in terms of nationality alone, and 48 percent with some mix of European and national identity (Eurobarometer 52, 1999: 10).

However, national identity is not just a question of 'being' but of 'doing' through national political, economic, and social structures and activities that build a sense of belonging (Howorth, 2000). Moreover, the 'state' in modern history has actively taken a role in constructing a sense of 'nationhood' not only in terms of 'doing' but also of 'being'. If the nation is an 'imagined political community' in which people imagine that they form a community with ties of fraternity limited by territorial boundaries and endowed with sovereignty, then the nation was largely the creation of states which have used mass

communication, mass education, historiography, and conscription to consolidate the nation (Anderson, 1983: 6-7).

The EU has also begun to use some such tools, but to much less effect for a number of reasons, not the least of which is the fact that the nation-states that make up its members continue to be engaged in the self-same task. The EU can be no more than an add-on for two reasons. First, because it depends in large measure on its member-states to build a sense of Europe, given the lack of a common language, Europe-wide mass communication system, political leadership with Europe-wide election campaigns, and so forth. And second, because it is imagined mainly through the different lenses of national identity and purposes. Thus, the Europe represented in the public imagination, at least as portrayed by French leaders, is different from the Europe of the Germans, the British, or the Italians. For the French, Europe is to be like France, with effective governance authority, a strongly-integrated economy, a defense identity, clearly defined borders, and a cultural mission that promotes a high European culture and democratic values. By contrast, for the British, Europe is more of an addition to the nation-state than a clone of it, with undefined boundaries expandable as far as possible, with limited governance authority to promote commerce and trade but not to impose a cultural mission or too many statutory rules, and not to interfere with its other relationship – the Trans-Atlantic one (Brewin, 2000). For the Italians, Europe is the opposite of Italy, and therefore to be embraced for its effective governance, rule of law, transparency with regard to decision-making, and more. Finally, for the Germans, Europe is less defined by what it does than what it is, as a larger entity which subsumes German ‘being’ under its ‘doing’, thereby protecting the country from its own past and bringing it into the future as part of a larger imagined community (Risse, 2001).

As a result of this plurality of nationally-imagined Europes, it is very hard for the EU to have a common identity equivalent to member-states’ senses of ‘nationhood’. But building a sense of European ‘region-hood’ identity is still possible if one accepts its necessarily composite nature – with national constructions of Europeanness alongside EU constructions of Europeanness. ‘Inventing’ Europe at the EU level has been a slow process, however. Although one could argue that the sense of common destiny has been growing for a long time, given the European project since the 1950s, conscious attempts to build other aspects of a European identity started late. Only since the mid 1980s have we seen the creation of symbols with which people can identify, such as the European passport, European license plates, the European flag, the European anthem ‘Ode to Joy’, and most recently the Euro, as well as citizen exchange programs, cross-national research, and school textbook-writing projects (Shor, 2000).

Thus, a composite European identity is being built through the process of ‘doing’, but has yet to get very far with regard to ‘being’. Any such identity, moreover, is unlikely ever to become anything like that of a nation-state, given that the EU’s variable boundaries in terms of policies as well as territory, its multiple structures, modes, and forms of governance, and its

divided, two level sovereignty make it difficult to build a clear and coherent sense of European culture and identity. A future in which one can expect no more than a composite regional identity, while not a problem in and of itself, can pose problems when considering questions of democracy in the EU.

5. A Regional State with Incomplete Democracy and Legitimacy in Question

If the EU is a regional state in the process of development, then it cannot possibly meet the requirements of democratic legitimacy of a nation-state, which is predicated on a country's indivisible sovereignty within a fixed set of territorial boundaries with a given set of institutional structures and modes of governing and a clear national identity enabling the expressing of a collective will. But this does not mean that the EU lacks democratic legitimacy. Much the contrary, since it passes most of the legitimacy tests required of nation-states, only in somewhat different ways.

5.1 Government *by, of, and for* the people

Democratic legitimacy in the nation-state has traditionally been seen as depending upon, in the phrase coined by Abraham Lincoln, 'government *by* the people, *of* the people, and *for* the people'. This means that citizens are guaranteed political participation, representation, and effective government. Often, this is summarized in the distinction between 'input' democracy – consisting of government *by* the people, focused on citizen participation, and generally traced back to Rousseau – and 'output' democracy – consisting of government *for* the people, focused on government effectiveness, and traced back to Montesquieu (Scharpf, 1999). Democracies are naturally seen to require both types of legitimizing mechanisms, with government *of* the people contained in both input and output formulations of democracy insofar as they express the collective will of the people and see to their collective welfare.

In the EU, 'input' democracy, or 'government *by* the people', has generally been much weaker than 'output' democracy, or 'government *for* the people'. Compared to the US or any other nation-state democracy, where national elections in principle consecrate a collective will, providing legislators with a mandate for governing in the interests of the collective welfare, EU elections to the European Parliament do not make the grade. This is for a wide range of reasons, not the least of which is the 'second-order' nature of the elections – where citizens' voting has more to do with national than European issues – and the EP's comparative lack of power (Reif and Schmitt, 1980; van der Eijk and Franklin, 1996). Much of the discussion of the democratic deficit over the years has focused on the fact that the EU does not have a parliament to reflect and express the will of the people in the way that the nation-state does. But how could it? After all, the nation-state by definition has a collective

identity, which is a *sine qua non* for the expression of a collective will. The EU does not, since it has at best a composite identity, as noted earlier, and lacks the collective identity necessary to constitute a *demos* (Weiler, 1999) or to express a collective will. Therefore any 'input' democracy based on the electoral politics of the kind found in the nation-state is not possible in the EU at the moment. Nor is it advisable, since it leaves itself open to populism.

But this does not mean that the EU is therefore necessarily democratically illegitimate. Although there may be no *demos*, or a single people, there are *demoi*, or peoples, who make up the EU '*demoicracy*' (Nicolaidis, 2003). Moreover, the 'will of the peoples' can still be expressed, and is: indirectly and strongly through the national executives sitting in the Council of Ministers; directly but much more weakly through the elected members of the European Parliament. Moreover, if legitimacy means legislating in such a way as to safeguard minority rights while responding to the majority will, then the EU, if anything, does better than most nation-state democracies. Any decision subject to the unanimity rules means that national executives can veto it. And, as we have already seen, the consensus rule – by which any issue with high political saliency is not forced on the concerned member-state – serves to safeguard any minority rights that would not already be protected by the supermajorities (of over 70%) required in qualified majority voting. On these grounds, any fears of a federal 'superstate' are clearly greatly exaggerated, especially if one adds that the EU has much less in the way of taxing, spending, implementing, and coercive powers than any nation-state (Moravcsik, 2002: 606-10).

The dangers of any federal 'superstate' are also diminished by the quasi-federal system of checks and balances embedded in the EU's institutional structures, which protect democratic legitimacy by preventing abuses of power. In this kind of legitimacy, the EU leads all nation-states, given the need for a very high consensus among institutional actors for anything to be agreed. By the same token, however, the checks and balances system can potentially undermine the effectiveness of decision-making and, thus, 'output' democracy *for* the people'. The absence of an EU politics or strong 'input' democracy '*by* the people' akin to that of the US – in which an activating popular consensus can overcome all the checks and balances through the election of a president with an overriding majority in the House and the Senate, able to threaten to pack the Supreme Court, as did Roosevelt – leaves the EU at risk of immobilism, and of undermining the collective welfare as a result, although so far this has not happened.

Moreover, if there are dangers from a federal 'superstate' in the supranational governing mode, then this is something all nation-states face as well, since the kinds of delegated authority given over to the Commission, the ECB, and the ECJ are the same given over to independent bodies everywhere. These are the actions in which independent authorities are believed to be the most legitimate because they are in potentially contested and politicized areas where citizens remain 'rationally ignorant or non-participatory', as in monetary policy; where impartiality is needed to safeguard minority rights; or where majorities require

'unbiased representation', as in anti-trust policy (Moravcsik, 2002: 613-14). In the EU, democratic legitimacy here is based on the fact that all actions follow from the legitimate decisions of the member-states as the outcome of Treaty negotiations, with 'expertocracy' providing for a kind of 'output' legitimacy based on delegated responsibility (Majone, 1998).

The legitimacy problems for the EU in this domain come not so much from any potential violation of political rights from a federal 'superstate', in fact, but rather from the potential clash between two other kinds of rights – economic and social – which also underpin democratic legitimacy in advanced industrialized democracies. This is because while 'negative integration' through the treaty-based, 'market-making' economic policies of the Commission and the ECJ has been relatively easy, 'positive integration' to correct for market spillovers in the social policy arena has been difficult in situations where member-states' preferences are so different, given their divergent social systems (Scharpf, 1999). The danger here is that the economic rights which the EU has a mandate to expand will overwhelm the social rights that member-states will find difficult to protect individually, in the absence of any general agreement – such as by jeopardizing the Scandinavian welfare state by insisting on opening up their high-quality public services to competition (Scharpf, 2003).

5.2 Government *with* the people

Avoiding abuses of power and guaranteeing minority rights while ensuring democratic participation, representation, and effective government are not the only means of reinforcing legitimacy in nation-state democracies. Another kind of democratic legitimacy has come to be added to the original formulation of 'government *by, of, and for* the people', which I call 'government *with* the people' because it opens decision-making up to citizens qua organized interests as opposed to qua voters. This kind of democracy through interest intermediation has gained its greatest support from democratic theorists in the US such as David Truman and Robert Dahl, with roots traced back to Madison's Federalist no. 10, who have portrayed 'pluralist' policymaking as complementing 'democracy *by, of and for* the people'. It represents a way in which minority interests can gain a voice even without a majority vote, through a kind of consultative democracy.

In democracies with pluralist policymaking processes such as the US but also the EU, interests are involved in policy formulation (in the EU as part of its joint decision mode) but not in policy implementation, which tends to be regulatory in nature (and which in the EU could be seen as part of the supranational mode). The problem for democratic legitimacy raised by government '*with* the people' is that it can interfere with government '*by and for* the people' – both input and output democracy – by catering to the demands of interests rather than the wishes and welfare of voters. Moreover, the sheer complexity of any such consultation system can lead to a kind of opaqueness with regard to who is responsible for decisions and who benefits – which is all the more problematic in the EU given that there are

no EU-wide elections *by* the people to set the parameters for the consultations *with* the people. The (partial) solution to this problem in the US pluralist process has been citizen activism and grass roots mobilization to balance out the power of special interests. In the EU's quasi-pluralist process, the (partial) solution has been Commission activism to mobilize citizens and even to create 'grass roots' interest groups (e.g. of women and consumers) at the EU level to counterbalance more powerful and already present business groups along with an increase in transparency.

All EU member-states also have some form of government *with* the people, although in none is it pluralist like the US or the EU. In corporatist countries such as Germany, the Netherlands, Austria, Denmark, and Italy since the early 1990s, where joint decision-making has been the predominant mode of governing, 'government *with* the people' consists of bringing certain 'privileged' interests, mainly business and labor, into policy formulation and implementation. One could even argue that the *partitocrazia* and clientelism found in Italy throughout much of the postwar period was another form of government '*with* the people', since organized interests tied to parties generally got what they wanted in policy formulation and often also divided the spoils in policy implementation. In corporatist systems, the risks to legitimacy are similar to those of pluralist systems, given that the politics of interest may hold sway over electoral politics; in clientelist systems, such risks are even greater, given the potential corruption tied to the politics of interest.

By contrast, in statist countries such as Britain and France, where executive action has traditionally been the predominant governing mode, 'government *with* the people' is ruled out in principle in policy formulation because of its possible interference with government *by* and *for* the people. Here, the legitimacy problem is the converse of that in pluralist or corporatist countries. In catering to the general wishes and welfare of the majority of voters, the specific wishes and welfare of minority interests may be neglected. Ironically, the (partial) solution to this potential problem has been to bring in 'government *with* the people' at the implementation stage of the policy process, through the accommodation of interests. In France, this has traditionally been done by making exceptions to the rules (even though it risks compromising government effectiveness *for* the people'); in Britain, it has involved limiting the number of rules in order to allow for voluntary self-governing arrangements (despite risks to participation '*by* the people') (Schmidt, 1999b).

EU decision-making has a significant impact on both corporatist and statist systems, although more on the latter than the former. The EU's pluralist policymaking processes fit reasonably well with corporatist ones, although they allow even more interests into policy formulation, while policy implementation is not at issue, since the EU generally allows corporatist implementation to stand. The fit is much worse with regard to statist polities, since the EU's pluralist access to interests clashes with the statist proscription against such access in policy formulation while the EU's regulatory model clashes with statist flexibility in

implementation – since derogation of the rules is illegal and statutory rules, rather than voluntary arrangements are the norm (Schmidt, 1999b; 2002b).

Generally speaking, then, all nation-state democracies have sought to increase their democratic legitimacy by adding some form of government *‘with’* the people to bolster government *‘for, of, and by’* the people. But for some EU member-states, i.e. those with statist policymaking processes, government *with* the people in national policy implementation may be curtailed by EU-related decision-making – leading to national problems of legitimacy. At the EU level, by contrast, government *with* the people has continually been reinforced as a way of overcoming the comparative weakness of government *‘by and of’* the people. In the EU, as a result, government *for* and *with* the people is particularly strong, such that effective and consultative governance are expected to balance out the paucity of political participation and direct representation.

The EU, in short, confronts a range of potential problems of legitimacy, but is probably no worse off than most nation-states. But why, then, do people persist in talking of the democratic deficit?

6. The Real Sources of the Democratic Deficit: The Lack of Politics and Discourse

In the popular mind, the EU is seen as having insufficient democratic participation or *‘government by the people’*, which it sees as possible only through the European Parliament; too much *‘government for the people’* through excessively technocratic decision-making by the Commission, which it assumes operates only in the supranational governance mode; and insufficient transparency and accountability with regard to the Council of Ministers or the Commission engaged in *‘government with the people’*. To counter these perceptions is not easy (especially since some have a ring of truth about them), despite the arguments mustered earlier suggesting that the EU can achieve a reasonable amount of democratic legitimacy, albeit not nation-state legitimacy. But even were it possible to convince the public of the legitimacy of the EU, there would still be problems. These result from the impact of the lack of politics at the EU level on national politics as well as the lack of a sufficiently communicative discourse at the national level about the impact of the EU.

6.1 The Lack of Politics

The main problem for national polities is that people miss the simplicity of a system in which one can *‘throw the bastards out’*, even if in the EU one does not really need to (since it has little opportunity to impose, given the consensus model) and one cannot (since the main decision-makers are the nationally-elected executives of the member-states acting in the

Council of Ministers). Perversely, the result is that 'government *by* the people' means punishing leaders at the national level for policies over which they have little control and for which they may not even be responsible, such as in cases of supranational governance or 'output' democracy *for* the people'. In monetary policy, for example, at the same time that the Commission holds Chancellor Schröder to task for risking breaching the 3% deficit criteria, the German public holds him to blame for high unemployment and the declining state of the economy.

Similar disjunctions affect consultative democracy *with* the people' in the EU. Although Brussels holds the key to decision-making in increasing numbers of policy areas, national interest groups in most areas mostly still organize, pressure, and protest primarily at the national level, with relatively little transnational coordination (except for business) (Imig and Tarrow, 2001a). This is as much the case for immigration policy, despite the fact that since the Amsterdam Treaty decision-making has been increasingly focused on the EU level with the move of the policy area from the third pillar to the first (Guiraudon, 2001), as in agricultural policy, although here the long history of CAP policy has led to more EU-focused action, despite the continued predominantly national focus (Klandermans et al., 2001).

Most problematic, however, are the effects of Europeanization on 'input' democracy *by* the people' when national governments, elected on a political platform at the national level, must speak and act at the EU level as representatives of national territorial interests or even national organized interests about policies which, once passed, they then must speak for and act on at the national level in their capacity as political representatives. The result is that they are, therefore, held accountable not only for that for which they may not be entirely responsible but also for that to which they may not be politically committed. The French Socialist government's implementation of EU-led deregulation in electricity is a case in point (Eising and Jabko, 2002). Moreover, because national elections tend to be focused on substantive policy issues that increasingly can only be fully addressed at the EU level, such as immigration, food safety, or economic growth, while European Parliamentary elections tend to focus on more general polity issues that can only be resolved by nationally-based actors, such as how to reform EU institutions, voters have voice over questions that do not count at the level at which they voice them, running the risk of depoliticization and of decreasing citizen engagement in traditional politics (Mair, 2001).

Contentious politics, which can be understood as a kind of democracy *with* the people' when the regular consultation process breaks down, confronts similar difficulties. This is because protests against EU policies tend to target national officials who are accountable for policy implementation but can do little to accommodate the protesters' concerns, as in the case of French and Italian truckers' protests against EU-mandated deregulation, while protests focused on more local issues may find more response from EU officials than national ones, as in the case of the 'euro-strikes' against the closing of French car manufacturer Renault's Belgian plant (Imig and Tarrow, 2001b).

The problems with regard to the lack of EU level politics are not just ones related to policy issues but also to polity issues. Generally speaking, national democratic practices have changed as the focus of governmental power and authority has shifted upward to the EU, as the locus of interest access and influence has moved from national capitals to Brussels, and as national partisan politics has increasingly been subordinated to the national interest politics of the Council, the organized interest politics of the Commission, or even the public interest politics of the Parliament (Schmidt, 2003). What is more, as noted above, the practices of some member-states – i.e. those with unitary states and statist policymaking processes like France and Britain – have been more affected than those of others – e.g. member-states with more federalized states and corporatist policymaking processes such as Germany and Italy – largely due to less institutional ‘goodness of fit’ with the EU’s quasi-federal institutional structures and quasi-pluralist policymaking processes. Such questions of ‘fit’ also affect representative politics, since although all countries have problems with the submerging of partisan politics by the consensus-oriented, non-partisan politics of the EU, the majoritarian politics of countries with unitary states and statist policymaking processes are, needless to say, likely to be more adversely affected than countries with more federalized states and corporatist policymaking processes which tend to have more consensus-oriented (albeit partisan) politics (Schmidt, 2003).

Such changes in national governance practices need not in and of themselves be a problem, however. They are only so if they are not recognized or accepted. And this is *the* problem, because mainstream political leaders in most member-states, instead of acknowledging the changes and seeking to redefine national democracy in light of them, have instead tended to hold on to traditional ideas about their country’s democracy – seeming to suggest that nothing has changed, even though everything has (Schmidt, 2002b; 2003). In fact, while EU-related changes in policy are generally the subject of much national discourse, with national leaders often using the EU as a blame-shifting device to ensure public acceptance, EU-related changes in the polity are mostly passed over in silence – except, of course, during referenda and parliamentary debates over Treaty ratification, and in the UK under Thatcher and Major.

This widespread absence of positive discourse and deliberation about EU-related polity changes means that national publics are generally left without much understanding or legitimization of the impact of the EU on the traditional workings of their national democracies. This is why citizens often hold their governments accountable for policies for which they are no longer fully responsible, organized interests blame them for policies they have comparatively little power to alter, and electorates punish them for policies to which they may not be politically committed. The lack of national legitimizing discourse and deliberation about the impact of the EU, therefore, only contributes to the public disaffection and depoliticization that has characterized national democracies in the last decade of the 20th century and at the beginning of the 21st century (see Klingemann, 1999; Pharr and Putnam, 2000). Moreover, it could even jeopardize the prospects of future integration. Any

such discourse, however, although crucial, is not easy. But it is an essential element of any democracy (March and Olsen, 1995; Dryzek, 1990).

6.2 The Lack of Discourse

In the nation-state, democracy is not just a matter of *institutions*, which guarantee political participation, representation, effectiveness, and consultation – government *by, of, for,* and *with* the people. It is also a question of *interests*, that is, whether people get much of what they want and need, mostly how they want and need it. And it is equally a question of *ideas* – about how democratic institutions should operate and about the balance between individual interests, group interests, and the interests of all. However, democracy is also a matter of *discourse* – that serves to generate and convey the ideas about democracy; mediate, mobilize, or even redefine interests; and infuse institutions with political life. Without *discourse*, the three ‘*i*’s: *institutions, interests, and ideas*, remain at great pains to explain the dynamics of change.

Discourse is important not just in terms of its content, by providing cognitive arguments about the policies and practices of a polity and normative arguments about the appropriateness of such policies and practices but also as an interactive process (Schmidt, 2002a). In its interactive dimension, discourse involves, first, a coordinative process in which policy actors – in ‘epistemic communities’ (Haas, 1992), ‘advocacy coalitions’ (Sabatier, 1998) or ‘strong publics’ (Eriksen and Fossum, 2002) made up of experts, organized interests, and policymakers – together conceive of new policies and new practices. Second, it encompasses a communicative process in which political actors and the public (including informed publics, the media, and the general public) deliberate about such new policies and practices in the ‘public sphere’ (Habermas, 1996; Eriksen and Fossum, 2002).

Although all polities have both coordinative discourses and communicative discourses, some polities emphasize the one, some the other. The coordinative discourse tends to be most elaborate in ‘compound’ polities – countries with federal or regionalized structures, corporatist processes, and/or consensus-oriented representation systems such as Germany, Italy, Belgium, Austria, Denmark, and the Netherlands – where the emphasis on government *with* the people ensures that policy actors and interests are more focused on reaching agreement among themselves and legitimizing such agreement to their own constituencies rather, than on having political actors convey their compromises to the public through the communicative discourse. By contrast, the communicative discourse tends to be most elaborate in ‘simple’ polities – countries with unitary institutional structures, statist policymaking processes, and majoritarian representation systems such as Britain, France, and Greece – where the emphasis on government *by* the people ensures that political actors generally seek to legitimize to the public decisions taken with relatively little consultation with

the most affected interests in the context of the coordinative policy discourse (Schmidt, 2002a).

As a doubly compounded system, with quasi-federal institutional structures, quasi-pluralist policymaking processes, and consensus-oriented politics, the EU has the most elaborate of coordinative policy discourses, the thinnest of communicative public discourse. With its coordinative discourse, the legitimacy of the EU as governance *with* the people is not in question, as EU officials, national government representatives, experts and interests in policy networks, epistemic communities, advocacy coalitions, strong publics, and the like engage in a highly deliberative process in their efforts to reach agreement on policies. With its thin communicative discourse, however, the legitimacy of the EU as governance *by* the people has been open to question. This has led to critiques about the lack of a truly European public sphere (Habermas, 1996) and the difficulties of constructing one given lack of a substantial EU level representative politics, and the paucity of EU political actors able to speak directly to a European public in a common language, reported by a European media, and considered by a European public opinion. Instead, the communicative discourse comes largely by way of national political actors speaking to national publics in national languages reported by national media and considered by national opinion (although one could argue that this still constitutes a European public sphere made up of European member-state ‘publics’ so long as such publics are aware of European issues and the views of other member-state publics on those issues – see Risse, 2003). Only during the Constitutional Convention could one show a truly elaborate communicative discourse in a fully European public sphere, which could contribute to legitimacy as part of government *by* the people (Magnette, 2003).

The EU’s emphasis on the coordinative discourse over the communicative leads not only to the ideational problems discussed earlier, when national political actors either engage in blame-shifting on policy issues or fail to acknowledge the changes in the polity. It also leads to discursive interaction problems related to its differential impact on simple and compound polities.

When it comes to policy issues, compound national polities tend to be least adversely affected by the EU, since the EU simply adds new voices to an already rich array involved in policy construction who are able to speak directly to differing interest constituencies about the new policies they helped construct. By contrast, in simple polities the EU adds voices to a policy construction process the outcome of which national political actors may be alone in speaking to at the national level. This may be why in France, political actors often legitimize the EU-related policies to the public through a communicative discourse that makes little mention of the role of the EU, as in the case of immigration and asylum policy in France (Geddes and Guiraudon, 2002), while in the UK, they blame the EU for piling on the rules.

However, when it comes to ‘polity issues’, that is, changes in governance practices or in policies that challenge traditional ideas about political rights, simple polities may have the

advantage despite the greater EU-related changes in practices. This is because the elaborate communicative discourse in simple polities enables political actors to speak clearly and in a single voice to the public about such challenges if they so choose – although the problem, as noted earlier, is that they have not chosen to do so, whether in France, where political leaders ignore the changes in national governance, or in the UK, where they tend to complain about policy changes while remaining silent on the polity issues (Schmidt, 1999a; 2003). Compound polities, less affected on polity issues because the EU-related changes in practices have not been as great, may nevertheless have a harder time where policy issues threaten economic and social rights, mainly because of the potential cacophony of voices speaking to the issue and communicating conflicting messages to the general public.

7. Conclusion

Thus, at the same that the EU taken as a whole may achieve some kind of legitimacy as a regional state, based on shared sovereignty, variable boundaries, multiple levels and modes of governance, composite identity, and incomplete democracy, its member-states may be losing their traditional legitimacy. National sovereignty is now divided, national territorial and policy boundaries are in the process of ‘de-differentiation’, national identity is no longer exclusively national, and national government structures and rules have changed through absorption into the EU’s multi-level and multi-modal governance system. Moreover, because the EU emphasizes government *for* and *with* the people – through effective and consultative governance – over and above government *by* and *of* the people – through political participation and representation – it thereby puts pressure on national representative politics in particular. National elected officials are held accountable for decisions for which they are not fully responsible, over which they have little control, and to which they may not even be politically committed.

The response by national politicians has often been to ignore such problems by continuing to project traditional visions of national democracy in their communicative discourse, despite the fact that the traditional political order has been transformed by EU-related practices – and more so for simple polities than compound ones – while the traditional economic and social order has been altered by EU-related policies. The result is that citizens may feel an increasingly significant democratic deficit at the national level – even as all attention is focused on the democratic deficit at the EU level. But no remedies proposed by the Constitutional Convention for the EU level, however inspired, will solve the national problems. This can only be done at the national level, by national leaders engaging the public in deliberations on the changes in the traditional workings of their national democracies in light of Europeanization. The opportunity for such deliberations will come if and when national referenda and parliamentary debates are held on a new Constitutional Treaty. But will national leaders take advantage of this new opportunity to engage the

citizenry in deliberations about their own national democracies rather than focusing solely on the new architecture of the European Union? The future not only of national democracies but also of the EU may be at stake.

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