



The EU ‘Crisis of Legitimacy’ Revisited: Concepts, Causes, and Possible Consequences for the European Politics and Citizens

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It is claimed that the EU suffers from a range of difficult-to-identify legitimacy problems, in part because of its complex internal structure and way of functioning – i.e. between various levels of governance and centres of decision-making authority. This paper tries to analyse critically the ‘classical’ concepts of legitimacy and legitimisation, and to see what practical significance these two notions can have for the research on the democratic governance in the EU. Moreover, the citizenship dimension is also addressed by means of considering the possibility for an increased citizens’ participation and, hence, more direct modes of legitimisation of the EU polity and policies.

Introduction

Since its inception in the early 1950s as a coal and steel community of six members, European integration has slowly evolved to encompass an expansive set of policy areas and an increasing number of European countries. Today the European Union (EU) is not only poised to geographically span the entire continent, but it is also capable of influencing the social, political and the economic life of its member states and to represent a wide range of European interests at the international arena.

However much of the recent efforts of the EU elites to drive European integration forward have been hampered by low approval ratings that some policy measures initiated in Brussels have suffered in the member states. At the same time, the majority of the European population has perceived the process of EU decision making as complex and opaque. An added negative factor has been the populist tendency of “blame-shifting” and “hitting Europe” (Beyers and Trondal 2003). A typical example of this has been the tendency of domestic politicians to accuse the EU for a range of economic and social problems at home rather than accept responsibility themselves. The failed Constitutional Treaty referenda in France and the Netherlands in late Spring 2005 dealt a major blow to the plans of the EU elites and promoters of European integration, but these troubles did not come unwarranted. Prior to this the citizens of Denmark (1992), Ireland (2001) and Sweden (2003) had similarly voted negatively and thus gave a serious indication that the “permissive consensus”¹, granted on mainly utilitarian grounds (Panebianco 1996; Scharpf 1997 and 1999a), was rapidly waning. Moreover, the increasing ‘Europeanification’ of various policy areas (Wessels 1996; Scharpf 1997; Olson 2001), which used to be the exclusive domain of the nation-state (such as foreign policy, border control, environmental policy, consumer protection, and even social inclusion and education), has created a widespread sense of apprehension among local politicians and the population that the process of integration might “redefine the political boundaries in

¹ Ronald Inglehart defines *permissive consensus* as a situation where “there is a favourably prevailing attitude towards the subject, but it was of low salience as a policy issue, leaving national decision-makers to take steps favourable to integration if they wished but also leaving them a wide liberty of choice” (quoted in Hodges 1972: 334).

Europe” (Weiler 1993: 18). Finally, through the application of rather unorthodox principles such as subsidiarity, proportionality and the open method of coordination (OMC), and by using different formal and informal networks of stakeholders, the multilevel governance of the EU has been questioned, together with the capacity of the national institutions to effectively protect the citizens’ interests against encroachments “from above” and “outside” their own state (Scharpf 1998; Streeck 2000).

The aim of this paper is to draw attention to the various EU legitimacy problems. First, it tries to critically review the academic literature on legitimacy and the types of legitimisation in different contexts – national, European and sub-national. Secondly, it attempts to identify the primary sources of legitimacy deficit in the EU and the potential reasons for them. Finally, the conclusion tries to link the issues of legitimacy and legitimisation with the possibility for increased citizens’ participation and representation within a multilevel governance system.

Forms of Legitimacy and Modes of Legitimation at the National and Supranational Level

Studies of legitimacy problems in various political contexts largely disagree about what legitimacy is and how to define this concept. They nevertheless do concur that it has something to do with public support for political decisions, personalities and institutions (Blondel 1995: 62; Lord 2000: 1). Some scholars posit that legitimacy can be achieved if there is both attitudinal and behavioural support by the ruled, for the rulers and their policies (Linz and Stepan 1996: 3). Conversely, no regime, even the most autocratic ones, can survive without the support, implicit and/or explicit, of its citizens. Hence political regimes try to foster popular support by creating the appropriate political and social institutions, as well as by promoting active relations with the representatives of civil society. It should be emphasised, however, that an important part of this process is played by the rule of law, particularly constitutional rules, as a means of establishing and formalising different channels of support (O’Donnell *et al.* 2004).

Support granted by both individuals and organisations may vary substantially depending on the circumstances. Hence it should not be conceptualised as a fixed point but instead as a continuum. Support may also be general (for the overall political system) or specific (for individual policies) (Easton 1965: 311-19; Blondel 1995). At the same time, acts of government can be perceived as legitimate for what they achieve (substantive legitimacy) and for how they do it (procedural legitimacy) (Weber 1946) Thus legitimacy implies the existence of a trade-off between efficiency and policy stability on the one hand, and normative justice and political style on the other (Lipset 1983; Diamond and Lipset 1994).

A number of academics have tried to define legitimacy as follows:

“Legitimacy involves the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society” (Lipset 1984: 88).

“A shared expectation among actors in an arrangement of asymmetric power, such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to the pre-established norms. Put simply, legitimacy converts power into authority – Macht into Herrschaft – and, thereby, simultaneously establishes an obligation to obey and a right to rule” (Schmitter 2001: 2).

In addition to the problem of definition, many have also puzzled over the possible methods of assuring legitimacy for a governing authority. Arguably the ‘process’ of legitimation is somewhat different from the ‘object’ of legitimacy. Weber for example identifies three ways of securing legitimation (or “three pure types of legitimate authority”): rational, traditional and charismatic (Weber 1964: 328). More recently Scharpf has argued that legitimacy can be secured either on the input or output side of government: input legitimacy implies democratic selection of office holders, public consultation and electoral approval political programmes; while output legitimacy refers to the necessity of attending directly to public needs and thus ensuring that policy follows public preferences and attitudes (Scharpf 1997).

The legitimization of policies and decisions at the supranational level diverges significantly from the way legitimacy is traditionally secured at the state or sub-national level. For instance, Wallace concludes that political identity, loyalty and affiliation do not usually operate in the same way at various levels of governance (Wallace 1993: 100). According to a neo-functionalist interpretation, the pursuit of different shared sectional benefits promotes a “patchwork quilt of support” across many and diverse societal interests and policy areas (Haas 1958: 16). Furthermore, Panebianco (1996) distinguishes theoretically between utilitarian and affective support¹ for the EU amongst citizens, providing evidence to support the claim that it is the former that usually predominates (Panebianco 1996: 5).

Yet there are many other ways of supporting the EU institutions and policies. One particular strand of research is concerned with the importance of law, both national and international. For instance, Weiler refers to the ‘formal’ or constitutional legitimisation of the EU, since he suggests that the creation of all European institutions has been sanctioned by law (Weiler 1993: 19; Weiler 1999b). Both Obradovic and Scharpf agree that the sole use of law and the implementation of constitutional reforms are not sufficient to provide adequate legitimacy for European governance, but its role should nevertheless be taken into serious consideration (Obradovic 1996: 197; Scharpf 1994: 220). Finally, Höreth concludes that the legitimisation of the European multi-level system presents a multidimensional and complex problem in and by itself. For this reason international law helps to structure the process (Höreth 1998: 30)

A number of social scientists concerned with the legitimacy problems facing the EU have identified at least four principal types of legitimisation (Scharpf 1994 and 1999b; Höreth 1998 and 2001; Weiler 1999):

- 1) *Output legitimacy*: support, granted on the basis of improved efficiency in provision of goods and services, as well as an increased European problem-solving capacity - **government for the people**;
- 2) *Input legitimacy*: Direct legitimisation through the elected European Parliament; citizens’ participation and consultation; and better transparency in taking decisions - **government by the people**;

- 3) *'Borrowed' legitimacy*: Indirect legitimation through the member states and their democratic representatives operating at different levels - **government of the people**;
- 4) *Constitutional legitimacy*: Formal legitimation through European and international law - **government by the 'rule of law'**.

Numerous studies on the relationship between European governance and democratic legitimacy have pointed out that the supranational authorities have traditionally relied on the first and third types of legitimisation (Scharpf 1994 and 1999b; Wessels and Diedrichs 1997; Höreth 1998; Moravcsik 2002). On the one hand, the technocratic and utilitarian function of EU institutions (i.e. their capacity to redistribute various resources and allocate political and social values in a relatively efficient manner [Majone 1996 and 2001]) has always been seen as an important underpinning for the 'permissive consensus' on the part of the European public. On the other hand, the democratic rule of law' within the member states and the expanding scope of the Community law, achieved through the series of formal revisions of the EC/EU treaties and the legal activism of the ECJ, have been viewed as instrumental for the supranational institutions to 'borrow' legitimacy from democratic experience of the member states (Obradovic 1996). Today some academics (notably Moravcsik 2002 and Crombez 2003), but also EU officials, maintain that the EU is sufficiently legitimate by referring to the national level as a source of popular support, as well as to the limited capacity of national representatives to influence supranational decision making. For instance, in the White Paper on Governance (2001), attention is drawn to the fact that "[t]he Union is built on the rule of law; it can draw on the Chapter of Fundamental Rights, and it has a double democratic mandate through a Parliament representing EU citizens and a Council representing the elected governments of the Member States" (Commission 2001a: 7).

The above explanations concerning the predominant sources of legitimisation in the EU are essentially valid, but not sufficient to support the legitimacy credentials of the Union as a supranational organisation and a qualitatively different kind of polity. It is true that the European Parliament (EP) is directly

elected by the European citizens, but it is the only such EU institution. At the same time, the elections for EP suffer from very low turnouts in some member states, while its legislative and decision-making powers remain comparatively weak (with national legislators).

During the last two decades profound changes relating to the formal requirements of both the internal functioning and international legal position of the Union have taken place. The expansion of EU competence since 1992 and the further detachment of the national and supranational levels of authority has left both national politicians and civil society groups demanding more transparency and accountability from European officials in Brussels. It has therefore become axiomatic that EU citizens should be given a greater say in European matters. As Schimmelfennig has argued, "The more power over issues of core state sovereignty and redistribution was transferred to the European level, the more the Community was in need of its own sources of direct popular support" (Schimmelfennig 1996: 2). Since the mid-1980s different forms of input legitimacy for the citizens and interest groups have been conceived, but very few implemented in practice. For instance, the creation of formal European citizenship in the early 1990s and the debate initiated by the White Paper on Governance on the role of 'civil society' in Europe have produced almost no substantive results with respect to EU legitimacy (Warleigh 1998; Bellamy and Warleigh 2001; Eriksen 2001; Höreth 2001).

In the next section the causes of the EU's legitimacy challenges are identified and analysed. Moreover, arguments for and against the existence of a 'legitimacy crisis' in Europe will be assessed and its potential impact on European governance evaluated.

Identifying some of the legitimacy problems in the EU ***A crisis of popular democracy?***

A crucial test for the popularity of the treaty reforms introduced over the 1980s and 1990s came with the series of national referenda to ratify the new Treaty on European Union (TEU) in 1992/3. The outcome of those referenda

continues to underpin the perception of a legitimacy crisis today. In France and Ireland for example ratification was only narrowly achieved, while voters in Denmark initially rejected the Maastricht Treaty on 2 June 1992 (subsequently reversing their decision a year later on 18 May 1993). Subsequent referenda, such as those following the IGC in Nice 2000 and the Swedish referendum in September 2003 to join the single currency (EMU), similarly reveal neither widespread approval for specific EU policies, nor public support for domestic political leaders who negotiated at the supranational level. This has been compounded further by a number of high-profile corruption scandals which shook the European institutions during the late 1990s and led to the resignation of the Santer Commission in 1999. In the autumn of 2003, allegations of misappropriation of Community funds and corruption amongst EU officials led to a series of financial revisions in Eurostat (the Statistical Office of the European Commission) and the European Commission offices in Brussels. The cumulative effect of these developments for European citizens has been to reinforce the perception that the European institutions are inefficient, distant and unaccountable, while for the EU bureaucracy concern at rapidly declining popular legitimacy has been mounting (Blondel *et al.* 1998).

As a result, in the second half of the 1990s reference to a 'legitimacy crisis' or 'democratic deficit' emerged at the heart of the European institutions (European Parliament 1996; Lebeccis and Paterson 1997 and 1999; European Commission 2001a and 2001b). Since the 2000 there has been an ongoing debate amongst academics about whether the EU suffers from a profound 'democratic deficit' or is simply characterised by a temporary lack of support by the European citizenry and domestic political elites (see Eriksen and Fossum 2000; Schmitter 2000c; Moravcsik 2002; Crombez 2003). Regrettably the debate has more recently reached something of a stalemate seemingly because most social scientists could not agree on the existence of a 'democratic deficit' despite the concern of European officials and national elites (European Commission 2001a; Laeken Declaration 2001); and because of a tendency to conflate the concepts of 'democratic deficit' and 'legitimacy

crisis' which has invalidated part of their normative arguments (for a critique see Jolly 2003).

A related problem is that many tend to unintentionally draw conclusions about European (supranational) democracy by applying the same political standards that are applicable to the national level (Banchoff and Smith 1999). This 'isomorphism' between the quality of the political regime in the member states and in the EU is misleading for those concerned with the democratic/legitimacy deficit at the European level. It should be stressed for example that the EU is still a 'polity in the making' (Schmitter 1996; Chryssouchoou 1998 and 2001) without a final institutional and legal endpoint. The EU also lacks a supranational system of political parties and a relatively permanent political elite who could rely upon established channels of competition and representation between the various levels of governance. Ultimately there is no guarantee that the grounds for legitimising the EU policies would be 'conventional,' i.e. as in the member states. It is quite possible that the norms of institutionalisation and the operation of the EU will be different and even contrary to the ways that national authorities justify their decisions (Beetham and Lord 1998; Schmitter 2001).

A crisis of political and social transformation?

Lipset once commented that "the crisis of legitimacy is a crisis of change" (Lipset 1984: 89), a statement that appears quite appropriate in describing a regional block composed of national polities and a 'polity in formation' (Sbragia 1992; Schmitter 1996; Chryssouchoou 1998). Despite the intense debate, the various legal reforms undertaken by successive IGCs since Maastricht have confirmed that the more the EU has changed, the more opposition it has provoked both at the national and at the supranational level. For instance, it has been established that the practice of 'switching the burden' or 'blame-shifting' from the national to the European level has been increasing more recently (Eriksen and Fossum 2000; Beyers and Trondal 2003). At the same time few solutions have been proposed as to how to address domestic policy problems without arousing public discontent, against unpopular measures taken at the supranational level.

Three major causes for the relatively low legitimacy rating of the EU institutions and the governance regime as a whole have been identified (Schmitter 2000c; Pollack 2000):

First, there has been increasing evidence that national politics in both established and fledgling democracies currently suffer from a general crisis of legitimacy, accompanied by the rise of extremist and populist tendencies in society (see Mair and Katz 1994; Mair 1995 and Mény and Surel 2000). 'Symptoms of morbidity' of the political system, such as an overall disapproval of the performance of the political institutions, low voter turnout in elections and falling party membership have increased in many countries. Overall citizens feel that something is not working well in modern democracies and that political and social interests are not well-protected in the face of various global processes, including European integration and disintegration (Offe 1999; Scharpf 1997 and 1999a).²

Second, recent studies of European public opinion have shown that there has been an increasing awareness amongst the EU population about the operation of the majority of the Community institutions, especially among the middle age and younger generations. The survey data (see the Eurobarometer results for 1995 and 2002) demonstrates that European citizens are beginning to realise that supranational governance and decisions taken in Brussels can generally have 'unexpected', and sometimes 'undesirable', effects on their daily lives (Dehousse 1995; Mény *et al.* 1996; Peterson 2003);

Finally, with growing criticism of neo-liberal economic policy, emanating in particular from the rise of new and increasingly vocal anti-globalisation movements, international entities such as the EU have been perceived as

² *Utilitarian support* "for the supranational institutions is support for integration which stems from a recognition of common interests and positive, mutual benefits that will result" (Lindberg and Scheingold 1970, quoted in Panebianco 1996: 5). *Affective support* is "emotional support which may exist between peoples, and which may also comprise a sense of common identity" (Deutsch, quoted in Panebianco 1996: 5).

increasingly unaccountable and distant from the concerns of both ordinary citizens and part of the transnational political and business 'elite'. Recent organised protests against the meetings of the World Trade Organisation (WTO), the G8, the International Monetary Fund (IMF) and the EU suggest that there is growing discontent with the policies of these international organisations.

In conclusion then, it is suggested that during the last decade the functioning of the EU has been influenced by and, in a way, embedded in the domestic and international environment. For example, a great number of legitimacy problems attributed to the EU have been present both at the national and the global level. Hence the EU has often been unfortunate to operate at, and be obliged to mediate between, different levels of governance – as a consequence it is frequently blamed by both citizens and national elite groups for being unaccountable and illegitimate.

A crisis of civic representation and participation?

Although citizens have traditionally not been at the centre of the European political system (Neunreither 1995), their role has nonetheless been perceived as important by both politicians and academics. This trend has been reinforced during the last decade with the introduction of European citizenship (Pinheiro 1993; European Commission 2001b; Bellamy and Warleigh 1998 and 2001). More recently, the Convention on the Future of Europe, composed of representatives from current and future EU member states, as well as representatives of the supranational institutions, was established to draft a proposed "constitution for the European citizens" (Laeken Declaration 2001). The necessity to increasingly consult the citizens and their representatives in order to legitimise many of the decisions taken at the supranational level has gradually evolved towards a more direct engagement of civic and professional organisations in the preparation and implementation of these decisions. Such has been the example of the formal involvement of the Economic and Social Committee and the Committee of the Regions in the EU decision-making process via a structured dialogue, as well as the informal engagement of various "civil society" and lobby groups in the work of different expert

committees at the supranational level (Andersen and Eliassen 1998; Eriksen 2001; Armstrong 2002). Symbolically numerous civic and special groups have been included in two recent conventions: the Convention on the Charter of Fundamental Rights (December 1999 - October 2000) and the Convention on the Future of Europe (February 2002 - June 2003). Thus the trend in this respect has clearly been away from consultation and towards direct participation. The logic behind this has been to maintain at least a minimal level of accountability vis-à-vis a wider circle of interests, including those of the European citizens. Moreover it has been suggested that civil society groups could also contribute during the preparatory and implementation phases of different European projects by investing their own resources and specific expertise (Smismans 1999; De Schutter 2002). Ultimately the involvement of 'active citizens' and societal groups in the decision-making process of the European institutions has been seen as a key factor in enhancing the 'general level of civic consciousness and participation' (Magnette 2003), which could eventually bring about the creation of a more coherent supranational communication and political space, as well as address in part the absence of a European demos (Dehousse 1995; Schmitter 2000a and 2000b; Habermas 1992 and 1998; Weiler 1999a).

Two important steps towards the creation of 'European citizenship' were the formal stipulation of the legal rights of the European citizens in the Maastricht Treaty (TEU 1992, Arts. 8a-e) and the creation of the position of a European Ombudsman (Panebianco 1996; Bellamy and Warleigh 2001). The key challenge has been that successive treaties and the political institutions at the supranational level have thus far been relatively inefficient at providing an opportunity for the European citizens to influence the EU decision-making process. Recent studies have demonstrated that progress towards developing a true European citizenship has effectively been frozen by European politicians (Warleigh 1998; Bellamy and Warleigh 2001). Nevertheless it has been argued that this might lead to the growth of informal patterns of inclusion and participation of the citizens in order to compensate (Lord and Beetham 1998; Lord 1998; Magnette 2003).

Finally, it should be noted that most solutions proffered as a means of addressing the 'democratic deficit' in the EU have predominantly centred on traditional top-down institutionalist approaches which try to remedy the structural imbalances at the supranational level (see Neunreither 1994; Bulmer 1994; Hix 1994 and 1998; Peterson 1995; Dehousse 1998 and H ritier 1997 and 1999). Bottom-up approaches by contrast are far less common within the European studies literature (for exceptions, see Bellamy and Warleigh 1998 and 2001; Warleigh 2000; Wiener; 1998; Banchoff and Smith 1999). Hence there remains an acute need to address the 'citizenship dimension' in order to account for the variety of legitimacy problems that arise from the position of citizens within the EU political system.

Conclusion

It is claimed that the EU has over recent years suffered from a range of legitimacy problems. In large part this is attributable to its complex institutional structure and way of functioning – between various levels of governance and centres of decision-making. It can be demonstrated however that the EU does not suffer from a 'democracy deficit' as some have assumed simply by juxtaposing the democratic political experience at the national level with that at the supranational one. However as a consequence of both endogenous and exogenous developments, it is the case that the EU finds it increasingly difficult to build support on the basis of three forms of legitimacy:

- Traditional liberal democratic institutions and values, usually associated with the functioning of the state and sub-state political entities, as well as transnational society (i.e. a European demos) – '*borrowed*' legitimacy;
- Results, i.e. by acting as a 'benevolent bureaucracy', which is efficient and produces solely 'goods' – and almost never 'bads' – for the wider European public – *output* legitimacy;
- The 'rule of law', i.e. by relying on the power of the existing European and international laws – *constitutional* legitimacy.

The need for greater input legitimacy ('government by the people') – relating to increased citizen participation and better representation, as well as improved accountability on the part of the rulers and EU elites – has been

viewed as one possible solution. However the further involvement of EU citizens in the decision making process has slowed over recent years (Warleigh 1998 and 2000; Bellamy and Warleigh 2001). Existing mechanisms for inclusion – such as EP elections, access to the European Ombudsman and, to an extent, the judges of the ECJ – have not been enhanced for many years or accompanied by other measures leading to more direct forms of civic participation (Schimmelfennig 1996; Nentwisch 1996 and 1998; Shaw 1997 and 1998; Sandholtz and Stone Sweet 1998; Bellamy and Warleigh 2001; Höreth 2001). Thus it has been pointed out that in order to alleviate the alleged ‘democratic deficit,’ as well as to address many of the legitimacy problems in the EU, one of the key principles of national democracy, ‘inclusiveness of citizenship’, has to be fulfilled at the supranational level (Boyce 1993: 459; Höreth 1998: 11).

In the foreseeable future however resistance from the nation-state and its representative institutions, together with some organised interests in Brussels, may make this difficult to realise. National representatives jealously guard their monopoly on defining the nature of citizenship and how extensive should it be. In some member states (those that are federal or with devolved powers), the regional units also play an important role in this respect. In addition, organised interests may impede the creation of an inclusive European citizenship because of its semi-corporatist behaviour which is protective of its privileged relations with the European institutions. Hence this mode of civic participation offers little potential to legitimate the decision-making process. In sum, although it is clear to most of the European elites that the EU and its policies should be ‘better communicated’ to the wider public, the means of achieving this are difficult to devise and implement. Ironically, the very structures and procedures upon which the EU was founded and has functioned for more than half a century (characterised by multilevel and network governance) is now part of the legitimacy problem. Finally, the option of creating a European demos remains a distant goal, given the non-existence of a comprehensive political space, and the profound cultural and socio-economic variation that exists between the member states.

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