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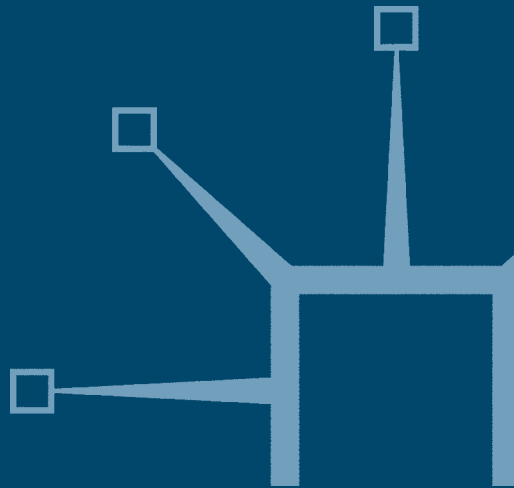
# Democratic Dilemmas of Multilevel Governance

Legitimacy, Representation and  
Accountability in the European Union

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Edited by

Joan DeBardeleben and Achim Hurrelmann



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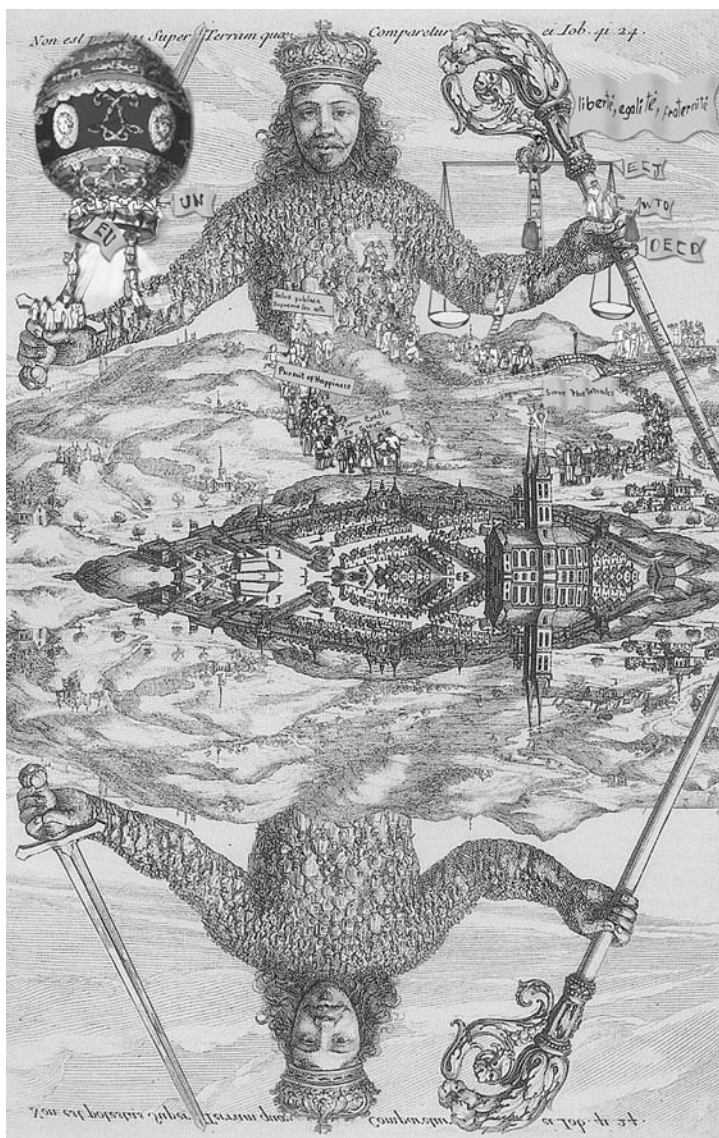
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Legitimacy, Representation and  
Accountability in the European Union

Edited by

Joan DeBardeleben

*Director of the Centre for European Studies and Professor in the Institute of European and Russian Studies, Carleton University, Canada*

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First published 2007 by PALGRAVE MACMILLAN

Houndmills, Basingstoke, Hampshire RG21 6XS and 175 Fifth Avenue, New York, N.Y. 10010

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ISBN-13: 978-0-230-50077-8                      hardback

ISBN-10: 0230500773                              hardback

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 1  
16 15 14 13 12 11 10 09 08 07

Printed and bound in Great Britain by Antony Rowe Ltd, Chippenham and Eastbourne

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# List of Abbreviations

|         |  |
|---------|--|
| BIS     | Bank of International Settlement                         |
| CAP     | Common Agricultural Policy                               |
| CDU     | Christian Democratic Union                               |
| CONECCS | Consultation, the European Commission and Civil Society  |
| COREPER | Committee of Permanent Representatives                   |
| CSU     | Christian Social Union                                   |
| DG      | Directorate General                                      |
| DG EMP  | Directorate General Employment and Social Affairs        |
| EAC     | European Affairs Committee                               |
| ECJ     | European Court of Justice                                |
| EES     | European Employment Strategy                             |
| EN      | Europe of Nations  |
| EP      | European Parliament                                      |
| EPP     | European Peoples' Party                                  |
| EPS     | European public sphere                                   |
| ETUC    | European Trade Union Confederation                       |
| EU      | European Union   |
| FDP     | Free Democratic Party                                    |
| GATT    | General Agreement on Tariffs and Trade                   |
| GDP     | gross domestic product                                   |
| ID      | Independence and Democracy                               |
| IGC     | Intergovernmental Conference                             |
| IMF     | International Monetary Fund                              |
| MAI     | Multilateral Agreement on Investment                     |
| MEP     | Member of European Parliament                            |
| MLG     | multilevel governance                                    |
| MP      | Member of Parliament                                     |
| NAP     | National Action Plan                                     |
| NATO    | North Atlantic Treaty Organization                       |
| NGO     | non-governmental organization                            |
| NP      | National Parliament                                      |
| OECD    | Organization for Economic Cooperation and<br>Development |
| OMC     | Open Method of Coordination                              |
| PES     | Party of European Socialists                             |
| PR      | proportional representation                              |

|     |                           |
|-----|---------------------------|
| QMV | qualified majority voting |
| SED | Socialist Unity Party     |
| SPD | Social Democratic Party   |
| TEU | Treaty on European Union  |
| UK  | United Kingdom            |
| UN  | United Nations            |
| USA | United States of America  |
| WTO | World Trade Organization  |

# Notes on the Contributors

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# Series Preface

When we think about the future of the modern state, we encounter a puzzling variety of scholarly diagnoses and prophecies. Some commentators predict nothing less than the total demise of the state as a useful model for organizing society – its powers eroded by a dynamic global economy and by an increasing transference of political decision-making powers to supranational bodies. Others disagree profoundly and point to the remarkable resilience of the state and its core institutions. Even in the age of global markets and politics, the state remains the ultimate guarantor of security, democracy, welfare and the rule of law. These debates raise complex questions for the social sciences: what is happening to the modern liberal nation-state of the OECD bloc? Is it an outdated model? Is it still useful? Is it in need of modest reform or far-reaching change?

The state is a complex entity, providing many different services and regulating many areas of everyday life. There can be no simple answer to these questions. The *Transformations of the State* series disaggregates the tasks and functions of the state into four key dimensions:

- the monopolization of the means of force
- the rule of law as prescribed and safeguarded by the constitution
- the guarantee of democratic self-governance
- the provision of welfare and the assurance of social cohesion

In the OECD world of the 1960s and 1970s these four institutional aspects formed the central characteristics of the modern state, creating a synergetic whole. This series is devoted to empirical and theoretical studies that explore changes to this historical model, and the current and future prospects for a traditional conception of the state. Although a political science approach dominates, many books are interdisciplinary in nature and also draw upon law, economics, history and sociology. We hope that taken together these volumes will provide readers with the “state of the art” on the “state of the state”.

This book contributes to the work of the Collaborative Research Centre *Transformations of the State* at the University of Bremen (Germany), and is funded by the German Research Foundation (DFG). The state analyses pursued by the Centre are readily accessible through two overview volumes: Stephan Leibfried and Michael Zürn, (eds), *Transformations of the*

*State?* (2005); and Achim Hurrelmann, Stephan Leibfried, Kerstin Martens and Peter Mayer, (eds), *Transforming the Golden-Age Nation State* (2007), published in the Transformations of the State series. Further information on the Centre, can be found at [www.state.uni-bremen.de](http://www.state.uni-bremen.de).

Achim Hurrelmann, Stephan Leibfried,  
Kerstin Martens and Peter Mayer  
Series Editors

# Preface

In this book we discuss the transformations of democratic self-governance that ensue as modern nation states are increasingly tied into a web of multiple and interconnected levels of political authority. Does the loss of state autonomy mean that democratic legitimacy is undermined, since national *demos* can no longer fully control the decisions that affect their members? Or will the multiplication of decision-making centres result in increased opportunities for democratic participation? What special challenges do the supranational structures of the European Union (EU) pose in this respect, and how do they differ from the problems federal or unitary states are faced with? To answer questions like these, this volume brings together researchers from Europe and North America who have worked extensively on questions of democratic legitimacy, in fields as diverse as comparative politics, international relations, EU studies, cultural sociology and mass communication.

In an institutional sense, the book is the outcome of cooperation between two research centres in Germany and Canada: the Research Centre Transformations of the State (TranState) in Bremen ([www.state.uni-bremen.de](http://www.state.uni-bremen.de)) and the Centre for European Studies (CES) at Carleton University in Ottawa ([www.carleton.ca/ces/](http://www.carleton.ca/ces/)). TranState is a centre of excellence that was founded in 2003 by the University of Bremen, the International University Bremen, and the University of Applied Sciences Bremen. The centre, which is co-funded by the German National Research Foundation (Deutsche Forschungsgemeinschaft), brings together expertise from political science, law and economics. An introduction to TranState's research is provided by two recent edited volumes: S. Leibfried and M. Zürn (eds), *Transformations of the State?* (2005); and A. Hurrelmann, S. Leibfried, K. Martens and P. Mayer (eds), *Transforming the Golden-Age Nation State* (2007). The future of democratic self-governance is one of four areas of focus that define TranState's research agenda. In this book, the contributions by Hurrelmann and Wessler et al. are outcomes of TranState projects.

CES was established in 2000 as an interdisciplinary unit with a mandate of furthering research, teaching and public outreach activities in the area of European and EU studies at Carleton University and in the Ottawa area. Since its establishment, the centre has received support for its activities from the European Commission and more recently from the Social Sciences and Humanities Research Council of Canada; it is housed in and

works cooperatively with two teaching units in the university, the Institute of European and Russian Studies (EURUS) and the Department of Political Science. Presently, research at CES focuses on a wide range of issues, including multilevel governance, EU enlargement and political participation; these issues are addressed from both a theoretical and a public policy perspective. A recent publication originating from the centre's activities is: J. DeBardeleben (ed.), *Soft or Hard Borders? Managing the Divide in an Enlarged Europe* (2005). CES housed the initial workshop that generated first drafts of the chapters in this volume, which have since been thoroughly revised and updated.

We wish to thank all contributors, as well as the European Commission, the University of Bremen and Carleton University for their support for the endeavour. Special thanks go to Margaret Watts for her invaluable assistance in copy-editing the manuscript.

Joan DeBardeleben and Achim Hurrelmann

# Introduction

*Joan DeBardeleben and Achim Hurrelmann*

Both of the main concepts underlying the analysis in this volume – ‘multilevel governance’ and ‘democracy’ – could be described as complex and essentially contested.<sup>1</sup> Exploring their interaction opens up even greater possibilities for debate and disagreement. In spite of its varying and sometimes ambiguous meanings, the concept of *governance* has gained increasing prominence in recent years, in large part reflecting the transition from state-centric governing relationships that marked the post-Second World War Western nation state to a greatly more complex constellation in which states and their governments are but one important group of players among various layers and centres of political power.<sup>2</sup> As J. Pierre points out, two main thrusts have driven the development of the governance concept. The first involves ‘to what extent the state has the political and institutional capacity to “steer” and how the role of the state relates to the interests of other influential actors’. The second thrust, less state-centred, concerns the process of coordination and self-governance within networks and partnerships, involving both public and private actors.<sup>3</sup> The *multilevel* factor adds an additional layer of abstraction and complexity. But the transformation of governing relationships in recent decades implies that it is no longer possible to focus on a single level of analysis (the international, national, or subnational), since these layers are interconnected in multiple ways.

In contrast to the notion of governance, the concept of *democracy* has a long intellectual lineage. Today, democracy is virtually uncontested as a normative standard for assessing the legitimacy of political systems. Yet the transformation of governing relationships makes it ever more complex to actually operationalize democratic standards, and to evaluate whether democracy is realized, or whether it *can* be realized, in specific situations. For several reasons, many would now doubt whether competitive

and 'fair' elections are an adequate indicator of real democracy. First, the power of those elected may be deeply constrained by other forces beyond the power of the electorate. Second, many institutions with significant power are not subject to election. Third, the public may not be adequately focused on elections. And finally, the choices offered to the public may not seem clear or significant. The multiple forms and levels of governance systems in the contemporary world thus lend themselves even less than previously to cut and dried understandings of 'democracy'.

This is particularly true for the European Union (EU), whose 'democratic deficit' has been extensively discussed among specialists and the public alike.<sup>4</sup> The EU is a unique political phenomenon, hard to classify with traditional political concepts. Neither a state nor a supranational government, the Union, through its institutions, laws and norms, nevertheless exercises authoritative power in a wide variety of policy arenas. It is thus not surprising that the notion of multilevel governance (MLG) was spawned in an effort to conceptualize EU authority relationships.<sup>5</sup> Yet until recently, discussions of multilevel governance in the EU have largely ignored questions of democratic legitimacy. As I. Bache and M. Flinders point out, 'the implications of multi-level governance for democratic accountability have been relatively neglected' and deserve particular attention in a 'next phase of research' on the MLG concept.<sup>6</sup>

This volume contributes to this new line of research. Its aim is to explore systematically the problems that MLG poses for the democratic legitimation of politics. Though most chapters focus on the EU, the volume also attempts to identify areas of shared concern with other MLG systems, like federations or international regimes. The issues it addresses are thus of general relevance for democratic governance in increasingly post-national and post-statist constellations.

## **Multilevel governance and European integration**

The term 'multilevel governance' was coined by G. Marks in 1992 in response to the increasing role given to subnational governments in the EU's structural policy.<sup>7</sup> Since then, it has gradually gained currency to describe the complex and flexible interactions between various actors impinging on the actions of the EU, including not only EU bodies, national governments, and subnational governments, but also non-state actors such as non-governmental organizations (NGOs), business interests and multilateral organizations such as the Baltic Council, the Northern Dimension and the Schengen Group. In their 2001 treatment of the subject, L. Hooghe and G. Marks identify the key features of MLG systems,

two of the most important being that 'decision-making competencies are shared by actors at different levels rather than monopolized by national governments' and that 'political arenas are interconnected rather than nested'.<sup>8</sup> The result, in the words of P. Schmitter, is 'an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/implementation'.<sup>9</sup>

Some authors see multilevel governance as a powerful theoretical construct, offering an alternative to the traditional paradigms in EU studies, intergovernmentalism and neofunctionalism,<sup>10</sup> while others view it as a form of the latter.<sup>11</sup> Not all EU experts accept the utility of the concept, some finding it too focused on institutional relationships rather than processes, or too concerned with government rather than governance.<sup>12</sup> Others doubt whether it really represents anything new, since extra-institutional networks have had importance in various contexts for some time. Nevertheless, the concept has become a standard term in EU studies, which might be due precisely to its 'neutrality', which makes it susceptible to different interpretations and compatible with various theoretical approaches.<sup>13</sup>

The MLG concept, although generated and debated within EU studies, is also of increasing interest more generally, as globalization has brought under challenge traditional notions of state sovereignty. Globalization, while moving some decisions 'upwards' to supranational actors, has moved others 'downwards' to the subnational level, with decentralization increasing since the Second World War.<sup>14</sup> Both supranational forces and domestic actors increasingly constrain the ability of national governments to set and enforce rules and relationships between important forces in society. In the absence of authoritative institutions at the supranational level, the interactions between various 'levels' in this maze of governing institutions represents a complex matrix, with diagonal, vertical and horizontal linkages. The currency of concepts such as 'network governance'<sup>15</sup> and 'spheres of authority'<sup>16</sup> signals a widespread recognition of the fact that authority structures are often located outside of the machinery of government and are defined by a web of connections of which states are only one part.

In many regards, multilevel governance seems similar to federalism, particularly federalism as it has evolved in recent decades, under the influence of the globalizing and regionalizing factors discussed above.<sup>17</sup> While traditional definitions of federalism emphasize the constitutionally defined division of jurisdictions between levels of government, the distinct

lines between levels of government have in fact become more and more blurred. This is partly because authorities at each level use various tools to influence other levels. For example, as J. Smith documents in her chapter in this volume, strings attached to federal budget disbursements can interfere with regional jurisdictions, while differential implementation of federal policies by regional authorities can in fact change their intended effects. But also most policy problems are interconnected, have multiple dimensions, and are impacted by a variety of forces that are outside the purview of any particular level of government. Since the distinct line of authority between levels of government is an increasingly outmoded concept, federal states face many of the same difficulties that generated the development of multilevel governance in the EU, even if their pre-existing institutional structure may provide a more defined system for channelling the complexities. Finally, even within countries which, in a constitutional sense, have unitary forms of government, devolution of authority has meant increasing interactions between levels of administration, also involving non-governmental actors, making the MLG concept potentially applicable in these situations as well.

To elucidate similarities and differences between the features of federalism and the character of governance in the EU, Marks and Hooghe distinguish two types of multilevel governance. Type I has its 'intellectual foundations' in federalism and 'shares [its] basic characteristics, but is not confined to national states'. These characteristics include 'general-purpose jurisdictions', 'a limited number of jurisdictional levels', 'non-intersecting memberships' between levels, and a 'system-wide durable architecture'.<sup>18</sup> Citing a broad range of literature, the authors note that this version of MLG 'captures a notion of governance common among EU scholars' that emphasizes regionalization and interaction between multiple levels of government as key components of the European integration process, while still maintaining a key, even if altered role, for the national state.<sup>19</sup> Type II MLG, in contrast, sees relationships between the various levels as being more flexible, task-specific, intersecting and variable in number. Marks and Hooghe note that this type of MLG applies particularly to governance above and below the nation-state level, and 'is ubiquitous in efforts to internalize transnational spillovers in the absence of authoritative coordination'.<sup>20</sup> They cite many examples involving governmental, private and transnational actors, and also note that these types of governance mechanisms are particularly important in cross-border regions and at the local level. They conclude, however, that 'the European Union [is] mainly a Type I jurisdiction', thus being an exceptional type of organization that spans the 'national/international frontier'.<sup>21</sup>



The distinction between Type I and Type II forms of multilevel governance suggests that the EU shares many features with traditional federal systems. Therefore the longer experience of federal states in addressing problems of democratic governance may offer guidance in understanding the EU's democratic dilemmas. Equally instructive for federal systems may be the EU's innovative and fresh approach in fashioning a more ambitious multilevel governance, which in some cases encompasses federal nation states but also seeks to transnationalize governance and externalize its governance methods beyond its own borders. It is precisely the premise of this volume that this type of comparative perspective will enrich both theory and practice.

### **Multilevel governance and democracy**

After these conceptual clarifications, it is now possible to return to the question of democracy. What implications does the increasing importance of MLG arrangements have for democratic legitimacy? As P. Hirst notes, democratic theory has only just begun to focus on such issues, having relied heavily 'on the notion of a self-governing community coincident with the nation-state' until quite recently. In MLG systems, by contrast,

[d]emocracy needs to be rethought on the assumption that it has no primary locus and no single demos; the national state shares power with increasingly salient sub-national governments, with proliferating forms of network and partnership governance, with a variety of quasi public and private organizations, with NGOs, and with international agencies and other forms of supra-national governance.<sup>22</sup>

In such contexts, questions arise about whether the establishment of formal institutions, like elections and parliaments, is sufficient to secure democratic legitimacy. If it is not, why not? And what other vehicles may be important to make governance more democratic?

To answer such questions, this volume examines the opportunities and dangers that multilevel governance poses for democracy. Existing assessments are in fact remarkably divergent. On one side of the spectrum, Marks and Hooghe claim that 'the dispersion of governance across multiple jurisdictions is both more efficient than, and normatively superior to, central state monopoly', not least since it 'can better reflect the heterogeneity of preferences among citizens'.<sup>23</sup> On the other side, B. G. Peters and J. Pierre fear that the 'informality and orientation toward objectives and outcomes rather than [. . .] rules and formal government

could be a “Faustian bargain” in which core values of democratic government are traded for accommodation, consensus and the purported increased efficiency in governance’.<sup>24</sup> The analysis in this volume suggests that there is some truth to both of these accounts. This is due to the fact that many of the choices that have to be made in the design, as well as in the normative evaluation of MLG systems, are inherently dilemmatic in character. Three interlinked democratic dilemmas of multilevel governance constitute the focus of the analysis in the individual chapters.

*Dilemma 1. Congruence between political and sociocultural spheres: Squaring high demands for democratic governance with weak conditions for democratization.* It has already been pointed out that multilevel governance has developed in response to the demand for democratic governance at a level above the nation state. It thus offers an opportunity to bring otherwise unregulated transnational processes under democratic control, thereby re-establishing the ‘congruence’ between social transactions and political decision-making.<sup>25</sup> Yet even if MLG systems allow for an expansion of democratic decision making beyond the nation state, the normative quality of the ensuing forms of democracy remains doubtful, primarily because the social and cultural conditions on which traditional forms of democracy rely do not exist outside the nation state. For example, in the EU, any simple transfer of democratic institutions from the national to the European level is impeded by what is often described as the ‘no-demos problem’: the relative newness of EU institutions, the diversity of the populations encompassed, the multiple national languages and the absence of a unified public sphere produce a relatively fragile European identity, as well as a low sense of shared political purpose. Among other factors, this accounts for the dismal voter turnout in EP elections (see the chapter by LeDuc in this volume), and severely undermines the legitimacy of democratic decisions reached at the EU level. In this situation, democratic arrangements that depart from national models of democracy, like the participation of stakeholders in transnational deliberative arenas, may provide a remedy, but their legitimacy depends on favourable social conditions as well, like the limited number and relatively equal strength of the parties involved. Even if A. Hurrelmann, in his first contribution to this volume, sees some potential in a combination of different channels of democratic input, it is clear that the discrepancy between the need for democratic decision making at the EU level and its precarious social preconditions constitutes a persistent threat to the normative quality and social acceptance of democracy in the EU.

*Dilemma 2. Accountability: Squaring strong capacity to solve common problems with weak sanctions for unpopular or failed policies.* Even if congruence

between democratic institutions and their social preconditions can somehow be established, problems of accountability of political leaders to the public arise. Many of the actors involved in multilevel governance are not elected by the citizens they purportedly represent, and hence cannot be tied to their preferences in any way. Furthermore, even if channels of electoral input do exist, the complexity of MLG arrangements makes it difficult to secure the accountability of decision makers. One important tool of accountability is the ability on part of the citizens to 'throw the rascals out', but in MLG systems, where many powers are 'fused', this is often impossible since it is difficult to trace political acts to identifiable agents. Furthermore, blame-shifting can be used as a political tool by political actors in the face of unpopular policies or policy failure.

Like the congruence dilemma, the accountability dilemma also generates problems of democratic legitimacy. As F. Scharpf has pointed out, a polity's democratic legitimacy can be evaluated in two complementary ways. In an output-oriented evaluation, the relevant standard for legitimacy is the polity's capacity to solve common problems, and to prevent the abuse of power by governors ('government for the people').<sup>26</sup> There can be little doubt that under conditions of globalization, output-oriented legitimacy can generally be secured more effectively by MLG systems, with their flexible territorial scales, than by the traditional state system, since many political problems do not coincide with nation state boundaries.<sup>27</sup> And while the multiplicity of actors in such systems might easily result in stalemate, empirical studies reveal that, at least in the EU context, obstruction has generally been avoided.<sup>28</sup> In addition, the interplay of multiple actors provides a system of checks and balances in which political power is kept under control.<sup>29</sup> Yet while the effects of multilevel governance on output legitimacy may be largely positive, the difficulty of calling leaders to account draws attention to problems of input legitimacy. In Scharpf's terms, this aspect of democratic legitimacy depends on the degree to which collectively binding decisions are made in a way that is responsive to the manifest preferences of the governed ('government by the people'). The result of MLG arrangements, however, might be that political decisions are increasingly being made by a self-selected group of participants, rather than by actors intentionally chosen by the people on the basis of their political preferences. This leads to the third dilemma.

*Dilemma 3. Representation: Squaring strongly deliberative policy making with unequal representation of citizens.* Compared to older forms of state-centric governance, the shift to multilevel governance has increased the number of access points for political participation, and the variety of actors – public and private – involved in decision making. As R. Germain

points out in his chapter, this promises a more deliberative style of policy making, since a greater variety of positions can be taken into account within a relatively non-hierarchical setting. Against this background, many authors, including G. Delanty (in this volume), suggest that models of deliberative or discursive democracy may provide a basis for democratizing the EU.<sup>30</sup> But how can the deliberative procedures enabled by MLG systems be squared with the equal representation of all citizens in the decision-making process? Both political theory<sup>31</sup> and EU studies<sup>32</sup> confirm that deliberation under real-world conditions (rather than in J. Habermas's ideal speech situation) tends to privilege participants with superior material as well as cognitive resources, and hence might bring about new forms of exclusion or domination. This reality adds an additional dimension to the already intricate problem of how representation of *citizens* in a multilevel system can be balanced against the representation of its *constitutive units*, or Member States.<sup>33</sup> In addition to representation of the citizens through the European Parliament and representation of the Member States through the Council of Ministers, the European Commission has in recent years been very active in shaping a system of functional representation through the consultation of organized civil society (described in detail by J. Greenwood in this volume). But in spite of the Commission's efforts to ensure the 'representativeness' of the organizations involved, it is likely that such forms of consultation, while certainly improving the deliberative qualities of decision-making procedures, may seriously distort the basic democratic criterion of 'one person, one vote'.<sup>34</sup>

These dilemmas suggest that certain trade-offs are unavoidable in efforts to realize democracy in MLG systems. The transition from state-centric to multilevel governance apparently extends the scope of democratic decision making but endangers its social preconditions, increases effectiveness but reduces accountability, and enables deliberation but weakens equal representation. For these reasons, the normative legitimacy of MLG arrangements, i.e. their acceptability if judged against democratic standards, may be in question. Moreover, their empirical legitimacy, i.e. the degree to which people view them as worthy of support, may also be undermined. Both perspectives on legitimacy – normative as well as empirical – are addressed in this volume.

## Overview of the book

The book is structured in four parts. The first section contains more detailed examinations of issues pertaining to the three dilemmas (Part I), while the chapters in the remaining sections discuss these dilemmas – and

their implications – in three thematic areas: the social conditions of democracy (Part II), institutional channels for democratic input in the EU (Part III), and the implications of EU enlargement (Part IV). These three areas are at the centre of many recent discussions of EU democracy, but they are here for the first time systematically examined through the lens of multilevel governance, and in the light of its democratic dilemmas.

The first section of the book opens with a chapter by A. Hurrelmann that primarily focuses on the implications of Dilemma 1. Hurrelmann develops a typology of various channels of democratic input in the EU by distinguishing different ‘legitimacy relationships’ that might govern the interplay of national democracies with the EU: analogy between EU and Member State governance structures, complementarity of the two levels of governance, and derivation of EU legitimacy from Member State legitimacy. Each of these relationships translates into a specific legitimization strategy that might be applied to justify European governance arrangements. Yet as Hurrelmann argues, none of these strategies adequately squares the demand for democratic government at the EU level with the supply of the social preconditions for various democratic institutions. For this reason, only a combination of different strategies may render legitimacy to the EU – even if new difficulties emerge once one tries to make the different approaches compatible in practice.

The chapter by J. Smith discusses accountability problems resulting from MLG, referred to above as Dilemma 2. Smith focuses on traditional federal systems, which due to their more precise division of competencies might be said to be less affected by this dilemma than the EU. Yet as Smith demonstrates, the multilevel structure causes blurred lines of accountability even in this comparatively ‘easy’ case, not least since the original division of jurisdictions and the distribution of resources between levels are no longer geared to current realities in many federations. Even states with unitary systems of government face similar problems, as they must recalibrate the intersection of global, national, and regional governing structures, as well the conflation of public, civic and private power.

In the last contribution to Part I, R. Germain engages concerns with representation in international organizations, addressing issues relating to Dilemma 3. Focusing on the International Monetary Fund (IMF) and the Bank of International Settlement (BIS), he reflects on various methods to assure representation of diverse constituencies in a context in which traditional vehicles of democratic input like elections are not relevant. The analysis shows that especially the BIS has developed promising solutions for including stakeholders in policy deliberations. Yet these solutions are successful mainly ‘because of a number of contextual factors: the target constituency is relatively small, the matters dealt with are relatively

technocratic, and decisions do not have any significant distributional effects'. Against this background, it is questionable whether – and how – methods of stakeholder participation in deliberative organs can be adapted, and representativeness ensured, where such favourable conditions do not exist, like in most fields of EU policy making.

Part II of this volume explores the social and cultural foundations of democracy. The chapters in this section discuss which conditions are required to implement democratic procedures; they also consider whether the various attempts by the EU to shape these conditions have been successful, a discussion mainly relevant to Dilemma 1. G. Delanty argues the EU must find a basis of legitimacy that differs from that underlying the traditional nation state, where 'an *ethnos* has underpinned the *demos*'. Delanty proposes that discursive democracy may provide such a basis, since it can bind diverse groups together through a process of dialogue, resulting in the creation of a 'cosmopolitan public culture' not based on any substantive conception of a 'demos'.

The analysis provided in the next chapter by H. Wessler et al. might lead one to question whether this process has proceeded very far. Their empirical study of the role of the media in creating a European public discourse suggests that while 'European governance is increasingly subject to public scrutiny, neither a common discourse nor a significant sense of belonging to the same community of communication has developed'. Given its segmented character, it is questionable whether the European public sphere provides a secure basis for the legitimacy of democratic decisions at the EU level.

Against this background, A. Hurrelmann, in his contribution to Part II, suggests a different approach. Beginning with an examination of the social prerequisites of democratic governance, he argues that obstacles to democratization are more significant in the EU than at the national level, in part due to the degree of socio-economic inequality between Member State populations, and to the fragmentation of collective identities and of the public sphere. Hurrelmann warns against too heavy a reliance on efforts to create a European identity or a European public sphere to resolve the EU's democratic dilemma, since both of these strategies offer weak prospects of success and could have undesirable consequences. Rather, he suggests that the EU can build on the favourable social conditions for democracy at the Member State level by using procedures of national decision making on EU issues to bolster the Union's democratic credentials.

Part III examines institutional features of multilevel systems, comparing various channels for democratic participation in EU policy making.

All three dilemmas identified above are relevant to this discussion. L. LeDuc focuses on elections to the European Parliament and identifies the particular features that reduce their effectiveness as vehicles of democratic input and legitimation. Foremost among these are declining voter turnout, the weakness of European-wide party groups, and the 'second order' nature of EU elections, which illustrates the deficits of the European public sphere. LeDuc's argument lends support to the thesis that the social conditions for democratic institutions may be weak or absent at the EU level (Dilemma 1). Citing M. Th. Greven, he raises the possibility that direct elections may be part of the problem, rather part of the solution, for the democratic deficit in Europe.

While LeDuc's analysis suggests deficiencies of popular representation through the European Parliament, T. Raunio considers the ability of national parliaments to represent their populations in EU governance. In this respect, he harkens back to Hurrelmann's suggestion about strengthening democratic representation in the EU through national institutions. Raunio's analysis identifies difficulties faced by national parliaments in exercising control over national governments in EU matters, and in assuring accountability of EU institutions to the citizens (Dilemma 2). New governance approaches being used in the EU, particularly the Open Method of Coordination (OMC), aggravate the problem.<sup>35</sup> Raunio draws a parallel between Member State parliaments in the EU and regional governments within federal states, both of which face many of the same problems. Accountability problems arise precisely due to low levels of transparency, the scope of informal decision making, and the minimal media attention to efforts of national parliaments to engage EU policy debates.

Another channel of democratic input in the EU is constituted by procedures of functional representation that involve interest groups and civil society organizations in deliberative procedures, organized by the European Commission. J. Greenwood, in his contribution to this volume, identifies the highly institutionalized nature of civil society involvement as a distinctive feature of the EU's political process, stressing that it 'equip[s] organized civil society with the ability to act as mechanisms of public accountability in the absence of structures such as an EU-wide mass media and public engagement with the EU'. He argues, however, that efforts by the Commission to increase the representative character of the groups included in consultation procedures (Dilemma 3) create their own problems because they may serve as an obstacle to the participation of associations 'which derive their legitimacy more from their ability to speak up for a given cause than in representing a given membership constituency'.

Finally, Part IV of the volume brings to bear the unique experience of the new Member States of Central and Eastern Europe. Linked to Dilemma 1, authors here explore whether the social preconditions for multilevel democracy should be viewed differently in the specific historical and cultural circumstances of the new Member States. Both contributions draw attention to the highly asymmetrical setting of the accession talks, with candidate states being obliged to adapt rapidly to the EU's established MLG structures and policies. Through his case study of Poland, D. Ost shows how this situation contributed to a perception of multilevel governance as a hierarchical project of the West, constituting a threat to Polish 'sovereignty, equality and dignity', which in turn fed Eurosceptic sentiments. Nevertheless, echoing Delanty's discussion of discursive democracy, Ost posits that, following accession, moving this Eurosceptic debate inside EU deliberative processes may actually aid the formation of European identities.

Y. Galligan and S. Clavero also demonstrate that the specific social and cultural conditions of the new Member States create specific difficulties for democratic governance. They focus on the EU's gender equality policies, which they view as 'an important aspect of the European Union's construction of democratic governance', and show that these policies have not been implemented on a consistent basis in the new Member States. Furthermore, an ambiguous role for women's groups is evident in this process: these groups do not necessarily see these policies as the best way to represent their interests, they have in many cases been excluded from relevant policy processes, and in other cases, they have not yet found 'their political role as advocates of gender equality'. This indicates that while policies generated by the EU within its MLG system may create vehicles for realizing equality and democracy at the national level, differing cultural views or social conditions may make their impact ambiguous and contradictory.

All in all, the chapters in this volume present a highly differentiated picture; the relationship between multilevel governance and democratic legitimacy does not lend itself to sweeping generalizations. Nevertheless, the three democratic dilemmas identified in this introduction prove to be a useful conceptual lens for examining the democratic potential and pitfalls of MLG arrangements.

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# **Part I**

## **Multilevel Governance and Democratic Legitimacy: Conceptual Issues**

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# 1

## Multilevel Legitimacy: Conceptualizing Legitimacy Relationships between the EU and National Democracies

*Achim Hurrelmann*

### Introduction

According to most observers, political globalization – the shift of many of the nation state’s traditional competences to international or supranational regimes or organizations – creates problems of democratic legitimacy for both national and international governance. At the national level, democratic processes are undermined by the growing interdependence of national and international institutions, which results in shrinking capacities of national *demoi* to exercise full control over political developments affecting their members. At the international or supranational levels, mechanisms of democratic participation and collective self-government are fragmentary compared to the nation state. This deficit cannot be easily remedied as many of the social conditions on which national democracies rely are not met in extra-national contexts. As the nation state’s autonomy dwindles and international or supranational institutions are found wanting in democratic quality, the democratic form of government as a whole seems to be in danger, as the citizens, in R. Dahl’s words, ‘participate extensively in political decisions that do not matter much but cannot participate much in decisions that really matter a great deal’.<sup>1</sup>

This development should not only concern political theorists but constitutes a challenge for policy makers and government elites as well. After all, globalization threatens to undermine not just the *normative legitimacy* of national and international institutions, i.e. their acceptability in the light of democratic standards, but also their *empirical legitimacy*, i.e. the support they enjoy in the population. Concerning national democracies, many commentators argue that the nation state’s loss of autonomy has led to a mismatch between citizen expectations, presumed responsibilities of

national governments, and actual capacities of governance, thus fostering profound disaffection with democratic institutions.<sup>2</sup> At the same time, the growing influence of international and supranational organizations increasingly threatens support for these institutions as well. This is because it highlights their democratic deficits and turns their legitimacy from a largely academic problem into an object of intense political contestation. M. Zürn describes this development as a process of *reflexive denationalization*: as citizens become aware of the importance of international and supranational organizations, they increasingly challenge their democratic credentials:

As a result of this process, denationalization becomes reflexive, and thus politicized. At the same time, the politicization of international politics harbours the potential for resistance to political denationalization, which increases the need – both from a normative and descriptive perspective – for the legitimization of such international organizations.<sup>3</sup>

Both in a normative and in an empirical sense, there thus seems to be a need to develop new *legitimation strategies* for political institutions in multilevel systems: if the arguments presented here are correct, processes of political globalization – or, in Zürn’s phrase, denationalization – lead to a loss of democratic quality and of public support at the same time, affecting all levels of governance. However, another likely effect of reflexive denationalization that has been given far less attention in the relevant literature should be taken into account as well: if it is true that citizens become aware of the interconnectedness between different levels of governance and increasingly question the demarcation lines between national and international politics,<sup>4</sup> it becomes ever less plausible to assume that they assess the legitimacy of nation state institutions without at the same time also taking into account their evaluations of international and supranational governance structures. By the same token, evaluations of international or supranational organizations are likely to be connected to attitudes towards national democracies as well. In other words, we should be witnessing the growing importance of *relational assessments of legitimacy*: the legitimacy of institutions at multiple levels of governance should increasingly be assessed in interconnected ways.

What role might such relational assessments of legitimacy play for the democratic legitimation of the European Union (EU)? This chapter conceptualizes different forms of legitimacy relationships, demonstrating that an insight into their construction can result in a better understanding of different approaches to underscore the Union’s acceptability, either in

rhetoric or in fact. The argument is unfolded in four steps: first, a typology of legitimacy relationships is developed that distinguishes zero-sum, negative-sum and positive-sum linkages between the EU and its Member States. Second, the chapter demonstrates how an insight into the construction of such legitimacy relationships can be used to analyse and devise legitimation strategies for the EU. Third, and on this basis, some options of institutional design are sketched that might help to better implement these strategies. When this is done, however, contradictions between these design options become apparent that complicate this task. The chapter develops the idea of second-order legitimacy relationships as a way to overcome these contradictions. It closes with a discussion of whether such institutional design options are relevant only to the normative legitimacy of the EU, or whether they promise to increase its empirical legitimacy as well.

### **Types of legitimacy relationships: relational assessments of the EU and its Member States**

A legitimacy relationship between different polities or different levels of governance exists if two conditions are met. In the first place, the legitimacy of more than one political unit or level has to become relevant to a political actor's (or an observer's) legitimacy evaluations, for otherwise no relationship can be established. In other words, relational assessments of legitimacy require *multiunit or multilevel evaluations*. To gain a first impression of what this might mean for legitimacy evaluations of the EU and its Member States, it makes sense to work with a fourfold typology, cross-tabulating assessments of EU and Member State institutions on the basis of simple positive vs negative dichotomies. Starting from this model, G. Martinotti and S. Stefanizzi distinguish between four types of citizen orientations in the European multilevel system: 'integrated' (positive orientations towards both the EU and one's Member State), 'nation-statist' (negative orientation towards the EU, positive orientation towards one's Member State), 'innovative/escapist' (positive orientation towards the EU, negative orientation towards one's Member State) and 'alienated' (negative orientations towards both the EU and one's Member State).<sup>5</sup>

This typology of orientations, however, does not tell us whether there is actually a *linkage* between the legitimacy evaluations of European and national institutions, or whether the respective assessments rely on evaluations that take place at the same time but are performed independently of each other. Against this background, it makes sense to introduce a second criterion, specifying that a legitimacy relationship only exists if

the evaluations of two (or more) units or levels of governance are indeed connected. Taking both conditions into account, a relational legitimacy assessment can then be defined as an *evaluation of political institutions in one political system (or at one level of governance) that is systematically linked to the evaluation of institutions in another system (or at another level)*. Note that this definition encompasses not only vertical legitimacy relationships in multilevel systems (e.g. between German and EU institutions) that constitute the focus of this chapter, but can also be applied to horizontal relationships (e.g. comparisons between the German and British political systems).

What consequences does the construction of a legitimacy relationship have for the outcome of the assessment, i.e. the evaluations of the political institutions and systems involved? When turning to this question, three types of relationships can be distinguished: zero-sum, negative-sum and positive-sum linkages (Figure 1.1). Each kind of relationship might come about as the result of more or less implicit and unintentional interpretations that underlie a person’s legitimacy beliefs. However, they may also be intentionally constructed by political entrepreneurs – e.g. government elites, but potentially also academics – in an attempt to induce other people to treat an institution or political system as either legitimate or illegitimate.

- In the *zero-sum* case, the legitimacy relationship serves to boost the legitimacy of one level of governance by pointing to the weaknesses of the other – or vice versa to delegitimize the first level or government by legitimizing the second. In the European context, this construction is especially prominent in Eurosceptic arguments that reaffirm the

|                             |              | Assessment of the nation state as ...  |   |
|-----------------------------|--------------|--|---|
|                             |              | Legitimate   | Illegitimate  |
| Assessment of the EU as ... | Legitimate   | <i>Positive-sum relationship</i><br>(resulting in 'integrative' citizen orientation) | <i>Zero-sum relationship</i><br>(resulting in 'innovative/ escapist' citizen orientation) |
|                             | Illegitimate | <i>Zero-sum relationship</i><br>(resulting in 'nation-statist' citizen orientation)  | <i>Negative-sum relationship</i><br>(resulting in 'alienated' citizen orientation)        |

Figure 1.1 Types of legitimacy relationships between EU and nation state



legitimacy of the nation state by pointing to the legitimacy deficits of the EU.<sup>6</sup> In Martinotti and Stefanizzi's typology, such zero-sum evaluations thus tend to result in 'nation-statist' orientations. In principle, however, the same logic might also be applied in reverse, for example in 'innovative/escapist' arguments that dismiss the nation state as anachronistic and portray regional integration as the only up-to-date form of political organization.

- By contrast, a *negative-sum* relationship exists if the legitimacy deficits of one level of governance do not serve to underscore the legitimacy of the other, but rather encroach on its legitimacy as well. In this case, the construction of a legitimacy relationship results in negative evaluations of both levels and thus in 'alienated' orientations. Arguments of this type are also not uncommon in discussions of globalization and Europeanization. For instance, it is often suggested that due to the transfer of political power from national to international or supranational organizations, the nation state loses legitimacy as its governance capacities decrease. At the same time, the legitimacy of international or supranational organizations also suffers as they are charged with new tasks beyond their original mandate which they cannot fulfil as appropriately or justifiably as nation state institutions (once) could.<sup>7</sup>
- Finally, it is possible to conceive of *positive-sum* relationships in which the legitimacy of one level of governance reinforces that of the other. The multilevel connection constructed in these kinds of evaluations assumes either a transfer of legitimacy from one governance level to the other or a relationship of mutual support between them. An example is K. van Kersbergen's idea of a 'double allegiance' of Europeans to the EU and their respective Member State: in this model, the EU contributes to the Member States' legitimacy by helping them to achieve social and economic goals, while the Member States prop up the legitimacy of the EU by making available national loyalties as a source of EU support.<sup>8</sup> In cases such as this, which will be discussed in greater detail in the next section, an 'integrated' citizen orientation results.

While it is not difficult to find examples of argumentative constructions of one or another of these types in academic debates, empirical studies that systematically assess their importance for citizens' legitimacy evaluations are thus far lacking. It is not unreasonable to expect that relational assessments play a greater role in elite debates about the EU than in the citizens' everyday evaluations of its legitimacy. Yet a number of recent studies on public support for the EU, mainly relying on survey research

and drawing on 'Eurobarometer' data, suggest that relational evaluations are relevant even in this context. Especially some of the more recent studies argue that variations in citizen attitudes towards the EU do not just depend on factors like value orientations and levels of cognitive mobilization,<sup>9</sup> or on the perceived economic benefits and costs of EU membership.<sup>10</sup> Instead, variations are also in some way or other connected to the respondents' attitudes towards their home country.<sup>11</sup> There is some controversy, however, as to whether this connection can best be described as a zero-sum or as a negative/positive-sum relationship: Some studies suggest that citizens with a positive orientation towards national institutions or a strong attachment to their own nation state tend to have a critical view of European integration or EU institutions.<sup>12</sup> Other models reach the opposite conclusion, finding that evaluations of national institutions or strong national identities are a positive predictor of evaluations of European governance. Hence, citizens who are supportive of the way political institutions work at home and identify with their nation state are more likely to support European institutions as well, and vice versa.<sup>13</sup>

One factor that contributes to this ambiguity is probably that relational legitimacy assessments do not follow one and the same logic in all parts of the population. Instead, it is to be expected that different forms of legitimacy relationships prevail at different times, in different places, or among different subgroups of the population. This picture, in any case, is suggested by studies on the relationship between European and national identities, a topic that has attracted greater research interest than legitimacy relationships in a strict sense. Evidence obtained by various techniques – survey research,<sup>14</sup> studies of elite discourses,<sup>15</sup> as well as small group experiments<sup>16</sup> – all show that while there is no necessary contradiction between a person's attachment to his/her nation state and to the EU, the relationship between national and European identities can take many forms. These forms depend on the ways in which these identities are constructed in public discourses and/or an individual's self-image.

By the same token, relational assessments of legitimacy should also be seen as an *object of political construction*. This has important implications for the democratic legitimation of the EU: if legitimacy relationships are an existing empirical phenomenon and can be shaped by processes of political construction, it is important to clarify how different kinds of such constructions can influence legitimation strategies for the EU. The discussion that follows will therefore seek to identify arguments that use legitimacy relationships to underscore the legitimacy of the EU and sketch options of institutional design that can make these arguments normatively (more) convincing.

## Legitimacy relationships and the democratic legitimation of the EU: ways to construct positive-sum legitimacy relationships

Looking at the three types of legitimacy relationships, it is clear that only zero-sum and positive-sum relationships can in principle form the basis for affirmative legitimacy assessments regarding the EU. While zero-sum constructions at present seem to be employed almost exclusively in attempts to legitimate the nation state by shifting blame to the EU, it is certainly not inconceivable to reverse this relationship. Still, it is doubtful whether a strategy of legitimating the EU mainly *against* its Member States can be empirically successful,<sup>17</sup> let alone normatively convincing. For this reason, the analysis in this chapter is limited to positive-sum relationships. If it were possible to construct positive-sum linkages between the EU and its Member States and to adequately justify them on the basis of normative democratic theory, this would clearly represent the most desirable state of affairs in the European multilevel system.

Under what conditions and on the basis of what arguments would it be possible to come to mutually reinforcing legitimacy assessments of the EU and its Member States? Three argumentative patterns appear to be the most important. These can be labelled analogy, complementarity and derivation. Each will be introduced here by asking which kinds of linkages they establish between the EU and its Member States in order to underscore the legitimacy of EU institutions.

- If the *logic of analogy* is applied, the legitimacy of EU institutions is justified by pointing out that EU institutions conform to the same principles that underlie the legitimacy of the Member States. In most cases, this argument implicitly presupposes that these principles themselves are appropriate, that they are adequately met in the Member States, and that they can be applied to the EU as well. The legitimacy of EU institutions is then supported by pointing out that they are structurally similar – or at least functionally equivalent – to national institutions. Thus the Member States' (presumed) legitimacy is transferred to the EU. As a strategy of democratic legitimation, this kind of relationship translates into what D. Beetham and C. Lord call the 'supranational model' of legitimating the EU. In this model, the state-like features of the EU are at the core of its legitimacy, both as anchors of the existing public support for its institutions and as foundation stones to build on in making the EU more legitimate. The model hence stresses that the EU 'already has its own directly elected parliament, a system

of transnational party federations and parliamentary party groups', and that institutional reform might further strengthen these features of supranational democracy.<sup>18</sup> In short, the EU is legitimate because – or if – European and national institutions are more or less 'alike'.

- By contrast, the *logic of complementarity* justifies the legitimacy of the EU by pointing to the systematic differences between European and national institutions, arguing that their specific capacities supplement each other in an effective way. To make this argument, it is necessary to assign to each level of governance specific functions which this level's institutions are supposed to fulfil. This functional perspective has a clear affinity to output-oriented conceptions of democratic legitimacy such as that developed by F. W. Scharpf.<sup>19</sup> Scharpf argues that democracy is defined not only by the goal to secure 'government by the people' (input-oriented legitimacy) but also by the goal of 'government for the people' (output-oriented legitimacy). In an output-oriented perspective, it can be claimed that the citizens' interests can only be advanced effectively if European institutions systematically differ from the institutions of national democracies. For example, G. Majone argues that the EU's specific competences of economic regulation can be exercised most successfully by non-majoritarian institutions like the European Commission, whose independence from electoral pressures enables it to act in the general interest. In this conception, European institutions are legitimate because, as an 'independent fourth branch of government', they can reach policy outputs that cannot be reached by the nation states and hence complement their governance capacities.<sup>20</sup>
- While the first two logics do not necessarily imply a clear hierarchy between the two levels of governance that enter into a legitimacy relationship, the *logic of derivation* treats one level as normatively superior to the other. In the European context, most arguments grant this privilege to the nation state. The legitimacy of the EU is then grounded in the fact that it can be controlled by its Member States and is thus no more than an instrument of their policy making. As in the logic of analogy, a transfer of legitimacy from the Member States to the EU takes place, but this time its basis does not lie in the structural similarity of institutions at both levels but in a relationship of dependency between them. As a strategy of democratic legitimation, this idea conforms to what Beetham and Lord call the 'intergovernmental model' of legitimating the EU. This model posits that 'the best way of conferring democratic legitimacy on the Union [is] by the ratification of EU Treaties by the democratic institutions of each member state and the election of national governments, whose members then go on to serve on the European Council and Council of Ministers'.<sup>21</sup> In the intergovernmental

perspective, input legitimacy is guaranteed as long as EU competencies have been explicitly delegated to the EU by national representatives and are exercised under their permanent and full control; output legitimacy depends on the EU's capacity to enhance the regulatory power of the Member States.<sup>22</sup> In both arguments, European institutions derive their legitimacy from the Member States either because they are controlled by national institutions and actors or because they constitute an instrument the Member States can use to increase the effectiveness of their policies.

It thus turns out that all of the most important legitimation strategies for EU governance usually distinguished in the literature – the supranational, the output-oriented (or 'technocratic') and the intergovernmental one<sup>23</sup> – are based at least to some extent on the construction of a positive-sum legitimacy relationship between EU and Member State institutions. It is important to note that if these strategies are successful, i.e. the claims they advance are accepted by their addressees, they not only underscore the democratic legitimacy of the EU but that of its Member States as well: if EU institutions stand in a relationship of analogy, complementarity or derivation to national ones, it becomes much more difficult to argue that they undermine the Member States' democratic quality. Europeanization – the most important aspect of political globalization in the European context – can no longer be portrayed as a general threat to the democratic form of government.

It is evident that all three legitimation strategies can be used both to justify the existing EU institutions and to provide guidelines for institutional reform. On the one hand, each strategy finds some basis in the EU's current governance structure, highlighting one specific institution – the European Parliament, the European Commission and the Council of Ministers respectively – as key to its legitimacy. On the other hand, each strategy also contains implications for how the EU's political system should be improved to make it normatively *more* legitimate. Accordingly, it is worthwhile to take a look at options of institutional design that might be used to better implement the three strategies – and to analyse which obstacles complicate any such attempt.

### **Implications for institutional design: the difficulty of institutionalizing positive-sum constructions**

A useful starting point for an inquiry into the institutional implications of the three legitimation strategies is the recent constitutional debate in the EU. This debate was predominantly a debate about the EU's

legitimacy: not only did the Laeken Declaration establishing the European Convention explicitly call for an investigation of how the Union's 'democratic legitimacy' could be improved, but the discussions that ensued were also mainly focused on questions of its 'legitimation in the light of normative criteria'.<sup>24</sup> In the constitutional debate, all three legitimation strategies were drawn on by political actors to justify their proposals for institutional reform, even if the legitimacy relationships at the heart of these models were not always made explicit.<sup>25</sup>

- The supranational model and the underlying *logic of analogy* – which have always been particularly influential among German elites<sup>26</sup> – in large part account for the fact that the Draft Treaty was called a 'Constitution' at all, as well as for much of its structure (e.g. the prominent place of the Charter of Fundamental Rights), language (e.g. the new, state-like names given to EU legal acts) and symbolism (e.g. the articles about the Union's values and symbols). All of these provisions are reminiscent of the 'instruments used by nation-states to anchor the polity in the population through the foundation of a visible identity, thus constructing an additional legitimacy and loyalty basis' for its institutions.<sup>27</sup> However, although the competencies of the EU were also expanded in the direction of a 'quasi-state catalogue of tasks and functions'<sup>28</sup> and the powers of the European Parliament were increased, the logic of analogy was clearly less influential in shaping the Draft Constitution's instrumental provisions – the 'efficient parts' of the Constitution, in W. Bagehot's words – than its symbolic ones. Most importantly, even under the Constitution, the EU's political system still differs from national democracies by protecting the independence of the Commission and its right of initiative, as well as by retaining the national veto in the Council of Ministers in many of the most important policy fields (e.g. taxes, domestic security, foreign affairs).
- The technocratic model and its *logic of complementarity* have had a less visible influence on the Draft Constitution. However, elements of this legitimation strategy can be discerned in the Commission White Paper on 'European Governance', published in time to influence the reform debate. In this document, the Commission not only stresses its role as guardian of the common interest in the EU but also sketches a model of 'good governance' that relies on direct consultation between the Commission and selected groups of experts and stakeholders outside of the representative institutions at either the national or European level.<sup>29</sup> The White Paper can thus be interpreted as seeking to build an independent 'expertocratic' legitimation base for the EU that

supplements legitimation through procedures of representative democracy.<sup>30</sup> In the Draft Constitution itself, the provisions about ‘participatory democracy’ allude to this concept but contain few specifics.

- Finally, the intergovernmental model and the underlying *logic of derivation* were championed most forcefully in the constitutional debates by the British government. Proponents of this legitimation strategy stressed the need to preserve the national veto, to strengthen the European Council, and to give national parliaments a more important role in EU decision making. In the Draft Constitution, some of these demands were met by retaining veto rights in many policy fields, establishing a permanent presidency of the European Council, and introducing a new ‘early warning mechanism’ to enforce the principle of subsidiarity that allows national parliaments to compel the Commission to review a legislative proposal. Still, the expansion of supranational elements in the Constitution, particularly when it comes to symbolic provisions, has made it difficult for national governments in various Member States to defend the Constitution against the charge of further diluting the powers of national democracies.

As the difficulties in ratifying the Constitution illustrate, there are two related problems with the three legitimation strategies and their attempts to construct positive-sum legitimacy relationships between European and national institutions. Firstly, none of them suffices on its own to legitimate the EU in its present institutional shape, nor to sketch a convincing blueprint of how the EU could be reformed to make it more legitimate. This is due to the fact that when really taken seriously, the legitimacy relationships on which the three strategies rely establish standards that are too strict to be met. The attempt to legitimate the Union based on a *logic of analogy* fails as the European Parliament is still too weak and the accountability of the Commission and the Council too indirect to conform to the democratic standards dominant in the Member States. Institutional reform to strengthen supranational elements in the EU system, on the other hand, is impeded. This is because many of the social conditions of decision making by supranational majorities – such as a common identity of the citizens, a coherent public sphere and a minimum extent of socio-economic equality in the population – are not adequately met in the EU.<sup>31</sup> Strategies of legitimation that rely on a *logic of complementarity* perform no better. They would presuppose that the outputs of EU governance can indeed be clearly distinguished from those of national governance, differing either in scope by referring to completely different policy issues, or in kind by avoiding all redistributive implications. Both conditions are not

met: national and EU governance is inextricably linked in most policy fields, and many EU policies are clearly not in the general interest but have identifiable winners and losers. To change this situation, a complete disentanglement of competencies and a reversal of many EU powers back to the Member States would be necessary. Yet this is a solution that appears neither feasible nor desirable given the interconnectedness and European scope of many of the problems to be solved in Europe's multilevel system.<sup>32</sup> By the same token, a pure *logic of derivation* can also not adequately legitimate the EU. In the present institutional structure, both supranational elements like qualified majority voting in the Council of Ministers and technocratic elements like the independence of the Commission reduce the Member States' ability to exercise full control over EU institutions. On the other hand, if all supranational and technocratic elements were scrapped and each national government obtained a right to veto all Council decisions, effective decision making in a Union of 25 or more members would be impossible.

In other words (and using terms employed in the introduction to this volume), none of the three strategies manages to establish congruence between common political problems in the EU, the democratic institutions required for their solution, and the social conditions for their functioning. For this reason, most analysts of European politics – and also most politicians participating in the constitutional debate – would probably agree that the EU can only base its legitimacy on a *combination* of the different strategies. Yet this solution, reasonable as it is, is complicated by a second problem: in many cases, the supranational, technocratic and intergovernmental strategies have contradictory institutional implications and thus undercut each other. For instance, if the European Parliament were given additional powers to strengthen analogies with national parliaments, this would most likely weaken both the independent regulatory powers of the Commission (on which the EU's legitimacy is based in a logic of complementarity) and the extent of national control over EU policies (which is stressed in a logic of derivation). Likewise, if the Commission were empowered, legitimacy assessments based on the logics of analogy and derivation would probably turn more negative. Moreover, if national governments obtained more powers, arguments based on the logics of analogy and complementarity would become less convincing. Against this background, M. Höreth argues that the EU is faced with a 'legitimacy trilemma':

This means that the proposals for institutional reform in the EU which target any of the three sources of legitimacy tend to weaken



another. [. . .] The quest for reforms to bestow greater legitimacy on the governance of the EU appears to be a zero-sum game: the multidimensional problem of legitimacy may be reshuffled to a degree, but it cannot be reduced in total.<sup>33</sup>

Höreth concludes that the current system of EU governance is likely to persist for the foreseeable future as it can only be improved in piecemeal ways.

The conceptual models of legitimacy relationships developed in this chapter, however, point to options that might help to overcome this zero-sum logic. In a sense, what is at issue here is a *second-order legitimacy relationship*, i.e. the relationship between different legitimacy relationships (and the supranational, technocratic and intergovernmental legitimization strategies that follow from them). The following section will therefore consider how these second-order relationships can also be constructed in positive-sum terms.

### **Second-order legitimacy relationships: a way to overcome contradictions between different legitimization strategies?**

Conceiving of the relationship between the three legitimization strategies – each of which is itself built on a specific kind of positive-sum linkage between the legitimacy of the EU and its Member States – as a second-order legitimacy relationship results in an argument that is somewhat abstract. The underlying problem, however, is simple: we are looking for ways that make it possible to ground the legitimacy of the EU on different legitimating linkages to the Member States – analogy, complementarity, derivation – at the same time, while avoiding constellations in which these different linkages undercut each other. In other words: what is needed is an institutional structure for the EU that allows for a positive-sum linkage to be made between these three positive-sum linkages. Obvious starting points for solving this problem are the three logics that have been identified before as the basis for positive-sum legitimacy relationships: analogy, complementarity and derivation. What would a second-order application of these logics amount to?

- The *logic of analogy* constitutes the most difficult case in this respect. What, after all, would it mean to claim that two different legitimization strategies are ‘analogous’? The most promising approach seems to be to focus on an analogy of institutional implications. In this case, one could speak of positive-sum relationships between different legitimization

strategies if institutions could be designed that can be justified according to two or more of the strategies at the same time. This is not as unrealistic as it might at first appear, especially if one keeps in mind that the European Parliament, the Commission and the Council of Ministers in their present shapes are not the only conceivable institutions that conform, respectively, to the (first-order) logics of analogy, complementarity and derivation. For example, attempts to construct analogies between national and European institutions do not have to focus exclusively on parliamentarism but might also refer to elements of presidentialism and direct democracy in the Member States' political systems. A reform of EU institutions in line with such models might make it possible to overcome some of the contradictions between the different legitimation strategies. For instance, if national delegations in the Council were not made up of government representatives but were directly elected by the electorate in each Member State,<sup>34</sup> the EU's system of governance would bear greater resemblance to national systems of democratic accountability (as demanded in a first-order logic of analogy). Moreover, this resemblance would come without giving up national control over European decisions (as demanded in a first-order logic of derivation). Similar effects could be reached if national veto rights were exercised not by national governments but by the people in referenda.<sup>35</sup> Furthermore, even when sticking to a parliamentary logic, a more harmonious combination of legitimation strategies based on analogy and derivation could be achieved by strengthening the role of national parliaments in forming Council delegations or in exercising national veto rights.<sup>36</sup>

- In a *logic of complementarity*, the construction of positive-sum relationships between the three legitimation strategies would be possible if specific spheres could be identified and demarcated in which each is appropriate, thus making it clear why and in which ways the strategies supplement each other. Instead of stressing the distinction between exclusive, shared and coordination competences of the Union as in the current draft, an EU Constitution should therefore more explicitly differentiate between (1) policy fields in which decision making by supranational majorities is deemed acceptable even under the problematic social conditions – the weakness of European identities, the fragmentation of a European public sphere and the socio-economic inequalities – that exist in the EU (e.g. trade or environmental issues); (2) policy fields in which decision making requires particular expertise and should thus be delegated to independent agencies, experts and participatory arenas that allow for the consultation of stakeholders

(e.g. currency matters or issues of food safety); and (3) policy fields in which national representatives have to retain ultimate control because supranational majority decisions would probably not be accepted by the population (e.g. social policy matters or other explicitly redistributive issues). Although this kind of demarcation already underlies the Draft Constitution, it is not made transparent to the lay reader. Furthermore, as there is no full agreement between the Member States about the classification of policies according to these three groups, mechanisms of flexible integration such as national opt-outs or enhanced cooperation could be used more extensively.<sup>37</sup>

- Finally, in a *logic of derivation*, positive-sum relationships between the three legitimization strategies can be constructed if one strategy is used to justify the application of the others. While in principle any of the three strategies might be given this privileged role, it appears most appropriate in the European context to grant this position to the intergovernmental strategy (and its first-order logic of derivation), since the Member States constitute the ‘masters’ of the EU treaties in a legal sense. Applying a logic of derivation to the relationship between the intergovernmental, supranational and technocratic strategies would then imply that all applications of the latter two strategies should be explicitly authorized by nation state institutions. This would require that all loopholes in the European political system that allow for an incremental shift to supranational or technocratic modes of decision making without explicit treaty revisions should be closed. An example of such a loophole is the flexibility clause of Art. 308 ECT (Art. I-18 in the Draft Constitution).<sup>38</sup> In addition, it would make sense to amend the new provisions for simplified treaty revision in the Constitution (Art. IV-444).<sup>39</sup> They should not just enable a shift from intergovernmental to supranational forms of decision making but also a recall of supranational competences if this is demanded by a certain number of Member States. The relationship between the different legitimization strategies would thus be politicized in a comprehensive way, allowing for a more flexible development of EU governance arrangements.

These suggestions certainly do not constitute fully developed blueprints for the design of EU institutions, and some are clearly more realistic and feasible than others. They show, however, that contrary to Höreth’s suggestion, the relationship between the three dominant legitimization strategies in the EU does not necessarily have to be conceived as a zero-sum game. Rather, one can come up with a number of design options that allow for the construction of positive-sum relationships between them. One obvious

question that remains concerns the relationship between these second-order relationships, and the threat of being trapped in an infinite regress. Yet the different solutions for constructing second-order relationships do not appear to be mutually incompatible, and it seems possible to apply more than one of them at the same time. When further elaborated and adequately operationalized, they could thus form the basis for the development of a European political system that can justifiably claim to ground its legitimacy simultaneously on relationships of analogy, complementarity and derivation to the national level of governance.

An entirely different matter, however, is whether this construction, even if normatively convincing, would actually have a positive influence on the EU's legitimacy in an empirical sense. In other words: is it plausible to expect that the design of institutions that allow for the construction of second-order legitimacy relationships between the three legitimation strategies will actually contribute to greater empirical support for the EU? Given the limited knowledge that large parts of the citizenry have of the EU's institutional structure, there are ample reasons to doubt whether institutional changes of any kind – and thus also those necessary to implement second-order legitimacy relationships – will translate into modified legitimacy evaluations.<sup>40</sup> If this is not the case, institutional changes at the EU level are unlikely to affect the citizens' legitimacy assessments: they might be relevant for the EU's normative legitimacy, but their effects on its empirical legitimacy will be limited.

Clearly, this line of argument has a lot of *prima facie* plausibility, and in the absence of more fine-grained empirical research on the formation of citizen attitudes towards the EU, it cannot be easily dismissed. Yet on the other hand, the persuasiveness of legitimacy relationships as parts of an argumentative strategy to build up empirical support for the EU should also not be underestimated. After all, part of the difficulty in generating public interest in the EU originates from the complexity and lack of transparency of its current institutional structure. By contrast, the logics of analogy, complementarity and derivation are almost intuitively accessible. If it were possible to design the democratic institutions of the EU in a way that would enable their defenders to portray them as analogues, complements and derivatives of Member State institutions, and if at the same time some of the contradictions that presently exist between these three logics in the EU's political system can be minimized by the design options discussed above, this might well have an influence on the EU's empirical legitimacy. Therefore, the identification of three relational legitimation strategies for the EU and the conceptualization of institutions that allow for a construction of positive-sum relationships between them is more than an

exercise in political theory, but might be relevant for attempts to increase public support for the EU as well.

## **Conclusion**

This chapter has sought to demonstrate that an insight into the construction of legitimacy relationships linking different levels of governance facilitates a better understanding of different strategies that are – or can be – used to underscore the EU’s legitimacy, both in a normative and an empirical sense. Its argument has been mainly theoretical: the hypothesis of reflexive denationalization implies that citizens should increasingly assess the legitimacy of institutions at multiple levels of governance in interconnected ways. For this reason, it also makes sense to frame normative and empirical legitimation strategies for EU institutions explicitly in these terms and to design such institutions in ways that conform to these relational strategies.

A look at the recent constitutional debates in the EU confirms that as legitimation strategies, relational arguments indeed influence the models of institutional design advanced by important political actors. Different models and the underlying legitimacy relationships, however, often stand in an uneasy state of tension to each other. It is therefore necessary to analyse second-order relationships between these legitimation strategies and to inquire into ways to overcome a zero-sum logic between them. This chapter has sketched some options of institutional design that make the most influential legitimation strategies for EU governance appear more easily reconcilable than is often assumed. These options promise not only to increase the normative legitimacy of the EU but might also have a positive influence on empirical support for EU institutions.

However, the analysis of the different legitimation strategies for the EU and of their implications for institutional design does not prove that the claims these strategies (and their adherents) advance are actually accepted by the citizens. Empirical research is needed to determine the actual importance of different types of legitimacy relationships for citizens’ legitimacy assessments. While the empirical results discussed in this chapter suggest that Europeans are at least receptive to such constructions, it should be examined more closely how exactly such arguments are framed by actors from different subgroups of the population. Furthermore, such studies should also investigate to what extent more than two levels of governance enter into relational legitimacy assessments. Which role, for instance, do attitudes towards subnational or global institutions play for the evaluation of European and national institutions? In principle, there are no

reasons to suppose that the arguments sketched here are restricted to the relationship between the EU and its Member States. Rather, the legitimization strategies that have been identified in the European context might become relevant for institutions at other political levels as well.

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- 39 This clause enables the European Council by unanimous decision to give up national veto rights in the Council of Ministers and to subject a policy to the standard 'legislative procedure', based on co-decision by the European Parliament and qualified majority voting in the Council. In contrast to Art. I-18, the application of this clause can be blocked by any national parliament.
- 40 In fact, it has even been argued that (first-order) legitimacy relationships between the European and the national level of governance are important in the EU precisely because the people know so little about EU institutions, which leads them to resort to national 'proxies' when forming an opinion about them (see Anderson, 'Proxies'; Kritzinger, 'Influence'). This argument neglects, however, that in a context of increasing interconnectedness between national and EU institutions there may be many other good reasons – in addition to information deficits – for interdependent legitimacy assessments.

# 2

## Federalism and Democratic Accountability

*Jennifer Smith*

### Introduction

In theory, citizens of federations face no more problems of democratic accountability than citizens of unitary states. Indeed, many would argue that citizens of federations face fewer problems because their system of government offers more latitude to democratic practices than the unitary system. Typically the constitution of a federal state establishes a form of multilevel governance under which different levels of government are possessed of legislative and executive responsibilities independently of one another. More independent, elected governments – more democracy, more accountability of governments to citizens. Within unitary-style states there are also multiple levels of governments, but they are organized hierarchically and only one level, namely the central or national government, possesses binding authority over the full array of legislative and executive responsibilities. One authoritative, elected government – less democracy, less accountability.

There are other reasons for thinking that the federal structure encourages the accountability of elected governments to citizens. One is the principle of the rule of law. The rule of law is the foundation of the orderly regime within which democratic politics are conducted. In the absence of some order and predictability, democracy risks a collapse into mob rule, in which circumstance accountability vanishes. As it happens, the rule of law is also the essence of federalism. The federal system is a formal, legal structure complete with rules that are enforceable in the courts. It is precisely this quality of the system that attracts smaller, weaker communities to join with the larger, stronger ones to establish a federal system. The weaker communities know that they can seek to have their rights under the constitution enforced in the courts. The rule-bound nature of the system assists

the conduct of democratic politics and the accountability of governmental actors to the citizens, which is an essential dimension of such politics.

Another reason federal structures encourage accountability is because equality and democracy are core principles of them. Equality begins with the treatment of the founding partners as equals. In democracies, the political equality of the individual is the central assumption on which majority rule is based. The reinforced emphasis on the norm of equality can only strengthen the expectation of citizens that they can and should demand that elected governments be accountable to them. A final reason for thinking that the federal structure enhances democratic accountability flows from the observation that elected, independently empowered governments within the same state often compete with one another for the affection of their electorates. The competition between governments inherent in the federal system has the effect of prodding the accountability of governments to citizens.<sup>1</sup>

Despite these reasons why federal systems enhance democratic accountability, the fact of the matter is that accountability remains a problem in them. Federal systems everywhere throw up their own peculiar obstacles to accountability. Incidentally, many of them were foreshadowed by political and constitutional theorists long ago. While it is true that federalism is compatible with democracy and can have the effect of reinforcing patterns of accountability, such reinforcement is not a necessary outcome of the system. Accordingly, the purposes of the analysis that follows are twofold: the first is to identify the obstacles that citizens face in the effort to get accountability from the system, beginning with the simplest obstacles and turning to more complex ones. The decidedly dim view of the relationship between federalism and democracy taken by early theorists of federalism will form an integral part of the analysis, as their arguments bear directly on the problem of democratic accountability in federal systems. The second purpose of the analysis is to identify the available solutions to the problem of accountability. How are citizens expected to engage the problem? In what ways can the system be changed to ease citizens' participation?

In turn, the conclusion will present some observations about the likelihood of success of the solutions that are commonly proposed as well as a different approach to the problem of accountability. Before proceeding further, however, it is necessary to begin with definitions of federalism and democratic accountability.

## **The concepts of federalism and democratic accountability**

In a federal system of government, the participating political communities agree to pursue some objectives together and other objectives on their

own. More specifically, they agree to establish a central government and to empower it to make and administer laws in some areas. Furthermore, they retain the power to make and administer laws themselves in other areas. The laws of the central government apply to the residents of the federation as a whole. The laws of the federating communities – the provinces, states or subunits, depending on the terminology in a given federation – apply to those who live within their respective boundaries. R. Watts sums up the result as a ‘combination of shared-rule for some purposes and regional self-rule for others within a single political system so that neither [level of government] is subordinate to the other’.<sup>2</sup>

From the combination of shared rule and regional self-rule flow several features, all or most of which are present in some fashion or other in existing federal systems. These features can be itemized as follows:

- the constitutionally protected autonomy of each level of government, central and regional (province, state, *Land*);
- a written constitution and courts that are empowered with the authority to settle disputes arising under it;
- a constitutional amending formula that is designed to prevent any one government of the federation from making changes to the constitution unilaterally; and
- a central government that includes some form of representation of the units of the federation.

The concrete factor underlying these features and anchoring all federal systems is territoriality. The communities that join together to form a federal state are not merely sociological constructs. They are land-based communities inhabiting territory that is demarcated by boundaries. Thus the local governments referred to above invariably are governments of territorially defined units, be they provinces (as in Canada), states (as in the United States), *Länder* (as in Germany), or cantons (as in Switzerland).

In contrast with the complex construct that is federalism, the concept of democratic accountability seems simple enough. In modern representative democracies, the people choose not to govern themselves directly but instead to elect individuals to govern in their place. The people get to hold the elected officials accountable for their record of decisions at the next election. Thus the key engine of accountability is the election that is held at regular intervals. Knowing that they can be thrown out of office, elected officials have a strong incentive to respond to the demands of the electorate, or at least to be seen to respond to them.

What is the impact of federalism on this simple yet powerful electoral dynamic? As indicated at the outset, there are positive impacts. Federalism reinforces some principles that are critical to democracy and therefore democratic accountability, such as the rule of law and equality. It also sets up a rivalry between governments that spurs them forward as agents of accountability competing for votes. However, federalism is also the source of negative impacts on democratic accountability. Early students of federalism noticed one of them right off the bat – the frustration of the will of the majority. Other negative impacts have taken time to develop and are the subject of more recent commentary. They include the regionalization of the system of political parties; closed governing practices; blurred lines of accountability; and the municipal misfits, or cities.

## **Federal obstacles to democratic accountability**

### **Federalism frustrates the will of the majority**

If governments are not required to bend to the will of the majority as expressed at elections, they can dodge accountability to the majority. Two early analysts of the federal system, J. Dalberg-Acton and A. V. Dicey, both recognized that the system places restraints on democracy, which they defined as majority rule. However, they reached opposing conclusions about the desirability of this restraint.

Acton, a leading liberal of the nineteenth century and a student of American federalism, warmed to the federal system precisely because of the barriers it raises to democracy. His concern was democracy run amok or unchecked by countervailing forces, and the example he dwelt on to make the point was slavery in the Confederate States. In his view the Confederacy was a vivid demonstration of how majority rule, unchecked by other principles like guaranteed rights and freedoms, can deteriorate into majority tyranny.<sup>3</sup> Acton's example hardly seems persuasive since one can argue that federalism served to protect slavery by enabling the southern states to get away with it, at least until the Civil War. On the other hand, had the Confederate States won the war and maintained themselves as an independent state, the result undoubtedly would have been a slave state for many years.

Acton canvassed some features of the American system that blunt the force of majority rule, beginning with the division of powers between the Congress on the one hand and the state legislatures on the other. The Congress, he wrote, could represent the will of the majority of Americans only in relation to the subjects of legislation assigned to it under the Constitution. The state legislatures could represent the will of

the majority only within the states, and then only in relation to the subjects that remained. Thus the division of powers fractures the electorate, impedes the development of anything other than fleeting national majorities, and ultimately weakens the chain of accountability of governments to citizens. The make-up of the Congress, in Acton's view, had a similar effect. He focused on the Senate, which is designed to represent the state electorates rather than the national electorate. Each state elects two senators irrespective of the population of the state – clearly a structural bias against democracy. The same design also skews accountability since the Senate as a whole cannot be considered accountable to a national electorate. Acton's analysis shows clearly that the state-based nature of American federalism militates against majority rule and the easy accountability of the government to the governed that flows from it.

What Acton liked about federalism – in effect its anti-democratic tilt – has since become a problem in the eyes of many analysts. At the time he wrote, many of the civil rights embedded in the American Bill of Rights were still a promise and therefore not the additional and powerful check on majority rule that they are today. Thus there remain the non-tyrannous majorities – the 'good' majorities – that form within the regime of the Bill of Rights. It is their fate under the federal system that struck A. V. Dicey, the influential British constitutional scholar whose career spanned the late nineteenth and early twentieth centuries. He saw that the system served to dissipate the power of national majorities to drive national policy and to hold the national government to account for them. Unlike Acton, he regarded this as a negative idea. Since Dicey's concern is closer to our own, it is worth pausing to consider why.

Dicey was a devotee of the British parliamentary system at a time when sovereign power resided in the British Parliament. Parliamentary sovereignty was the gold standard by which he measured the American system and determined it to be a weak government of competing parts and no clear structure of accountability. He identified several reasons for this state of affairs, one being the diffusion of power inherent in the inevitable conflict between Washington and the state governments. Another was the inability of the Congress to articulate and act on national objectives. It was too busy attending to the demands of the states – demands ably represented in the body designed to forward them, namely the Senate. Yet another reason was the written constitution peculiar to the federal system, which was something of an anathema to a constitutional scholar convinced of the desirability of Britain's unique 'unwritten' constitution. Dicey argued that the unwritten constitution allows government to be flexible, innovative and capable of fast action, while the written

constitution favours rigid and conservative governmental practices because of the role of lawyers and judges in the determination of disputes between governments that arise under it. The legalistic approach, he wrote, is an inevitably restrictive and narrow one.<sup>4</sup>

Dicey's promotion of the straightforward unitary model of representative democracy unencumbered by the strictures of the judiciary would find little favour today among those who rely on the courts as the champions of human rights. Yet there is no getting around the power of the model in the promotion of democratic accountability. There is a straight line between the government and the citizens. By contrast, in federal systems there are many lines pointing in different directions. There is also the matter of the courts. The role of the courts as umpires of the federal system interferes with democratic accountability for the obvious reason that courts usually are not elected bodies. The principle of judicial independence requires that they be beyond the reach of citizens, who hold them accountable for their decisions. This principle persists regardless of the fact that these decisions often have a direct impact on the shape of public policy. Isolated from the mechanisms of electoral accountability, courts can hold back governments from charting innovative public policy courses in response to emerging economic and social challenges. The best example of this occurred in the United States during the Great Depression. Trapped by conventional thinking about the limited role of government in the economy, elected officials floundered for some time. Under the administration of President Roosevelt, however, they eventually began to pursue the then unorthodox public policy approaches collectively known as the 'New Deal'. The Supreme Court of the United States, like all courts conservative by profession and training, struck down some of the early legislative initiatives of the programme. President Roosevelt's threat to get Congress to enlarge the membership of the court and then 'pack' it with new appointees favourable to his way of thinking ultimately prompted the judges to take a more benign view of congressional intervention in the economy than they had previously. After the court-packing incident, the court never overturned another New Deal measure.

### **Federalism, political parties and electoral competition**

Both Acton and Dicey drew attention to the basic structural features of federalism that lessen the impact of majority rule by restricting the reach of the national electorate to specified public policy areas and leaving local electorates to demand accountability from local governments for the rest. While this certainly muddies the waters, it can be argued that the role of the political parties at each level of government is to build majority

support for themselves, win government, and then stand accountable to the electorate at the next election. In other words, the political parties can overcome the fissures that flow from the federal system. This is indeed possible, but the federal system makes the task very difficult. The reason is regionalism: federalism encourages regional systems of political parties.

From the standpoint of democratic accountability, arguably the best system is the competitive two-party system organized around a right-left division of opinion. The party in power faces a single opposition party that mounts the sustained, coherent and organized attack on the government's policies. That focused attack represents the public's demand of accountability from the government. For the governing party, there is nowhere to hide. For the public, there is no confusion about the battle lines. Yet in federations that are marked by differences in the ethnic background, religion or language of the territorially based communities that reside within them, the competitive two-party model is a phantom. The pressures that militate against it are too strong. Belgium is an obvious case. At the federal level there are no national political parties. Instead, the political parties are language-specific and coalition governments are the norm.

Belgium, with a population of some 10 million, is comprised of the Dutch-speaking community in Flanders in the north (just under 60 per cent of the total population of the country); the French-speaking community in Wallonia in the south (just over 30 per cent); a tiny German-speaking community of some 70,000 souls located in the south-east; and Brussels (1 million and largely French-speaking). The three language communities are Dutch, French and German. Belgium began life as a unitary state but since 1993 has been possessed of a highly decentralized federal system. The movement towards a federal system picked up speed in the decades following the Second World War. It was during that period that the traditional political parties, no longer able to broker their internal linguistic divisions, split into new, language-based parties.

The requirement of coalition government in Belgium, or anywhere else for that matter, is not intrinsically undemocratic. Indeed, quite the opposite. The point is simply that in terms of accountability, a coalition of political parties presents a more complex picture than the prototypical one-party majority. The parties of a coalition expectedly bring different points of view to the table. Trade-offs are made; bargains are struck. However, the citizen is not necessarily privy to any of this activity and, in the event that they are privy, will have difficulty discerning which of the coalition partners is driving a particular public policy position. The party s/he supported in the election? Or the other parties? Accountability



becomes problematic rather than obvious. It becomes even more problematic when the political parties in question are cross-pressured on particular issues. For example, in Belgium the federal government retains responsibility for social security, including employment insurance and pensions. It is to be expected that the socialist political parties support the government's role in this respect in the interest of the equitable redistribution of wealth. Undoubtedly the Wallonian political parties do. However, their socialist Flemish counterparts are cross-pressured because they must also respond to nationalist demands in Flanders to 'federalize' social security by transferring the responsibility to the regional governments. Since Flanders is wealthier than Wallonia, there is the risk that such a transfer would diminish the redistributive character of the programmes currently administered by the federal government.<sup>5</sup>

The multi-party system that is characteristic of many federations is not necessarily a product of sharp ethnic, religious and linguistic differences among geographically based communities. Other factors can serve to generate regional party systems, an example being the bifurcation of Germany during the Cold War. The system of unified, competitive political parties<sup>6</sup> in West Germany consisted of two main parties – the right-of-centre Christian Democratic Union/Christian Social Union (CDU/CSU) and the left-of-centre Social Democratic Party (SPD) – plus two minor parties – the Free Democratic Party (FDP) and, latterly, the Greens. The system produced alternating, fairly stable coalition governments. By contrast, East Germany was run by the Socialist Unity Party (SED), a communist party. Since the reunification of Germany in 1990, the two main parties from western Germany have competed successfully against the Party of Democratic Socialism (the SED's successor party, called the Left Party since 2005) in the *Länder* in eastern Germany. Nevertheless, the Left Party is an important presence there and has participated in coalition governments in some of the *Länder*. At the local level in eastern Germany, the resilience of the Left Party ensures a multi-party system and coalition governments.

There is also the impact of the Left Party in western Germany. To date, the party has made no inroads in elections in the western *Länder*. However, the federal level of politics is another matter. It made a modest start in the first reunification election in 1990, gaining 2.4 per cent of the vote, and increased that figure in subsequent elections, falling back in the election in 2002 because of internal party conflicts that hampered its appeal to the electorate. Yet in the election in 2005, in alliance with a dissident labour faction of the SPD, a reorganized and rejuvenated Left Party won 8.7 per cent of the vote and 54 of 614 seats in the German

Bundestag – its best outing to date. As well, the party elects members to the European Parliament. The Left Party, with its strong base in eastern Germany, contributes to the continuance of a multi-party system at the federal level as well as in the eastern *Länder*. It also contributes to the ongoing need of coalition government and the resulting problems of democratic accountability associated with coalitions.<sup>7</sup>

### **Executive federalism**

However much the regional party systems common to many federal systems might complicate democratic accountability from the standpoint of the electorate, there is another axis of accountability available that flows from the rivalry between the two levels of government. When the state governments clash openly with the federal government, citizens can gain an appreciation of the complexities of the issue in question and determine which level of government to hold responsible for a policy outcome that they dislike. The conflict between the governments facilitates democratic accountability. On the other hand, when the governments cooperate with one another, they are complicit in the result that is obtained. They are all responsible, which means, politically speaking, that none is responsible. This is the problematic side of executive federalism, which has great significance for democratic accountability.

Canadian political scientist D. Smiley coined the concept of executive federalism, defining it broadly as ‘the relations between elected and appointed officials of the two orders of government in federal–provincial interactions and among the executives of the provinces in inter-provincial interactions’.<sup>8</sup> Today, and depending on the federal system in question, it is necessary to add other levels of government to the mix, namely supra-national (the European Union [EU]) and subnational (territorial governments in the Canadian north). Otherwise, the definition holds.

Smiley was well aware of the importance of intergovernmental activity for the smooth coordination of governance in modern federal systems. The idea that each level of government can act in isolation from the other is scarcely imaginable. However, as Smiley stressed, intergovernmental activity is the monopoly of executives, the elected officials charged with executive tasks, and the public servants who often prefer to conduct their business away from the glare of the public. Often they collaborate in extended and complex consultative processes with one another, and the only non-governmental actors that are part of the process are select groups and individuals with particular expertise. It is an elitist affair that is very difficult for the average voter to penetrate. It is hard for the voter – who sees only the summary of an agreement and knows

nothing about the bargaining that went into it – to extract accountability from a closed intergovernmental process.

The practice of executive federalism also serves to diminish democratic accountability whenever agreements that are reached at intergovernmental meetings have the status of a *fait accompli*. For example, in Canada there is no need for the governments to take such agreements to the legislatures, and generally they decline to do so. Instead, they content themselves with the fanfare of a public announcement. Since the legislatures do not vote on the agreements, they do not scrutinize them in legislative committees. Sometimes they do not even debate them, either. The upshot is that one of the major engines of democratic accountability, i.e. the opposition in the legislature, is more or less blocked from participating in this area of governance.

### **Entanglement**

Another problem of democratic accountability flows from the phenomenon of entanglement, which means the involvement of one level of government in the responsibilities of another level. There is a blurring of the lines. Once this happens, citizens have difficulty identifying the responsible agents and holding them accountable for their actions.

No federal system today can escape the problem of entanglement, even those originally designed along classical lines. Under the classical model, each level of government is assigned its own spheres of jurisdiction and remains responsible for them to the electorate. As a result, the lines of accountability from government to electorate are clear. The voters easily know which level is responsible for what policy sphere. The trouble, of course, is that in practice the classical model no longer obtains, even in the classically designed systems like Canada, Australia and the United States. In its place is a cooperative or collaborate model in which all levels of government often find themselves involved in a particular public policy area.

The classical model relied on the idea of limited government as well as clearly demarcated jurisdictional lines. In the years following the Second World War, however, the idea was more or less abandoned as ambitious governments embarked on the construction of the welfare state and the management of the economic cycle to maintain reasonably robust levels of employment. Since the powers under the old federal constitutions were not logically divided for such purposes, the governments were bound to run into one another, and they did. Suddenly it was not easy to see where the responsibilities of one level ended and those of the other began. In addition, many new public policy concerns have proven difficult to

address within the confines of subject areas set out in eighteenth- and nineteenth-century constitutional documents. Sometimes these concerns cover multiple subject areas. Sometimes they are entirely new. Occasionally they are both, an obvious example being the environment. The environment was not a nineteenth-century concern. Now it is a concern of most governments, although not an easy one to partition among them. There also is the financial side of the equation, which is always complicated.

Typically, given the age of many federal constitutions, the level of government assigned costly responsibilities is ill-equipped with the powers of taxation required to fulfil them. Conversely, the level of government that has the lion's share of the taxing and spending powers does not possess such responsibilities but wants to influence public policy in relation to them anyway. Such is the case in Canada, where the federal government has money to spare for health care but no jurisdictional responsibility for it because health care remains the constitutionally mandated task of the provinces. Nevertheless, the federal government seeks to influence the health care policies of the provinces, even to help them shape and sustain what amounts to a national health care system. The complex, ongoing negotiations between the two levels of government that is required to keep the health care system functioning defies any simple notion of accountability. Indeed, during elections, governments are quick to blame one another for the policy failures invariably rooted out by the media in an effort to make mischief during the campaigns.

It is not just the classical federal systems that face entanglement and the problem of democratic accountability arising out of it. The federal system of Germany departed from the classical model from the start by relying on the *Länder* governments to implement most federal legislation – a feature that clearly promotes the need for collaboration between the governments. Consistent with this feature is the composition of the upper house of the federal legislature, the Bundesrat, which is made up of representatives of the *Länder* governments. Although administrative power is concentrated in the *Länder* and they have some exclusive competencies in relation to cultural and local matters, extensive legislative powers belong to the federal government. Over the years, the resulting close linkages among governmental actors have produced an opaque policy-making process that, in the words of one analyst, 'has reduced the transparency and public control of the decision-making process'.<sup>9</sup> Meanwhile, there is the added challenge of membership in the European Union.

In the ongoing process of European integration, the regulatory reach of the EU extends to some of the matters assigned to the *Länder*. When the exclusive legislative competencies of the *Länder* are at issue, their

governments form the German delegation in the Council of Ministers, the lead decision-making body of the EU. In all other matters, including those that touch upon the administrative powers of the *Länder*, the federal government represents Germany in the Council. The result is the participation of the federal government rather than the *Länder* in most EU decisions that affect *Länder* competencies. This not only interferes with the design of Germany's federal system by concentrating even more power in the federal government but also diminishes the accountability of the *Länder* governments for matters that (constitutionally, at least) are supposed to belong to them.

The evident need of the commitment and collaboration of different levels of government to pursue effective economic and social policies hinders the easy exercise of democratic accountability for the simple reason that it is difficult for the citizen to know who is in charge and responsible. Nor are governments necessarily inclined to make it clear, even if that were possible, unless they have a policy success on their hands. Certainly the entanglement of responsibilities enables them to dodge accountability more easily than would clarity. One of the worst cases of policy entanglement, however, deserves consideration on its own. It arises in the cities, the true misfits of federalism.

### **Municipal misfits, or cities**

The cities raise their own peculiar problems of democratic accountability. From the standpoint of federalism, the cities mostly are afterthoughts. The older federal systems were established in rural societies in which the 'cities' in existence were really towns, and their current size simply unimaginable. In the constituent units of the federation there was usually a layer of local or municipal governments – the municipalities. These municipal governments came in all shapes and sizes: rural, semi-rural, towns, cities. They still do. The common habit was to make the municipalities the constitutional responsibility of the constituent units. As a result, they possessed no powers of their own independently of the other levels of government, only those powers assigned to them by the constituent units responsible for their fate. Thus in Canada, the municipalities are the creatures of the provincial governments, which delegate powers to the municipalities and assign revenue sources to them.

Fast forward to today, and the status of the mighty cities as creatures of the provinces seems bizarre. Bizarre or not, their constitutional status remains unchanged. Meanwhile, the range and complexity of the tasks facing city governments everywhere have exploded beyond the old mainstays of municipal infrastructure, urban planning and local policing.

City governments everywhere are on the front line of many outsized problems: immigration settlement; racism; homelessness and poverty; urban transit; water treatment and sewage; pollution; and so on. Many of these problems are the responsibility of the other levels of government, but they are entangled in the responsibilities delegated to the municipalities and, in any event, the municipalities meet them first. Yet municipalities are always short of money. The revenue sources delegated to them generally are meagre, the leading one being the regressive property tax.

Writing about the Mexican situation, which in principle is like the Canadian one, M. González Oropeza succinctly explains why the cities pose such a problem of accountability in the federal system. 'Municipal governments,' he writes, 'generally lack powers delegated from the state or federal orders of government. Still, they have to solve issues where the confluence of such powers is so intertwined that a clear-cut separation among the different jurisdictions is impossible to make.'<sup>10</sup> Urban residents are well aware of the futility of holding underfunded and underempowered city governments responsible for the quality of city life, but they cannot turn to other governments so easily because municipal issues generally do not dominate national and state elections.

In newer federal systems like Germany's, there is some departure from this pattern. Under the German Constitution, by contrast with the Canadian and Mexican, the municipalities are guaranteed the right to administer their affairs, including cultural institutions, local infrastructure, services and urban planning, and access to some tax revenues. However, they are not a third order of government in their own right but are subject to the exclusive supervision of the *Länder* governments. They are also dependent upon additional funds from the *Länder* governments, since their own revenue sources do not cover their spending requirements.<sup>11</sup>

## **Solutions to the problem of democratic accountability**

Political leaders are not in the habit of offering solutions to the problem of democratic accountability since that would be an admission that there *is* such a problem. Their penchant is to stay in the realm of policy, seeking practical solutions to practical problems. Academic writers have the most to say about democratic accountability, although not a great deal from the standpoint of federalism. In the literature on federalism there are precious few ideas available for consideration, and some of them require the arduous process of constitutional change. On the other hand, there are non-constitutional strategies as well. In the next section, the constitutional remedy is considered first, particularly in relation to

the assignment of powers and the role of the cities. It is followed by consideration of two prominent non-constitutional strategies, namely disentanglement and the use of direct democracy.

### **Constitutional strategies**

From the standpoint of accountability, an obvious idea is to reform the assignment of powers to the levels of government in order to make peace with current practices, to accommodate exogenous developments (like the establishment of the EU or the globalization of trade) and, at the same time, to bring some clarification to the situation. The effort is not devoid of creative possibilities. In many of the older federal systems, the nineteenth-century concepts used in nineteenth-century constitutions could be discarded in favour of a restyled assignment that conceives of public policy areas in twenty-first-century terms. For example, in Canada the Constitution assigns responsibilities for the banks to the federal government, but stock exchanges are provincial matters. The result of this is more than one independently run stock exchange in the country. It is hard to find anyone in business, studying business, or regulating it who thinks that this is a good thing, although the effort to get the relevant parties to agree on a new system has not yet been successful. In a round of formal constitutional amendment, that might change. Certainly the subjection of the stock exchanges to one regulator would necessarily enhance democratic accountability. The way things stand now, a stock investor who lives in Calgary cannot hold the Ontario government accountable for not properly regulating the Toronto Stock Exchange.

Another area ripe for constitutional reform is the power of taxation. The mismatch referred to earlier between revenue sources and spending responsibilities is a common problem in federal systems. It is probably the single most important driver of the interdependency that makes it hard for the electorate to figure out which authority is accountable for what. Additionally, it introduces unfairness in the accountability exercise. It is hard to hold a financially strapped government accountable for the discharge of a constitutional responsibility that it cannot afford to meet. India offers a typical example of the problem. According to G. Mathew, the central government in New Delhi has accumulated broad powers of taxation at the expense of the states.<sup>12</sup> At the same time, the role of the state governments in the economic sphere has expanded along with the country's participation in the global economy. The state governments are very active in pursuit of an agenda of economic liberalization. Predictably, they seek access to revenue sources commensurate with their increasing responsibilities.

Then there are the cities. As indicated earlier, the cities raise problems of democratic accountability of their own. This is particularly the case in traditional federal systems, in which cities are not an independent order of government under the constitution and have limited access to revenue sources beyond those delegated to them by a more senior level of government. Ad hoc arrangements that enable the cities to get by are a common resort, and Canada provides a perfect example of this. There, cities are the responsibility of the provinces, but the federal government's interest in them has increased. In 2004 the government decided to direct a share of federal revenues raised from the retail tax on petrol to the cities – not directly to the cities but indirectly to them through the provinces – for broadly denoted purposes like the maintenance and development of urban transit and water treatment.<sup>13</sup>

Undoubtedly this federal funding initiative for the municipalities will generate some real accomplishments as many badly needed urban projects get under way. Yet the arrangements involved three levels of government – federal, provincial and municipal. They were hammered out in the style of executive federalism, that is, among government actors and away from the gaze of citizens. The resulting bureaucratic maze is a puzzle for democratic accountability. Whom does a city dweller blame for an old and inefficient public transit system? The government with deep pockets but no jurisdiction for public transit? The government with thin pockets but the jurisdiction? Or the government with no pockets but direct administrative responsibility for the system?

Frustrated by the situation, those who argue in favour of a 'new deal' for the cities want to remedy these deficiencies by empowering city governments independently of other levels of government and by expanding their powers of taxation. Some even call for the establishment of city-states as member units of the federation in their own right, even though the idea implies the dismemberment of the units in which the candidates for such treatment are located and the redefinition of the boundaries of the units. In other words, the advocates of action on the cities want to change the Constitution. Therein lies the rub.

The trouble with such clear-cut, logical remedies to the problem of democratic accountability is that they require constitutional change – a process that involves the participation of many actors and therefore a high degree of consensus about the need for change and the kind required. The process is fraught with pitfalls. Often it takes a near crisis to get the exercise going, and even then there is every chance of failure. The amending formulae that are contained in the constitutions of federal systems are designed to require a substantial level of consent for change among



political leaders and citizens. Some systems adhere to formulae that demand the support of a super-majority of the legislative bodies. This is the case with Germany's formula, under which two-thirds of the membership of each house of the German Parliament must consent to change. Other systems use the referendum, although not just a single, national vote but votes in each of the member units as well. In Switzerland, the requirement of a double majority in favour of a partial revision of the Constitution specifies the majority of the voters nationally and in a majority of the cantons.

Switzerland provides an excellent example of how arduous the task of constitutional change can be under such exacting rules. At the beginning of 2000, the newly revised Constitution came into effect following the requisite approval of the voters in the spring of the previous year. However, the process took over 30 years, having been launched by the federal government as far back as 1966.<sup>14</sup> Germany supplies an example of recent failure. In the fall of 2003 a high-level commission on the modernization of the Constitution was established to find ways to reallocate responsibilities between the federal government and the *Länder* in an effort to shake up a governmental system that exhibits an increasingly immobilized decision-making process. Since the establishment of the commission was preceded by discussions among the principal political actors, there was some expectation that the effort would achieve success. Its failure in 2004 was an indication of the difficulty involved in getting widespread agreement on changes to the fundamental rules of the game.<sup>15</sup> Following the formation of a grand coalition government in the wake of the federal election of 2005, some of the more modest reform proposals were revived and, at the time of writing, are under debate in the legislature.

### **Non-constitutional strategies: disentanglement**

Disentanglement can be the aim of constitutional reform, but it does not always require action at that level. Instead, and as discussed here, it is simply a call for governments to respect the existing division of powers between the central and state governments, to mind their own business, as it were, and to stop poaching on each other's territory. It must be emphasized that in the mouths of the state governments (the usual complainers) the advocacy of disentanglement is a matter of maintaining power against the encroachments of the central government, not promoting democratic accountability. Still, disentanglement is consistent with democratic accountability, a point made by academic enthusiasts of the idea, economists being prominent among them.

To some extent democratic accountability is a sideshow in the economists' version of disentanglement as well. For them, disentanglement makes sense in the context of a growing private sector, a shrinking public sector, and consequently a more limited role for government in the provision of public services. They say a clean public policy environment in which business deals with as few government actors as possible is more efficient from the standpoint of a productive economy. Still, the effect of disentanglement for democratic accountability is easy to see – clear-cut lines of responsibility from government to voters. When each level of government is responsible for a given jurisdiction and there is no overlap or sharing, the voters know very well whom to hold to account for what at elections. However simplistic this scenario appears, something like it must be in the minds of the democratic promoters of disentanglement.

Setting aside the promise of disentanglement for democratic accountability, there remain a couple of problems with it, one being that the existing assignment of powers is not necessarily the best one. In most federal systems the existing assignment is the old one that has long been taken over by events. For example, the conduct of foreign policy is routinely assigned to the central governments of these systems. Long uncontested, even this assignment is proving a little problematic in a global trade era. Member units are anxious to be involved in the trade side of the file, not just as participants in the efforts of the central government but as well by establishing their own trade missions abroad. In the case of the EU, the Member States of federal countries like Germany have pressed – with greater or lesser success – to participate directly in some EU decision-making forums when matters within their jurisdiction are on the table.<sup>16</sup> If disentanglement means going back to the status quo ante, then arguably it is not a desirable option today. Nor is it a likely political one, the second problem with the idea. Once one level of government has staked out some territory in the other level's turf and patterns of negotiation have been developed to move various policy files along, it is doubtful that either party would risk the bother of moving backwards. There is too much interdependency.

### **Non-constitutional strategies: direct democracy**

The difficulties associated with sorting out the responsibilities of the governments of federal systems seem overwhelming in the face of the complex public policy problems that demand the collaboration of public actors. Jurisdictional overlap, collaboration and interdependency seem here to stay. That being so, it is tempting to look in another direction altogether to strengthen democratic accountability, namely popular sovereignty. The example is Switzerland.

Switzerland has long been known for the use of the techniques of direct democracy to secure a robust measure of popular sovereignty at the federal and cantonal levels. The 1999 Constitution continues the tradition. Setting aside the variations at the cantonal level and staying at the federal level, the two important tools with which the citizens can extract accountability from the federal government are the initiative and the referendum. The initiative permits citizens to insert themselves at the beginning of the decision-making process on their own initiative. On following the required procedures of form and manner, the citizens can initiate a vote on the total or partial revision of the Constitution, and, even more notably, on non-constitutional federal proposals. A successful legislative initiative must meet the same test of agreement as a constitutional initiative, namely the double majority.

There is also the use of the referendum, or popular vote on legislative measures already enacted by the federal Parliament. The Swiss have pioneered the compulsory referendum as well as the optional referendum, the former confined to the cantonal level. At the federal level there is only the optional referendum for new laws, again triggered by citizens who follow the requirements of form and manner. The test of success is the double majority. Once a new legislative measure is adopted by the federal Parliament, there is a specified period of time in which citizens can get a referendum on it underway. Should they fail to do so, the law is enforced. Should they meet the requirements to hold a referendum, then the process is underway and the law is not enforced until its fate is established one way or the other.<sup>17</sup>

There can be no doubt that direct democracy, i.e. the instrument of popular sovereignty, is a key to the conundrum of democratic accountability in federal systems. The use of the referendum or the initiative is a certain way to exact accountability from elected officials. Moreover, the high standard set for agreement – the double majority – ensures the need for a broad consensus on legislative action and prevents one group in the society from hijacking a measure that enjoys widespread support among the citizens. Finally, the establishment and use of the techniques of direct democracy serve to establish an environment in which the exaction of democratic accountability is regarded as a normal rather than an abnormal process.

## **Conclusion**

Democratic accountability is diminished in the governmental jumble that is federalism today. Since the world of the old federal constitutions

no longer exists, it is hardly surprising to find that the constitutions themselves no longer delineate clearly the policy responsibilities of the levels of government. These responsibilities have assumed proportions unimaginable in the minds of the eighteenth- and nineteenth-century drafters of the constitutions. Moreover, some policy areas are simply new. It is no wonder that in order to govern at all under the constitution, governments need to collaborate with one another. But it is difficult for citizens to sort out who is responsible for what in collaborative efforts, and in any event collaboration enables governments to blame one another for policy failures.

Regrettably, it is hard to tackle the problem of accountability directly by amending the constitution. The constitutions of federal systems are especially difficult to amend because a substantial level of agreement on proposed changes invariably is required. The 33-year effort of the Swiss is telling evidence of the point, but at least they finally achieved the objective. In many other federal systems in which the need for constitutional change is acknowledged, little or no success has been achieved. Thus it would appear that a non-constitutional approach is preferable to a constitutional one, at least in the short term.

On the basis of the analysis above, the robust route to democratic accountability is the most direct one, namely the institution of the techniques of direct democracy. Citizens can use them to cut through, go around or simply ignore the web of jurisdictional overlap and hold accountable the government that has seen to the enactment of the legislation in question. Must such techniques be entrenched in the constitution? Not necessarily. Governments are quite capable of sponsoring legislative measures to establish the popular initiative and referendum as part of an effort to promote the engagement of the citizens in political life. One suspects that once such measures are established, it is very difficult for governments to repeal them.

It is worth emphasizing the importance of the use of a super-majority rule of decision making in the initiative and the referendum. Such a rule establishes a high threshold of consensus, thereby preventing a bare majority from overriding the wishes of the minority on an issue considered by the citizens to be sufficiently salient to hold such a vote in the first place. The super-majority rule is consistent with Acton's view discussed at the outset, which sets forth that the structure of the federal system helps to defeat majority tyranny. In addition, the super-majority rule in the form of the double majority serves to counter regionalism by preventing one populous part of the country from dominating the rest.

It must be conceded, of course, that direct democracy is viewed with considerable scepticism in many quarters. The Swiss case remains unique. In most federations, the use of direct democracy is limited to the referendum that is held on amendments to the Constitution, and even that is the exception rather than the rule. There has been a resurgence of the use of the initiative and the referendum in some states of the United States, such as California. In Canada, one of the federal political parties has championed the issue in recent years. Nevertheless, in the literature on the problem of accountability in federal states there is rarely mention of direct democracy. The obvious reason is the fragile coexistence of different nationalities within many of them, to say nothing of even larger forms of multilevel governance like the EU.

Still, it is worth stressing that the techniques of direct democracy, properly formulated, can aid citizens to exact accountability from governments despite the entanglement of governmental responsibilities so characteristic of multilevel governance. Moreover, this can be accomplished without fear of majority tyranny or enhanced regional conflict. Those who are concerned about the problem of democratic accountability and who seek to engage the citizens more directly in the decision-making process would profit from close study of the Swiss experience of direct democracy.

## Notes

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- 3 J. E. E. Dalberg-Acton, *Essays in the History of Liberty: Selected Writings of Lord Acton*, Vol. 1 (Indianapolis: Liberty Classics, 1985), pp. 211–12.
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- 5 A. Lecours, 'Belgium', in A. L. Griffith (ed.), *Handbook of Federal Countries*, 2nd edn (Montreal and Kingston: McGill-Queen's University Press, 2005), pp. 59–72.
- 6 F. W. Scharpf, 'No Exit from the Joint Decision Trap? Can German Federalism Reform Itself?', <http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp05-8.html> (3 March 2006), p. 6.
- 7 There are other factors as well, including the use of an electoral system with a significant element of proportional representation (PR).
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- 10 M. González Oropeza, 'Mexico: a Historic Election Brings Pressures for Decentralization', in Blindenbacher and Ostien (eds), *Dialogues on Distribution of Powers and Responsibilities in Federal Countries*, p. 22.
- 11 J. Kramer, 'Federal Republic of Germany', in J. Kincaid and G. A. Garr (eds), *Constitutional Origins, Structure, and Change in Federal Countries* (Montreal and Kingston: McGill-Queen's University Press, 2005), p. 150.
- 12 G. Mathew, 'India: Continuity and Change in the Federal Union', in Blindenbacher and Ostien (eds), *Dialogues on Distribution of Powers and Responsibilities in Federal Countries*, p. 18.
- 13 C. Dunn, 'Fed Funding of Cities: That's All There Is', *Options*, 26(8) (2005) pp. 58–62.
- 14 N. Schmitt, 'Swiss Confederation', in J. Kincaid and G. A. Tarr (eds), *Constitutional Origins, Structure, and Change in Federal Countries*, pp. 352–4.
- 15 Scharpf, 'No Exit', pp. 12–17.
- 16 Kramer, 'Federal', p. 158.
- 17 Schmitt, 'Swiss', pp. 366–8.

# 3

## Between Anarchy and Hierarchy: Governance Lessons from Global Economic Institutions

*Randall D. Germain*

### **Introduction: governance as concept**

Governance has become a hotly contested concept across the social sciences over the past two decades. Within the fields of comparative and international political economy, it has become associated primarily with the wielding of public, political power, most often set within the context of pluralistic and fragmented – or multilevel – polities.<sup>1</sup> It has thus a dual connotation: on one hand, governance is about establishing norms and expectations that channel behaviour to enable or constrain activity; on the other hand, it is about engaging in deliberative activity that can compel or sanction individual and collective agency in myriad ways. These two aspects of governance come together within the context of decision making, where political agents deliberate and undertake actions that have concrete consequences for specific communities.

The discussion that follows emphasizes the second, deliberative aspect of governance. In particular, it is concerned both with the way in which prevailing modalities of political decision making are organized and with the manner in which the capacity of the mechanisms, structures and processes that produce decisions in the name of public authority acquire a semblance of legitimacy in the eyes of those subject to such decisions. Governance in this sense is defined as the formal mechanisms that establish authority, prescribe rules and allocate resources among competing stakeholders in a given issue area. Moreover, governance today occurs within the constraints of complex modern societies that are highly stratified and incapable of providing unanimous support for individual decisions. The structure of governance, in other words, is organized somewhere between hierarchy and anarchy. Governance is therefore concerned both with making decisions and instantiating them within and

across target populations; that is to say with the process of rule making *and* the administration of rules.<sup>2</sup> Such a view, for example, allows C. Murphy to identify *global* governance as ‘one of many sites in which struggles over wealth, power, and knowledge are taking place’.<sup>3</sup>

Governance under conditions of complex modernity requires modes of legitimation that enable those subject to the fiat of decision making to represent their claims and interests in a manner constant with prevailing societal norms. For this reason ‘good’ governance is often linked to consensual processes associated with democracy, because, as M. Zürn argues, democracy is ‘required to produce normatively justifiable solutions’.<sup>4</sup> Or, as D. Held contends, governance requires principles that in different ways demand a consensual and participative approach precisely to allow all concerned stakeholders to share in decision making.<sup>5</sup> Nevertheless, we must not restrict the language and discourse of governance solely to a liberal frame of reference, even if liberalism provides a powerful conceptual lens through which to consider this question. This is so because the range and scope of prevailing societal norms change over time, introducing a reflective and transformative element into both the procedural and deliberative aspects of governance.<sup>6</sup>

For the purposes of this chapter, the principal features of modern political governance may be rendered in terms of representation, participation, justice and accountability. Each of these features warrants a place in our conception of modern political governance because each plays a role in securing the allegiance of the governed. Adequate representation, for example, is necessary to ensure that voice is given to the governed and that debate unfolds across as wide a spectrum of participants as possible. Without adequate representation governance becomes less inclusive and can marginalize significant elements of the governed. Equally important – but also very problematic – is justice, which is a highly contentious feature insofar as its content varies dramatically according to the normative lenses through which the specific relationships of individual and community, of polity and economy are viewed. And accountability is a central mechanism that enables justice to be realized, in part by allowing the governed to respond to the consequences of governance.<sup>7</sup> This chapter focuses on the feature of participation, which can be highlighted as the operational link enabling adequate representation, accountability and even justice to be brought together in practice.

The chapter is organized in three parts. The first part explores some modalities of governance within a multilevel political structure. Here the question of participation is raised as a key problematic of modern structures of governance. Next, the examples of the International Monetary



Fund (IMF) and Bank for International Settlements (BIS) are explored as examples of cross-national or international governance that occur within a global political structure organized somewhere between anarchy and hierarchy. Although neither of these institutions are polities in an expansive and formal sense, they are examples of governance structures that face many of the same problems faced by fragmented, multilevel polities. As such, they hold lessons for the organization of governance broadly construed, most importantly in terms of how to organize transnational forms of participatory decision making. The final section reflects on how multilevel governance can be made more accountable using the experiences of the IMF and BIS as guideposts.

The argument advanced below is that modern governance structures need to pay careful attention to how participation is organized within key decision-making fora if they are to be made more legitimate in the eyes of stakeholders and concerned citizens alike. Given that fragmented and multilevel polities are structurally organized between hierarchy and anarchy, they cannot produce political decisions that command unanimous support; thus mechanisms must be fashioned within decision-making fora that inculcate and embed adequate participatory channels for concerned stakeholders to make their voices heard in a meaningful way. As A. Hirschman noted some 30 years ago, voice is inextricably connected to the legitimate functioning of democratic working polities.<sup>8</sup> How voice can acquire meaning is one of the principal tasks for democrats to tackle over the coming years if they are to make large, unwieldy polities more legitimate in the eyes of their publics. This analysis finds that the BIS provides a more interesting lesson for extending the participation of governance structures into stakeholder constituencies than does the IMF.

## **Governance within a multilevel context**

The dawn of the modern era in Europe witnessed an important change in prevailing governance structures. This change can be characterized in different ways: as a shift from personal and charismatic leadership to institutional and bureaucratic leadership; as the triumph of the modern absolutist state; or as the fusion of capitalist imperatives with state authority on a world scale.<sup>9</sup> Many now argue that a similar epochal change is under way. In particular, the consolidation of the nation state since the Treaty of Westphalia in 1648, which produced a trajectory of increasing centralization of governmental decision making, has stalled.<sup>10</sup> Not only have established polities such as the Soviet Union or Czechoslovakia split apart, but decentralizing trends are also in evidence in erstwhile strong

states such as Great Britain, Spain, and even to a certain extent in China. The shorthand signifier of this development is 'globalization', and it has made existing structures of governance less effective and more politically contested.<sup>11</sup>

In organizational terms, this new structural context for governance lies between hierarchy and anarchy. It is not hierarchical because no single source of authority is all-powerful across a full range of issue areas. Yet it is not strictly speaking anarchical, because there is an ordered arrangement to decision making at work within and between different political authorities. This new context for governance is 'multilevel', that is, it consists of an overlapping patchwork of functional and politically contested sources of authority.<sup>12</sup> This context, for example, is clearly apparent in the emerging structure of decision making within the global economy, and it is here that one can most clearly chart the new and emerging modalities of governance. Governance within the global economy today is characterized by three important features: (1) the fragmentation of power in terms of both material and ideational resources; (2) a consensus-oriented decision-making process; and (3) a quasi-public of frame of reference. Each can be outlined briefly.

### **Fragmentation of power**

The contemporary global political economy is marked in the first instance by a material fragmentation of power along a number of dimensions. In terms of the hard case of military capability, despite the seemingly dominant position of the United States (US), it is perhaps enough to note that there are a number of areas in which American military superiority has not translated into absolute supremacy. The most glaring example is the so-called 'war on terror', aggressively prosecuted since 2002, which has not resulted in a clear-cut military victory over the putative target – al-Qaeda – in either Iraq or Afghanistan. Moreover, America's military overstretch has in fact highlighted both its crucial dependence on allies for operational effectiveness and the absolute military capacity in existence among America's potential adversaries, ranging from China and Russia to India and Iran. Despite being the world's strongest military power, the US has been unable to impose its will militarily across broad swathes of the world.

Furthermore, the rise of China, India and Brazil – among other economies – threatens the hitherto uncontested economic dominance of the United States and the Western world more generally. As production of manufactured goods (and now even services) becomes more evenly distributed among developed and developing countries, the governments

and companies of the latter countries are acquiring new-found influence over the direction of international trade flows and trading arrangements. For example in the World Trade Organization (WTO) developing countries are finally beginning to wield some actual negotiating power over the direction of trade talks.<sup>13</sup> While such new-found power has yet to be felt fully in global financial developments, there can be no doubt that the immense build up of dollar-denominated assets by countries like China, Russia and many oil-producing countries indicates that a pendulum shift is under way, even if it is unclear how the influence that flows from these assets will be used. The conclusion to draw from these trends is unmistakable: the military and economic predominance of the US and the West (both in terms of governments and multinational corporations) is under challenge today like at no other time in the past century.

At the same time, it is not only material power that is fragmenting. The ideational and/or ideological support to Western power is also being robustly challenged. We can see this in the selective manner by which emerging economies such as China, India and Russia are integrating with the global economy. Contrary to patterns of the past 30 years, developing and transition economics are liberalizing at a speed and on grounds of their choosing. The ideology of liberalization is not all persuasive for the elites of these countries; instead, to better control the pace and outcomes of development, these elites are contesting liberal ideas along a number of fronts. Evidence of this is provided in the failure of the Multilateral Agreement on Investment (MAI) in 1995, the halting progress of multilateral trade negotiations (including near-meltdowns in Seattle in 1999 and Cancún in 2002), and even in the rejection of the IMF and its policies in Malaysia after the Asian financial crisis, in Russia after its default in 1998 or in Argentina after its 2001 devaluation and default.<sup>14</sup> The ideological challenges to liberalization and multilateralism represented by these developments indicate at the very least that there is a growing ideational incoherence as to the parameters of economic governance at the global level.<sup>15</sup>

When power becomes fragmented in this way, with no one state or agent possessing overwhelming dominance, decision making within the global economy can follow mutually exclusive but sometimes overlapping paths. On the one hand, still powerful countries can attempt unilaterally to further their interests by flouting rules, by pursuing bilateral arrangements in spheres where their remaining power can be most fully exploited, and by charting their own course in defiance of the costs of doing so. We can see this path being taken most prominently by the US, whether by flouting the rules of international trade to provide protection

to beleaguered American industries (steel, forestry and farming most provocatively); by negotiating a series of bilateral free trade agreements with small countries such as Israel or Chile, as well as highly dependent economies such as Canada and Mexico; or by pursuing foreign adventures that garner very limited international support, such as the invasion of Iraq or the high-profile diplomatic campaign now being waged against Iran and its nuclear programme. Unilateralism in international decision making is not a strategy confined to the past; it is today alive and well.

### **Consensus-oriented decision making**

On the other hand, and arguably more prevalent within world politics generally, countries can fall back onto multilateral negotiations as the most advantageous mode of decision making congruent with their diminished capacities. In this way they may be able to fashion results acceptable to a wider circle of states, even those who may not directly benefit from the decisions. We may call this consensus-oriented decision making, and it is a procedural *modus operandi* that has emerged over the last two decades, coinciding with the fragmentation of power within the global economy. Where no single government can dictate decisions, and where various interests and ideas pull in competing directions, a negotiated consensus becomes one of the few means by which global economic governance can proceed.

The evidence that a consensus-oriented decision-making structure has emerged can be seen in two of the global economy's foundational elements. First, in the international trading regime, the tortuous negotiations which comprise the Doha Round have seen first the developing countries and then the US threaten to walk out rather than see a watered down Round completed.<sup>16</sup> Interestingly, however, neither side has yet made good on its threat, indicating that whatever the bargaining stance of the main protagonists, the stake that all have in these negotiations – when combined with no side harbouring a knock-out trump card – means that negotiation rather than bottom-line bluster will ultimately rule. While the final result of the Doha Round remains in question, its impact upon developing countries as a whole (it will undoubtedly bestow its advantages asymmetrically onto WTO signatories) will be a result of strenuous and contested negotiations among parties whose interests are often in direct collision with one another.

Second, in the global system of monetary and financial relations, ongoing developments clearly reflect the need to engage in consensus building on a global scale that spans not only competing and conflicting state interests, but differing priorities among public and private sector agents.

Indeed, in such an environment, consensus is sometimes not even possible. To take perhaps the most egregious case, the central role of the US dollar as the world's principal currency is complicated by the inability of successive American administrations to control its price. In the 1990s America's wrath was directed towards the Japanese, who were thought to benefit from a cheap currency policy at America's expense, while more recently China has become currency enemy number one. In neither case, however, has the US been able to get the 'offending' government to acquiesce to its wishes (namely to revalue their currencies). In the area of international financial regulation, the negotiations over the second Basle Capital Accord (known as Basle 2), have been marked by an exceptionally high degree of compromise over almost every major element. Whereas the first Accord was negotiated quickly in the late 1980s on the back of American and British agreement over the central issues (and their capacity to force through an agreement),<sup>17</sup> Basle 2 has reflected the difficulties of negotiating in an environment marked by a high degree of fragmentation in the capacity of major agents to exercise power.<sup>18</sup>

### **Public frame of reference**

The final characteristic feature of governance in the contemporary period flows from the above two observations concerning power and decision making. If power – understood both in material and ideational terms – within the global political economy is becoming fragmented and decision making within its central institutions is becoming more consensus-oriented as a result, what makes the achievement of consensus under such conditions possible? One answer is the emergence of a quasi-public frame of reference within which decisions are made. In terms of financial governance it is possible to argue that a global financial public sphere has emerged,<sup>19</sup> and more generally that decision making within the context of global economic governance is becoming both more public and more deliberative in its form. Effectively, this simply means that where rules-based systems are concerned (as for example with trade, finance, environment, property rights), the development of such rules is increasingly the product of publicly sanctioned negotiations among a growing array of stakeholders. To return to the example of finance, when the Bretton Woods system ended in the early 1970s, a very small and elite group of stakeholders – mainly the G10 group of countries – set about recasting the building blocks of the international monetary system.<sup>20</sup> By contrast, when the world's monetary and financial system was being refashioned in the latter years of the 1990s, the number of participants in this process had multiplied to what, according to the standards of the 1970s, must

have seemed a bewildering and chaotic number. From a polite conversation among like-minded gentlemen during the 1970s, the debate over reforming the international financial architecture had become by 2000 a slightly raucous cacophony among people who marched in the streets and took opposing views on everything from economic theories to empirical evidence. And throughout all of this, an increasingly globalized public realm greased the wheels.

In combination, these three features indicate that governance is becoming less reliant on force and coercion, more open to negotiation and concession, and conducted within a framework that places a growing importance upon representation, participation and the public sanctioning of decision making. Governance is becoming less reliant on direct and explicit coercion, and more inclined to be the product of negotiated settlements reflecting agreement and compromise over key issues. If these features are becoming associated with key governance dynamics today, how can the structures of governance be fashioned so that such dynamics work together rather than pull in different directions? In other words, what models of transnational governance do we have to guide our deliberations? One way of answering this question is to examine extant governance structures and draw lessons pertaining to future possibilities. This is taken up in the next section.

## **Governance within the IMF and BIS**

International institutions such as the IMF and BIS operate within a political and economic environment marked by all of the characteristics identified above. Yet the IMF and the BIS are governed in different ways, and the consequences of these differences provide important insights for debates over governance. In particular, the BIS's outreach, organized around a highly technocratic participation model geared towards a relatively flat governance structure, offers a model for participation that – with certain adaptations – resonates with multilevel polities such as the European Union (EU), and might hold lessons for the EU's own system of stakeholder participation.

Both the IMF and BIS share several traits concerning their structures of governance. As institutions they have discernible constituencies with important stakes in the outputs of these institutions. They are clearly linked to governments or arm's-length government institutions, and are more or less universal in terms of their membership.<sup>21</sup> They also pay special attention to the issues associated with legitimating their decisions. However, they are distinguished from each other by three important

differences. On one hand, the IMF is a more hierarchical institution than the BIS, with a triadic set of axes linking the IMF's large staff (led by the Managing Director and senior officers) to the 25-member Executive Board that approves all direct policy decisions, and which are putatively overseen by the Board of Governors through its offshoot, the International Monetary and Financial Committee (IMFC). In contrast, the BIS, also an organization that is owned by its members (central banks), makes do with a staff that is one-fifth as large as the IMF.<sup>22</sup> Its Board of Directors, composed of representatives from the G10 countries,<sup>23</sup> restricts its decisions to BIS operations in support of central bank activity in financial markets. Its mission is to support the operation of its member central banks, and to this effect it holds reserves and often executes market interventions on their behalf. Unlike the IMF, therefore, the BIS does not take decisions that conflict directly with the interests of its members.

On the other hand, the IMF has real resources which can flow directly to its member countries, and over which all have varying degrees of claim. Conflict over the deployment of these resources (when, how much and at what cost) is therefore endemic to the operational logic of the IMF. It is also the case that the mandate of the IMF – to support both the smooth operation of the international monetary and financial system as a whole as well as individual member countries facing balance of payments difficulties – sets up conflicts between debtors and creditors to the IMF, or between those who need the IMF's resources and those whose quotas are being used *as* IMF resources. As indicated above, no such conflict can arise within the BIS, because it does not dispense resources to its member central banks.

Finally, the arena of intervention and the target communities that constitute the focus of these two institutions are different. The BIS is dedicated to supporting central banks in the execution of monetary policy, as well as providing research to enhance the understanding that central banks and regulators have of issues associated with financial regulation. These are what M. Moran has characterized as esoteric communities, mostly removed from the glare of publicity and often protected by statute from extensive technical oversight.<sup>24</sup> They are in other words a rather protected community of officials, although not of course immune to pressure from politics and civil society more generally. In contrast, because of what the IMF does (namely support governments in difficulty at a 'price' that often includes political risk), it is not immune from many different kinds of pressures emanating from political and social constituencies. Put most baldly, when the BIS provides support to a member central bank, very few people hear about it; but when the IMF weighs into a country, few (in that country at least) are ignorant of its activities. This difference

means that a purely technocratic approach to the question of participation and legitimacy will not suffice for the IMF, whereas for the BIS such an approach constitutes the logical starting point of any discussion about the issues of participation and legitimacy.

How then have the IMF and BIS gone about the business of trying to strengthen the legitimacy of their decisions? As J. Best has recently argued, the IMF has concentrated on refocusing its activities onto emerging market economies with a special emphasis on organizing multilateral surveillance and promoting domestic ownership of any attendant adjustments.<sup>25</sup> The latter takes several forms, ranging from mandating target governments to consult with affected parties to inviting selected civic organizations into the IMF itself to debate and advance knowledge about IMF policies. But these debates are carried out within fairly constricted circumstances, for two reasons. First, as a deeply hierarchical organization, the IMF reserves to its own staff ultimate jurisdiction for making decisions about IMF resources and policies. In other words, civil society is consulted mostly for educational purposes, to explain Fund policies and to raise awareness of why it needs to do what it does. Second, the ground upon which IMF policies are made is quite strictly limited to the technical application of neo-classical economic principles, about which there is not a significant and ongoing debate within the IMF itself. Therefore, what is admitted as argument, reason and evidence is broadly speaking confined to the discipline and field of economics rather narrowly determined.<sup>26</sup> Civil society has been invited in, as it were, but under limited and controlled circumstances.

In the BIS, the debate over legitimacy has taken a narrower, more technocratic route. Although in part driven by the question of ownership, it is the question of participation that has been more prominent, namely how to ensure that all of the relevant policy makers and political leaders are involved in creating rules for an increasingly globalized set of financial markets and firms. For the BIS, this has meant three things. First, it has meant a process of expansion that has seen its membership grow significantly over the past ten years, to include now central banks from every area of the world. Second, the BIS has opened offices in Asia and Latin America in order to more effectively communicate its work to relevant policy authorities outside of Europe and the G7 countries. And finally, the BIS has developed a relatively extensive series of outreach programmes which enable countries and officials not formally represented within the BIS, or represented in only a minor capacity, to participate in debates and some aspects of decision making. One part of this outreach is represented by extensive consultation between BIS officials and its



members in terms of a 'travelling roadshow' that seeks to gain input from non-G10 members in a serious and extended manner. More importantly perhaps are the various committees struck by the BIS and its affiliated groupings<sup>27</sup> that include a wide range of stakeholder officials in their composition. These committees take their lead from the first truly inclusive set of committees formed in the wake of the Asian financial crisis by the Willard Group, also known as the G22, which reported in the autumn of 1998.<sup>28</sup> And while these are almost always chaired by a member drawn from a G10 central bank or lead regulator, they are just as often co-chaired by a non-G10 member and include significant representation from non-G10 countries. This combination of a technocratic focus and inclusive membership has produced wide exchanges within these deliberative fora, which in turn has meant that issues of concern to developing or emerging market economies have not been sidelined. For example, the development by the BIS of a series of codes and principles around which all countries should organize their banking supervisory systems has been marked by serious and systematic participation from emerging market economies. Although of course heavily weighted towards the needs and imperatives of mature financial systems, these standards and codes are not oblivious to the demands of emerging markets.<sup>29</sup> In this way, debates at the BIS have been on some counts wider and fuller than at the IMF.

At the same time, it must be acknowledged that the IMF and BIS have significant gaps in their governance structures. Both institutions are only selectively connected to nation states in the sense that (1) their decisions are always filtered through national governments, and hence through pre-existing governance structures associated with national polities; and (2) they are relatively immune to the organized demands of civil society agents, precisely because such agents have very few formal points of entry into decision making at the IMF and none at the BIS. Many critics have duly noted these gaps and raised concerns about the legitimacy and effectiveness of these institutions over the long term.<sup>30</sup> Yet, despite these criticisms, at the level of actually existing governance, the BIS offers a model of transnational participation that provides an interesting starting point to the question of how to enhance the legitimacy of governance within the constraints of modern, multilevel polities.

### **Multilevel governance and democratic accountability**

We can now return to the question that began this chapter: to what extent do the IMF and BIS provide insights for the organization of governance

within multilevel polities? Although they are not themselves formal polities, the lessons they hold are tempered by the same imperatives facing countries like Canada and Member States of the European Union, primarily because both international economic institutions and fragmented polities have legitimation deficits that can be addressed in part by revisiting the linked questions of representation and participation. Fragmented polities need to better represent a fuller range of constituencies if they want to expect those segments of the public adversely affected by political decisions to agree to abide by them. One way of extending representation is to consider different ways of ensuring that all concerned stakeholders – those who are directly affected, positively or negatively, by the decisions of institutions – can participate in some capacity in decision-making processes.

On this score, the argument of this chapter is that the BIS provides an important lesson for how to develop a governance structure which takes seriously the question of representation and participation. In particular, the BIS demonstrates that widening participation within deliberative organs, and reaching out to target constituencies (in this case segments of the financial community), enables those who have to implement decisions to also contribute to their deliberation. However, in comparison with the IMF it is also clear that the legitimating effects of this kind of stakeholder participation are particularly great in the BIS because of a number of contextual factors: the target constituency is relatively small, the matters dealt with relatively technocratic, and decisions do not have any significant distributional effects.

Against this background, a critical adaptation is required to make BIS-style participation meaningful and applicable to formal polities. To make participation in deliberative organs as meaningful as possible, a broad cross-section of concerned stakeholders needs to have access to the decision-making fora. The BIS remains a restricted technocratic institution, partially immune to many aspects of social and political pressure. While this may suffice for decisions regarding financial regulation – and this itself is a contested proposition<sup>31</sup> – where decisions have a wider impact upon social, economic and political systems, participation needs to be altered accordingly. And most crucially, it needs to be organized along lines that respect the constituencies involved in the deliberations. Even within the BIS, on this score, an argument can be made for stronger civil society representation within its deliberations.<sup>32</sup>

At the same time, opening up decision making and governance to include any group or movement that professes its desire to be involved carries significant risks. Governance is a complex business, involving many

trade-offs among competing conceptions of what is right and wrong with society, polity and economy. The analysis of these competing conceptions demands that a certain level of technical expertise be attained before participation becomes meaningful. This is where procedural mechanisms of governance become critical, because unless adequate fora are established within which debate and deliberation can be initiated and/or maintained, decision making becomes a free-for-all where power and might substitute for argument and analysis of the needs and solutions of concerned stakeholders. By organizing participation properly, governance can better meet the stringent demands of legitimacy necessary for the stability and effectiveness of institutions.

As it currently stands, both the BIS and the IMF are organized by, and run for, relatively highly circumscribed and technocratic communities that are separated from others by virtue of their education, their constituency, their norms and mores, and their social status. For both the IMF and the BIS to further increase their legitimacy as structures of governance (financial and otherwise), they will need to respond more thoroughly to the call to widen participation beyond channels dominated by technocrats (almost exclusively economists) and government officials, to agents active in what can be identified as civil society.<sup>33</sup> It is here where their own democratic deficit is most serious. However, if the BIS was to more seriously engage civil society representatives along the lines that it has undertaken with respect to its own financial constituencies, then paradoxically it could be held up as a true exemplar of multilevel governance in a new age. This would without doubt qualify as a 'lesson' for others to emulate and follow.

Yet, even if this were to happen, the lessons derived from an examination of the BIS could only be taken so far in terms of providing insights for the governance of polities such as the European Union. This is primarily because the EU, among other things, actively engages in the business of allocating resources among Member States. This activity produces conflicts among Member States over the spoils of redistribution, which is something the BIS cannot get involved in. However, recognizing this limitation is not the same thing as arguing that there is nothing of relevance for the EU in the experience of organizing participation within the BIS. Governance is necessarily in part technocratic, and technocratic participation can itself be organized more or less legitimately. To follow in the BIS's footsteps by identifying significant stakeholders and reaching out to them is one way of ensuring that participation is as legitimate and representative as circumstances permit; and this perhaps is the key governance lesson to be learned from global economic institutions.

## Notes

- 1 See for example A. Prakash and J. A. Hart (eds), *Globalization and Governance* (London: Routledge, 1999); M. Hewson and T. J. Sinclair (eds), *Approaches to Global Governance Theory* (Albany: State University of New York Press, 1999); and A. Baker, D. Hudson and R. Woodward (eds), *Governing Financial Globalization* (London: Routledge, 2005).
- 2 For a similar distinction, see R. Latham, 'Politics in a Floating World: Towards a Critique of Global Governance', in Hewson and Sinclair (eds), *Approaches*, p. 27.
- 3 C. N. Murphy, 'Global Governance: Poorly Done and Poorly Understood', *International Affairs*, 76(4) (2000) p. 799.
- 4 M. Zürn, 'Democratic Governance beyond the Nation-State: the EU and Other International Institutions', *European Journal of International Relations*, 6(2) (2000) p. 186.
- 5 D. Held, *Global Covenant* (Cambridge: Polity Press, 2004), pp. 102–5.
- 6 By defining democracy as a participative process of will-formation, Zürn is clear that democracy cannot be confined within a liberal or constitutionalist framework simply because the values which guide democratic deliberation change over time. Zürn, 'Democratic Governance', pp. 186–90. See also M. Hewson and T. J. Sinclair, 'The Emergence of Global Governance Theory', in Hewson and Sinclair (eds), *Approaches*.
- 7 R. D. Germain, 'Globalising Accountability within the International Organisation of Credit: Financial Governance and the Public Sphere', *Global Society*, 18(2) (2004) pp. 217–42.
- 8 Hirschman stated that 'to develop "voice" within an organization is synonymous with the history of democratic control through the articulation and aggregation of opinions and interests'. See A. Hirschman, *Exit, Voice and Loyalty* (Cambridge: Harvard University Press, 1970), p. 55.
- 9 For various portrayals of these changes, see M. Weber, *Max Weber on Charisma and Institution Building: Selected Papers* (Chicago: University of Chicago Press, 1968); P. Anderson, *Lineages of the Absolutist State* (London: New Left Books, 1974); A. Morton, 'The Age of Absolutism: Capitalism, the Modern States-system, and International Relations', *Review of International Studies*, 31(3) (2005) pp. 495–517; and F. Braudel, *Civilization and Capitalism, 15th–18th Century*, Vol. 3: *The Perspective of the World* (London: William Collins, 1984).
- 10 See for example J. Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge: Cambridge University Press, 1997) and M. Mann, *The Sources of Social Power*, Vol. 1: *A History of Power from the Beginning to A.D. 1760* (Cambridge: Cambridge University Press, 1986).
- 11 See for example D. Held, A. McGrew, J. Perraton and D. Goldblatt, *Global Transformations: Politics, Economics, Culture* (Cambridge: Polity Press, 1999); and P. G. Cerny, 'Webs of Governance: the Privatization of Transnational Regulation', in A. D. Andrews, C. R. Henning and L. W. Pauly (eds), *Governing the World's Money* (Ithaca: Cornell University Press, 2002).
- 12 It would be possible also to refer to this condition as one of 'polyarchy'. However, this term is avoided in this chapter because of its association with the institutional functioning of democracy. As will be clear from below, democracy per se is not described, but rather the structural conditions within which governance is organized. For an excellent discussion of the limits of

- the term 'polyarchy', see W. Robinson, *Promoting Polyarchy: Globalization, US Intervention and Hegemony* (Cambridge: Cambridge University Press, 1996), Ch. 1.
- 13 A. Narlikar, *International Trade and Developing Countries: Bargaining Coalitions in the GATT and WTO* (London: Routledge, 2003).
  - 14 On the failure of the MAI, see A. Walters, 'NGOs, Business and Investment Rules: MAI, Seattle and beyond', *Global Governance*, 7(1) (2001) pp. 51–73; on Cancún, see R. Wilkinson, 'Collapse at Cancún', *Global Governance*, 10(2) (2004) pp. 149–55; and on recent challenges to international financial institutions, see G. Datz, 'Crisis and Reversal of Fortune? Sovereign Debt, Debt Restructuring and Economic Performance in Argentina', paper presented to the 2006 annual conference of the International Studies Association, San Diego, 22–25 March 2006.
  - 15 R. Higgott and N. Phillips, 'Challenging Triumphalism and Convergence: the Limits of Global Liberalization in Asia and Latin America', *Review of International Studies*, 26(3) (2000) pp. 359–79.
  - 16 See R. Wilkinson, *The WTO, Crisis and the Governance of Global Trade* (London: Routledge, 2006).
  - 17 E. Kapstein, *Governing the Global Economy* (Cambridge, Mass.: Harvard University Press, 1994).
  - 18 M. R. King and T. J. Sinclair, 'Private Actors and Public Policy: a Requiem for the New Basel Capital Accord', *International Political Science Review*, 24(3) (2003) pp. 345–62; D. Wood, *Governing Global Banking* (Aldershot: Ashgate Publishing, 2005).
  - 19 R. D. Germain, 'Financial Governance and the Public Sphere: Towards a Global Modality of Governance?', *Policy and Society*, 23(3) (2004) pp. 68–90.
  - 20 R. N. Cooper, 'Prolegomena to the Choice of an International Monetary System', *International Organization*, 29(1) (1975) pp. 63–97; E. Helleiner, *States and the Re-emergence of Global Finance* (Ithaca: Cornell University Press, 1994); and E. Mayorbre (ed.), *G24: the Developing Countries in the International Financial System* (Boulder, Colo.: Lynne Rienner Publishers, 1999).
  - 21 In terms of numbers, the IMF currently counts 184 members, while the BIS has 55. BIS membership has, however, significantly expanded over the past ten years and now includes central banks from all major developed and developing countries.
  - 22 The BIS has a staff of approximately 550, of which just over 400 work primarily on support operations for member central banks. The IMF has a staff of approximately 2800.
  - 23 The G10 dates from the early 1960s, when the General Arrangements to Borrow were first set up to support exchange rate operations by the central banks of participating states. The G10 includes the US, UK, France, Germany, Japan, Italy, Canada, Belgium, the Netherlands, Sweden and Switzerland. Why it was never called the G11 remains a mystery.
  - 24 M. Moran, *The Politics of Banking: the Strange Case of Competition and Credit Control* (London: Macmillan Publishers, 1984).
  - 25 J. Best, 'The Dilemmas of Political Economic Legitimacy: Recent IMF Reforms in Critical Perspective', paper presented to the annual meeting of the Canadian Political Science Association, York University, 1–3 June 2006.
  - 26 For a critique along these lines see J. Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton & Co., 2002).

- 27 While these committees are technically independent from the BIS, they are based at the BIS, which also provides their secretariats. It is clear that the work of these committees is integrally related to the broad mandate of the BIS. These committees are the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the Committee on Payments and Settlements Systems, the Committee on Global Financial System Stability, and the newly formed Financial Stability Forum.
- 28 Convened at the behest of the US Treasury in April 1998, representatives from central banks and finance ministries of 22 countries met to discuss ways of strengthening the international financial system. This group later expanded to 33 countries before being in turn whittled down to the G20 grouping that was officially launched in September 1999. See S. Soederberg, *The Politics of the New International Financial Architecture* (London: Zed Books, 2004).
- 29 L. Mosley, 'Attempting Global Standards: National Governments, International Finance, and the IMF's Data Regime', *Review of International Political Economy*, 10(2) (2003) pp. 331–62; T. Porter, 'Technical Collaboration and Political Conflict in the Emerging Regime for International Financial Regulation', *Review of International Political Economy*, 10(3) (2003) pp. 520–51.
- 30 See for example N. Woods, *The Globalizers: the IMF, the World Bank and their Borrowers* (Ithaca: Cornell University Press, 2006); Wood, *Global Banking*; T. Porter, 'The Democratic Deficit in the Institutional Arrangements for Regulating Global Finance', *Global Governance*, 7(4) (2001) pp. 427–39; and Germain, 'Globalising Accountability'.
- 31 Soederberg, *New International Financial Architecture*.
- 32 For arguments along these lines, see Porter, 'Technical Collaboration'; Germain, 'Globalising Accountability'; and J. A. Scholte, 'Civil Society and the Governance of Global Finance', in J. A. Scholte and A. Schnabel (eds), *Civil Society and Global Finance* (London: Routledge, 2002).
- 33 More generally, see Scholte and Schnabel, *Civil Society* and R. D. Germain and M. Kenny (eds), *The Idea of Global Civil Society: Politics and Ethics in a Globalizing World* (London: Routledge, 2005).

## **Part II**

# **Social Underpinnings of Democracy in the EU**

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# 4

## Europeanization and Democracy: the Question of Cultural Identity

*Gerard Delanty*

### **Introduction**

Since the signing of the Maastricht Treaty (1992) – yet extending back to the Single European Act (1986) – critics have claimed the European Union (EU) suffers from a double deficit: a democratic deficit and a cultural one. Underlying both deficits is a perceived lack of legitimacy resulting from a weak political community and a thin cultural community. As a multilevel polity, the EU is not a parliamentary democracy in the conventional sense of the term, despite having a Parliament, a (draft) Constitution and many other features of a democratic government that have been reproduced on a transnational level. The political foundations of the EU are primarily based neither on a direct nor elected representation of its own. The EU is above all founded on a second order of national models of parliamentary democracy (see the chapter by L. LeDuc in this volume), which in turn are based to varying degrees on local and regional democracies. Despite the additional tier of transnational governance, somehow a democratic deficit has resulted. This is compounded by the lack of a common cultural identity on the part of the EU's citizens. Instead of generating loyalty and identity, the EU is viewed positively by its citizens mainly for pragmatic reasons and is a focus of hostility for many. As an institution created to facilitate the movement of goods, labour, capital and services, the EU invites neither strong forms of identity nor a foundation for belonging. There is a perceived lack of accountability. Moreover, there is a fear of the social consequences of the liberalization of markets – a fear that is now increasingly associated with globalization. Efficiency can no longer, however, be the exclusive justification for the EU. Rather, the Union must devise different kinds of legitimation that go beyond principles such as subsidiarity or purely regulatory policy making.

The expansion in the competencies of the EU has unavoidably led to its politicization and to questions of democracy and identity.

The cultural deficit argument runs roughly like this: the EU is culturally thin and lacks the kind of values that are allegedly conducive to strong democracy, which has on the whole developed within national structures. In support of this position are some obvious facts: there is no common European language, no common European memory that can bind many diverse social groups and, for many, there are only the memories of divisions. A European people does not exist, and Europe, unlike the nation states that comprise it, cannot appeal to a revolutionary act of heroic emancipation in which a national culture is created by an action of liberation from oppression. The absence of a thick, supranational cultural identity results in a cultural deficit. It is noteworthy that this cultural deficit first entered public discourse at about the same time that the democratic deficit became an issue for European integration, namely following the adoption of the Maastricht Treaty that established a new momentum for the Union. This chapter addresses the model of culture that is at stake in a transnational and multilevel polity such as the EU. It is argued that neither national models of culture nor a supranational model of culture will offer a sound basis for the kind of democratization that appears to be emerging with Europeanization.

Any discussion of the relation between culture and democracy must consider that neither culture nor democracy is a simple, coherent entity; rather, both are multifaceted and ongoing processes. Consequently, the relationship between them will also be differentiated. When European integration began, it may have been credible to see culture in terms of consensus and an ordered system of symbolic meaning. Today, this symbolic model of culture no longer exists in quite this way. Culture is diverse, fragmented and based on contested values and fragile loyalties. This pluralization of culture has entered the sphere of democracy, presenting new challenges.<sup>1</sup> In short, culture is no longer the exclusive basis for social integration that it once was considered to be.

The chapter begins with an analysis of the different dimensions and models of democracy with a view to establishing the characteristic form of democracy most appropriate to the EU. It is argued that, in normative terms, discursive democracy is this form. Secondly, in an attempt to link discursive democracy with the question of cultural identity, the notion of cosmopolitanism is proposed as a model for understanding cultural and political identity in Europe. This cultural model places emphasis on communicative rather than symbolic features. Thirdly, the question of the cultural foundations of democracy is explored from this perspective.

Methods to 'democratize' the EU should, it is argued, be appropriate to the nature of the institution rather than trying to mimic approaches more appropriate to a parliamentary democracy, which the EU is not.<sup>2</sup> Instead, the EU needs to give expression to different kinds of democratic identity; central to these are what will be called cosmopolitan solidarities. The kind of cultural identity pertinent to a multilevel democracy such as the EU is a cosmopolitan public culture. In this culture, the emphasis is on dialogic negotiation and cosmopolitan solidarities around a range of issues relating to pressing social problems that are not being solved on a national basis. The test of this culture's political legitimacy will lie in the political system's capacity to respond to political communication within the wider public sphere.

### Europeanization as discursive democracy

Underlying democracy is a notion of peoplehood. Democracy is the rule of the people or the political self-government of a people, but it is also more than these two definitions suggest. Democracy can be seen in three senses: (1) the representation of social interests (i.e. institutionalized majority rule in the electoral system and parliament); (2) constitutionalism (i.e. formal limits to parliament and the protection of minorities from majority rule); and (3) the participation of the public (i.e. citizenship and civil society; or, the construction of the political subject). A mature democracy will be strong in all three senses. Some polities will be stronger in one and weaker in others depending on their cultural assumptions. As such, direct democracy will have a higher dependency on citizenship than representation, and late democracies such as some post-communist societies may have weak traditions of civil society.

In addition, democracy is located along three levels: the local/regional, the national and the transnational/global levels. Here, too, there are different levels of embeddness of democracy, depending on the dimension in question. Thus it is plausible that constitutionalism is more pertinent to the transnational level and participation to the local.<sup>3</sup> Further to these considerations of the differentiated nature of democracy is the relationship *between* the levels. The notion of multilevel democracy is not, at least in normative theoretical terms, a morphological structure with the various levels simply layered. Rather, the relationship between the layers can be dynamic and changing with the various levels interacting along the lines of a network. This is more difficult to specify in terms of precise mechanisms, but what is most relevant here is reflexivity (i.e. the mutual interaction of the various levels). Through interaction

the various levels modify themselves and create new social realities. This is particularly pertinent with respect to large-scale democracies such as the EU as well as federal systems such as Canada and Germany. Consequently, democracy as an institutional form organized in a multilevel polity can be reduced neither to a single entity nor to structure, and, importantly, is self-transcending.

By nature, a democracy cannot be fully institutionalized. As the expression of a political subject generally associated with the notion of a people, democracy has a cultural form as well as a political form. The political form of democracy is determined by the various elements discussed above. However, as a cultural form, democracy is based on certain values, identities and ways of imagining the world. Thus the classic liberal idea of democracy that emerged in seventeenth-century England was based on the cultural value of tolerance, initially for free worship bearing traces of the Christian tradition. Other values that have defined democracy have included the pursuit of wealth and individual liberty. The republican tradition stressed secular government. It is undoubtedly the case that the cultural values of different societies have influenced the political form of democracy to a very great extent. In many cases these have been the values of particular elite groups. With the creation of large-scale mass democracies in the twentieth century the relation between the cultural and the political form of democracy has become more complicated. However, in the vast majority of cases the cultural form of democracy has been largely influenced by the specific form of nationalism, or national identity. This is simply because democracy has been shaped within the political, cultural and territorial form of the nation state: democratic states have been nation states, if not in reality then at least in ideology and in theory. In such cases an *ethnos* has underpinned the *demos*.

To an extent this is true of all democracies, whether federations or nation states. Here one only needs to consider the very different cases of the United States and European federal states such as Germany. Yet invariably the *ethnos* will be weaker on the level of the state in federal democracies, as the examples of Canada and Switzerland illustrate. It is a different matter with respect to the EU since the political form of the EU is not that of a nation state and there is no underlying *ethnos*. The EU is composed of many different political traditions and is more deeply layered than most of its individual Member States. It is also the only genuine example of a transnational democracy that is not merely an intergovernmental organization.

Although the nature of the EU is disputed, it is evident that the Union has moved beyond intergovernmentalism to become a transnational

polity with a project of democratization. This project cannot be so easily explained in terms of the established political theories of democracy and is unique to the EU. Only in the most limited sense is the EU a liberal democracy. The formal separation of powers and the representation of social interests that have been the basis of liberal democracies are central to the structure of the EU. As a multilevel polity, however, social representation is constrained by the principle of subsidiarity. This results in a dilution of direct democratic control at higher levels. While it may appear that the EU is a state separated from society, it is a state of a very different kind than the liberal democratic states that developed in Europe in the modern era. The differentiated nature of the EU is less explained by the separation and balance of powers than by the separation of states. It is simply not possible to see the EU exclusively as a state separated from its constitutive Member States, for it is embedded in these states. Moreover, the European Parliament is the sole expression of direct representation, and this body is both relatively weak and unlikely to have a more prominent role. Consequently, the EU holds only a limited claim to representative democracy. Representation will continue to be important, but, given the nature of the EU and its relation to the Member States, it is unlikely to extend representation beyond the present level. It may be more successful as a constitutional democracy, guaranteeing certain rights. There is an interesting paradox here: one of the main drawbacks of the ill-fated draft Constitution is that it was not democratically formed, given that the new Member States were not part of the consultation. Yet it does establish a framework of rights that ultimately are not at the disposal of individual Member States.

According to many critics, the republican tradition offers a more adequate model for Europeanized democracy.<sup>4</sup> With its emphasis on the people as a self-governing body, republican political thought claims to represent the genuine European political tradition from antiquity to the present day. In opposition to the emphasis on the parliament in liberalism, republicanism stresses popular sovereignty rooted in civil society and a more substantive conception of citizenship as participation in political community. The tradition clearly has a resonance in European politics as is reflected in the civil society tradition of self-government, but its application to the wider European level is limited. The problem with the republican tradition for Europe is that it presupposes a political subject, namely a people. It is based on a consensual view of politics as an expression of a shared world. In the communitarian version of republican political theory this is connected with a prepolitical conception of the political community and, as is suggested by the notion of social capital,

the cohesiveness of this community is essential for the working of democracy. For the greater part, this model of democracy has developed with the structures of the nation state and, moreover, presupposes a relatively homogeneous society. It is not easily reconciled to pluralism and neglects both multiculturalism and the politics of difference. Only in a fundamentally different form could it be transferred to the transnational level.

An alternative to both of these political theories is the idea of discursive or deliberative democracy.<sup>5</sup> Embodying elements of the liberal and republican traditions, it is more relevant to the transnational dimension of democracy. In the particular version of discursive democracy represented by J. Habermas, the representative dimension of democracy is rooted in a conception of civil society that has divested itself of a substantive conception of a specific peoplehood. Discursive democracy is based neither on the state nor on peoplehood, but on communication in the public sphere. In the liberal tradition it is the state that is sovereign; in the republican tradition it is the people. Discursive democracy avoids these extremes and is more promising as a political theory of large-scale, multi-ethnic and transnational polities such as the European Union.<sup>6</sup> As Habermas and others have argued, competing interest groups have multiplied to a point that representative democracy is inadequate, and simplistic notions of popular sovereignty are equally limited when it comes to highly pluralized societies. Traditional notions of citizenship as based on exclusion have also been questioned as a result of the rise of post-national forms of membership.<sup>7</sup>

This is not to suggest that all aspects of liberal democracy are irrelevant to the EU. The idea of a constitution has continued relevance in establishing the foundations of a viable democracy. This has been persuasively argued by Habermas<sup>8</sup> and from a more critical perspective by J. Weiler.<sup>9</sup> The procedural nature of liberal democracy is an essential aspect of democracy today in the context of complex and large-scale societies with multi-ethnic populations. Discursive democracy can be seen as a mix of liberal and republican traditions. What is retained from the latter is the idea of civil society and a notion of democracy that is not reducible to the state. Discursive democracy is based on public spheres in which political issues are deliberated upon by citizens as individuals and as collective agents. Public spheres can exist on all levels of democracy, from subnational to national to transnational. Only after extensive public deliberation can contested interests be articulated by representative bodies and translated into legislative proposals and legal institutionalization. For Habermas, a discursive democracy requires such an internal relation between law and democracy.<sup>10</sup> Discursive democracy is not merely

about decision making but is about the public discursive expression of values and goals and takes place within a public field of contestation. For this reason discursive democracy is based in the public sphere.

The notion of discursive democracy has many advantages as a normative model of democracy for a transnational and post-national polity such as the EU. The present structures of the EU do not fully accord with this, but it is possible to argue that democratic institutionalization could take this direction in the future. Discursive democracy relates to the multi-level context of the EU as polycentric, where political rule is negotiated between different social actors – states, elected representative, legal bodies such as the European Court of Justice (ECJ), various kinds of organized interests and non-governmental organizations (NGOs).

On a more general level, democratization is built into the very logic of Europeanization as a process involving different kinds of discursive resolution. It is striking that much of this occurs outside formal representative channels. The debate about the democratic deficit is one such instance of Europeanization as a form of discursive democratization. For this reason H.-J. Trez and K. Eder argue that Europe cannot be fully democratized: 'Democracy has been turned into a promise pushed by European governing institutions themselves, into a general expectation shared by the European public and into a claim raised by European citizens.'<sup>11</sup> Thus the democratic deficit is indicative of a paradox in that political communication about the deficit in democracy leads to more democracy. But democracy can never be complete without a contradiction. As a field of transformative projects, Europeanization is embroiled in democracy. The notable aspect of this is that democratization is shaped by the public, and the EU is responsive to the opinions of the public. As Trez and Eder remark, monitoring the deficits of democracy is part of the corporate identity of the EU. This produces an institutional reflexivity for the EU, which becomes self-perpetuating since it is sustained by discovering more and more deficits.<sup>12</sup> In these terms, then, the EU is a good deal more democratic than is often thought. Moreover, from the outside the EU is a good deal more democratic than from within – but this is a perspective rarely taken.

The upshot of this is that a multilevel polity such as the EU continually produces political communication about democracy. It is in this sense that the EU leans towards being a discursive democracy rather than a liberal-parliamentary democracy or a republican polity based on a self-governing political community. If this is the case, it is plausible to suggest that this kind of a multilevel polity is not based on a concrete people as such. Obviously this will have implications for the conception of culture

and identity. What then is the relationship of discursive democracy to culture in the context of a transnational and multilevel polity such as the EU? The following section links discursive democracy with cosmopolitanism.

### **Cosmopolitanism and the question of culture**

Discursive democracy has generally been conceived in culturally thin terms, even to the point of being culturally neutral. As a result, the problem of the cultural deficit can be restated as an apparent problem for any viable democracy of a transnational European nature. In jettisoning all substantive notions of peoplehood for a procedural deliberative model of democracy, the cultural resources needed for identification appear to be lost. In a classic statement of a deliberative approach to the problem of how to create a society in purely democratic terms, a 'veil of ignorance' is required to rule out particular interests in favour of an abstract reasoning. In Habermas's own model, which departs from J. Rawls, the notion of constitutional patriotism becomes the sole kind of political identity for the post-national polity. The main feature of this is the denial of substantive cultural or 'thick' cultural values and identities as inappropriate for multi-ethnic societies, which can only accept the principle of social integration through reasoned deliberation. In place of all cultural forms of identification is an identification with the principles of the constitution.

While the idea of discursive democracy is convincing in both normative and descriptive terms as a model of democracy, it lacks a cultural foundation. In most accounts, discursive democracy is related to a relatively restricted area of political issues that do not entail major cultural or moral conflicts. Indeed, it is the nature of many conflicts where major moral and cultural issues are at stake that discursive reasoning is often precisely what the debate is about. Leaving aside such controversies concerning different conceptions of the common good in which discursive resolutions are ruled out, the wider question of the cultural basis of discursive democracy needs to be clarified.

The version of discursive democracy proposed and defended in this chapter is termed 'cosmopolitan democracy', distinguished from two other variants of cosmopolitan theory, namely moral cosmopolitanism<sup>13</sup> and transnational cosmopolitan.<sup>14</sup> In contrast to these variants, cosmopolitan democracy takes into account the rooted nature of democracy and involves the discursive resolution of contending visions of the social world. It therefore entails a confrontation with cultural identities. Democracy cannot circumvent cultural questions in favour of a purely procedural deliberative politics, which is often what discursive democracy suggests. As previously



noted, cultural identity has been at the fore of discussions about the nature of European identity, although there has been widespread disagreement as to the nature of culture with respect to Europeanization.<sup>15</sup> Cultural questions cannot be kept out of democracy.<sup>16</sup> The EU itself is at a decisive point at which it must decide what kind identity and value system it should articulate.

What are the cultural foundations of the EU? How is EU democratization linked to cultural values, beliefs and practices? The cultural foundations of the EU do not lie in a prepolitical cultural identity that, as in the myths of many nations, has been awakened by history. Although there have been attempts to relate European integration to the logic of the European civilizational heritage, these do not offer much substance. It is unlikely that an official acknowledgement of Christianity can offer a basis for a European self-understanding. What is needed is a conception of public culture rather than a symbolic system of meanings embodied in a tradition or heritage.

This public cultural dimension of European discursive democracy is captured in the notion of cosmopolitanism: the mixing and recombination of existing identities.<sup>17</sup> All the evidence suggests that the cultural logic of Europeanization is leading not in the direction of a supranational European identity but, rather, towards a cosmopolitan reorientation of existing collective identities. In other words, national and regional identities as well as many other kinds of collective identities are adjusting to transnational processes – of which Europeanization is but one – and they are undergoing change as a result. There are different manifestations of the Europeanization of identities and values. The following is a list of the some of the more significant instances of the public culture of Europeanization based on cosmopolitanism:

- *Culture as dialogue*: The concept of public culture suggested by a notion of cosmopolitanism is one of dialogue. Culture is itself a mode of communication by which societies are constituted. According to Habermas, communication is the basic feature of cultural possibility and the basis of social action. Culture in this sense is pervaded by dialogue through which intersubjective forms of self-understanding take shape. A dialogic conception of culture seems particularly pertinent to cosmopolitan expressions of culture.<sup>18</sup>
- *Cultural pluralism*: Cultural value systems and collective identities increasingly have to adjust to new contingencies and to the fact that many people have multiple identities. By now, most European societies have culturally mixed populations. Furthermore, national identities

are increasingly compatible with post-national values, including a European identity. This is often referred to as 'unity in diversity', which has become the leitmotif of the EU's cultural identity in recent times.

- *Cultural translation*: Pluralism, while important and especially relevant to Europeanization, has often been highlighted to the exclusion of other dimensions of culture that are also central to cosmopolitanism. One such dimension is the articulation of new cultural frames through which new visions of social and political order are given form. The notion of cultural translation is one key aspect of this dimension of culture; it refers to the construction and articulation of new cultural codes and ways of framing social and political issues. The more cultures come into contact with one another, the more they undergo change as a result. A process of cultural translation happens when one culture reinterprets itself through the categories of another and these new interpretations take on the character of a new cultural frame. It is also increasingly the case that all cultures are now interpreting themselves through global culture and, in the European case, through Europeanized cultural categories.

The result of this conception of cosmopolitanism is a view of culture and politics as intertwined in complex ways. Culture does not simply offer a symbolic foundation for politics. Both national and supranational as well as wider global processes are all mutually implicated in this. It is this interconnected web of cultural realities that is indicated by the notion of cosmopolitanism. With respect to Europeanization, both the EU as a multilevel polity and the nation state are co-evolving. It is simply not the case that one acts on the other. The opposition of nation state and a European polity is a false dichotomy. Already a great deal of the European is constrained within the national tradition, and it was from this tradition itself that the impetus towards European integration arose.

The relation between the national and the European should be seen in terms of a reflexive relation but also as an expression of cosmopolitanism. The reflexive relation produces new frames that lead to new visions of social and political order. Cosmopolitanism entails the transformative vision of an alternative society, and, as such, it is part of every society. The very idea of cosmopolitanism has its roots in the culture of many nations, as noted by F. Meinecke<sup>19</sup> over 100 years ago in his study on the rise of the cosmopolitan idea in nineteenth-century Germany. Although Meinecke thought the rise of the nation state would overshadow cosmopolitanism, the situation today suggests their mutual implication. Cosmopolitanism comes into existence at the interface where the global

encounters the local; it is not itself the global but the resulting movement of both. The following section will attempt to develop some of the implications of cosmopolitanism with respect to the cultural dimension of Europeanization.

### **Rethinking the cultural question in Europeanization**

On the basis of the foregoing remarks, European cultural identity is hybrid, mixed and evolving. Drawing from the notion of cosmopolitanism, the European and the national are not two separate domains of culture in which the latter is 'thick' and the former 'thin'. The relation between them is reflexive rather than a zero-sum game in which a gain in one is a loss for another. The fact is that the strengthening of Europe as a cultural reference point is not at the cost of national identification since what is occurring is a transformation of the national. Indeed, it could be said that the principal mode by which European identification is expressed is precisely through national frames.

Yet there is no denying the emergence of what might be called a European master frame. Although, as argued, it is unlikely that this will replace national frames, the master frame is becoming increasingly articulated. Such a master frame expresses itself in terms of a growing consciousness of what European cultures have in common as opposed to a frame that transcends these national cultures. A process of evolution is evident in the development of this master frame of cosmopolitanism, for it is neither static nor fixed. This developmental movement is due not least to the previously discussed process of democratization that has given a forward momentum to all forms of Europeanization.

One of the novel aspects of this mix of democratization and cosmopolitanism is the emergence of a situation in which citizens need to choose whether or not they wish to belong to a European polity. The constitutional referenda that are currently suspended concerning the ratification of the 350-page European Constitution involves a high-stakes decision about the scope of the political community people will belong to. People do not normally have to decide whether they wish to belong to a particular society. In the case of the European Union it is a different matter. The cultural deficit is more apparent for the simple reason that the element of acceptance or rejection has been built into the making of the new polity, bringing into it an unavoidable discursive element.

European identity is being shaped in the public sphere – and in a multiplicity of public spheres – under conditions that did not prevail in the past when most nation states were created. Dialogue is clearly central to

this, and, in terms of the previously discussed notion of discursive democracy, Europeanization is a transformative project. It has without doubt reached a level far beyond a transformation in statehood. This is also why cultural policies alone will not succeed in creating a new political or collective identity.

So far, much of the debate revolves around increasing personal identifications with Europe. This does not tell us much about the collective identity that is always more than the sum of individual identities. While more and more people either have a primary identification with Europe or, as is more common, have a dual identity with Europe and their nation, it is an entirely separate matter whether or not a collective identity exists.<sup>20</sup> Such a collective identity may take one of two forms. Firstly, it may be a collective identity of the EU in the sense of an institutional identity. Secondly, it may be a broader societal identity that includes not only the institutional level but, more importantly, cultural values which also have a wider civilizational dimension.

The limits of the capacity of the EU to articulate a supranational collective identity have been discussed by C. Shore and others.<sup>21</sup> We do not need to repeat these criticisms here beyond noting that, as discussed above, such criticisms often tend to assume zero-sum scenarios such as the assumption that national societies are relatively uniform and unproblematic in their own cultural self-understanding. In such contests the EU cannot win. However, taking a broader view of collective identity, as pertaining less to an institution than to a civilizational process, we can see how collective identity articulates other values.

It is in this context that the question of whether there are core European values that could be the cultural basis of a European cosmopolitan democracy arises. Despite the apparent absence of a transnational European identity that unites all Europeans, there is more commonality than is often thought. Of what does this consist? One of the core European values is that of solidarity and a concern with social justice. This is often overlooked in accounts of European identity, where the emphasis is often on cultural differences as linked to national and ethnic conceptions of culture. Such a viewpoint tends to neglect the role of social values in European modernity. Such values have a greater salience today as the European project has entered a new phase in which social issues have moved to the fore.

What is striking when one looks at European society from a global rather than national standpoint is the presence of core values that have defined social and political struggles. Solidarity, as associated with social justice, is one of the most characteristic features of European society and a stark contrast to other societies such as the United States.<sup>22</sup> This notion of

solidarity is reflected in traditions such as trade unionism, social democracy, social Catholicism, charity and a wide range of civil society movements. The development and transformation of democracy in Europe have been driven by the core value of social justice.

It is a mistake to see culture entirely in terms of conflict or diversity. While the recognition of diversity can be a positive thing, it can also be negative. The contemporary celebration of diversity is without doubt a necessary corrective to salutary accounts of European identity as spiritual teleology or an undifferentiated appeal to a unifying civilization myth that is so often a feature of accounts of the history of the European idea. Yet even such alternative readings of history fail to draw attention to the social commonalities in European modernity.

Is culture the problem for democracy? Against the current attempt to see a basic tension between Europeanization and cultural identities, the argument advanced here is that cultural differences should not be exaggerated. Three kinds of cultural conflict are typically seen as a problem: (1) the tension between nations and the EU; (2) tensions between West and East; and (3) tensions arising from immigration. Against the myth of cultural conflict, I argue that there are more social commonalities uniting Europeans. Regarding the first point, survey results demonstrate that EU citizens may not have a high level of identification with the EU or Europe more generally, but, by and large, they trust it.<sup>23</sup> That is quite a significant result with respect to democracy; such trust is central to democracy and is arguably more significant than a common identity. However, as C. Lord also points out, the proposition that there is a fundamental lack of identification with Europe is also highly questionable, particularly if this is conceived as the withdrawal of support for EU decisions. The referenda in 2005 in France and the Netherlands would be an exception in this regard.

With respect to the East–West conflict, D. Laitin<sup>24</sup> has argued that the difference between the old and the new Europe is not any greater than differences within the old Europe. Many of the latter often go unrecognized because studies that use social–psychological survey data to quantify the extent of personal identifications with Europe often neglect changes to collective identities and macro social change.

Regarding tensions arising from immigration, generalizations are difficult. Immigration has become an ever more political issue, and the degree of politicization is variable, as is the extent to which such politicization has brought about a structural shift in political culture in European countries. The apparent rise in xenophobia and racism must be measured against multicultural policies of inclusion and anti-racist counter-offensive measures. Minorities have always been marginalized, and whether they are

more marginalized today is debatable. Undoubtedly there are cultural conflicts arising from immigration, but such conflicts do not reflect a wider tension between national and European levels of governance.

Rather than looking at conflicts between primordial national cultures and a supranational European order of governance, a more differentiated analysis is required. Any account of Europeanization and cultural identity must include the following: (1) societal interpenetration as a result of globalization; (2) the Europeanization of the state and legal transformation; (3) the rise of a European public space; and (4) socio-cognitive and cultural change.

1. *Societal interpenetration as a result of globalization*: European societies are now more and more interconnected due to factors that are not explained by Europeanization but by global processes such as global markets, Americanization, developments in popular culture such as sport, travel and communications.
2. *The Europeanization of the state and legal transformation*: Aside from transversal societal interpenetration, there is no denying the tremendous impact of the EU on the state and above on all on national law. As a result of the superiority of EU law over national law, no national society can claim to be autonomous.
3. *The rise of a European public space*: The European space has become a part of political communication in most European states. This is the informal space of the public sphere that is becoming one of the most important expressions of the public. Where the two previously mentioned expressions of Europeanization take effect on the macro level of societal change, this occurs on the *meso* level of social movements and of various organizations based on interests ranging from economic to cultural to political. It is the polyvocal and polycentric space of civil society and political communication.
4. *Socio-cognitive and cultural change*: Europeanization entails new forms of self-understanding that are not measurable by opinions or approval rates. Although such surveys do provide indicative information on societal trends, they do not measure longitudinal change and above all do not measure changes in socio-cognitive and cultural models, that is, the emergence of new frames by which social reality is constructed. Such framing processes are not reducible to individual identities.

From a critical normative perspective, major challenges to Europeanization remain despite the great deal of change that has already taken place on the cultural as well as on the institutional level. The argument

here is that the EU needs to articulate the core values of the European democratic heritage in a more explicit way. Central to this heritage is the concern with social justice and solidarity. Rather than compete with the nation state in a fruitless search for a new supranational identity that will transcend and negate national identities, the only alternative for the EU is to give substance to what can be termed 'cosmopolitan solidarities.'

The current danger is that xenophobic currents will capture the social space. Already there is much to suggest that the rise in right-wing populist parties with xenophobic programmes lies in the ability of these parties to gain significant electoral support on the basis of social concerns. However, xenophobic parties are not themselves the problem – instead, they are the result of a problem, namely the relative failure of European democracy to address social issues.

### **Conclusion: idea of a cosmopolitan Europe**

The main conclusion of this chapter is that ostensible indicators of a democratic deficit (e.g. the relatively low voter turnout in EU elections, the 'No' votes in France and the Netherlands in 2005) are not evidence of a crisis in democracy in Europe or a failure of Europeanization. Moreover, the fact that there is not a European equivalent of a national cultural identity does not mean that Europeanization is bereft of cultural resources. Viewed from the perspective of discursive democracy and a wider notion of cosmopolitanism, Europeanization figures as a more pervasive and multilevel process. In short, the multilevel nature of the EU polity is reflected in a polyvocal kind of cultural Europeanization.

With a view to the future, the current situation suggests that Europeanization has reached a decisive juncture: either the EU remains an intergovernmental organization with limited social and cultural aims, or it becomes a polity based on a political community. To achieve the latter, which appears to be the goal, a deepening of the democratic heritage is needed. To an extent this has already occurred, even if it is not manifest on the level of overt legitimacy as measured by voting behaviour and public opinion. Europeanization resembles more closely the model of cosmopolitanism: a multilevel and unilinear process by which nation states and societal systems are themselves transformed by a movement that is not entirely to be explained by an EU master plan.

The constitutional debate – presented as a crisis in the wake of the French and Dutch popular rejection of the draft Constitution in May 2005 – is a striking example of how the democratic deficit has itself generated a major challenge for the EU, whose elites have tended to assume that the

masses will follow their decisions. From now on it is likely that there will be a different relationship between the elites and the masses. In a curious way the referenda debates were examples of discursive democracy: it was not a question of the masses following the messages of the elites but of articulating different positions with a wider field of contestation.

## Notes

- 1 See A. Gutmann, *Identity in Democracy* (Princeton: Princeton University Press, 2003).
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# 5

## The Quest for a European Public Sphere: News Media and Democratic Legitimacy

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### **Introduction: the news media and democratic legitimacy**

Democratic legitimacy of political orders and political decisions depends on the consent of the governed. This almost common-sensical proposition suggests that

legitimacy requires that people have beliefs about a political order that motivate them to support that order in some way, to accept obligations towards it and to act mainly according to its rules. These beliefs and attitudes should also correspond to public opinion and be articulated in public discourse.<sup>1</sup>

There is, thus, a constitutive connection between citizens' beliefs, public discourse and the empirical legitimacy of a political order. Citizens learn about the political world from, and develop their legitimacy beliefs in reaction to, public discourses in which such beliefs are expressed and discussed. Public discourse is a precondition of democratic legitimacy, and this gives the news media a prominent role in the process of democratic legitimation and delegitimation. News media content constitutes a crucial factor in the complex interplay between a polity's institutional features, the actions and public pronouncements of political actors, and citizens' beliefs and participatory behaviour. But what exactly is the role of the news media in the process of legitimation and delegitimation? Three aspects are important here.

First, the news media perform two functions simultaneously. They act as mediators of public discourse and as participants. The mediator function is best captured by the metaphor of an *arena* in which societal actors exchange views and arguments while being observed by the audience in

the gallery.<sup>2</sup> Ideas are furnished to the mass media from other arenas such as social movements, the legal arena, or the scientific community. Interaction in the media arena is triadic rather than dyadic in nature: two (or more) political actors compete for attention and approval by a third party, the audience. In this process actors strive to win legitimacy for their concerns by attempting to persuade those segments of the audience that are undecided or indifferent. At the same time, they try to demonstrate leadership in their own camp and strengthen the backing of their followers. The news media are not neutral transmitters in this struggle for legitimacy. They employ their own criteria of newsworthiness and allocate attention accordingly; they construct disagreement mostly as a controversy between two opposing camps.<sup>3</sup> Moreover, the news media also engage in public discourse themselves by offering commentary and interpretation in addition to factual news. In doing so, they are semi-autonomous vis-à-vis political actors and citizens. While dependent on input from political actors as well as on acceptance by their audiences, in democratic polities news media cannot be instrumentalized completely for external purposes.<sup>4</sup> Media play an important role in determining what citizens know about the political world; they also constrain what political actors can convey to their constituencies. Thus, they impinge on the legitimacy arguments that are put forth in the arena as well as the legitimacy beliefs that can be formed by citizens. Without understanding news media content, therefore, it is impossible to fully understand the procurement and withdrawal of democratic legitimacy.

Second, since most public debates are controversial, public discourse can serve to legitimize or to delegitimize political decisions and political orders, depending on the circumstances. On the one hand, conflict can lead to scepticism and to the withdrawal of legitimacy for controversial decisions. Public debate may expose weak justifications or improper procedures and thus delegitimize decision makers or decision-making processes. On the other hand, conflict can contribute to clarifying underlying differences of interest as well as empirical claims. Public debate may discredit some of the less tenable arguments and, under favourable circumstances, it may even strengthen mutual recognition of the seriousness of opposing claims. In this sense public debate may foster civility and a willingness to (accept) compromise.<sup>5</sup> The sheer extent of public debate about a particular issue or institution does not automatically increase its legitimacy in the eyes of citizens. While there can be no public debate without news media coverage, such coverage in no way guarantees a legitimizing outcome. Moreover, under certain conditions the media may contribute to delegitimation. For example, they may engage in

exaggerated scandalization or use inappropriate or overly strict legitimacy standards in their coverage and commentary.

Third, policy debate is not the only way in which the news media contribute to (de)legitimation. Public discourse also implicitly and explicitly constructs a particular communicative community, which in turn constitutes the horizon of legitimacy arguments. Problems discussed in the media arena are 'owned' by a particular collectivity, which is called upon to solve or handle them. Legitimacy claims and arguments are made with respect to certain values, historical experiences and traditions. In short, public discourses presuppose and (re)produce particular collective identities. The geographical scope and the substance of these collective identities are by no means arbitrary. On the contrary, each public sphere has its own socio-spatial extension that predefines and gives meaning to the claims and arguments advanced. The nation state constitutes the dominant point of reference for public discourse because it has evolved as the dominant centre of political decision and, by implication, the dominant horizon for legitimizing political outcomes.<sup>6</sup>

Consequently, the legitimacy of transnational and supranational systems of governance such as the European Union (EU) partly depends on the degree to which the socio-spatial boundaries of national public spheres are expanded so as to correspond with the transnational scope of governance. Such an extension of boundaries can potentially take different forms.<sup>7</sup> It could mean an extension of the media arena itself, leading to a pan-European media system with pan-European audiences. It could also mean including the transnational centre of decision making among topics discussed in national public discourses ('vertical Europeanization').<sup>8</sup> Boundaries could also be extended by including political actors, views and arguments from other European countries into national public discourses ('horizontal Europeanization'). Finally, the transnationalization of public spheres could involve defining transnational collective identities in public discourse by, for example, referring to Europe as a problem-solving community or a community of shared values ('Europeanization of collective identification').

### **A European public sphere: four normative models**

It is quite obvious that a pan-European media arena accessible to all European citizens does not exist at present. There are very few specialized media outlets with a European scope such as *The Economist*, the Financial Times, the *International Herald Tribune* or the TV channel *Euronews* (with its simultaneous translation into several languages). But these are specialized

publications with a small, elitist readership or viewership. On the European level there are no equivalents of the general-interest TV channels and high-circulation newspapers and news magazines that we take for granted on the national level. Therefore, research on the emergence of a European public sphere (EPS) has long reverted to study of national media, especially national quality newspapers, with a goal of assessing their degree of 'Europeanization'.

Before examining the empirical results of this study, it is useful to first discuss the normative standards necessary for such an analysis. What should one expect from the national news media in order to be able to speak of a consistent trend of Europeanization or the emergence of a European public sphere? Synthesizing the existing literature and building on our own research, it is possible to distinguish four normative models.

### **The monitoring governance model**

The first of these normative models focuses on the democratic value of 'monitoring governance' for citizens. In order to develop legitimacy beliefs about the EU and its decisions, citizens must be informed about EU institutions and EU policies in the first place. The monitoring governance model, therefore, demands that the news media cover these institutions and policies as part of their political news. While this appears to be a straightforward demand at first sight, things become more complicated when we ask about the necessary level, development and qualitative features of such coverage. Just how much EU coverage counts as an appropriate representation of EU institutions and EU policies in national public spheres? Is there an absolute quantitative threshold that EU coverage must consistently surpass? Or is it enough if such a threshold is surpassed episodically in relation to important events such as EU summit meetings? Should EU coverage increase continually over time? And if so, should it grow parallel to EU policy output or the increasing intrusion of EU decisions into citizens' lives? Finally, on which phases of the policy-making process should EU coverage focus? Is it enough if it covers the implications of policy decisions after these have been taken? The existing literature has not always been clear on these points. We, therefore, propose a normative model that combines three aspects.

First, in some parts of the literature there is a tendency to overstate demands for publicity and transparency with respect to the EU.<sup>9</sup> A healthy dose of secrecy is a functional prerequisite for the proper functioning of many bargaining and decision-making processes. In addition, A. Moravcsik has pointed out that 'of the five most salient issues in most West European democracies – health care provision, education, law and order,

pension and social security policy, and taxation – none is primarily an EU competence'.<sup>10</sup> G. Majone has also pointed to the legal and material limitations of EU policy making: 'The Community has no general taxing and spending powers similar to those held by national governments; and with a budget of less than 1.3 per cent of Union GDP which, moreover, must always be balanced, it can only undertake a limited range of policies.'<sup>11</sup> All of this suggests that it would be inappropriate to expect a level of media attention for the EU that equals that of national governments. It would also be acceptable if media attention were lower for those policy fields in which the EU enjoys fewer decision-making powers. While R. Koopmans and J. Erbe as well as B. Pfetsch<sup>12</sup> record a match between EU competencies in a specific policy field and the level of media attention, S. Sifft et al. suggest that it is not EU competencies as such that explain attention levels but the intrusion of EU policies into core functions of the nation state, such as public spending and defence.<sup>13</sup> In any case, the normative standard for the level of monitoring EU governance should be adjusted to the unique characteristics of this polity.

Second, public discourse should not only reflect the peculiarities of the polity but also its development over time. The monitoring governance model suggests that we should expect an increase over time in the level of EU coverage because the competencies of the EU have been successively expanded. Several standards of comparison may qualify here, including the quantitative development of the legal output of the EU, the adoption of more conflict-inducing institutional arrangements (such as the strengthening of the European Parliament or the expansion of qualified majority decisions), as well as the adoption of more controversial policies, such as eastern enlargement, that exacerbate distributional conflicts and trigger identity debates. All of these developments should produce an upward slope rather than a flat line in EU coverage.

Finally, the monitoring governance model will have to take into consideration the amount of domestication of EU issues, i.e. the degree to which EU policies are reported with respect to their domestic effects only. Normatively, monitoring governance implies that EU policy- and decision-making processes are publicly discussed, rather than simply reported on *ex post facto*.<sup>14</sup> Once the national news media's coverage of the EU is normatively evaluated in such complex terms, empirical analysis is unlikely to produce black and white results concerning the existence or non-existence of a European public sphere.

### **The convergent monitoring governance model**

The second normative model supplements the monitoring governance function of the national news media with different layers of *discourse*

*convergence*: it is not enough for the national media to discuss EU issues; rather, the same issues should be discussed simultaneously in several or all EU countries.<sup>15</sup> According to the convergent monitoring governance model, national debates should be synchronized temporally and homogenized with respect to the relevance criteria employed. The meaning of 'relevance' or 'relevance criteria' is, however, ambiguous. J. Habermas's original formulation, to which K. Eder and C. Kantner refer, reads: 'The core [of a European communicative context] is formed by a political public sphere which enables citizens to take positions at the same time on the same topics of the same relevance.'<sup>16</sup> Here the relevance of topics, i.e. the level of attention they arouse, is supposed to be equal or similar in the various national public spheres. Yet Eder and Kantner as well as T. Risse, S. Tobler and other authors go a decisive step further: they require public discourses to look at such topics with similar *criteria* of relevance, i.e. a similar or identical framing or problem definition.<sup>17</sup> For instance, in 1999 debates over the European Commission's corruption scandals were equally intense but framed differently in Germany and Spain. H.-J. Trezn finds that Germans framed the issue predominantly as a moral problem, indicating the democratic deficit in the EU, whereas in Spain the issue was linked to the conflict between northern and southern Member States over reforming EU structural funds in the course of the enlargement process.<sup>18</sup> Such contradictory framing, it is argued, points to the absence of discourse convergence.

As with monitoring governance, the normative standards are ambiguous. The concepts of 'relevance criteria' or 'frames' carry an element of indeterminacy: the more specifically and concretely the frames are defined, the harder it will be to find convergence; the more abstractly the frames are conceived, the more similarities will emerge, with the danger of overrating homogeneity. Furthermore, it is not entirely obvious why the same frames must underlie debates in different European countries at all. Is it not natural that public discourse on the same issue may take on different perspectives across countries, reflecting particular circumstances and historical experiences? To avoid applying an unnecessarily demanding standard, the possibility for individual countries to diverge from the mainstream in their framing of an issue should be acknowledged as consistent with 'convergent monitoring'. A more realistic version of the model would put stronger emphasis on structural rather than on the deeply substantive aspects of national public discourses, evoking a standard of *completeness*: all frames that exist in national public spheres should be present in the other national public spheres as well.<sup>19</sup> Frames may enjoy different prominence in different national contexts, but national media should *take note* of frames used in other countries. Of course, this kind of transnational

frame dissemination is most likely to occur if there is actual discursive exchange between national public spheres, i.e. if journalists observe discussions in other countries, report on interesting and diverging debates abroad, and thereby infuse them into their national debates. Discourse convergence rooted in a criterion of completeness builds on *mutual observation* and *discursive exchange* – criteria that emphasize innovation in discourse and constitute in themselves an alternative normative model that will be detailed below.

An additional criterion may involve the similarity or dissimilarity of the underlying national *discourse constellations*.<sup>20</sup> Discourses are commonly divided into two opposing discourse coalitions made up of a particular set of actors that use specific sets of arguments to justify their positions. If such constellations of national discourses become more similar across countries over time, discourse convergence increases. This convergence may involve either the membership of discourse coalitions or the central arguments used by them or both. Such a process of convergence would likely involve mutual observation and discursive exchange between discourse coalitions from different countries, facilitated by news media coverage. This brings us to the third normative model, which places these horizontal dimensions of Europeanization centre stage.

### **The horizontal integration model**

The horizontal integration model takes account of the socio-spatial extension that characterizes every public sphere. If a European public sphere is to emerge, it must span the entire continent, or at least major parts of it.<sup>21</sup> In principle, monitoring governance can take place in ‘separate compartments’ constituting a segmented form of Europeanization, but truly European public discourses presuppose mutual observation between European countries, as well as actual discursive exchange across borders. This is normatively desirable for several reasons. First, opinions expressed and decisions taken in one European country can become consequential for the other countries and for the EU as a whole, amply demonstrated by the French and Dutch rejections of the European Constitution in 2005. Second, ideas and arguments from other countries can enrich public discourse by injecting ‘fresh blood’ into sometimes quite predictable national debates, supporting discourse innovation. Third, knowing about opinions and arguments from other Member States can, under favourable conditions, foster mutual understanding, a reconciliation of interests, the willingness to compromise, and cross-border solidarity. Thus, horizontal discursive integration helps overcome national solipsism and self-centredness.



### **The horizontal integration and collective identification model**

Common European identity elements are often considered a fundamental building block of democratic legitimacy. The fourth normative model builds on this idea, supplementing mutual observation and discursive exchange with some degree of collective identification with Europe.<sup>22</sup> In doing so, the horizontal integration and collective identification model is not concerned with prescribing a particular substance of European identity as preferable to others but rather with the process of publicly identifying with Europe as such. Collective identities cannot emerge, persist and gradually change without a process of public display and discussion. They are, in part, constructed and reproduced through discourse about 'collective self-understandings' that constitute an integral part of public culture.<sup>23</sup> As discussed above, the formation of collective identity has several aspects: which community is addressed by communications? Which collectivity is invoked as the 'owner' of a problem and called upon to solve or handle it? Which values, historical experiences and traditions are called up in public discourse? EU experts disagree about the normative significance of the third aspect. In particular, to what degree does the EU's legitimacy depend on a 'thick' collective identity with a strong sense of a common history and a common purpose?<sup>24</sup> Is an 'identity light', namely 'some minimum sense of belonging to the same community', adequate for the job, as Risse has suggested?<sup>25</sup> If transnational identity constructs develop, they do so under somewhat aggravated conditions because their historical depth has to be constructed with greater conscious effort. Therefore, it is unrealistic to demand historically rich identities from transnational public discourses; it is more sensible to expect a restricted sense of transnational identity related to a discourse community faced with common problems.<sup>26</sup> Ultimately, however, the question of a requisite European identity will depend on the extent and character of political competencies entrusted to the EU:

What kind of shared identity would suffice to support a European political community with vastly extended political competencies depends on somewhat uncertain empirical estimates. This question cannot be settled by normative arguments. Probably only some process of trial and error with a close watch on errors and more positive experiences and an open mind towards both possibilities and limitations can be helpful here. The same is true for the relationship between national identities and a common European identity.<sup>27</sup>

The four models presented above – monitoring governance, discourse convergence, horizontal integration and collective identification – all

point to important normative elements. While the standards for monitoring governance and discourse convergence should be adjusted to some degree, particular emphasis should be placed on horizontal discursive integration and a 'light' version of collective identity.

## Measuring Europeanization

The following section provides results of a long-term study of media content of national quality newspapers in five European countries. In this empirical study three of the four normative models are applied empirically, with data on trends in monitoring governance, horizontal integration and collective identification.<sup>28</sup> Table 5.1 gives an overview of the operationalization of these three dimensions of Europeanization. The table shows that all dimensions are subdivided into two aspects. Monitoring governance has an institutional as well as a policy aspect. While the first

*Table 5.1* Three dimensions of Europeanization

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### *1. Monitoring governance*

|                                 |   |
|---------------------------------|---|
| Visibility of EU institutions   | Is the EU regarded as a relevant actor in public debates?<br>Indicator: Mentioning of EU institutions           |
| Public attention to EU policies | To what degree are EU policies subject to public scrutiny?<br>Indicator: EU policies as a subject of an article |

### *2. Horizontal integration*

|                     |  |
|---------------------|--|
| Mutual observation  | To what degree does Europe become a relevant unit of public attention?<br>Indicator: References to other European countries  |
| Discursive exchange | To what extent are public spheres permeable for discursive exchange with other spheres?<br>Indicator: Direct and indirect quotations from foreign actors and contributions by foreign actors |

### *3. Collective identification*

|                               |   |
|-------------------------------|---|
| Acknowledgement of identities | Is Europe perceived as a collective entity in public discourse?<br>Indicator: References to 'the Europeans' |
| Expressions of belonging      | Is a sense of belonging to the same European public developing?<br>Indicator: 'We' references               |

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aspect describes the relevance of EU institutions and actors in domestic debates, the latter shows the degree to which EU policies are subject to public scrutiny. Horizontal integration combines mutual observation and discursive exchange. In a similar vein, collective identification is characterized on the one hand by acknowledgments of Europeans as a collective entity, and on the other by explicit expressions of belonging to this entity ('we Europeans').

The analysis further differentiates between three qualities of Europeanization of public discourse, namely the trend line, the level, and the geographical scope of transnationalization. The trend line refers to the process character of Europeanization, to its supposedly growing amplitude. Following a suggestion by M. Zürn, we assess the trend of Europeanization in relative terms, 'as the extent of cross-border transactions relative to transactions taking place within national borders'.<sup>29</sup> This allows assessment of whether a process of Europeanization or some other kind of transformation is actually under way. For example, the increasing attention in the media to EU policies might not be just an outcome of Europeanization; in principle, it could also be the result of a more general politicization of the media in relation to various domestic, European or international policies.

The level of Europeanization answers the question of how relevant the Europeanization of public spheres actually is. We might find an intensive trend line towards transnationalization; if it remains on a low level, however, it would hardly amount to a noticeable transformation of the public sphere. The level is assessed in relative terms by comparing it to the level of domestic references.

The geographical scope of cross-border interconnectedness involves the extent to which transnational communicative exchange extends beyond Europe into a Western or possibly even a global public sphere. This aspect of the analysis helps prevent a disproportionate weighting of the impact of the EU by taking into account that European integration might not be the only possible trigger for the transnationalization of public spheres. International communication studies show that new technologies of communication, international news agencies and the growing importance of international, often US-based, media corporations might as well generate transnational communicative flows, albeit with a global, or rather Western, scope.<sup>30</sup> Geopolitical developments such as the end of the Cold War and the threat of international terrorism might further contribute to a growing attention of public discourse beyond the narrower EU-Europe. The analysis systematically identifies indications of two alternative patterns of transnationalization: Europeanization and Westernization.

References to the USA provide a rough indicator for the latter, i.e. discursive articles focusing on the US, quotation of US speakers and references to 'the West' as a collective identity.

While most EPS studies narrow down their sample to EU articles, the data set for this study has a broader scope. It includes articles in the political sections of newspapers covering all topics of political discourse, not just European topics. Furthermore, in contrast to most EPS studies, this analysis is based on a long-term perspective. It starts in 1982 at the high tides of 'Eurosclerosis' and continues in seven-year steps until 2003.<sup>31</sup> This permits assessment of whether more European integration – as it has developed with the Common Market, the Maastricht Treaty as well as the common currency – goes hand in hand with the Europeanization of public spheres.

The sample covers a wide range of EU Member States, including quality newspapers from Germany (*Frankfurter Allgemeine Zeitung*), Great Britain (*The Times*), France (*Le Monde*), Austria (*Die Presse*) and Denmark (*Politiken*). The focus on quality papers is based on the assumption that a transnationalization of discourse is more likely to evolve here than in the regional press, tabloids or television. If no significant trend of Europeanization is observed in quality papers, it is even less likely to be present in other media.<sup>32</sup> Moreover, since we are specifically interested in the Europeanization of discourse, the methodology identifies *discursive articles*, i.e. articles most likely to contain opinions backed by justifications. Consequently, the sample includes editorials and editorial page opinion articles as well as political columns, interviews and contributions from external authors such as intellectuals, politicians or experts. It also includes a range of other non-op-ed articles and pieces that analyse, interpret, argue or justify rather than simply report news.

## Empirical results

### Monitoring governance

We measure the *visibility of international institutions* by coding all articles that mention political institutions and by contrasting national, EU and other international institutions. What we find is a statistically significant trend towards Europeanization: the increasing political importance of the EU is reflected by a growing visibility of European institutions in public debates. The share of EU institutions mentioned more than doubles from 1982 to 2003, reaching a level of 29 per cent. Having said that, one must also stress that national institutions are mentioned far more often (63 per cent on average) than all international institutions taken together.

So, the national perspective is not given up as might be expected or hoped for by supranationalists. Rather, it is complemented by a European spin. Moreover, the trend of Europeanization is put into perspective by the fact that even the quality press often does not differentiate between the Commission, the European Parliament (EP) and the Council, but rather talks about the EU in general or about the Commission, leaving aside the other institutions. In contrast, the level of 'non-EU' international institutions remains stable – and this means effectively falling below the amount of attention paid to the EU. The North Atlantic Treaty Organization (NATO) as the transatlantic institution per se serves as a good indicator of the (non)existence of the westernization of public spheres. It gradually falls into public negligence and accounts for only 5 per cent of all references to institutions on average. Other international institutions such as the Organization for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO) are far less visible. Only the United Nations (UN) (8 per cent on average), though nearly forgotten in the year 1989, experience rising attention in 2003 as the discussion about the US-led intervention in Iraq centred around the UN Charter and Security Council resolutions.

The second aspect of the monitoring governance dimension is *public attention to policies*. To what degree does public discourse shift its attention from national policies to EU (or other international) policies in the wake of European integration? Figure 5.1 shows a strong and statistically significant trend towards Europeanization. Whereas EU policies are in the

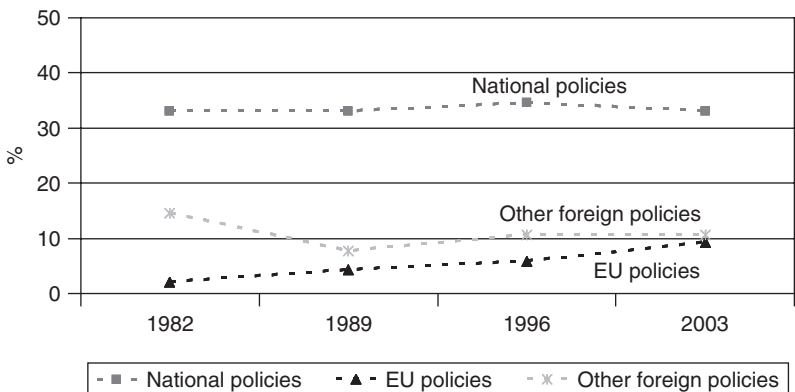


Figure 5.1 Policies as main subject of articles

Source: Representative sample of discursive articles in FAZ, *Le Monde*, *The Times*, *Die Presse* and *Politiken* for the years 1982, 1989, 1996 and 2003 (N = 2964)

centre of only 2 per cent of all articles in 1982, this share has more than quadrupled by 2003 (9 per cent). This is not embedded in a general trend towards transnationalization as the share of other foreign policies has not increased and national policies remain at about the same level. Debates on European policies focus primarily on issues such as common foreign and defence policy, monetary and financial policy, industry and competition policy as well as questions of enlargement. Fewer public discussions centre on agricultural policy or home affairs and judicial policy. It cannot go unnoticed, however, that the level of Europeanization is still relatively low – only 5 per cent of all articles on average as compared to 33 per cent on national policies.

Concerning the level of Europeanization achieved, there is a striking discrepancy between studies that find a very low level of focus on Europe<sup>33</sup> and the more optimistic findings of H. Sievert<sup>34</sup> and particularly Trenz, who sees a 'highly Europeanized' quality press.<sup>35</sup> Our data prove that this discrepancy can be explained first of all by the rising tide of Europeanization in the 1990s. Second, our multidimensional design shows that the discrepancy between high and low levels of Europeanization partly results from 'artefacts' produced by the design of the respective empirical studies.<sup>36</sup> Trenz, for example, takes 'all political references to Europe'<sup>37</sup> as an indicator, thereby finding a relatively high level. This corresponds roughly to the results of our first aspect (the mere mentioning of EU institutions). If we take our somewhat more demanding criterion and require that EU policies be the main subject of an article, we find that less than one in ten articles focuses on EU policies. We suggest that these findings can only be interpreted together, establishing a moderate level of Europeanization that has not yet revolutionized the routine coverage of the national quality press.

## **Horizontal integration**

### *Mutual observation*

Is the increase in the monitoring of European governance accompanied by growing horizontal integration? Are European countries observing each other more intensively? Our data show that attention towards the outside world in national quality newspapers is relatively stable and remains on a level that was already relatively high by the beginning of the 1980s.

Figure 5.2 contrasts all articles focusing on other European countries with the number of articles focusing on the home country and those focusing on the US. No consistent trends towards either Europeanization or westernization emerge. European countries receive most attention in 1996 and least in 2003. Attention to one's own nation also peaks in 1996 and

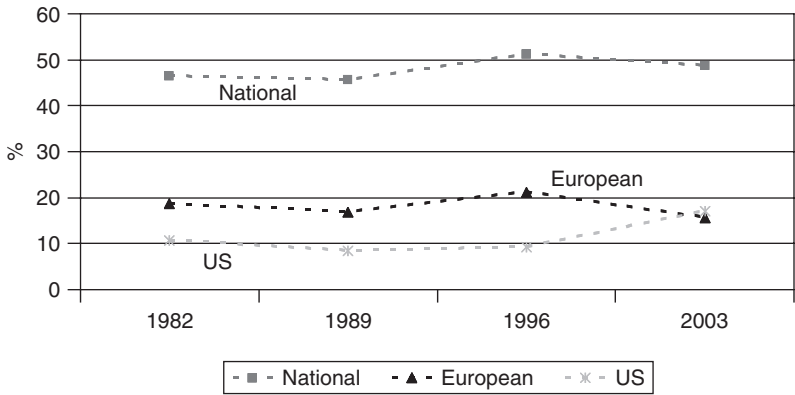


Figure 5.2 Observation of other countries

Source: Representative sample of discursive articles (incl. press reviews) in *FAZ*, *Le Monde*, *The Times*, *Die Presse* and *Politiken* for the years 1982, 1989, 1996 and 2003 ( $N = 3059$ )

drops slightly in 2003. Attention to the US, in contrast, increases from 9 per cent in 1996 to 17 per cent in 2003.

In order to explain these figures we might look at the agenda of world politics rather than at the continuous changes of EU integration. In 1982, 1989 and 2003, major international events dominated the scene: the Falklands War, the fall of communism, terrorist attacks and the US-led occupation of Iraq. Because of the latter, the US and Iraq are the countries most often discussed in all newspapers in 2003. While these major events of world politics trigger the ups and downs of public discourse, the political agenda of the EU does not influence the geographical focus of articles: the accession of Spain, Portugal, Finland or Austria to the EU has no effect on the public spheres of the other countries: the newcomers are not included more often in the public discussion in any of our newspapers.

In the absence of clear trends, the levels of the different forms of transnationalization are especially interesting: every second article has a transnational focus, and this level has been relatively stable in the last 20 years. This shows that at least the leading quality newspapers pay considerable attention to what happens abroad. However, the focus is not specifically on European countries as they constitute only 18 per cent of all articles on average. These articles mostly deal with the more powerful European players such as Great Britain, France and Germany. The US alone receives about 12 per cent of the attention, showing that it is the powerful and not specifically the European countries that are in the focus of public debates.

*Discursive exchange*

Going beyond mere attention paid to other countries, the discursive exchange criterion measures to what extent newspaper articles make explicit references to speakers from abroad. As newspapers offer different fora for external speakers, we differentiate between two major forms: *discursive contributions* and *discursive references*. Discursive contributions are interviews with or opinion articles written by actors from abroad – two formats that allow for extensive opinion giving. The somewhat more frequent alternative is discursive references (i.e. direct or indirect quotations of at least two consecutive sentences). This type of reference offers speakers the chance to express opinions and to give at least some kind of basic justification for them.

First, we take a look at the role of the EU institutions in discursive exchange. They may have managed to establish themselves as a frequent point of reference in media discourse, but they play a rather passive role as objects and not as subjects of discourse as they have not become powerful speakers in public debate: a continuously small share of less than 5 per cent of all speakers quoted represents EU institutions (e.g. Commissioners, officials, spokespersons). This would be less surprising if foreign speakers generally did not have a say in national discussions, but they do: as Figure 5.3 shows, roughly every second discursive reference relates to national speakers, which in turn implies that every second reference comes from foreign speakers.

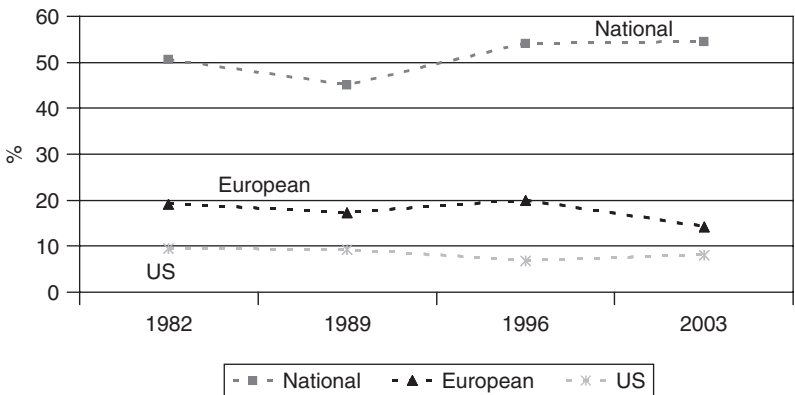


Figure 5.3 Origin of discursive references

Source: Discursive references in representative sample of discursive articles in *FAZ*, *Le Monde*, *The Times*, *Die Presse* and *Politiken* for the years 1982, 1989, 1996 and 2003 ( $N = 2640$ )



However, this high level of transnationalization does not mirror a trend towards more discursive references from European countries. Rather, the overall picture shows a relatively stable level of European speakers at 17 per cent on average. There is some deviation from this level in 1989 and 2003 due to developments in world politics. Specifically, the focus on international terrorism after 9/11 drew attention away from Europe. This does not support the quite plausible hypothesis of Americanization as a consequence of 9/11, however. The level of American speakers in our newspapers is stable and below 10 per cent. This is striking since we observed a much stronger increase of focus on the US in terms of mutual observation (see above). This may be a reflection of the interventionist US foreign policy, which was increasingly covered by newspapers without intensifying transatlantic discourse.

Thus, the transnationalization of public spheres seems to be consolidated on a relatively high level in national quality dailies but without displaying a pattern of Europeanization or westernization in the horizontal dimension. Moreover, it should be noticed that international speakers as well as fellow Europeans, although they are frequently quoted (discursive references), rarely get the chance to express their opinion more fully in interviews and guest contributions (discursive contributions). Discursive contributions form a substantive share of our sample, as every fourth article is an interview or a guest contribution. *Transnational* discursive contributions are rare however: 82 per cent of guest contributions are of national origin. Nevertheless, a weak trend towards Europeanization can be observed as the share of contributions from other European countries increased from 2 to 9 per cent between 1982 and 2003. This increase is based on a very low level, however, and it would therefore be premature to conclude that this shows a transformation of public discourse.

### **Collective identification**

A precondition for the self-perception of Europeans as members of a common community of communication is that 'the Europeans' as a *topos* exists in public discourse. Even when using the term with a negative connotation, it still implies that the existence of this collective is acknowledged. Therefore, we first analyse the occurrence of the term 'the Europeans' in discourse; second, its connotation; and third, the explicit identification with Europe by the use of a European 'we' in public discourse ('we Europeans'). In a nutshell, we find that the salience of the term 'the Europeans' is very low and 'we Europeans' hardly exists. But from this very low level, the figures gradually increase in more recent years.

'The Europeans' exists as a *topos* in public discourse and gradually gains more importance, starting with a share of 6 per cent of all collectives mentioned in 1982 and rising to slightly above 10 per cent in 2003. 'The West' (12 per cent on average), however, is more common than 'the Europeans' (8 per cent on average), but it has declined since 1989. In general, we find that contrary to the increasing European trend, the demand for other transnational collectives such as 'the Communists' or 'the Muslims' rises and falls according to the agenda of world politics. Moreover, 'the Americans' or 'the Muslims' are collectives used with a neutral or negative connotation, while 'the Europeans' goes with a positive connotation.

Figure 5.4 on the explicit use of 'we Europeans' confirms that there is a nascent trend towards the Europeanization of public identities. While we-references to the West stagnate and identification with one's nation drops between 1996 and 2003, 'we Europeans' increases slightly from below 1 per cent in 1982 to 5 per cent in 2003. Looking at the level of identification, however, the nation is still the most frequent point of reference (40 per cent of all we-references) together with a broad range of very specific collective identities such as 'we, the government' or 'we, the farmers'. Identification with Europe is at 3 per cent on average; identification with 'the West' is even weaker.

Our findings thus reaffirm the presuppositions of scholars who state that Europe has so far suffered from being no real *Gemeinschaft* (community) and not having a *demos*.<sup>38</sup> In contrast to Risse and M. van de Steeg,<sup>39</sup>

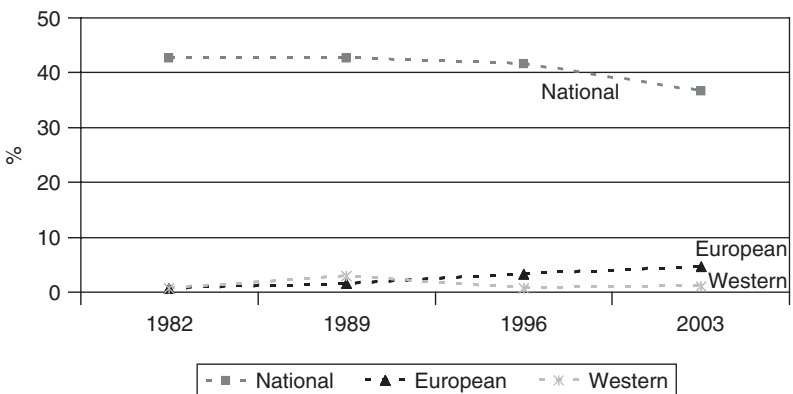


Figure 5.4 Collective identification: 'we' references

Source: 'We' references in representative sample of discursive articles in *FAZ*, *Le Monde*, *The Times*, *Die Presse* and *Politiken* for the years 1982, 1989, 1996 and 2003 ( $N = 1510$ )

who found indications of a common European identity in an admittedly 'easy case' (the debate about the right-wing extremist and racist Jörg Haider joining the Austrian government) and claimed that '[t]he higher the salience of European issues in people's daily lives, the more people tend to identify with Europe', our results suggest a more cautious conclusion: on the one hand, the beginning trend towards a European public identity certainly sheds doubt on the orthodox pessimism of some scholars, who maintain that identification with Europe can *never* develop in the near future. On the other hand, the level of European identification is still much too low to indicate a substantive transformation of public identities.

## Conclusion

Is there a transnationalization of public discourse in Europe? In order to respond to this question, we have reaggregated the three dimensions of our analysis in Table 5.2. It contrasts the trend and level of the Europeanization and westernization of public spheres. For each dimension we calculated the strength and direction (positive/negative) of the trend relative to the domestic development. The level of transnationalization is to be understood as the share of the transnational values of a

Table 5.2 Trends and levels of transnationalization

| Dimension | Indicator                 | Europeanization |           | Westernization |           |
|-----------|---------------------------|-----------------|-----------|----------------|-----------|
|           |                           | Trend           | Level (%) | Trend          | Level (%) |
| 1         | Monitoring governance     | 7.0*            | 16        | -2.8           | 33        |
| 2(a)      | Mutual observation        | -1.8            | 37        | 3.8            | 24        |
| 2(b)      | Discursive exchange       | -3.7            | 34        | -2.0           | 16        |
| 3         | Collective identification | 3.8*            | 7         | -0.1           | 3         |
| Mean      |                           | 3.2             | 33        | 0.9            | 26        |

Legend:

Europeanization: Values refer to the European policies and references in comparison to the national ones.

Westernization: Values refer to the Western/international, *but not European* policies and references in comparison to the national ones (because westernization only occurs when Europeanization is accompanied by an increase of American or transatlantic references).

Trend: Slope parameter of regression line (OLS regression) in comparison to national development with \*  $p < 0.05$ .

Level: Share relative to national policies and references.

variable relative to the respective national value.<sup>40</sup> The first main column enables us to decide for each dimension and related indicator whether Europeanization has occurred. The second main column shows whether this process is embedded in a larger process of westernization.

A substantial and statistically significant trend towards the transnationalization of national public spheres occurs only in the first dimension: monitoring governance. Here we clearly find a process of Europeanization that is not part of a general trend of westernization. This trend occurs in all newspapers in our sample. For the two aspects of horizontal integration, we even find negative developments. While this should not be overinterpreted, we can state at least that there is no positive trend, either towards Europeanization or towards westernization. On the collective identification dimension, we find a weak trend towards Europeanization of collective identities on a very low level. Therefore, as mentioned, it would be premature to conclude from our data that a process of Europeanization of identities has occurred, but it can be said that the beginning of this trend is one towards Europeanization rather than towards westernization.

To sum up these results in one sentence: the overall pattern of transnationalization that we can identify for European public spheres over the last 20 years is one of *segmented Europeanization*. European governance is increasingly subject to public scrutiny, but neither does a common discourse in Europe develop nor a significant sense of belonging to the same community of communication. Even in the monitoring governance dimension, most media coverage engages in the domestication of existing EU policies rather than in debating policy decisions before the fact.<sup>41</sup> Thus, only the first of our normative models – monitoring governance – is partly met by empirical reality to date. The lack of a European public sphere in the full sense of the word has put strong brakes on the legitimacy of the EU so far. Of course, this pattern may change in the future. It is therefore important to continue monitoring the Europeanization of national public spheres in the years to come. In addition, at least one of the new eastern European Member States must be included in the sample of countries, and the analysis will become even more meaningful to the extent that more popular media such as tabloid newspapers or television are scrutinized in addition to the national quality dailies that have dominated research so far.

We would like to come back, finally, to our initial question about the role of the news media in the complex interplay between institutional features, political actors and citizens, and suggest two roads for future research on the long-term consequences of Europeanized public discourses. On the one hand, if public discourses monitoring EU governance processes are going to have an impact, we should be able to observe an increase in the active

justification of policy options and decisions on the part of European decision makers. Thus, one fruitful road for future research would be to observe public pronouncements by political actors on the European scene parallel to the Europeanization of media discourse in order to find potential causal relations. But Europeanized public discourses may also have an effect in the opposite direction vis-à-vis the citizens. However, since public discourses are controversial almost by nature, we do not expect a direct and short-term increase in the support or acceptance of the EU as a consequence of growing Europeanized discourse. Instead, we contend, public discourses may influence the *normative expectations* and *criteria* that citizens employ in judging the legitimacy of the EU – a dimension often neglected in survey research. These more subtle and more fundamental connections between the news media and democratic legitimacy open up new research fields well worth tilling.

## Notes

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- 2 M. Ferree, W. Gamson, J. Gerhards and D. Rucht, *Shaping Abortion Discourse. Democracy and the Public Sphere in Germany and the United States* (Cambridge: Cambridge University Press, 2002), p. 11.
- 3 H. Wessler, *Öffentlichkeit als Prozess* [The Public Sphere in Procedural Perspective] (Opladen, Wiesbaden: Westdeutscher Verlag, 1999).
- 4 D. Hallin and P. Mancini, *Comparing Media Systems. Three Models of Media and Politics* (Cambridge: Cambridge University Press, 2004).
- 5 Peters, 'Public Discourse'; B. Peters, S. Sift, A. Wimmel, M. Brüggemann and K. Kleinen-von Königslöw, 'National and Transnational Public Spheres: the Case of the EU', in S. Leibfried and M. Zürn (eds), *Transformations of the State?* (Cambridge: Cambridge University Press 2005), pp. 139–60.
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- 7 See S. Sift, M. Brüggemann, K. Kleinen-von Königslöw, B. Peters and A. Wimmel, 'Segmented Europeanization. Exploring the Legitimacy of the European Union from a Public Discourse Perspective', *Journal of Common Market Studies*, 44 (2006, forthcoming). For a similar differentiation, see also R. Koopmans and J. Erbe, 'Towards a European Public Sphere? Vertical and Horizontal Dimensions of Europeanized Political Communication', *Innovation*, 17(2) (2004) pp. 97–118.

- 8 J. Gerhards, 'Missing a European Public Sphere', in M. Kohli and M. Novak (eds), *Will Europe Work? Integration, Employment and the Social Order* (London/New York: Routledge, 2001), pp. 145–58.
- 9 For a similar argument, see F. Neidhardt, 'Europäische Öffentlichkeit als Prozess. Anmerkungen zum Forschungsstand [A European Public Sphere in the Making. The Current State of Research]', in W.R. Langenbucher and M. Latzer (eds), *Europäische Öffentlichkeit und medialer Wandel: eine transdisziplinäre Perspektive [A European Public Sphere and the Evolution of Mass Media: Transdisciplinary Perspectives]* (Wiesbaden: Verlag für Sozialwissenschaften, 2006), pp. 46–61.
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- 13 Sifft et al., 'Segmented Europeanization'.
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- 15 See K. Eder and C. Kantner, 'Transnationale Resonanzstrukturen in Europa. Eine Kritik der Rede vom Öffentlichkeitsdefizit [Transnational Resonance Structures in Europe. Criticizing the Thesis of the Public Sphere Deficit]', in M. Bach (ed.), *Die Europäisierung nationaler Gesellschaften [The Europeanization of National Societies]* (Wiesbaden: Westdeutscher Verlag, 2000), p. 315.
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- 19 See Peters and Wessler, 'Transnationale Öffentlichkeiten'.
- 20 See H. Wessler, K. Kleinen-von Königslöw, M. Brüggemann, S. Sifft and A. Wimmel, 'Together We Fight? Piecemeal Europeanization in the Public Discourse on Military Interventions', paper presented at the First European Communication Conference, Amsterdam, 24–26 November 2005.
- 21 See A. Wimmel, 'Transnationale Diskurse in der europäischen Medienöffentlichkeit [Transnational Discourses in Europe's Mediated Public Sphere]', *Politische Vierteljahresschrift*, 46(3) (2005) pp. 459–83; Peters and Wessler, 'Transnationale Öffentlichkeiten'; Peters et al., 'National'; Tobler, 'Konfliktinduzierte'.
- 22 While the collective identification with Europe is hardly conceivable without some degree of mutual observation and discursive exchange between European countries and speakers, it is uncertain whether horizontal integration actually *leads to* the emergence of common European identity elements. Our own data presented in the last part of this chapter suggest that both dimensions may be empirically independent. Therefore, we treat them as conceptually separate here.
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- 24 See, for example, P.G. Kielmannsegg, 'Integration und Demokratie (mit Nachwort zur 2. Auflage) [Integration and Democracy (Including an Epilogue for the 2nd Edition)]', in M. Jachtenfuchs and B. Kohler-Koch (eds), *Europäische Integration* [European Integration], 2nd edn (Opladen: Leske + Budrich, 2003), pp. 49–83.
- 25 Risse, 'Zur Debatte'.
- 26 See also Eder and Kantner, 'Transnationale Resonanzstrukturen'.
- 27 Peters, 'Public Discourse', p. 114.
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- 30 See D. Held, A. McGrew, D. Goldblatt and J. Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford: Stanford University Press, 1999). M. Beisheim, S. Dreher, G. Walter, B. Zangl and M. Zürn, *Im Zeitalter der Globalisierung? Thesen und Daten zur gesellschaftlichen und politischen Denationalisierung* [In the Age of Globalization? Theses and Data on Societal and Political Denationalization] (Baden-Baden: Nomos, 1999). O. Boyd-Barrett and T. Rantanen (eds), *The Globalisation of News* (London: Sage, 1998).
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- references (kappa 0.70), collective identity labels (kappa 0.71), and we-references (kappa 0.67).
- 32 In a pre-test, the selected newspapers were compared with quality papers representing the opposite political camp, e.g. the *Guardian* with *The Times*. The test showed that differences are generally small and insignificant for the variables relevant to our analysis.
  - 33 C. Eilders and K. Voltmer, 'Zwischen Deutschland und Europa: eine empirische Untersuchung zum Grad von Europäisierung und Europa-Unterstützung der meinungsführenden deutschen Tageszeitungen [Between Germany and Europe: an Empirical Investigation of the Degree of Europeanization and Support for Europe in the Leading German Press]', *Medien & Kommunikationswissenschaft*, 51(2) (2003) pp. 250–70. See also Gerhards, 'Missing'.
  - 34 H. Sievert, *Europäischer Journalismus: Theorie und Empirie aktueller Medienkommunikation in der Europäischen Union* [European Journalism: Theory and Findings about Mediated Communication in the European Union] (Opladen/Wiesbaden: Westdeutscher Verlag, 1998).
  - 35 Trenez, 'Korruption', p. 311.
  - 36 Neidhardt, 'Europäische Öffentlichkeit', p. 47.
  - 37 Trenez, 'Korruption', p. 311.
  - 38 See, for example, Kielmansegg, 'Integration und Demokratie'; D. Grimm, 'Does Europe Need a Constitution?' *European Law Journal*, 1 (3) (1995) pp. 282–302.
  - 39 T. Risse and M. Van de Steeg, 'An Emerging European Public Sphere? Empirical Evidence and Theoretical Clarifications', paper presented at the conference 'Europeanization of Public Spheres, Political Mobilisation, Public Communication and the European Union', Berlin, 20–22 June 2003, p. 22.
  - 40 In the case of EU policies, these are mentioned in about 5 per cent of all articles; national policies are mentioned in 33 per cent of all articles, therefore the level has the value 16 per cent.
  - 41 Sift et al., 'Segmented Europeanization'.



# 6

## Is There a European Society? Social Conditions for Democracy in the EU

*Achim Hurrelmann*

### **Introduction**

The European Union (EU) is a union of democracies, and most observers would agree that the Member States constitute the most important fora of democratic life in Europe's multilevel system. However, as more and more decision-making competencies are shifted away from the Member States and to the EU, and national autonomy is increasingly being curtailed by EU law, the notion that the Union can base its democratic legitimacy mainly on the legitimacy of the Member State governments becomes ever less convincing. There are hence good reasons to ask why the most important institutional principles associated with democracy in the Member States – direct election of all core legislators and full accountability of all rulers to the electorate – cannot be transferred to the EU level as well. In other words: can the EU construct institutions that would base its legitimacy on genuinely supranational democratic procedures, analogous to those known from the Member States?

When this question is discussed in the academic literature on European democracy, most debates tend to boil down to a set of problems concerning the relationship between democratic institutions and their social environment. As a number of influential commentators have argued, every attempt to transfer national structures of representative democracy to the EU level – which would require, most of all, giving full legislative powers to the European Parliament, restricting the national veto in the Council of Ministers, and making the Commission accountable to the electorate – is prevented by the fact that the EU lacks the necessary 'social infrastructure' that democracy requires. According to this argument, the problem is that there is simply no European 'society' or '*demos*' sufficiently homogeneous in economic or cultural terms to sustain supranational

structures of democratic decision making.<sup>1</sup> The implication is that, at least for the time being, comprehensive forms of democracy in Europe's multilevel system can only be implemented at the national level.

Yet while these arguments certainly raise an important point, their conclusion might be premature. After all, many national systems of democratic governance operate quite successfully in societal contexts characterized by substantial heterogeneity. This indicates that it is not impossible to adapt democratic institutions to 'difficult' social conditions. It is therefore necessary to inquire much more carefully than is often done which forms of social heterogeneity might pose problems for democratic governance and to what extent such problematic conditions exist in the EU. Furthermore, we have to examine what options exist to adapt democratic institutions to such conditions in order to cushion or counteract their problematic effects. In other words: studies of *political integration* in the EU have to entail an analysis of *social integration* – an examination of the social conditions that define the environment in which political institutions operate and of the ways in which these can be shaped by political means.

This chapter develops some theoretical arguments for this kind of analysis and presents a set of relevant empirical data. The first section explores whether one can adequately speak of a 'European society' at all. What would it mean to state that a European society exists, and what is the empirical evidence to support this proposition? Evidence considered in this section suggests that there are good reasons to affirm the existence of a European society. It remains to be asked, however, whether this society provides an adequate 'infrastructure' for democratization. This question is addressed in the second section, which confirms that while a supranational form of democracy is not impossible, the conditions for democratization are less favourable at the European level than in the Member States. Against this background, the final section assesses some avenues for the possible further democratization of the EU. It concludes that the greatest potential for democratizing Europe's multilevel system may lie in reforming processes of *national* decision making on European issues.

### **Does a European society exist?**

In recent years, a number of historians,<sup>2</sup> sociologists<sup>3</sup> and political scientists<sup>4</sup> have posed the question of whether there is such a thing as a European society. The conclusions they reach and the data they assess in the process vary considerably, indicating that a range of reasonable definitions

of the term 'society' exist in the social sciences. Of course, the existence of a European society can easily be affirmed if we apply a standard dictionary definition, according to which one can speak of a society once a group of persons permanently live together on a certain territory. Surely this requirement is met in Europe, or, more precisely, on the territory of the EU. But the question becomes far more complex if we use a definition that applies the term 'society' only to certain *kinds* or *qualities* of 'living together'. In fact, different academic disciplines, and also different theoretical approaches, are accustomed to working with different kinds of such qualifications when speaking of societies.

What, then, should the term 'society' mean to political scientists studying European integration? Most political scientists – implicitly or explicitly – define society in contrast to the state. This usage can be traced back to authors like Georg Wilhelm Friedrich Hegel<sup>5</sup> and Karl Marx.<sup>6</sup> For Hegel and Marx, 'civil society' (*bürgerliche Gesellschaft*) refers to the private – especially the economic – sphere of interactions of the people living together on a certain territory, a sphere in which they act as autonomous individuals motivated by private interests. By contrast, the term 'state' (*Staat*) is used to describe the public, political sphere of interactions, where collectively binding decisions are being made for the polity as a whole. Even when the state is democratized, this distinction remains in place: if individuals participate in procedures of democratic decision making in a polity, they act not as private persons (*bourgeois*), but as citizens in a political role (*citoyen*).

Certainly, in modern states, it does not make much sense to assume a strict separation between state and society. Rather, it is obvious that both spheres interact: the state deliberately shapes societal structures, but, at the same time, it is affected by social forces originating, for example, from spheres like the economy, religion or culture.<sup>7</sup> One can even argue that there is a relationship of *mutual interdependence* between the state and society: on the one hand, state institutions depend on a minimum of public support from society, or at least on the absence of active resistance. If such support or acquiescence is lacking, even the most tyrannical regime will not survive for long. On the other hand, the interaction of autonomous private individuals in civil society cannot function either, at least not in an orderly fashion, in the absence of some core rules formulated and implemented by the state.<sup>8</sup> Against this background, and on the basis of the definitions developed here, we can therefore identify both *social preconditions of the state* and *state preconditions of society*.

If we adopt this distinction between society and the state and also accept the conclusions about their interdependence, what do these considerations

mean for the EU? Clearly the EU is not a state, at least not in the sense of a sovereign polity. Yet its factual impact on political decision making and power relations in Europe has grown so large that it seems appropriate to apply the considerations about state–society relations to EU–society relations as well. Focusing on the EU, the question concerning the social preconditions of the state would then have to be formulated as follows: does the European polity receive the necessary social support from the European population that is required for its functioning? The question concerning state preconditions of society would run: does the EU possess the formal competencies and de facto capabilities necessary to establish and implement rules that secure the peaceful social interaction of autonomous individuals across nation state boundaries?

Both questions can be answered affirmatively. First, regarding the social preconditions of the European polity, there is hardly any empirical indicator that would point to a pervasive lack of social support for the EU and its institutions.<sup>9</sup> In stark contrast to the mainly critical debates in the media and in academia, data from the European Commission's half-yearly Eurobarometer show that citizens in the old and especially in the new Member States tend to express considerable amounts of trust in EU institutions. In many countries, trust for the EU is even higher than the trust placed in national administrations and parliaments (Figure 6.1). One plausible explanation for this counter-intuitive finding is that most citizens are simply indifferent towards the EU since they do not feel much affected by its policies. A. Moravcsik, for instance, argues that EU competencies exist mainly in policy domains which do not arouse great public interest at any political level, be it national or European.<sup>10</sup> But be that as it may, for our purposes it is enough to conclude that public opinion data simply do not support the thesis of a pervasive crisis of public support for the EU, hence the social preconditions for the functioning of the EU polity do not seem to be in question.

A similarly positive conclusion can be drawn for the state preconditions of society, i.e. regarding the role of European institutions as guarantors of peaceful private interactions in European society. Surely it cannot be denied that the EU differs from the European nation states in its ability to shape social structures since it lacks most of the competencies that were crucial for the processes of 'nation building' in Europe in the eighteenth century: competency in war, education and taxes.<sup>11</sup> Yet as a private sphere of interaction for autonomous individuals, a European society does not need to have the characteristics of a nation.<sup>12</sup> And the EU does possess regulatory competencies that have allowed it to establish and

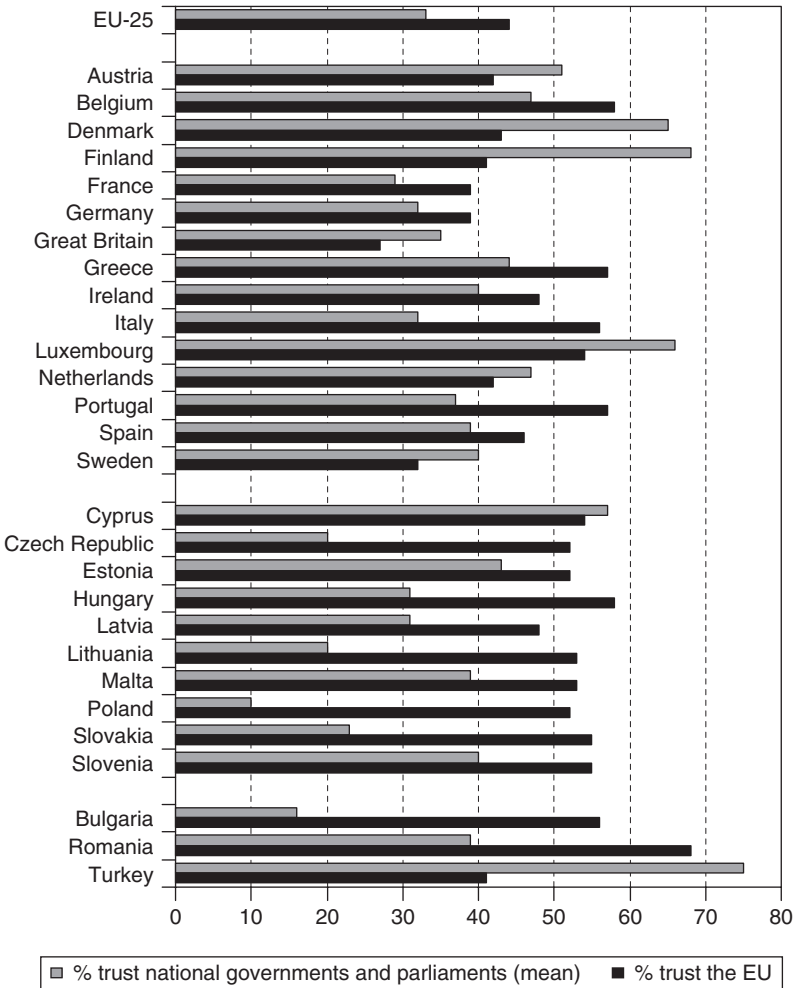


Figure 6.1 Trust in national institutions and the EU, 2005  
 Source: European Commission, Eurobarometer 63 (Brussels: European Commission, 2005)

implement structures of peaceful pan-European interaction of private persons, most importantly the free flow of people, goods, services and capital across state borders. We can conclude, therefore, that not only the social preconditions of a European polity, but also the state (read: EU) preconditions of a European society exist.

## Can European society be democratized?

Against this background, the interrelations between the EU and European society become a truly contentious issue only if we add a further qualification to the term 'society' by asking whether European society is 'democratizable', i.e. capable of supporting democratic institutions. This further qualification leads us back to the problems discussed at the beginning of the chapter. We now ask whether the structures of European society are adequate to put in place and maintain a certain type of state (polity) marked out by a democratic form of government.

The social preconditions of a democratic polity are considerably more difficult to meet than simply the social preconditions of a political system as such. After all, democracy as a form of government implies *standards of normative legitimacy* that are not necessarily met whenever the citizens more or less tacitly or grudgingly support (or acquiesce to) the political system. Rather, the explicit aim of democratic political systems is the *collective self-government of the citizens as equals*, which in turn requires that political processes operate in an open and reliable fashion (transparency), that all citizens can equally and effectively take part in them (participation and deliberation), and that rulers are elected and can be removed by the people (accountability). Accordingly, to define the social preconditions of a democratic polity, it is no longer enough simply to ask under what conditions social support for a political system can be maintained; rather, we have to ask under what conditions the system is able to operate in a fashion that conforms to these normative criteria.

Looking at the EU's institutional structure, it is clear that neither in its present state<sup>13</sup> nor in that envisaged by the draft Constitution<sup>14</sup> does the EU meet the criteria of transparency, participation, deliberation and accountability to the same extent as its individual Member States do. Of course, these are not democratically perfect either. But in the EU's system of governance, it is even more difficult than in the Member States to identify which actors are responsible for which decisions and to hold them to account for their actions. And while there are many options for interest group participation in deliberative procedures at the EU level (see the contribution by J. Greenwood to this volume), the political participation of non-organized citizens remains restricted to largely meaningless EU elections (as discussed by L. LeDuc in this volume).

The core problem, however, is that even if EU institutions were reformed to bring them into line with national models of democracy (e.g. by further strengthening the legislative powers of the European Parliament or by making the Commission directly or indirectly accountable to the electorate),

this would not necessarily guarantee that all democratic criteria were adequately met in practice. The reason – and this brings us back to the question of social preconditions of democracy – is that *problematic patterns of social integration* may prevent formally democratic institutions from actually operating in a normatively legitimate fashion. If one looks to democratic theory in general as well as to discussions about EU democracy in particular, three forms of social heterogeneity can be identified that might pose the greatest obstacles in this respect:<sup>15</sup>

- The first problematic form of social integration is pronounced *socio-economic inequality* in the population. Discussions about EU democracy largely neglect this issue, but a number of well-established debates in normative democratic theory can be drawn on to argue this point. For instance, J. Rawls stresses that formally equal citizenship rights are not sufficient to guarantee political justice in a democratic society. This is because inequalities in private interactions – pertaining, for example, to wealth or knowledge – may hamper the abilities of individuals or groups to make adequate use of these rights. Hence, the extent of legitimate socio-economic inequalities is restricted in Rawls's theory through the difference principle, intended to guarantee that equal liberties of citizenship actually have a 'fair value' to all citizens.<sup>16</sup> Even many critics of Rawlsian contractarianism do not disagree with this general argument. For instance, C. Pateman has pointed out that structures of dependency and subordination in spheres of life generally considered 'private' – i.e. seen as belonging to the realm of civil society – have the potential to undermine formally equal citizenship. This is due to the fact that some members of society do not possess the economic or cognitive 'independence' necessary to participate on equal terms in collective decision making.<sup>17</sup> While it is certainly difficult to define the precise point at which this becomes a problem, these arguments show that, at least from a normative perspective, forms of socio-economic integration are not irrelevant to democracy since pronounced inequalities may negatively affect patterns of political participation – and, in turn, the legitimate operation of democratic procedures.
- The second problematic form of social integration that might undermine democratic legitimacy is the fragmentation of a polity's *public sphere*. Following the work of J. Habermas, the public sphere is generally defined as a network of intermediary actors and institutions – political parties, interest groups and especially media – that enables the exchange of information and opinions between the citizens.<sup>18</sup> It is easy to see why this kind of network is crucial to democracy: without it, there are no

fora for political deliberation that allow citizens to form political opinions, debate policy proposals, monitor the performance of governments and exercise democratic control over them. Therefore, if such intermediary institutions are lacking, formally democratic institutions and processes are at risk of becoming a mere façade, failing to guarantee meaningful political participation and true democratic accountability.<sup>19</sup>

- Finally, a third problematic form of social integration is the fragmentation of *collective identities* in the polity. In discussions about the EU, this problem has clearly received the greatest attention and is often presented as the most important obstacle to democratization.<sup>20</sup> The argument is that the collective self-government of the citizens presupposes that they consider their collectivity a cohesive political community, at least to the extent that they recognize their fellow citizens as legitimate participants in collective deliberations, i.e. as persons whose views must not be neglected in democratic decision making.<sup>21</sup> If there is no such mutual recognition, the equal and effective participation of all citizens in democratic procedures cannot be guaranteed. Furthermore, it is also important to note that the existence of common identities bolsters the legitimacy of the majority principle that constitutes the backbone of most democratic systems: if the members of a collectivity possess strong feelings of commonality, they can be expected to willingly subject themselves to majority decisions even if this means that they might have to accept outcomes that violate their own expectations in the interest of the community as a whole. Conversely, if common identities are weak or absent, there is a danger that minorities will perceive the majority principle, or its individual outcomes in particular controversies, as illegitimate.

Returning to the EU, we thus have to ask whether one or more of these problematic forms of social integration hampers the democratization of the EU in such a way that one would have to argue that the social preconditions of democracy are not adequately met in European society. In answering this question, the difficulty is that for none of the three problem areas can a precise threshold be identified that would determine exactly at what point socio-economic inequalities, the weakness of the public sphere, or the fragmentation of identities become dangerous for democracy. Against this background, unequivocal conclusions about whether the EU is capable or incapable of being democratized must necessarily remain speculative. What is more useful, however, especially in a discussion of multilevel governance, is to compare the characteristics of European society to those of Member State societies. When this is done,



empirical indicators point to a clear conclusion: the social preconditions of democracy are considerably more problematic at the EU level than at the level of the Member States.

First, let us have a look at patterns of socio-economic inequality in the European population. This is easier said than done, since all established indicators of equality and inequality in the EU are based on the European nation states as reference units. What these indicators reveal is that the different national societies in the EU are in fact remarkably similar with respect to their *internal* socio-economic structures. For instance, the poverty rate after social transfers lies somewhere between 10 and 20 per cent of the population in almost all Member States. Most importantly, there are no big differences between the old Member States (EU-15) and the Accession States that either entered the Union in May 2004 (AC-10) or will enter by 2007 (AC-12) (Figure 6.2). Yet such similarities of individual European societies must not be read as an indicator for the existence of one ‘homogeneous’ European society. For while the internal structures of the national societies might resemble each other, these societies differ enormously in *levels* of economic well-being and social security. This difference is particularly large if the old and the new Member States are compared. On average, the gross domestic product (GDP) per capita in the AC-12 is only about half the average of the EU-15 even if differences

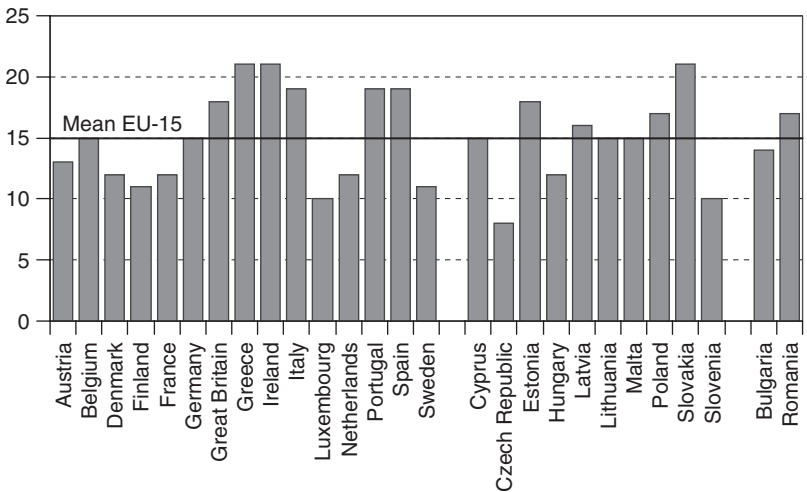


Figure 6.2 Poverty rates in European nation states (%). Share of persons living in households with an income of less than 60% of the national median equivalized disposable income (after social transfers). Year: 2003 (Italy: 2004; Malta: 2000).

Source: Eurostat

in purchasing power are taken into account. In addition, there are significant regional differences within the new Member States, which means that some peripheral regions – particularly in Bulgaria and Romania – are even poorer than these averages suggest.<sup>22</sup>

As a result of the ‘methodological nationalism’ in the calculation of equality indicators, we have to resort to proxies if we want to assess which effects the socio-economic differences between the Member States have on socio-economic inequality within European society viewed as a whole. For example, it makes sense to look at the income limits used to calculate the national poverty rates, which is defined as 60 per cent of the median equivalized disposable income per household. Even after accounting for differences in purchasing power, this income threshold in some of the new Member States still is lower than one-third of the average for the old Member States (Figure 6.3).<sup>23</sup> Therefore, if poverty rates were calculated on the basis of a pan-European median income, which would lie somewhere in between the median incomes in the old and the new Member States, the apparent similarity between these two groups of countries would disappear: poverty rates in western Europe would fall below those calculated on the basis of national averages, while large parts of the population in eastern Europe would have to be

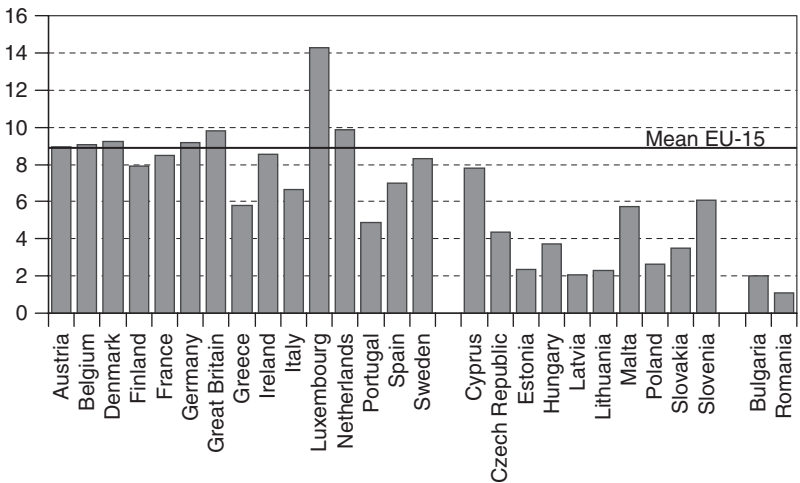


Figure 6.3 Income thresholds for the calculation of poverty rates (1000 PPS). 60 per cent of the national median equivalized disposable income of a single-person household. Year: 2003 (Greece, Netherlands: 2001; Spain: 2002; Malta: 2000).

Source: Eurostat

qualified as poor.<sup>24</sup> M. Heidenreich obtains a similar result by calculating the decile ratio of GDP per capita in 266 European regions of equal size (so-called NUTS-2 regions, of which 211 are in the EU-15 and 55 in the AC-12), i.e. the ratio of the GDP per capita in the region at the 90th percentile to the region at the 10th percentile. While the figures for the EU-15 (2.0) and the AC-10 (1.9) are almost equal, indicating a similar pattern of regional inequalities within both groups, the numbers for the EU-25 (3.1) and EU-27 (3.8) are significantly higher.<sup>25</sup> This shows that the differences between the richest and the poorest citizens in the EU have increased substantially through EU enlargement. It is not unreasonable to ask whether, given these big differences, EU citizens from all Member States would actually possess the capability to participate on equal terms in processes of democratic decision making at the EU level.

A similarly sceptical conclusion is warranted if one looks at the existence of a European public sphere. In this respect, it is especially the development of a European media public that seems to be problematical: while it is plausible to expect that party and interest group structures will become more genuinely 'European' in character if the democratization of the EU continues, especially if the European Parliament gains additional powers, the language problem renders this kind of development greatly more difficult when it comes to the media. Still, one could also speak of a European media public if different national publics continue to exist but are linked in a way that enables the citizens to contribute to European discourses through their national mass media, with multilingual media personnel playing a mediating role.<sup>26</sup> Yet if this were the case, there would have to be indications for a genuine communicative interaction, i.e. for a regular exchange of information and opinions between the different national mass media. The only study so far that has examined such interactions not just in individual case studies of well-publicized controversies<sup>27</sup> but over longer periods of time is the one reported on by H. Wessler et al. in this volume. It concludes that a pattern of 'segmented Europeanization' characterizes national public spheres: discussions about European issues become more intense in the national mass media, but there is little cross-border exchange between the media discourses in individual countries. Again, the implication is that the social preconditions for democracy at the EU level are not necessarily absent but are considerably more problematic than at the Member State level.

Finally, focusing on collective identities in the EU population, we have to bear in mind that the emergence of European identities on the one hand and the continued saliency of national identities on the other do not have to contradict each other.<sup>28</sup> For this reason, the polls conducted

for the Eurobarometer attempt to map in a differentiated way whether the respondents define their identity solely with reference to their nationality, to their nationality and Europe, to Europe and their nationality, or solely to Europe (Figure 6.4). The results show that a large majority of

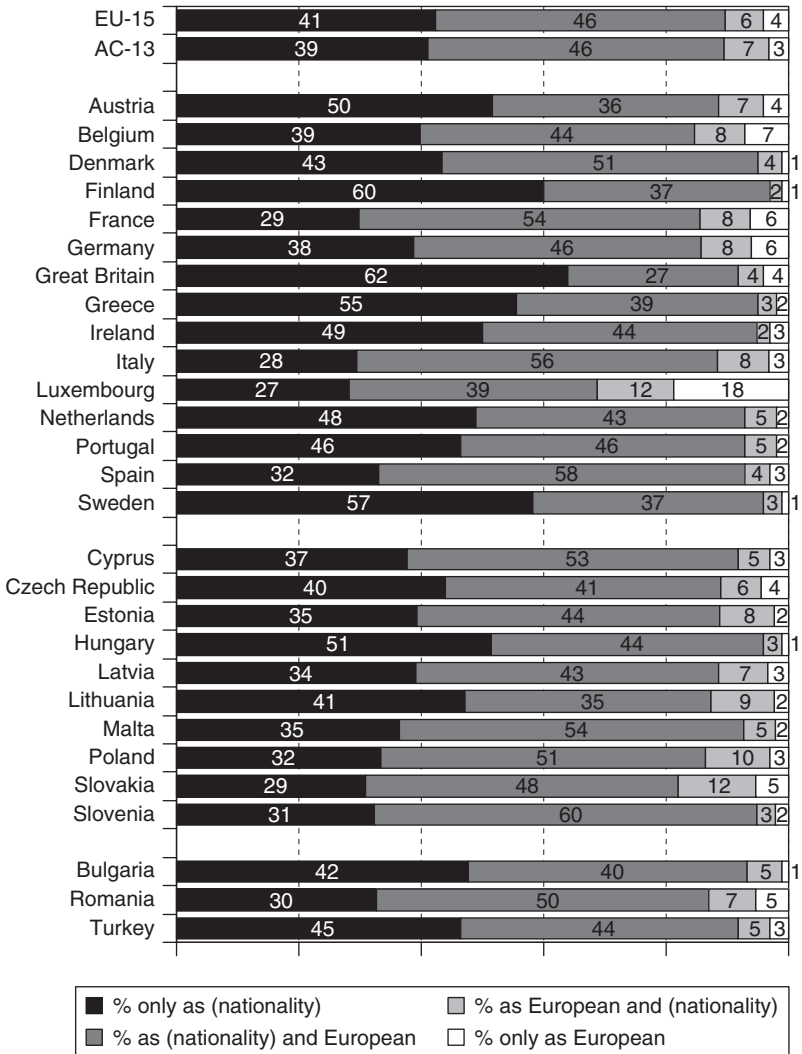


Figure 6.4 National and European identities. Year: 2004 (EU-15) and 2003 (AC-13). Source: European Commission, *Eurobarometer 61* (Brussels: European Commission, 2004); European Commission, *Candidate Countries Eurobarometer 2003.4* (Brussels: European Commission, 2004)

the citizens in almost all Member States describe themselves at least partially as European. Nevertheless, we can also observe a relative weakness of European identities compared to national identities. This is indicated by the fact that nationality constitutes the primary point of reference for almost 90 per cent of the respondents, albeit with some variation between the countries. In addition, more than one-quarter of the population in every EU Member State explicitly rejects possessing a European identity.

We can conclude, therefore, that although none of the indicators surveyed necessarily renders the democratization of the EU impossible, they all suggest that the conditions for putting in place democratic institutions at the EU level are worse than at the national level. This means that democratic procedures at the EU level would – in normative terms – not be as legitimate as the same procedures at the national level. To be sure, this normative argument does not necessarily imply that the social acceptance (or empirical legitimacy) of such procedures would be severely threatened. Yet it is clear that social inequalities, the fragmentation of public spheres, and the weakness of common identities are not conducive to citizens' empirical support for would-be democratic institutions at the EU level either.

### **Implications for democratization**

How should we react to this diagnosis when trying to conceive a more democratic institutional structure for the EU? A first plausible answer would be to revisit the considerations presented above about state pre-conditions of society and to examine to what extent EU institutions themselves can shape the structures of European society to increase the chances for successful social integration adequate to support democratic governance.<sup>29</sup> In principle, political systems can draw on a number of mechanisms to promote greater social equality and to contribute to the emergence of a public sphere and of common identities in the population. Therefore, the oft-cited claim by German legal theorist E.-W. Böckenförde that a liberal state cannot guarantee its own social prerequisites is far too undifferentiated.<sup>30</sup> Modern welfare states regularly intervene in the economy but also in other areas of life generally considered 'private' in order to counteract inequalities in the interaction of private individuals and to alleviate structures of dependency and subordination that these inequalities might give rise to.<sup>31</sup> The emergence of a public sphere might be encouraged by increasing the transparency and publicity of political procedures.<sup>32</sup> There are also many options for deliberate identity politics: for example, constitutions or core policy documents can systematically attempt to call up values and symbols that promise to strengthen feelings

of commonality and solidarity in the population. Moreover, decision-making procedures like elections and referenda can be designed in ways that encourage citizens to perform certain collective actions or engage in certain discourses, which again might initiate processes of identity formation.<sup>33</sup>

However, in the case of the EU, it is doubtful whether such strategies can really work. Even if the draft Constitution were ratified after all, EU institutions would still lack formal competencies and financial resources to implement a comprehensive social policy agenda aiming at increasing socio-economic equality. And in the unlikely case that the EU were to gain such competencies, collective identities and feelings of solidarity in the European population would probably still be too weak to guarantee that large-scale redistributive measures are considered legitimate by those people (and Member States) that would constitute 'net contributors'.<sup>34</sup> To be sure, the emergence of such feelings of solidarity can be encouraged by deliberate identity politics, and some articles of the draft Constitution seem to serve exactly this purpose.<sup>35</sup> Yet the Europeanization of collective identities is a long-term process, and overly aggressive attempts to influence this process by political means risks bringing about unwanted and undesirable side-effects. These side-effects might include the elimination of the diversity that presently characterizes European societies, the exclusion of allegedly 'non-European' parts of the population, or the emergence of nationalist counter-movements.

Against this background, a second way to react to the deficits concerning the social preconditions of democracy in the EU appears more promising. This reaction takes the character of the EU as a multilevel polity seriously and accepts that, for the time being, the conditions for democratization are much better at the national than at the European level. This implies that the transfer of national models of democracy to the EU level is faced with enormous obstacles and that there might be greater chances for democratization through the vehicle of Member State involvement. It is important to note that this does *not* imply that a democratization of Europe's multilevel system is only possible by returning decision-making competencies from the EU to its Member States – although there might be a case for that, too. For even if the present division of competencies is not amended, there is a potential for democratizing the Member States' involvement in EU decision-making processes.

This approach to increasing the democratic legitimacy of the EU is often neglected in the relevant literature. But one should not forget that the Member States are still the most powerful actors in the EU's political system and are not likely to give up this position. This multilevel structure

of the EU's decision-making system implies that EU politics can also be democratized at the Member State level. And the ways in which the Member States currently exercise their participation and veto rights in EU decision making can surely be made more democratic. A minimum demand would be to improve the national parliaments' control over the decisions taken by their governments in the Council of Ministers – for instance, by including parliamentary observers in the national delegations to increase transparency.<sup>36</sup> A more radical suggestion would be to select the national representatives in the Council in separate national elections rather than recruiting them from the national governments.<sup>37</sup> At least in principle, veto rights might also be taken away from the Council and be exercised instead by national parliaments or even directly by the people in referenda.<sup>38</sup> Such reforms would not rule out measures that simultaneously seek to strengthen those qualities of European society that are crucial for expanding democratic structures at the EU level. Yet taking into account that the social preconditions of democracy are clearly better at the Member State level, the institutions of national decision making on European issues seem to offer far greater options for democratization.

## **Conclusion**

The arguments put forward in this chapter demonstrate that problems of democratic legitimacy in multilevel contexts need to be approached from a point of view that focuses not just on institutional design, but also takes into account societal characteristics. This insight is not only relevant to European integration but to processes of political globalization in general, which might result in new incongruities between political and societal structures.

With respect to the EU, this chapter has shown why discussions about the democratization of the EU can benefit from a more systematic inquiry into the contours of European society: ultimately, this inquiry concerns the social circumstances that have to be taken into account when designing the institutions of European democracy. As we have seen, these circumstances are in a number of respects more challenging at the EU level than at the level of the Member States: socio-economic inequalities are more pronounced, structures of a public sphere more fragmented, and European identities only exist in parts of the population. All these factors render the institutionalization of a legitimate form of democracy more difficult at the EU level. Democratizing EU institutions is only possible if this specific social context is taken into account. But the multilevel character of the EU polity and its society also offer

opportunities in this respect: apart from attempts to intentionally mould European society to improve the conditions for democratization at the EU level, there are also promising options to democratize EU politics at that political level at which the social conditions for democracy are the most favourable: in the EU Member States.

## Notes

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- 3 U. Beck, 'So macht Gleichheit Ungleiche aus uns allen: Und kann es so etwas wie eine europäische Gesellschaft überhaupt geben? [Thus Equality Makes Us All Unequal: And Can Such a Thing as a European Society Exist at All?]', *Frankfurter Allgemeine Zeitung*, 8 October 2004, p. 36; C. Crouch, *Social Change in Western Europe* (Oxford: Oxford University Press, 1999), pp. 393–409; M. Mann, 'Is There a Society Called Euro?' in R. Axtmann (ed.), *Globalization and Europe: Theoretical and Empirical Investigations* (London: Pinter, 1998), pp. 184–207.
- 4 C. Offe, 'Is There, or Can There Be, a "European Society"?', in I. Katenhusen and W. Lamping (eds), *Demokratien in Europa: der Einfluss der europäischen Integration auf Institutionenwandel und neue Konturen des demokratischen Verfassungsstaates* [Democracies in Europe: the Impact of European Integration on Institutional Change and New Contours of Constitutional Democracy] (Opladen: Leske + Budrich, 2003), pp. 71–89.
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- 7 E.-W. Böckenförde, *Recht – Staat – Freiheit: Studien zur Rechtsphilosophie, Staatstheorie und Verfassungsgeschichte* [Law – State – Liberty: Studies on Legal Philosophy, State Theory and Constitutional History] (Frankfurt: Suhrkamp, 1991), p. 217.
- 8 Offe, 'European Society', pp. 71–4.
- 9 R. Barker, 'Legitimacy, Legitimation, and the European Union: What Crisis?', in P. Craig and R. Rawlings (eds), *Law and Administration in Europe: Essays in Honour of Carol Harlow* (Oxford: Oxford University Press, 2003), pp. 157–74.



- 10 A. Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union', *Journal of Common Market Studies*, 40 (2002) pp. 615–17.
- 11 Offe, 'European Society', pp. 72–4.
- 12 Offe ignores this fact when he argues that the lack of EU competencies over war, education, and taxes – and thus in his view the impossibility of a European nation building – results in the impossibility of a European society: 'Europe is not a state and hence not a society' (Offe, 'European Society', p. 77). This claim only makes sense if the concepts of nation and of society are treated as synonymous.
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- 23 The poverty rate is expressed as the percentage of the population living in households with an income of less than 60 per cent of the national median equivalized disposable income. The equivalized disposable income is a measure that seeks to compensate for differences in household size and composition.
- 24 This lends support to a thesis put forward by U. Beck, who argues that 'tearing down borders [in Europe] does not reduce, but accentuates the explosive potential of European inequalities, since the barriers of perception created through international non-comparability are demolished, and hence inequalities are

- evaluated equally across state borders' (Beck, 'Gleichheit', p. 36; translation by author). In recognition of the problems of 'methodological nationalism', the EU's statistical office 'Eurostat' is currently preparing to produce an indicator for the 'risk of poverty rate according to a common European threshold', but these data will not become available until 2007. I thank Ian Dennis of Eurostat for his advice on this issue.
- 25 Heidenreich, 'Regional Inequalities', pp. 314–15.
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## **Part III**

# **Political Participation in the EU's Multilevel System**

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# 7

## European Elections and Democratic Accountability: the 2004 Elections to the European Parliament

*Lawrence LeDuc*

### Introduction

'Can the European Union Finally Become a Democracy?', asked political theorist M. Th. Greven in a recent essay on democratic norms, institutions and practices in the European Union (EU).<sup>1</sup> His answer was pessimistic. Like other observers who have attempted to address the problem of the 'democratic deficit' in Europe, Greven took note of the inherent democratic deficiencies which have become embedded in EU institutions.<sup>2</sup> These included the lack of a genuinely European political space or *demos*, constitutional deficiencies and legal practices, as well as the structure, lack of meaningful legislative powers, and electoral accountability of the European Parliament. While some analysts have seen the Parliament and the direct election of its members as part of the *solution* to the democratic deficit, Greven views it as part of the *problem*. 'There are still no true European parties', he noted, 'merely intraparlimentary coalitions and strategic alliances'. And, 'European elections', he argued, 'are more precisely "national by-elections", because electoral campaigns in the various member states almost invariably focus on national issues and a national agenda'.<sup>3</sup>

The elections held in June 2004 were the sixth direct elections to the European Parliament and the first to involve 25 countries voting simultaneously for their representatives. Citizens of the ten countries that joined the EU only a month earlier were voting in these elections for the first time, while those of nine other member countries had voted on all five previous occasions. As a natural experiment involving an exercise conducted simultaneously in 25 countries, but with considerable variation in the national political context, these elections can tell us much about the evolution of European political institutions and the present state of European

democracy. The elections provide an opportunity to examine these issues through a window that opens only at five-year intervals and that provides a unique perspective on many of these larger questions concerning the persistence of the democratic deficit in Europe and the prospects for the future of the EU 'finally becoming a democracy'. This chapter considers the structure, form and context of these most recent Euro elections and assesses the progress (or lack thereof) they represent towards a regime of true democratic accountability.

## **The European Parliament and Euro elections**

The EU is not, and never has been, a parliamentary democracy in the sense that Canadians might define it. Yet a parliamentary type of assembly has been one of its core institutions almost from the beginning. The Treaty of Paris, which established the European Coal and Steel Community in 1951, contained provisions for a Common Assembly drawn from the Member States. The members of the Parliamentary Assembly, as it became known after the Treaty of Rome was signed in 1957, were seconded from the national parliaments. However, their political role was sharply limited in an institutional structure in which virtually all policy initiatives rested with the Commission, and all important political decisions were taken by the Council of Ministers representing the governments of the Member States. While both founding treaties envisioned the prospect of *direct* elections to the Parliament at some future time, a reform of that nature was slow to be adopted. So long as the EU was thought of solely as an intergovernmental association of sovereign European states, the concept of a directly elected assembly responsible to a wider European electorate made little sense. But, as the political culture of the EU evolved and concern about its lack of democratic accountability deepened, the role of the Parliament and the manner in which its members were chosen came under greater scrutiny, and the logic of direct elections became more compelling. Gradually, the establishment of direct elections came to be seen as *the* solution to the problem of democratic accountability in the EU. As L. Tindemans argued in 1975, direct elections contained the capability in and of themselves of establishing 'the democratic legitimacy of the whole European institutional apparatus'.<sup>4</sup> The first direct elections to a European Parliament were held in 1979, 22 years after the signing of the Treaty of Rome. Yet more than two decades later the core issues of legitimacy and democratic accountability are as central to the European debate, and as unresolved, as they were then.



While the role and functions of the Parliament have evolved considerably over the 25 years since the first direct election of its members, the nature of the elections themselves has changed relatively little despite the hope that this reform would prove capable of restoring 'democratic legitimacy'. In an influential article written shortly after the 1979 elections, K. Reif and H. Schmitt advanced a theory of 'second order' elections to capture the essential characteristics of the 1979 vote.<sup>5</sup> European elections, they suggested, were not about Europe at all but were influenced primarily by the national political environments in which they took place. 'What is new here', they argued, 'is that one second order political arena is related to nine different first order arenas.'<sup>6</sup> This was so, they maintained, because the 'composition of the Parliament does not reflect the "real" balance of political forces in the European Community'. From the voters' perspective, there was little at stake in such elections, a general lack of information, and minimal incentive to participate.<sup>7</sup> Not surprisingly, therefore, turnout in these elections was often sharply lower than occurred in national elections, and levels of citizen interest and engagement were likewise low.<sup>8</sup> The significance of the elections, if any, lay almost entirely within the national political environments within which they took place. And because cycles of national politics varied considerably across the (then) nine Member States, the meaning and importance of the elections would likewise vary with the national political context.

Analyses of subsequent European elections have pursued this same logic and for the most part confirmed and strengthened Reif and Schmitt's understanding of the first direct election of members of the European Parliament. M. Marsh tested many of Reif and Schmitt's propositions with data from three subsequent European elections and confirmed most of them.<sup>9</sup> C. van der Eijk and M. Franklin, in a more extensive analysis of the 1984 and 1989 elections, also accepted much of the logic of the 'second order' model and concluded that it held important (and negative) implications for the evolution of European democracy.<sup>10</sup> 'The logic of democratic elections', they argued, 'presupposes that the political verdict of electorates can be construed as emanating from the political preferences of voters, preferences that are relevant to the decision making arena concerned.' Van der Eijk and Franklin maintained that these conditions were lacking in the case of European elections and concluded that the lack of 'proper democratic accountability' was leading inevitably to a 'crisis of legitimacy' in the EU.<sup>11</sup> Many other scholars, increasingly sensitive to the issue of the 'democratic deficit' in Europe, have come to similar conclusions.<sup>12</sup> If democratic legitimacy remains a major concern in Europe today, the Parliament, together with the process by which its

members are elected, continues to be thought of as at least part of the solution. Yet, as we shall see in the following analysis of the most recent elections, it remains, even 25 years later, a significant part of the problem.

## Parties and party groups

One of the key reasons that European elections differ from national elections is that it remains unclear what is being contested in them. In a parliamentary system such as that of Britain or Canada, elections are essentially a battle between political parties for control of the government. Many scholars have argued that a more democratic political order in Europe would emerge in due course as the EU gradually made the transition from a 'Europe of nations' to a 'Europe of parties'.<sup>13</sup> But, as S. Hix and C. Lord point out in their study of the evolution of Euro parties, the party families that exist in the Parliament do not translate well to the electoral arena.<sup>14</sup> Few voters would have perceived the elections that took place in June 2004 as a battle between the European Peoples' Party (EPP) and the Party of European Socialists (PES) for control of the machinery of government in the EU. Yet these and the other party families (see Figure 7.1) would be readily recognizable to those who follow the day-to-day workings of the Parliament. As in so many other areas of EU

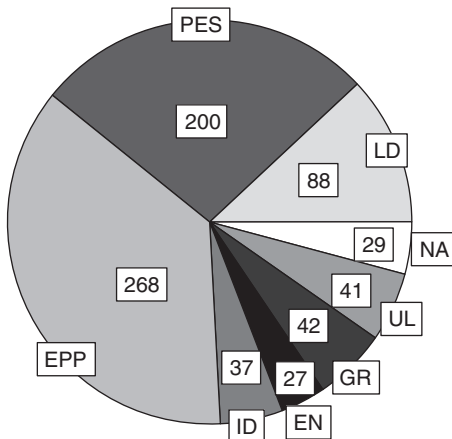


Figure 7.1 Seats in the European Parliament, June 2004, by party groups.

EPP – European People's Party/European Democrats; PES – Party of European Socialists; LD – Alliance of Liberals and Democrats for Europe/European Liberal Democrat and Reform Party/European Democratic Party; GR – European Greens/European Free Alliance; UL – European United Left/Nordic Green Left; ID – Independence and Democracy; EN – Union for a Europe of Nations; NA – no affiliation

politics, the gulf between the elites and the mass public appears to be widening rather than narrowing with respect to the evolution of a 'Europe of parties'.

Nevertheless, the distribution of seats won by the various party groups is one of the few ways that we can report the results of the June 2004 elections for all 25 countries in summary form and to develop an interpretation of the election as a single event. Otherwise, it becomes necessary to report 25 separate results, in most cases displaying an array of parties that would not be recognizable to voters beyond their own national borders. For simplicity, and an overview of the Parliament, one is tempted to rely on the distribution of seats shown in Figure 7.1. Yet, electoral reality demands that we return to more detailed nation-by-nation results if we are to understand the elections from the point of view of the voter rather than that of the parliamentarian.

The party groups shown in Figure 7.1 do of course reflect at least one kind of political reality, namely the ideological groupings of parties that exist throughout most of Europe. The *familles spirituelles*, as they have often been called, are manifested in one form or another in the politics of the current Member States, in part because of their common European heritage.<sup>15</sup> The first five of these, representing respectively the Conservative/Christian Democratic, Socialist/Social Democratic, Liberal, Communist and Green families are readily recognizable and are found in some form in virtually all of the Member States. Thus, the basis for a 'Europe of parties' would appear to exist in the present configuration. But the 'paradox', as Hix and Lord describe it, is that this 'Europe of parties' is all but invisible to the voter.<sup>16</sup> Electoral politics, even in European elections, is viewed almost exclusively through a national lens. In fact, the two remaining party groups shown in Figure 7.1 – Independence and Democracy (ID) and Europe of Nations (EN) – represent groups in their respective countries that actively contest, or at least decline to participate in, a 'Europe of parties'. The very name 'Europe of Nations' in fact represents an exactly *opposite* vision of Europe.

While the party families shown in Figure 7.1 have undergone changes over time and the actual alliances between parties may vary to some degree with every parliament, the elements that underlie them have been remarkably stable. As is seen in Table 7.1, the degree of change in the partisan configuration of the European Parliament in the 2004 election was very modest in spite of the addition of ten new countries to the electorate. The European People's Party grouping continues to hold a plurality (not a majority) of the seats, and the Party of European Socialists remains a strong second. Both the Liberal and Reform groups (shown as LD and

Table 7.1 Net changes in the European Parliament, by party groups, 1999–2004

|     | 2004      |           | 1999      |           | Net change (%) |
|-----|-----------|-----------|-----------|-----------|----------------|
|     | Seats (N) | Seats (%) | Seats (N) | Seats (%) |                |
| EPP | 268       | 36.6      | 233       | 37.2      | -0.6           |
| PES | 200       | 27.3      | 180       | 28.8      | -1.4           |
| LD  | 88        | 12.0      | 51        | 8.1       | +3.9           |
| GR  | 42        | 5.7       | 48        | 7.7       | -1.9           |
| UL  | 41        | 5.6       | 42        | 6.7       | -1.1           |
| ID* | 37        | 5.1       | 16        | 2.6       | +2.5           |
| EN  | 27        | 3.7       | 31        | 5.0       | -1.3           |
| NA  | 29        | 4.0       | 25        | 4.0       | 0.0            |
|     | 732       | 100.0     | 626       | 100.0     |                |

EPP – European People’s Party / European Democrats; PES – Party of European Socialists; LD – Alliance of Liberals and Democrats for Europe / European Liberal Democrat and Reform Party / European Democratic Party; GR – European Greens / European Free Alliance; UL – European United Left / Nordic Green Left; ID – Independence and Democracy (2004), \*Europe of Democracies and Diversities (1999); EN – Union for a Europe of Nations; NA – no affiliation.

ID in Table 7.1) made some gains in the June 2004 elections but remained well short of overtaking either of the larger groups. The Green and Left groups, at between 5 and 7 per cent of the total seats, continue to be a significant voice in Strasbourg/Brussels. Given the persistence of these well-established party groups, it might be reasonable to expect that voters would easily recognize the configuration that forms the basis for party competition in European elections. However, it is clear that while British voters may recognize the Conservative Party as ‘conservative’, they do not for the most part associate it with a ‘European People’s Party’. The same, of course, might be said of CDU voters in Germany, New Democracy voters in Greece, or Fine Gael voters in Ireland. The ‘European’ dimension of party politics is simply not salient to voters in European elections. But the national dimension is.

## The second-order model

The core of Reif and Schmitt’s ‘second-order’ model of European elections is not simply that they are dominated by national politics rather than European affairs but that they reflect specific *cycles* of national politics. European elections take place at fixed intervals – in June of every fifth year. Thus, the relationship of the European elections to national election cycles will vary considerably from one country to another and from one election to the next. As is seen in Figure 7.2, there is substantial variation

|                | 03 |   |   |   |   |   |   |   |   |    |    |    | 04 |   |   |   |   |    |   |   |   |    |    |    | 05 |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
|----------------|----|---|---|---|---|---|---|---|---|----|----|----|----|---|---|---|---|----|---|---|---|----|----|----|----|---|---|---|---|---|---|---|---|----|--|--|--|--|--|--|---|--|
|                | 1  | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 1  | 2 | 3 | 4 | 5 | 6  | 7 | 8 | 9 | 10 | 11 | 12 | 1  | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |  |  |  |  |  |  |   |  |
| Austria        |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Belgium        |    |   |   |   | N |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Cyprus         |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Czech Republic |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Denmark        |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   | N |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Estonia        |    |   |   | N |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Finland        |    |   | N |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| France         |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Germany        |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Greece         |    |   |   |   |   |   |   |   |   |    |    |    |    |   | N |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Hungary        |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Ireland        |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Italy          |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Latvia         |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Lithuania      |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    | N  |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Luxembourg     |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | EN |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Malta          |    |   |   | N |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Netherlands    |    |   |   |   | N |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Poland         |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Portugal       |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Slovakia       |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Slovenia       |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    | N  |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Spain          |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   | N |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| Sweden         |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  |   |  |
| UK             |    |   |   |   |   |   |   |   |   |    |    |    |    |   |   |   |   | E  |   |   |   |    |    |    |    |   |   |   |   |   |   |   |   |    |  |  |  |  |  |  | N |  |

Figure 7.2 Proximity of national elections (lower house) to the June 2004 European Parliament elections

across the 25 countries in terms of the relationship of the June 2004 European elections to those for the national parliament.<sup>17</sup> Only one of the 25 countries (Luxembourg) routinely holds its national elections on the same date as those for its members of the European Parliament.<sup>18</sup> For all of the other 24 countries, European elections occur in varying proximity to national elections. In two countries in 2004 (Greece and Spain), a national election had taken place only a few months prior to the European elections. In five others (Belgium, Estonia, Finland, Malta and The Netherlands), a national election had taken place at some time during the previous year (2003). Thus for seven of the 25 countries the European election may well have been seen as having marginal relevance to the cycle of national politics. In these countries, it might be reasonable to expect that political parties, particularly the larger parties, would be less engaged, the campaigns less intense, and the voters less interested. As we shall see subsequently, this is a condition that might be expected to generate low levels of citizen interest as well as lower turnout.

The opposite would tend to occur in those countries where a national election took place within a short time *after* the European elections. Five countries (Denmark, Lithuania, Portugal, Slovenia and the UK) held national elections within the year following the June 2004 European elections. In these cases, the European elections might be expected to be highly relevant to national politics. Political parties, preparing for a national campaign, would tend to be active and highly engaged. The European elections might provide an opportunity to test issues and themes for the national campaign to follow. The stakes in these circumstances are higher for the political parties, particularly the governing party and the principal opposition parties. The consequences of elections held under these conditions are potentially much greater, but the consequences are *national* ones, not European.

In the remaining 12 countries, the elections of June 2004 occurred at a time distant enough from national elections to be relatively free of either of the two patterns described above, although some elements of one or both of them might still apply. In these cases, the European elections fell close to the mid-point of a national four- or five-year political cycle – a pattern somewhat similar to that of ‘off year’ Congressional elections in the United States. Like mid-term US Congressional elections, the European elections may have consequences for the governing party, but unlike those occurring just before national elections, the consequences are not immediate. Such elections may provide voters with an opportunity to ‘punish’ a governing party without ousting it from office, to promote the cause of an opposition party without giving it power, or to make specific

issue statements by casting a vote for minor parties. Of course, turnout may also be lower under such conditions, but the low turnout in itself may create a condition capable of magnifying some of these hypothesized effects, in the process motivating certain types of voters to participate who might otherwise not be inclined to do so, while at the same time inducing others *not* to participate.

For governing parties, the potential consequences of European elections can be seen in Table 7.2, which compares the percentage won by the principal governing party in the June 2004 European elections with the percentage of the vote that it obtained in the preceding national election. Governing parties fared more poorly in the European elections

Table 7.2 Net gains or losses by the principal governing party in the 2004 European Parliament elections (% of vote)

|                | <i>Date</i>          | <i>*Party</i> | <i>EU</i> | <i>NAT</i> | $\pm$ |
|----------------|----------------------|---------------|-----------|------------|-------|
| Slovakia       | 2002 09              | SDKU          | 17.1      | 15.1       | 2.0   |
| Luxembourg     | 2004 06              | CSV           | 37.1      | 36.1       | 1.0   |
| Spain          | 2004 03              | PSOE          | 43.3      | 42.6       | 0.7   |
| Lithuania      | 2000 11              | DP            | 30.4      | 31.1       | -0.7  |
| Finland        | 2003 03              | KESK          | 23.3      | 24.7       | -1.4  |
| Greece         | 2004 03              | ND            | 43.1      | 45.4       | -2.3  |
| Belgium        | 2003 05              | SP.A/Spirit   | 11.0      | 14.9       | -3.9  |
| Netherlands    | 2003 05              | CDA           | 24.4      | 28.6       | -4.2  |
| Estonia        | 2003 03              | Reform        | 12.2      | 17.7       | -5.5  |
| Portugal       | 2002 03              | PSD           | 34.0      | 40.2       | -6.2  |
| Cyprus         | 2001 05              | AKEL          | 27.9      | 34.7       | -6.8  |
| Hungary        | 2002 <sup>†</sup> 04 | MSzP          | 34.3      | 42.1       | -7.8  |
| Italy          | 2001 05              | FI            | 21.0      | 29.4       | -8.4  |
| Austria        | 2002 11              | OVP           | 32.7      | 42.3       | -9.6  |
| Latvia         | 2002 10              | TP            | 6.6       | 16.7       | -10.1 |
| Denmark        | 2001 11              | V             | 19.4      | 31.2       | -11.8 |
| Malta          | 2003 04              | PN            | 40.0      | 51.8       | -11.8 |
| Ireland        | 2002 05              | FF            | 29.5      | 41.5       | -12.0 |
| Slovenia       | 2000 10              | LDS           | 21.9      | 36.2       | -14.3 |
| Sweden         | 2002 09              | SAP           | 24.8      | 39.8       | -15.0 |
| Germany        | 2002 09              | SPD           | 21.5      | 38.5       | -17.0 |
| France         | 2002 <sup>†</sup> 06 | UMP           | 16.6      | 33.7       | -17.1 |
| UK             | 2001 06              | Labour        | 22.3      | 40.7       | -18.4 |
| Czech Republic | 2002 06              | CSDD          | 8.8       | 30.2       | -21.4 |
| Poland         | 2001 09              | SLD           | 9.3       | 41.0       | -31.7 |
| Mean           |                      |               |           |            | -9.3  |

\* Party in government or the largest party in the governing coalition following the preceding national parliamentary election.

<sup>†</sup> First round.

than in the national ones in 22 of the 25 countries, with the average loss of votes being 9.3 per cent. Unpopular governments in France and Germany were punished severely in the 2004 European elections, receiving 17 per cent fewer votes than in the preceding parliamentary election held two years earlier. In Britain, the decline in Labour's vote would presage its considerable losses in the national election a year later, but the decline in its share of the vote in the European elections (−18.4 per cent) was much steeper than in the subsequent national election (−5.5 per cent). British voters felt freer to punish the governing party in the European elections than in the national elections essentially because control of the government was not at stake.

As Table 7.2 shows, there are few exceptions in 2004 to the fate of governing parties in the Euro elections, although there is considerable variance in the magnitude of the effect. Except for Slovakia, the exceptions to the general pattern are readily explained. In Luxembourg, where the European and national elections are held at the same time, we would not expect to see much difference in the performance of the governing party. And in Spain, a new government which had been elected only three months previously had not been in office long enough to see its popularity decline. Length of time in office is certainly a factor in explaining why some governing parties do better in Euro elections than others. The young New Democracy government in Greece, for example, fared considerably better (−2.3 per cent) than did governing parties in Ireland (−12 per cent) or Sweden (−15 per cent) that had been in power for a considerable period of time. European elections take their toll on governing parties with few exceptions. Only those fortunate enough to have just arrived on the scene at that point in the election cycle appear to run counter to this overall trend. But the effect continues to be, as Reif and Schmitt argued after the first direct elections 25 years earlier, that European elections do not for the most part reflect the 'real' balance of political forces in Europe. Rather, they reflect the natural tendency of voters to punish governing parties for their perceived failures, particularly when the cost of inflicting such punishment is very low.

The losses suffered by governing parties in European elections, depending on their timing in the national elections cycle, are not the only trend hypothesized by Reif and Schmitt's second-order model. In summarizing the effects found in the first several direct elections to the European Parliament, van der Eijk, Franklin and Marsh noted that smaller parties often do better in these elections than in national contests.<sup>19</sup> In studying the outcome of the 1989 Euro elections, J. Curtice tested various explanations for the strong showing of Green parties in several of the



(then) 12 Member States, notably in Belgium, France, Ireland, Italy and Britain.<sup>20</sup> But evidence from the 1989 elections and subsequent contests suggests that while smaller parties generally do better in European elections, not *all* small parties necessarily do better and the trend is not always observable in every country. Thus, with 25 different cases to examine in the 2004 elections, we would expect to find considerable variation, but we would also expect that smaller parties in general should be able to pick up some of the votes lost by governing parties in such elections. A vote against the national governing party in European elections does not, for the most part, mean a vote *for* the main opposition party. Frequently, the benefit accrues instead to one or more smaller parties that are well positioned politically vis-à-vis the main national players.

One complication in examining the pattern of support for smaller parties in 2004 is that many different types of small parties exist across the 25 Member States. In some countries, one or more smaller parties may be members of a governing coalition and thus may suffer along with their larger partners from the general trend against governing parties. Parties such as the Greens in Germany, the Freedom Party in Austria, the Northern League in Italy, or D'66 in the Netherlands found themselves in this position in 2004, although the German Greens, with 11.9 per cent of the vote and 13 seats, did quite well in the election in spite of this handicap. The Freedom Party in Austria in contrast, with 6.3 per cent of the vote and one seat, fared much more poorly. There are also parties in a few countries which contest European elections but do not field candidates in national ones. The June Movement in Denmark for example, a Eurosceptic party, runs a list of candidates in European elections but not in national ones. The party won 9.1 per cent of the vote and one seat in the June 2004 elections – a strong showing, but well below its performance in the 1999 election (16.0 per cent and four seats). Eurosceptic parties also fielded lists of candidates with considerable success in Britain and in Sweden in 2004. The UK Independence Party (which has also run candidates in national elections) won a stunning 16.8 per cent of the vote and 12 seats in 2004, while the June List in Sweden obtained three seats with 14.4 per cent of the vote. In the last three European elections particularly, parties specifically dedicated to the Eurosceptic cause have enjoyed a degree of political success in several countries, generally at the expense of the larger parties.

Recent European elections have sometimes also provided opportunities for new parties or splinter parties to field a list of candidates, sometimes with greater success than such parties enjoy in national elections. The explanation of the performance of such parties in European elections

is relatively simple and straightforward. In an election where control of the national government is not at stake, voters can more readily use the European elections to 'send a message' or register a grievance. In 2004, two anti-corruption parties – the Hans Peter Martin List in Austria and Europa Transparant in the Netherlands – each gained two seats in the European Parliament on 14.0 and 7.3 per cent of the vote respectively. Typically, such parties come and go in the politics of many EU Member States, but European elections often afford them a greater opportunity to gain visibility and votes in an environment that is inherently less competitive and more accessible.

One variable that needs to be taken into account in assessing the fortunes of smaller parties in European elections is the electoral system.<sup>21</sup> Since 1999, all EU Member States have used some variation of proportional representation in European elections. However, the actual electoral rules and practices vary considerably from one country to another. Some, such as Spain and the Netherlands, use a single national list of candidates, while others, such as Germany or Italy, employ regional lists. Closed lists are used in some countries, while others permit preferential voting for individual candidates. Ireland continues to use STV in both European and national elections. Such institutional differences mean that the political opportunities for smaller parties will vary considerably across the 25 Member States. In a country with a large number of members and a single national list, it is easier for a small single-issue party to gain a seat. On the other hand, regional parties may fare better in countries that employ regional lists. The contrast between European elections and national elections will also be greater in countries that do not use the same system in both. In France, for example, which utilizes two-ballot plurality in national elections but list PR in European ones, the contrast is stark. Parties such as the Greens or the National Front are all but shut out in national elections unless they can form alliances with other parties. But in European elections, these parties fare much better. In the 2004 elections to the European Parliament, the National Front obtained seven seats on 9.8 per cent of the vote, and the Greens six seats with 7.4 per cent. In Britain, which continues to use first-past-the-post in national elections, the relative differences in the strength of the parties at the national and European levels are greatly magnified by the differences in electoral systems that are employed at the two levels.

## **Turnout**

The final hypothesis that can be derived from the 'second-order model' of European elections is that turnout in them will be lower than in national

elections because voters see European elections as less relevant to their own concerns than national elections. Evidence from all of the European elections to date has supported this hypothesis, as turnout in every European election since 1979 has been lower than the average in a comparable set of national elections for the Member States. Typically, the average turnout in European elections has been about 15–20 percentage points lower for the set of member countries voting in any given election. But, as we would also expect, there is considerable variation between the countries. And in 2004, with 25 different countries participating, the potential for such variation was greater than in any previous European election.

As is seen in Table 7.3, turnout in the 2004 election was on average nearly 25 percentage points lower than the closest national election for

*Table 7.3* Turnout in the June 2004 European Parliament elections compared with turnout in national elections

|                | <i>EU</i> | <i>NAT</i> | $\pm$ | <i>Date</i>       |    |
|----------------|-----------|------------|-------|-------------------|----|
| Belgium        | 90.8      | 91.9       | -1.1  | 2003              | 05 |
| Luxembourg     | 90.0      | 90.0       | 0.0   | 2004              | 06 |
| Malta          | 82.4      | 95.7       | -13.3 | 2003              | 04 |
| Italy          | 73.1      | 81.3       | -8.2  | 2001              | 05 |
| Cyprus         | 71.4      | 90.5       | -19.1 | 2001              | 05 |
| Greece         | 62.8      | 76.5       | -13.7 | 2004              | 03 |
| Ireland        | 58.7      | 62.6       | -3.9  | 2002              | 05 |
| Lithuania      | 48.3      | 45.9       | 2.4   | 2004              | 10 |
| Denmark        | 47.9      | 84.5       | -36.6 | 2005              | 02 |
| Spain          | 45.9      | 77.2       | -31.3 | 2004              | 03 |
| France         | 43.1      | 64.4       | -21.3 | 2002 <sup>x</sup> | 06 |
| Germany        | 43.0      | 79.1       | -36.1 | 2002              | 09 |
| Austria        | 41.8      | 84.3       | -42.5 | 2002              | 11 |
| Latvia         | 41.3      | 71.2       | -29.9 | 2002              | 10 |
| Finland        | 39.4      | 66.5       | -27.1 | 2003              | 03 |
| Netherlands    | 39.3      | 80.0       | -40.7 | 2003              | 05 |
| UK             | 38.9      | 61.3       | -22.4 | 2005              | 05 |
| Portugal       | 38.7      | 65.0       | -26.3 | 2005              | 02 |
| Hungary        | 38.5      | 70.5       | -32.0 | 2002 <sup>x</sup> | 04 |
| Sweden         | 37.8      | 80.1       | -42.3 | 2002              | 09 |
| Czech Republic | 28.3      | 57.9       | -29.6 | 2002              | 06 |
| Slovenia       | 28.3      | 60.5       | -32.2 | 2004              | 10 |
| Estonia        | 26.9      | 58.2       | -31.3 | 2003              | 03 |
| Poland         | 20.8      | 46.3       | -25.5 | 2001              | 09 |
| Slovakia       | 16.9      | 70.1       | -53.2 | 2002              | 09 |
| Mean           | 47.8      | 72.5       | -24.7 |                   |    |

Parliamentary election (lower house), closest to June 2004.

<sup>x</sup> First round.

the set of all 25 countries voting in 2004. But the variation *between* countries was substantial. In only one country (Lithuania) was turnout *higher* in the European election than in the most nearly comparable national election. Some of the other apparent anomalies are readily explained. In Belgium, which has compulsory voting, turnout is high in all elections. And in Luxembourg, where European and national elections are held on the same date, turnout is by definition the same (and much higher than the EU average). In Ireland and Italy, the differences are smaller than the average. But in most of the other countries, they are quite large. In Austria, the Netherlands and Sweden, the difference in turnout between the two levels exceeded 40 per cent. And in Slovakia, the difference in turnout between the European election and the 2002 national election was an astounding 53 per cent.

One might have hypothesized that turnout would be somewhat higher in those countries voting for the first time in a European election in 2004. But for the most part, this was not the case. The five countries with the lowest turnout in 2004 were found among the new Member States – Czech Republic, Slovenia, Estonia, Poland and Slovakia. Latvia and Hungary, with turnout variations of about 30 per cent from national elections, also fell near the low end of the distribution shown in Table 7.3. And Lithuania, the sole country with a higher turnout in the European election than in the comparable national contest, achieved this distinction only because it had relatively low turnout in both. Among the new EU member countries, only Malta and Cyprus managed to maintain voting participation at a respectably high level. Even in these cases, however, turnout in the elections for the European Parliament was considerably lower than in the nearest national election.

In most EU Member States, turnout in Euro elections has established a fairly consistent pattern, but in a few others it is found to swing wildly from one election to the next. In Sweden, for example, turnout has fluctuated only between 37 and 41 per cent over three elections (Table 7.4). In Portugal, on the other hand, it has swung between a high of 72 per cent and a low of 36 per cent over four elections. In some instances, the variations over time are explained by the position of the EP election in the national elections cycle as discussed earlier. However, most countries that have established a pattern of low turnout in European elections have tended to maintain that pattern, even with some variation across the five-year cycles. Turnout in the UK, for example, reached a low point of 24 per cent in the 1994 election, but rebounded to 39 per cent in 2004. The difference might be explained in part by the proximity of the 2004 EP election to the national one. But the mean turnout in the UK in Euro

Table 7.4 Turnout in European Parliament elections, 1979–2004

|                   | 1979 | 1984 | 1989 | 1994 | 1999 | 2004 | Mean |
|-------------------|------|------|------|------|------|------|------|
| Belgium           | 91.4 | 92.2 | 90.7 | 90.7 | 91.0 | 90.8 | 91.1 |
| Luxembourg        | 88.9 | 87.0 | 96.2 | 88.5 | 85.8 | 90.0 | 89.4 |
| Italy             | 84.9 | 83.4 | 81.4 | 74.8 | 70.8 | 73.1 | 78.1 |
| Greece*           | 78.6 | 77.2 | 80.1 | 80.4 | 75.3 | 62.8 | 75.7 |
| Germany           | 65.7 | 56.8 | 62.3 | 60.0 | 45.2 | 43.0 | 55.5 |
| Ireland           | 63.6 | 47.6 | 68.3 | 44.0 | 50.7 | 58.7 | 55.5 |
| France            | 60.7 | 56.7 | 48.8 | 52.7 | 46.8 | 43.1 | 51.5 |
| Netherlands       | 58.1 | 50.6 | 47.5 | 35.6 | 29.9 | 39.3 | 43.5 |
| Denmark           | 47.8 | 52.2 | 47.4 | 52.9 | 50.4 | 47.9 | 49.8 |
| UK                | 32.2 | 31.8 | 36.6 | 36.4 | 24.0 | 38.9 | 33.3 |
| Portugal*         |      | 72.4 | 51.2 | 35.5 | 40.4 | 38.7 | 47.6 |
| Spain*            |      | 68.9 | 54.7 | 59.1 | 64.4 | 45.9 | 58.6 |
| Austria*          |      |      |      | 67.7 | 49.0 | 41.8 | 52.8 |
| Finland*          |      |      |      | 57.6 | 30.1 | 39.4 | 42.4 |
| Sweden*           |      |      |      | 41.6 | 38.8 | 37.8 | 39.4 |
| Malta             |      |      |      |      |      | 82.4 | 82.4 |
| Cyprus            |      |      |      |      |      | 71.4 | 71.4 |
| Lithuania         |      |      |      |      |      | 48.3 | 48.3 |
| Latvia            |      |      |      |      |      | 41.3 | 41.3 |
| Hungary           |      |      |      |      |      | 38.5 | 38.5 |
| Czech Republic    |      |      |      |      |      | 28.3 | 28.3 |
| Slovenia          |      |      |      |      |      | 28.3 | 28.3 |
| Estonia           |      |      |      |      |      | 26.9 | 26.9 |
| Poland            |      |      |      |      |      | 20.8 | 20.8 |
| Slovakia          |      |      |      |      |      | 16.9 | 16.9 |
| Mean <sup>†</sup> | 65.9 | 63.6 | 63.8 | 59.2 | 52.8 | 47.8 |      |

\*Begins with accession election – Greece (1981), Portugal and Spain (1987), Austria, Finland and Sweden (1995).

<sup>†</sup> Not included in calculation of means.

elections has for the most part fluctuated fairly narrowly around the mean of 33 per cent (Table 7.4) – one of the lowest among EU Member States and substantially lower than turnout in national elections which, even with recent declines, has tended to be about 60 per cent.<sup>22</sup>

Perhaps of even greater concern than the problem of low turnout in European elections is the persistent pattern of decline (Figure 7.3). Turnout in European Parliament elections began to drop sharply after 1989, and it has not recovered. At just under 48 per cent, turnout in the 2004 election was the lowest of any of the six direct elections to the European Parliament held thus far.<sup>23</sup> While turnout has also been declining in national elections in many European countries, the steep decline in turnout in European

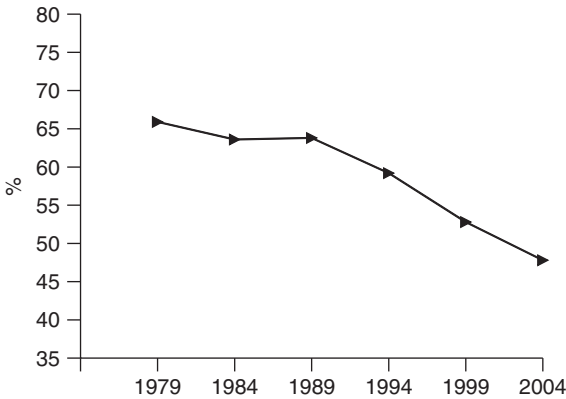


Figure 7.3 Turnout in European Parliament elections, 1979–2004

Parliament elections since 1989 is cause for perhaps even greater concern because it has been declining from a level that is already low in comparison to that found in national elections. One might have hypothesized in 1979 that as direct elections became established in the minds of voters as an instrument of democratic accountability in the EU turnout in them might gradually rise. But, instead, it has gone *down*. And, with the decline to a level below 50 per cent in the most recent election, the turnout issue becomes more central to the debate about democratic legitimacy in the EU. If a majority of its citizens decline to vote in its elections, how can the conduct of direct elections begin to address the problem of the ‘democratic deficit’ in Europe?

## Conclusion

What the results of the 2004 elections clearly demonstrate is that most of the problems of democratic legitimacy and accountability associated with European Parliament elections over the past 25 years remain in place. Some, such as the problem of low turnout, have substantially worsened. In her introduction to a book on the 1999 European elections, J. Lodge titled her essay ‘Invisible, Irrelevant but Insistent: the European Parliament and European Elections’.<sup>24</sup> G. Irwin titled an article on the 1994 elections, written for *Electoral Studies*, ‘Second Order or Third Rate?: Issues in the Campaign for the European Parliament’.<sup>25</sup> Scholars have continued to confirm the core elements of the ‘second-order’ model in attempting to understand European elections – low turnout, the weakness

of governing parties, the strength of smaller parties. They have also taken note of the fact that European election campaigns, aside from selective bursts of support for small Eurosceptic parties, have had little to do with European issues and problems.<sup>26</sup> Levels of interest and participation continue to be low, except on those occasions when they have important implications in the national politics of a particular country. While a number of scholars have examined the 'problem' of European democracy, and by extension the challenges presented by the Parliament and Europe-wide elections, it is evident that large hurdles remain firmly in place.<sup>27</sup> Observers who believed or hoped that this set of conditions might change as a 'Europe of parties' gradually evolved cannot help but be disappointed. While the historic achievement of conducting an election simultaneously in 25 countries should not be discounted, the high expectations initially generated by direct elections to the European Parliament as an instrument of democratic accountability have yet to be fulfilled.

## Notes

- 1 M. Th. Greven, 'Can the European Union Finally Become a Democracy', in M. Th. Greven and L. Pauly (eds), *Democracy beyond the State* (Latham: Rowan and Littlefield, 2000), pp. 35–61.
- 2 On this theme see, among other sources, S. Anderson and K. Eliassen (eds), *The European Union: How Democratic is It?* (London: Sage, 1996); and P. Norris, 'Representation and the Democratic Deficit', *European Journal of Political Research*, 32 (1997) pp. 273–82.
- 3 Greven, 'Can the European Union', pp. 37–8.
- 4 As quoted by J. Lodge, 'The European Parliament', in Andersen and Eliassen (eds), *The European Union: How Democratic is It?*, p. 189. Tindemans was at the time the Prime Minister of Belgium and was mandated by the Council to prepare a report on the EU in 1975. The Tindemans Report contained recommendations for a stronger European Parliament, direct elections and other institutional reforms designed to advance the process of integration and strengthen the political aspects of the Union.
- 5 K. Reif and H. Schmitt, 'Nine Second-Order Elections: a Conceptual Framework for the Analysis of European Election Results', *European Journal of Political Research*, 8 (1980) pp. 3–44.
- 6 Reif and Schmitt, 'Nine Second-Order Elections', p. 3.
- 7 Ibid.
- 8 For example, turnout in Britain was, at 32.2 per cent, more than 43 percentage points lower than that of the 1979 national election held only a month earlier. Differences in Denmark (–40 per cent), The Netherlands (–30 per cent), and Germany (–25 per cent) were likewise substantial in comparison with national elections held a couple of years previously. For a complete set of national turnout figures for the 1979 European Parliament elections, see Table 7.4.

- 9 M. Marsh, 'Testing the Second Order Election Model after Four European Elections', *British Journal of Political Science*, 28 (1998) pp. 591–607.
- 10 C. van der Eijk and M. Franklin, *Choosing Europe: the European Electorate and National Politics in the Face of Union* (Ann Arbor: University of Michigan Press, 1996).
- 11 Van der Eijk and Franklin, *Choosing Europe*, pp. 6–7.
- 12 See, among others, P. Norris, 'Representation and Democratic Deficit', *European Journal of Political Research*, 32 (1997) pp. 273–82; and J. Lodge, 'Invisible, Irrelevant but Insistent: the European Parliament and Euro Elections', in J. Lodge, *The 1999 Elections to the European Parliament* (London: Pinter, 2001), pp. 3–11.
- 13 See, for example, D. Marquand, 'Towards a Europe of Parties', *Political Quarterly*, 2 (1978) pp. 425–45.
- 14 S. Hix and C. Lord, *Political Parties in the European Union* (New York: St. Martin's Press, 1997) pp. 1–20.
- 15 For a discussion of European party 'families', see K. von Beyme, *Political Parties in Western Democracies* (Aldershot: Gower, 1990). See also A. Ware, *Political Parties and Party Systems* (Oxford: Oxford University Press, 1996), pp. 27–43.
- 16 Hix and Lord, *Political Parties*, pp. 12–15.
- 17 We consider here only elections for the lower house of the national parliament. Some countries also have presidential elections, elections for a second chamber, or partisan local elections, all of which may operate on different cycles. A complete picture for any single country may therefore be considerably more complex than the pattern shown in Figure 7.2.
- 18 In 1999, Belgium also held its national elections on the same date, but it did not do so in 2004.
- 19 C. van der Eijk, M. Franklin and M. Marsh, 'What Voters Teach Us about Europe-wide Elections: What Europe-wide Elections Teach Us about Voters', *Electoral Studies*, 15 (1996) pp. 149–66.
- 20 J. Curtice, 'The 1989 European Election: Protest or Green Tide?', *Electoral Studies*, 8 (1989) pp. 217–30.
- 21 For an overview of electoral systems and a discussion of some of their effects on electoral outcomes, see A. Blais and L. Massicotte, 'Electoral Systems', in L. LeDuc, R. G. Niemi and P. Norris, *Comparing Democracies 2: New Challenges in the Study of Elections and Voting* (London: Sage, 2002), pp. 40–69.
- 22 Turnout in the UK election held in May 2005 was 61.3 per cent. In the preceding (2001) election, it was 59.4 per cent.
- 23 There is a technical issue regarding the mean turnout figures shown in Tables 7.3 and 7.4 because they are calculated from the official turnout figure in each of the individual countries voting in the election. Since the countries vary considerably in the size of their electorates, a mean turnout figure calculated in this way will tend to weight the smaller countries more heavily. The difference is small but potentially significant. For example, if the European electorate were treated as a single entity in the 2004 election, the turnout is estimated at 45.7 per cent, about two percentage points lower than the mean of 47.8 per cent shown in Table 7.3. This is because some smaller countries with high turnout (Belgium or Luxembourg, for example) are weighted more heavily in the mean than would be warranted by their size, while certain larger countries (the UK, for example) are by definition underweighted.



- 24 Lodge, *The 1999 Elections*, pp. 3–11.
- 25 G. Irwin, 'Second Order or Third Rate? Issues in the Campaign for the European Parliament', *Electoral Studies*, 14 (1995) pp. 183–99.
- 26 See, for example, J. Smith, 'How European are European Elections?', in J. Gaffney (ed.), *Political Parties in the European Community* (London: Routledge, 1996).
- 27 See, for example, M. Zürn, 'Democratic Governance beyond the Nation State', in Greven and Pauly (eds), *Democracy beyond the State*, pp. 91–114; and M. Shephard, 'The European Parliament: Laying the Foundations for Awareness and Support', *Parliamentary Affairs*, 50 (1997) pp. 438–52.

# 8

## National Parliaments and the Future of European Integration: Learning to Play the Multilevel Game

*Tapio Raunio*

### Introduction

Democracy in the European Union (EU) is based on two channels of citizen participation – the national channel and the European one. In the former, citizens in each country elect representatives to the national parliament, who in turn control their government that represent the Member States in the Council of Ministers (henceforth Council) and the European Council. In the European channel, the same citizens elect the members of the European Parliament (EP). Considering the central role of national governments in the EU's political system and the low turnout in EP elections, both scholars and politicians normally argue that the national route remains the primary channel for providing democracy to the way the EU takes its decisions.

However, there is broad consensus among scholars that this national route is not functioning as it should. Most of the literature on the role of national parliaments in the EU sees them as victims of European integration.<sup>1</sup> Constitutionally, the issue is relatively straightforward. Powers which previously were under the jurisdiction of national legislatures have been shifted upwards to the European level (by national legislatures themselves – thereby signalling that the benefits accruing to Member States from integration outweigh the losses to national parliamentary sovereignty). In the Council the increased use of qualified majority voting (QMV) makes it difficult for national parliaments to force governments to make *ex ante* commitments before taking decisions at the European level.

Perhaps more significant is the challenge posed by the multilevel nature of the EU polity. When describing how the EU works, scholars have increasingly in recent years relied on the concept of 'multilevel

governance' (MLG). The basic tenets of MLG are that (i) decision-making competencies are shared by actors at different levels, namely at the sub-national, national and the European levels; (ii) collective decision making and pooling of sovereignty among Member States involves a significant loss of control for individual national governments; and (iii) the political levels or arenas are interconnected, with policy choices on one level dependent on decisions taken at other levels.<sup>2</sup> The core of MLG consists of intergovernmental negotiations, with extensive policy coordination carried out between bureaucrats and ministers in the hundreds of working groups and committees operating under the auspices of the Commission and the Council.<sup>3</sup> The resulting information deficit reduces the ability of domestic legislators to control their governments in European matters. In fact, through the centrality of technical expertise in the EU policy process, the true winners of European integration have arguably been bureaucrats and organized private interests at all levels of government and not directly elected representatives – the traditional holders of legitimacy in European systems of parliamentary government.<sup>4</sup>

While such pessimistic conclusions might actually underestimate the influence of parliaments, the challenges facing them certainly deserve serious consideration. Active scrutiny by individual domestic legislatures of their governments is important in ensuring democratic input into the EU policy process, as the principal actors in the EU are still national governments that take decisions in the European Council and the Council. This chapter analyses the role of national parliaments in the EU. The first section highlights the considerable difficulties national legislatures face when trying to control their governments in EU matters. The second section looks ahead to the future, arguing that while national parliaments have gradually become more involved in the EU policy process, the increasing use of the Open Method of Coordination (OMC) and other forms of intergovernmental policy coordination potentially undermines this positive trend. The main argument is that the multi-level political system of the EU resembles the cooperative or executive federalism characteristic of many federal states, which arguably strengthens the state executives vis-à-vis their parliaments. Executive federalism may improve the ability of national governments to solve common problems, but the decision process is removed from the public sphere to intergovernmental meetings taking place behind closed doors. As a result, cooperative federalism weakens the transparency of collective decision making and, consequently, the accountability of national executives to their parliaments.

## The main problems facing national parliaments

National parliaments have quite extensive duties and rights in the EU's political system. Their main function in the EU's policy process is to control their governments that represent Member States in the Council and the European Council. The ability of a legislature to control the government in European affairs depends on a variety of factors that include the constitutional rules and established 'ways of doing things' of the country, as well as party-political factors such as the composition of the governments and the cohesion of political parties.<sup>5</sup> This function brings national parliaments regularly into the game, as the Council holds meetings during most weeks of the year (with approximately 100 Council meetings per year), and the European Council meets several times every year. National parliaments are also responsible for adopting amendments to the EU's 'Constitution' according to respective national constitutional regulations. Finally, national parliaments are involved, in some Member States more than others, in the implementation of EU directives when this requires enactment of new domestic legislation.

As parliamentary scrutiny of EU matters is largely based on controlling the government in individual pieces of supranational EU legislation, it is worth describing briefly how the system works at the national level. The reader should bear in mind that the following description is a simplification of how things work and that there are significant differences between the individual parliaments.<sup>6</sup>

All Member State legislatures have established special European Affairs Committees (EACs), whose task is to coordinate parliamentary scrutiny of European matters and to monitor government representatives in the Council. Members of the European Parliament (MEPs) are represented in the EACs of the Belgian, Greek, Irish and Maltese parliaments and in the German Bundestag.<sup>7</sup> National governments must submit to their parliaments the Commission's legislative proposals that fall within the competence of the legislatures. The government informs the parliament of its stand, and the legislature scrutinizes the cabinet position. It is essential that the parliament is kept up to date, as the Council and the EP, particularly in legislation falling under the co-decision procedure, often quite significantly amend the initiatives. The extent to which legislatures delegate European matters downward to specialized committees varies between countries.

Before the Council meeting the EACs receive the agendas of the meetings, in some countries together with government memoranda. The responsible minister then appears, if requested, in person before the committee,

and the MPs have the opportunity to put questions to the minister, following which the EAC decides if there is a majority in favour or against the government position. There is notable variation in the frequency of committee meetings, with most EACs meeting on a weekly basis when the parliament is in session. Considering the work schedule of the Council, it is reasonable to assume that the more often the EACs meet, the better positioned they are to control ministers. After the Council meeting, the minister reports back to the EAC, appearing in person if so required to give an account of the meeting. The same procedure applies more or less to monitoring European Council meetings and Intergovernmental Conferences (IGCs).

Having explained how national parliaments scrutinize government behaviour in EU matters, let us next turn to the main problems facing national parliaments in fulfilling this function. As outlined in the introductory section, it is commonly accepted that the systemic features of the EU policy process disadvantage national parliaments. No matter how tightly national MPs control their governments in EU matters, their input is always indirect, involving a delegation of authority to governments that represent Member States in the EU political system. In order to reduce the resulting *informational asymmetry*, national parliamentarians thus need information about (i) the preferences and negotiation strategies of their governments, and (ii) the positions of the EU institutions (Commission, EP) and the other Member States. The focus in the remainder of the section is on three aspects of the scrutiny process that are important in reducing the information deficit: (1) the access of national parliaments to information; (2) the involvement of specialized committees; and (3) the ability to 'mandate' the government through issuing voting instructions. The analysis that follows is limited to the 'old' 15 Member States, for the simple reason that it is far too early at this stage to have any reliable cross-national data on scrutiny procedures in those countries that joined the Union in 2004.

### **Access to information**

This includes two dimensions: (a) when are parliaments informed about EU matters and when do they actually start processing European issues (timing), and (b) what documents do the parliaments have the right to receive from their governments (scope). Both the timing and the scope depend primarily on constitutional and legal regulations about the right of the parliament to receive information. Timing is very important, for an essential prerequisite for effective scrutiny is that legislatures receive the appropriate documents as early as possible, with the MPs thus having

more time to examine the proposals which often are quite technical in nature. Moreover, as the overwhelming majority of EU legislation is in reality already decided in the Council's working groups and in the Committee of Permanent Representatives (COREPER), parliaments that only get involved in the process just before the relevant Council meeting have quite marginal opportunities to influence the decisions. When examining the average duration for the transfer of EU documents from the relevant source (for COM documents, the Commission; for Council documents, the Council's General Secretariat) to the office or equivalent of the national parliament, ten legislatures received the documents in approximately two weeks: Denmark (documents only), Germany (minimum time), Belgium, Finland, Italy, Ireland, Luxembourg, the Netherlands, Austria and Sweden. After that there was more variation, with the remaining countries placed in the following order: Spain, Portugal, Germany, France, the UK, Denmark (the so-called factual notes) and, lastly, Greece.<sup>8</sup> Obviously, parliaments can gather information independently of the government, for example by using online document bases of the EU and national administrations, but the emphasis placed here on documents received from the government is based on the reasoning that legal regulations about access to information are important in facilitating effective scrutiny.

With the partial exception of Greece, in all countries national governments routinely submit to their parliaments the Commission's legislative proposals that fall within the competence of the legislatures. In most countries legislatures have also the right to receive documents on the preparation of international agreements between the EU and third parties, on cooperation in Common Foreign and Security Policy and Justice and Home Affairs matters, Green and White papers, the proposal for the annual EU budget, and the Commission's consultation documents. The practice of supplying legislatures with explanatory memoranda, either before the Council meeting or when the parliament first receives the legislative initiative, is most advanced in Austria, Denmark, Finland, Germany, Great Britain, the Netherlands and Sweden. Such memoranda normally explain the consequences of the proposal for the country and the EU and may contain the views of experts and interest groups.<sup>9</sup>

This brief description of the constitutional or other rules guiding national parliaments' access to information shows that there is quite significant variation between the parliaments. In general, the information rights are better in the more northern Member States, with the legislatures of the southern EU countries much more disadvantaged in this respect. However, even in countries where national parliaments enjoy

better access to information, such as Denmark and Finland, MPs do regularly complain about lack of information – particularly the kind of information that would enable them effectively to control the government. After all, receiving too much information is an essential part of the problem, as MPs often find it very difficult to identify the important points from the mass of documents they receive.

### **The role of specialized committees**

For similar reasons, it is also important to examine the involvement of specialized committees. Delegating European matters to the specialized committees means that all MPs, and not just the small minority in the EAC, become routinely involved in EU matters.<sup>10</sup> As a result, the parliament makes better use of its own policy expertise and is able to monitor the government's behaviour more effectively, a rationale that applies in general to the empowerment of committees.<sup>11</sup> The extent to which legislatures delegate European matters downward to specialized committees varies enormously between EU countries. The system is most developed in Finland where, according to the Constitution, the committees of the Eduskunta must process all bills and are therefore actively involved in scrutinizing European legislation.<sup>12</sup> In Denmark, Germany, the Netherlands, Italy and Sweden the specialized committees are also to a certain extent involved in the processing of EU issues.<sup>13</sup> However, in the majority of parliaments the specialized committees remain relatively marginalized in European issues.<sup>14</sup>

### **'Mandating' the ministers**

The ability to issue voting instructions is usually emphasized in the literature. This results particularly from the Danish system, where the EAC of the Folketinget is famous for its ability to constrain ministers through issuing explicit voting instructions. However, this indicator is not entirely unproblematic. After all, the government depends on the support of the legislature (which can throw the government out of office) even without any constitutional powers to mandate the ministers. Therefore governments can be expected to incorporate the preferences of the MPs into their negotiating positions even without any explicit mandating. This applies particularly to issues that require the approval of domestic legislatures, such as IGCs leading to amendments of the EU's Constitution.<sup>15</sup> Secondly, even when the legislature does enjoy such constitutional powers, any mandating is bound to be highly selective. Tight voting instructions can also be counterproductive, as decisions taken by the Council and particularly the European Council are often based on complex

bargaining, involving considerable trade-offs between the governments. Nevertheless, the strong mandating position acts as an important preempting mechanism, encouraging the government to engage in a wider consultation and negotiation process with the parliament than might otherwise be the case.

In all Member States there is *some* control of the government through the EAC either before and/or after the Council meetings. However, it must be emphasized that there is huge variation between the parliaments. In most countries the ability to 'mandate' ministers is either completely lacking, or it is rarely exercised. In the majority of the Member States the government merely sends information to the EAC, with a minister, or a civil servant from a ministry occasionally appearing before the committee, usually when more important matters are on the agenda. In other countries, like in Denmark and Finland, on the other hand, the ministers appear in the committee on a weekly basis and also often after the Council meeting. The EACs of the Austrian Nationalrat and the Danish Folketinget have the right to issue binding voting instructions to government representatives. The mandating power of the Austrian parliament is included in the Constitution, whereas the practice in Denmark is so institutionalized that it is almost constitutional in character.<sup>16</sup> The Dutch Tweede Kamer has similar powers in Justice and Home Affairs matters as does the German Bundesrat, where a proposal requires approval pursuant to domestic law or in instances where the *Länder* have jurisdiction.<sup>17</sup>

Having examined the main problems facing national parliaments, Table 8.1 compares the national parliaments on these three dimensions – information rights, the involvement of specialized committees, and the ability to mandate ministers. The categorizations admittedly lack precision and should be understood more as rough estimates than as exact measurements, but they nonetheless provide a decent overall picture of where national parliaments stand.<sup>18</sup> Concerning access to information, 6 out of 15 parliaments are classified as having strong information rights. Finland and Germany are the only countries where the involvement of specialized committees was categorized as strong, with weak involvement found in 9 out of 15 countries. Turning to voting instructions, we note that only the Danish parliament has strong powers to mandate the ministers, with again 9 out of 15 countries having weak mandating powers. While we may disagree about the accuracy of the information in Table 8.1, one can nevertheless conclude that most parliaments are not able to exercise effective control over their governments in European affairs.



*Table 8.1* The main problems facing national parliaments vis-à-vis their governments in EU matters

| <i>Member State</i> | <i>Access to information<br/>(scope + timing)</i> | <i>Specialized<br/>committees</i> | <i>Voting<br/>instructions</i> |
|---------------------|---|-----------------------------------|--------------------------------|
| Austria             | Strong  | Weak                              | Moderate                       |
| Belgium             | Moderate  | Weak                              | Weak                           |
| Denmark             | Strong  | Moderate                          | Strong                         |
| Finland             | Strong  | Strong                            | Moderate                       |
| France              | Moderate  | Weak                              | Weak                           |
| Germany             | Strong  | Strong                            | Moderate                       |
| Greece              | Weak  | Weak                              | Weak                           |
| Ireland             | Strong  | Weak                              | Weak                           |
| Italy               | Moderate  | Weak                              | Weak                           |
| Luxembourg          | Moderate  | Weak                              | Weak                           |
| The Netherlands     | Moderate  | Moderate                          | Moderate                       |
| Portugal            | Moderate  | Moderate                          | Weak                           |
| Spain               | Moderate  | Weak                              | Weak                           |
| Sweden              | Strong  | Moderate                          | Moderate                       |
| UK                  | Moderate  | Weak                              | Weak                           |

*Sources:* Specialized committees – Bergman et al., ‘Democratic Delegation and Accountability: Cross-national Patterns’, p. 175 (see note 15); access to information – Maurer and Wessels, ‘National Parliaments after Amsterdam: From Slow Adapters to National Players?’ (see note 1); voting instructions – Bergman et al., ‘Democratic Delegation and Accountability: Cross-national Patterns’, pp. 175–6, and Maurer and Wessels, ‘National Parliaments after Amsterdam: From Slow Adapters to National Players?’

This section has largely focused on the ability of national parliaments to scrutinize individual pieces of supranational EU legislation – arguably the main function of national parliaments in the EU’s political system. While the majority of parliaments have gradually (especially since the early 1990s) improved their scrutiny of EU matters, the available evidence clearly indicates that most national legislatures are quite weak in relation to their governments in EU matters. The next section examines another challenge facing national parliaments – the increasing use of OMC and other forms of intergovernmental policy coordination in the EU’s political system.

### **The challenge posed by the Open Method of Coordination (OMC)**

While intergovernmental policy coordination has been a feature of the EU’s decision-making system throughout the history of integration, such informal policy coordination has become much more prominent

since the early 1990s. The European Employment Strategy (EES) adopted at the Essen European Council in 1994 and the coordination of national economic policies agreed in the Maastricht Treaty extended this coordination to two highly salient issue areas of domestic politics. In addition, OMC officially became a part of EU jargon at the Lisbon European Council in 2000. OMC has four main components: (1) fixed guidelines set for the EU, with short-, medium-, and long-term goals; (2) quantitative and qualitative indicators and benchmarks; (3) European guidelines translated into national and regional policies and targets; and (4) periodic monitoring, evaluation and peer review, organized as a mutual learning process. In recent years OMC (together with other forms of policy coordination) has been applied to a broad range of policies, including employment, social policy, environment, taxation, immigration, research, transport, working time, social protection, education, social infrastructure, regional cohesion and social inclusion.

The increasing use of OMC and other forms of informal, non-binding, primarily intergovernmental 'soft law' instruments needs to be understood in the context of the sensitive question of dividing competencies between the EU and its Member States. European integration has reached the stage where the core areas of the welfare state, such as social policy, employment and education, are starting to be affected. In these policy areas (that are both money-intensive and touch core areas of national sovereignty) it is very difficult to build the needed consensus among national governments for transferring policy-making authority to the European level – hence the resort to intergovernmental policy coordination. The national governments want, on the one hand, to achieve highly valued policy objectives, such as reducing unemployment and making their economies more competitive, while on the other hand, they are not willing to cede formal sovereignty to the Union. The Commission meanwhile sees these new modes of governance as a way to expand the EU's competence in the face of resistance from the Member States.

The literature on OMC and other forms of soft law instruments – or 'new modes of governance' – is already quite extensive.<sup>19</sup> This literature has so far produced two main findings. First, it is still too early to make any definitive assessments of the success of OMC. Nevertheless, while the impact of OMC varies greatly between policy areas, scholars usually point that, unlike top-down supranational legislation, it is flexible and (supposedly) respects subsidiarity and national autonomy. The downside of this flexibility and non-binding nature of outputs is that the EU has few if any means to make the national governments follow its recommendations. However, the more important findings in terms of national

parliaments are those concerning the input of various 'stakeholders' in the process. OMC has strengthened the leadership role of the Council and the European Council, intruding thus on the Commission's right of monopoly. Yet on the other hand the Commission has a central role to play through its role as the institution setting objectives and issuing guidelines and recommendations to national governments.<sup>20</sup> The EP has until now been effectively marginalized, and, more worrisome, the contribution of local and regional actors, often identified as the main stakeholders in these processes, has so far been quite disappointing. At the national level OMC seems to be the preserve of a fairly small circle of civil servants who possess expertise on the issues. As OMC and all forms of soft law policy coordination are primarily intergovernmental in character, national parliaments are thus, from a constitutional perspective, in a strong position to influence the proceedings. However, this applies only if they are willing and able to control their governments in these matters.<sup>21</sup>

At this point it is worth comparing the position of national parliaments in two modes of EU governance – the traditional 'Community method' of producing supranational legislation and the OMC mode (Table 8.2).<sup>22</sup> When it comes to agenda setting and proposal power, national parliaments are weak actors in both types of governance. In supranational legislation the Commission basically has the monopoly of initiative, but obviously its initiatives are largely based on instructions from the Council and the European Council. OMC is much more a tool to be used collectively by the Member States, but here too the EU institutions – mainly the Commission and the Council, depending on the policy question – set the agenda and coordinate subsequent actions. In supranational legislation the competence belongs to the EU, whereas OMC is primarily used in policy areas where the Union has no access to binding legislation. This division of competence also impacts on the Council decision rule. Most supranational legislation is passed nowadays in the Council by QMV, but in OMC processes issues are decided by unanimity. Thus domestic legislatures are in a stronger position, as domestic governments cannot be outvoted in the Council, and hence national parliaments can, at least theoretically, veto decisions they disagree with.<sup>23</sup> The EP performs an increasing role as a co-legislator in producing supranational laws, but it is merely consulted (or kept informed) in OMC.

Turning to the domestic level, civil servants are central actors in both types of governance. However, in OMC their role appears to have been far more influential, with much less guidance and instructions from members of government. Most national legislatures, however, have also

Table 8.2 EU governance models and the position of national parliaments

|   | <i>Supranational legislation</i>   | <i>OMC</i>   |
|---|--|--|
| Agenda-setting power<br>Formal competence     | Commission<br>EU   | Commission or the Council<br>Member states (but OMC is also used in policy areas that fall under the EU's competence)  |
| Decision rule in the<br>Council               | Increasingly QMV – national governments can thus be outvoted; when unanimity applies, national governments have veto power   | Unanimity, with national governments possessing veto power. However, QMV can often be applied in questions in which the Council in supranational legislation also decides by QMV |
| The role of the European<br>Parliament        | Co-legislator when the co-decision procedure (and also assent procedure) is used; otherwise consultative   | Consultative   |
| Domestic negotiators at<br>the EU level       | Policy preparation is mainly delegated to civil servants, but final decisions are taken by ministers in the Council; more important items are always debated in the government | National reports and action plans are prepared and presented mainly by civil servants; the input of ministers has been relatively limited  |
| National parliamentary<br>scrutiny            | The EAC monitors government behaviour; specialized committees are also increasingly involved   | In principle the same as in supranational legislation but so far there is little evidence of national parliaments actively scrutinizing OMC processes                            |
| Information rights of<br>national parliaments | Legislative proposals and amendments are sent to national parliaments; governments often also provide MPs with additional explanatory memoranda                                | Documents are sent to national parliaments; but parliaments often have weaker access to non-legislative documents  |
| The role of opposition                        | To challenge and criticize the government; but often actively involved in shaping national EU policy, coordinating with the government   | Less involved in the process; could use the information to attack the government   |
| Output  | Binding EU legislation that either requires (directives) implementation by national parliaments or does not (regulations)  | Non-binding recommendations, which may result in new domestic legislation or other measures enacted by national governments or parliaments                                       |
| Policy learning                               | With the exception of directives, the same solution applies across the Union   | National parliaments can use the information to improve domestic legislation   |

Source: F. Duina and T. Raunio, 'The Open Method of Coordination and National Parliaments: Further Marginalization or New Opportunities?' (see note 22).

become actively involved in EU issues in recent years. As a result, the majority of them process routinely most if not all supranational legislation in the EACs and also increasingly in the specialized committees. The (so far relatively scarce) evidence from OMC, in turn, shows that national parliaments have not scrutinized OMC documents in the same way as they process EU laws (see below). The information rights of national parliaments are also stronger in supranational legislation, as they receive the legislative initiatives from their own government and also from the Commission. As OMC documents are non-legislative items, the information rights of national legislatures are generally weaker (with much variation between the individual countries). Importantly, if the government is not obliged to send the documents to the parliaments, then it is up to the national MPs to ask for such documents (provided they are aware of their existence).

The role of the parliamentary opposition is quite different in the two types of governance. In supranational legislation the opposition of course does its best to criticize and challenge the government, but this criticism is modified by two factors. First, in many EU countries, particularly in the smaller Member States, national integration policy is based on broad parliamentary consensus, with the opposition also involved in forming national positions.<sup>24</sup> Moreover, were the opposition to attack the government, the prime minister might blame the opposition parties for rocking the boat and jeopardizing the success of the government (and thereby the 'national interest') in EU negotiations.<sup>25</sup> Yet in OMC the opposition can use the information generated by cross-national comparisons to criticize the government for inefficiency and policy failures. As OMC produces non-binding outputs, it also has a higher capacity for policy learning.

This comparison reveals that national parliaments could in fact in many ways benefit from the use of OMC, not least because it does not force the domestic legislatures to adopt legislation. However, the available evidence indicates that national parliaments have failed to make an impact in OMC. Examining policy coordination in employment and social inclusion strategies, the country chapters in the volume edited by J. Zeitlin et al. testify that the various OMC documents, particularly National Action Plans (NAPs), largely escaped parliamentary scrutiny or debates.<sup>26</sup> To be sure, parliaments were often informed about NAPs, but mainly after they had already been produced and sent off to Brussels. In some exceptional cases national MPs did demand more information, and there were also some examples of opposition parties using the EU's recommendations to support their own claims.<sup>27</sup>

Also examining employment and pensions policies, C. de la Porte and P. Nanz note that these processes escaped parliamentary scrutiny.<sup>28</sup> National legislators thus have very little direct involvement in OMC, playing at best a passive role by being informed of developments.<sup>29</sup> While there are no other studies detailing the contribution of national parliaments, it is noteworthy that domestic legislatures are hardly even mentioned in other publications on OMC. Therefore it is easy to concur with C. M. Radaelli who argues: 'Although there is some preliminary evidence of limited technocratic-political learning, the potential in terms of participation, openness, real transparency, increasing visibility in the domestic media and parliaments – in a word, the democratic aspects of the process – has not been fulfilled.'<sup>30</sup>

There are three main reasons why national parliaments have failed to make an impact under OMC. First, the whole process is by its very nature intergovernmental, with civil servants primarily responsible for drafting national programmes and presenting them in Brussels.<sup>31</sup> National MPs are informed of these preparations, but far too often this happens much too late. Secondly, national MPs may find it hard to follow OMC processes. Unlike normal EU legislation, OMC and other forms of policy coordination do not often have any fixed deadlines or even rules guiding the behaviour of the various actors. Given the intergovernmental or informal nature of OMC, there is also (at least in some national parliaments) procedural ambiguity about how to process these things in parliament and domestically in general. For example, what are the rights of the national parliaments to receive the relevant information and documents, and how are these to be processed in the legislature? Hence it might be that national parliaments have simply not yet learned how to contribute to OMC issues and that their contribution will become stronger over time. And thirdly, it appears that the actual impact of OMC and other forms of informal policy coordination has so far been relatively modest, if not even inconsequential, in many policy areas. As a result, national parliamentarians have not found it worthwhile to spend their precious time on scrutinizing such processes.

Nevertheless, the challenge posed by intergovernmental policy coordination deserves to be taken very seriously. While the EU is not a fully fledged federation, its multilevel political system closely resembles the cooperative federalism characteristic of many federal states. Indeed, OMC and other forms of policy coordination are classic examples of cooperative federalism, with common objectives defined by Member States together with the Commission and/or the Council, monitoring by the EU institutions (federal level), and implementation and choice of instruments

for meeting the objectives delegated to Member States. Importantly, cooperative federalism is almost exclusively intergovernmental in character, and thus it is often likened to executive federalism.

Regardless of how effective state parliaments are in controlling their governments, executive federalism concentrates power in the executive branch.<sup>32</sup> For example, in Australia cooperative federalism has resulted in a proliferation of intergovernmental committees and working groups. The ministerial meetings are characterized by low openness and transparency and reliance on informal, but still politically binding, procedures and decisions. State parliaments have often voiced complaints about being sidelined in the negotiations. Moreover, in order to make decision making possible in the first place, decisions are increasingly taken by (qualified) majority voting, which further reduces the effective sovereignty of the states.<sup>33</sup> Germany provides another good example. The role of the *Länder* in the implementation of federal laws has resulted in extensive intergovernmental cooperation, with a total of over 1000 working groups and committees. Again, the *Land* parliaments have seen their role weaken due to intergovernmental cooperation.<sup>34</sup> Similarities with the EU are obvious, and without more active participation of national parliaments, the alleged deparliamentarization caused by the EU will be reinforced through the increased use of executive federalism in the Union.

To be sure, the arguments about executive federalism apply also to the supranational mode of EU governance. However, it is important to understand the difference between OMC and supranational legislation. The negotiations that form part of OMC are always carried out behind closed doors, and the legal rules about information rights that apply to access to legislative documents do not cover non-legislative items. The processing of supranational legislation is on the whole much more transparent, particularly under co-decision procedure where the EP is actively involved, and, overall, national parliaments find it easier to follow the adoption of EU laws because such procedures are subject to clearer timetables and interinstitutional rules. As a result, OMC and intergovernmental policy coordination thus weakens the transparency of collective decision making and, consequently, the accountability of the representatives.

To facilitate parliamentary involvement in OMC and other non-binding forms of intergovernmental coordination, such 'soft law' matters should be processed by national parliaments using the same procedure that is reserved for scrutinizing the Commission's legislative initiatives. This would mean that ministers would be forced to explain their actions before parliamentary committees and perhaps even in the plenary, with MPs having the chance to put questions to the ministers or other government

representatives travelling to Brussels.<sup>35</sup> While MPs and parliamentary civil servants may object to this by saying that their desks are already full without having to process such non-binding matters, one must keep in mind that policy coordination is to an increasing extent used in questions that are highly salient for most MPs, including such issues as employment policy, economic policy, social policy and pension reforms. Efficient scrutiny of such matters is thus significant also in terms of national legislation, as the policy choices adopted at the European level increasingly impact on Member States' domestic politics. Hence parliamentarians have both an electoral and a policy incentive to engage themselves in such questions.<sup>36</sup>

## Conclusion

While most national parliaments have been rather late adapters to integration, there is no doubt that they do now exert tighter scrutiny on their governments in EU matters than a decade ago and that this positive trend should not be reversed. However, the structural disadvantage facing national parliaments, and the resulting significant informational asymmetry, means that parliaments will remain quite weak actors in the EU political system – at least when we examine their ability to influence supranational EU legislation. The second main argument of this chapter has been that the increasing use of intergovernmental policy coordination and OMC poses another serious threat to national parliaments. The quicker the national legislatures learn how to deal with such processes, the better their ability to shape EU decisions.

Nonetheless, it is clear that it is up to the national MPs themselves to decide how to react to these challenges. Even the best organizational arrangements will not result in effective scrutiny without political will. Previous research has demonstrated that the level of parliamentary scrutiny in EU matters depends very much on the salience or divisiveness of European integration. Hence we can expect that national parliamentarians will continue to invest more resources in processing EU issues. But it is equally clear that despite facing similar problems, and despite parliaments learning best practices from each other (as happened in the case of the enlargement in 2004, when the parliaments of the new Member States studied the scrutiny systems in the 'old' EU countries), it is likely that parliaments will not produce a uniform response to these challenges. As literature on organizations suggests, change is often incremental and path-dependent, with institutions adapting their procedures gradually in response to changes in their environment.<sup>37</sup> After all, there are quite



notable differences between the political systems and/or political cultures of EU countries. Some parliaments have throughout their history placed more emphasis on scrutinizing the government's legislative initiatives (for example, the Nordic parliaments), while in other countries the MPs understand their role quite differently.<sup>38</sup>

Finally, political parties have so far managed to keep EU questions out of the plenary debates. While this may serve the strategic interests of the parties, it does further distance the EU from average voters. Media would most likely cover debates in national parliaments about EU legislation and the development of integration, with the result that citizens would gradually become better informed about the Union. This is all the more important as national EU policy is usually decided by the governments, both at the national level as well as in the EU level in the Council and the European Council behind closed doors, and the media still cover the normally less than exciting debates of the EP rather seldom.

## Notes

- 1 See in particular P. Norton (ed.), *National Parliaments and the European Union* (London: Frank Cass, 1996); A. Maurer and W. Wessels (eds), *National Parliaments on their Ways to Europe: Losers or Latecomers?* (Baden-Baden: Nomos, 2001); T. Raunio and S. Hix, 'Backbenchers Learn to Fight Back: European Integration and Parliamentary Government', *West European Politics*, 23(4) (2000) pp. 142–68; and K. Auel and A. Benz (eds), 'The Europeanization of Parliamentary Democracy', *Journal of Legislative Studies*, 11(3–4) (2005).
- 2 See L. Hooghe and G. Marks, *Multi-Level Governance and European Integration* (Lanham: Rowman and Littlefield, 2001); I. Bache and M. Flinders (eds), *Multi-level Governance* (Oxford: Oxford University Press, 2004).
- 3 A. Benz, 'Mehrebenenverflechtung in der Europäischen Union', in M. Jachtenfuchs and B. Kohler-Koch (eds), *Europäische Integration*, 2nd edn (Opladen: Leske + Budrich, 2003), pp. 327–61.
- 4 T. Bergman and E. Damgaard (eds), *Delegation and Accountability in European Integration: the Nordic Parliamentary Democracies and the European Union* (London: Frank Cass, 2000); H. Kassim, B.G. Peters and V. Wright (eds), *The National Coordination of EU Policy: the Domestic Level* (Oxford: Oxford University Press, 2000); and W. Wessels, A. Maurer and J. Mittag (eds), *Fifteen into One? The European Union and its Member States* (Manchester: Manchester University Press, 2003).
- 5 On research explaining cross-national variation in the level of control, see T. Bergman, 'National Parliaments and EU Affairs Committees: Notes on Empirical Variation and Competing Explanations', *Journal of European Public Policy*, 4(3) (1997) pp. 373–87; T. Bergman, 'The European Union as the Next Step of Delegation and Accountability', *European Journal of Political Research*, 37(3) (2000) pp. 415–29; L.L. Martin, *Democratic Commitments: Legislatures and International Cooperation* (Princeton: Princeton University Press, 2000); T. Raunio,

- 'Holding Governments Accountable in European Affairs: Explaining Cross-National Variation', *Journal of Legislative Studies*, 11(3–4) (2005) pp. 319–42; and T. Saalfeld, 'Deliberate Delegation or Abdication? Government Backbenchers, Ministers and European Union Legislation', *Journal of Legislative Studies*, 11(3–4) (2005) pp. 343–71.
- 6 For detailed information on the scrutiny systems in the national parliaments, see COSAC, *Third Bi-annual Report: Developments in European Union, Procedures and Practices, Relevant to Parliamentary Scrutiny* (Brussels, 2005); Maurer and Wessels (eds), *National Parliaments on their Ways to Europe*; and K. Szalay, *Scrutiny of EU Affairs in the National Parliaments of the New Member States: Comparative Analysis* (Budapest: Hungarian National Assembly, 2005).
  - 7 In Greece the idea was to improve the flow of information between the parliament and the EU. However, this has contributed to the committee's weakness by making scrutiny of government behaviour difficult given the presence of MEPs that have no formal link with the government. See D.G. Dimitrakopoulos, 'Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments', *Journal of Common Market Studies*, 39(3) (2001) pp. 405–22.
  - 8 A. Maurer and W. Wessels, 'National Parliaments after Amsterdam: From Slow Adapters to National Players?', in Maurer and Wessels (eds), *National Parliaments on their Ways to Europe*, p. 447.
  - 9 Maurer and Wessels, 'National Parliaments after Amsterdam', pp. 439–45.
  - 10 For example, in 1998 the average size of an EAC in the 15 Member States was 7.4 per cent of all representatives. See Raunio and Hix, 'Backbenchers', p. 156.
  - 11 See in particular I. Mattson and K. Strøm, 'Parliamentary Committees', in H. Döring (ed.), *Parliaments and Majority Rule in Western Europe* (Frankfurt and New York: Campus and St. Martin's Press, 1995), pp. 249–307.
  - 12 T. Raunio, 'The Parliament of Finland: a Model Case for Effective Scrutiny?', in Maurer and Wessels (eds), *National Parliaments on their Ways to Europe*, pp. 173–98.
  - 13 Maurer and Wessels, 'National Parliaments after Amsterdam', pp. 448–9.
  - 14 The same applies to plenaries. T. Bergman et al. concluded that in no Member State legislature does the plenary get actively involved in EU matters, with plenary involvement categorized as 'weak' in 13 countries and as 'moderate' in Finland and Italy. See T. Bergman, W.C. Müller, K. Strøm and M. Blomgren, 'Democratic Delegation and Accountability: Cross-national Patterns', in K. Strøm, W.C. Müller, and T. Bergman (eds), *Delegation and Accountability in Parliamentary Democracies* (Oxford: Oxford University Press, 2003), p. 175.
  - 15 T. König and S. Hug, 'Ratifying Maastricht: Parliamentary Votes on International Treaties and Theoretical Solution Concepts', *European Union Politics*, 1(1) (2000) pp. 93–124.
  - 16 The Austrian case illustrates well how difficult it can be for the parliament to exercise its mandating powers. See G. Falkner, 'How Pervasive are Euro-Politics? Effects of EU Membership on a New Member State', *Journal of Common Market Studies*, 38(2) (2000) pp. 223–50; W.C. Müller, 'Austria', in Kassim et al. (eds), *The National Coordination of EU Policy*, pp. 201–18; and J. Pollak and P. Slominski, 'Influencing EU Politics? The Case of the Austrian Parliament', *Journal of Common Market Studies*, 41(3) (2003) pp. 707–29.

- 17 Maurer and Wessels, 'National Parliaments after Amsterdam', pp. 451–3.
- 18 For more information on the criteria behind the categorizations, see Maurer and Wessels, 'National Parliaments after Amsterdam' and Bergman et al., 'Democratic Delegation'. Where there was contradictory information between the sources, I relied on data from the volume edited by Maurer and Wessels, as that study focused exclusively on the role of national parliaments in European integration. The different categorizations were at least partially explained by the subjective element involved in the categorizations, as both studies relied primarily on the expertise of country specialists. For example, it is quite difficult to measure the involvement of specialized committees in the handling of EU matters.
- 19 See in particular the material available on the homepage of OMC Forum at the European Union Centre of the University of Wisconsin-Madison (<http://eucenter.wisc.edu/OMC>) and the references in S. Borrás and B. Greve (eds), 'The Open Method of Co-ordination: Theoretical, Empirical and Methodological Challenges for EU Studies', *Journal of European Public Policy*, 11(2) (2004), and in J. Zeitlin and P. Pochet with L. Magnusson (eds), *The Open Method of Co-ordination in Action: the European Employment and Social Inclusion Strategies* (Brussels: Peter Lang, 2005).
- 20 The role of the Commission in OMC and other forms of policy coordination varies considerably between policy areas, with the Council often adopting the leading function instead of the Commission.
- 21 See, for example, Borrás and Greve (eds), 'The Open Method of Co-ordination'; S. Borrás and K. Jacobsson, 'The Open Method of Co-ordination and New Governance Patterns in the EU', *Journal of European Public Policy*, 11(2) (2004) pp. 185–208; B. Eberlein and D. Kerwer, 'New Governance in the European Union: a Theoretical Perspective', *Journal of Common Market Studies*, 42(1) (2004) pp. 121–42; A. Héritier, 'New Modes of Governance in Europe: Policy-making without Legislating', in A. Héritier (ed.), *Common Goods: Reinventing European Integration Governance* (Lanham, Md: Rowman and Littlefield, 2002) pp. 185–206; D. Hodson and I. Maher, 'The Open Method as a New Mode of Governance: the Case of Soft Economic Policy Co-ordination', *Journal of Common Market Studies*, 39(4) (2001) pp. 719–46; C. M. Radaelli, 'The Open Method of Coordination: a New Governance Architecture for the European Union?', *Sieps Report* 2003 (1), Stockholm; S. Régent, 'The Open Method of Co-ordination: a Supranational Form of Governance?', *European Law Journal*, 9(2) (2003) pp. 190–214; and Zeitlin et al. (eds), *The Open Method of Co-ordination in Action*.
- 22 This comparison draws on F. Duina and T. Raunio, 'The Open Method of Coordination and National Parliaments: Further Marginalization or New Opportunities?', paper presented at the 15th International Conference of the Council for European Studies, Chicago, Ill., March–April 2006.
- 23 However, in several instances the non-binding policy recommendations are adopted by QMV instead of unanimity.
- 24 See Bergman and Damgaard (eds), *Delegation and Accountability in European Integration*; and K. Hanf and B. Soetendorp (eds), *Adapting to European Integration: Small States and the European Union* (London: Longman, 1998).
- 25 A. Benz, 'Path-dependent Institutions and Strategic Veto Players: National Parliaments in the European Union', *West European Politics*, 27(5) (2004)

- p. 881; K. Auel and A. Benz, 'The Politics of Adaptation: the Europeanisation of National Parliamentary Systems', *Journal of Legislative Studies*, 11(3–4) (2005) p. 379.
- 26 Zeitlin et al. (eds), *The Open Method of Co-ordination in Action*.
- 27 See also K. Jacobsson and H. Schmid, 'The European Employment Strategy at the Crossroads: Contribution to the Evaluation', in D. Foden and L. Magnusson (eds), *Five Years Experience of the Luxembourg Employment Strategy* (Brussels: ETUI, 2003) pp. 111–39; and K. Jacobsson and Å. Vifell, 'New Governance Structures in Employment Policy Making? Taking Stock of the European Employment Strategy', in I. Linsenmann, C. Meyer and W. Wessels (eds), *Economic Government of the EU: a Balance Sheet of New Modes of Policy Coordination* (London: Palgrave, 2006, forthcoming).
- 28 C. de la Porte and P. Nanz, 'The OMC – a Deliberative-democratic Mode of Governance? The Cases of Employment and Pensions', *Journal of European Public Policy*, 11(2) (2004) pp. 267–88.
- 29 C. de la Porte and P. Pochet, 'Participation in the Open Method of Co-ordination: the Cases of Employment and Social Inclusion', in Zeitlin et al. (eds), *The Open Method of Co-ordination in Action*, p. 360.
- 30 Radaelli, 'The Open Method of Coordination', p. 50.
- 31 Another related and highly important question, which lies beyond the scope of this chapter, is the extent to which these civil servants are subject to control by their ministers or even by their immediate superiors in the ministries. The evidence so far would largely indicate that civil servants effectively run the show, with fairly little political guidance from ministers.
- 32 R.L. Watts, *Comparing Federal Systems*, 2nd edn (Montreal and Kingston: McGill-Queen's University Press, 1999), pp. 57–9.
- 33 See M. Painter, *Collaborative Federalism: Economic Reform in Australia in the 1990s* (Cambridge: Cambridge University Press, 1998).
- 34 See T. Börzel, 'Europäisierung und innerstaatlicher Wandel: Zentralisierung und Entparlamentarisierung?', *Politische Vierteljahresschrift*, 41(2) (2000), pp. 225–50; and T. Börzel, *States and Regions in the European Union: Institutional Adaptation in Germany and Spain* (Cambridge: Cambridge University Press, 2002).
- 35 G. de Búrca and J. Zeitlin, 'Constitutionalising the Open Method of Coordination: What Should the Convention Propose?', *CEPS Policy Brief No. 31* (2003); and Jacobsson and Schmid, 'The European Employment Strategy at the Crossroads'.
- 36 This way national legislators would also have the opportunity to learn about developments and policy choices in other countries, hence making it possible for national parliaments to produce better laws in the future. After all, this is a key argument used in favour of OMC. See F. Duina and M. Oliver, 'National Parliaments in the European Union: Are There any Benefits to Integration?', *European Law Journal*, 11(2) (2005) pp. 173–95.
- 37 Dimitrakopoulos, 'Incrementalism and Path Dependence'.
- 38 Bergman, 'National Parliaments'; Bergman, 'The European Union'; and Maurer and Wessels, 'National Parliaments after Amsterdam', pp. 448–53.

# 9

## Organized Civil Society and Input Legitimacy in the EU

*Justin Greenwood*

### **Introduction**

The multilevel governance system of the European Union (EU) affects the roles of organized civil society in the EU political system distinctively, raising striking issues of democratic legitimacy and accountability. A rehearsal of these issues is pertinent to interest groups, scholars of democratic theory and practice, and comparativists interested in federalism.

There are debates familiar to all Western political systems about the democratic impact of organized civil society (here denoting non-governmental organizations [NGOs] with political action orientations, whether producer or otherwise). These debates centre on whether such actors are friend or foe, and whether they are agents of output legitimacy (concerned with popular consent arising from the technical capability of policy making, or 'winning by results'), or input legitimacy (popular consent deriving from opportunities for participation). Yet there are a number of features about the EU that lead to some unique questions about the role of organized interests. These stem from the multilevel character of the EU and the unique nature of its *demos*, which originates from its supranational character and institutional design.

G. Majone prominently represents a school of thought based on the idea that output legitimacy is sufficient for the EU because of its limited authority structure anchored primarily in regulatory functions. Its task is therefore oriented towards the technical efficiency of public policy outputs. It also aims to insulate decision making from popular participation because such participation has the potential to dilute the technical quality of public policies.<sup>1</sup> This hostility to groups as agents of input legitimacy has a common foundation with market liberals, who see those groups as rent-seeking agents interfering with wealth creation processes. At the other end of the

spectrum are perspectives concerned about asymmetries of power between business and other types of interests. This latter perspective is compatible with a view of participatory democracy having the potential to strengthen systemic weaknesses in EU input legitimacy, provided the potential for power asymmetries resulting in the privatization of policy making can be addressed. The possibility of addressing these asymmetries through procedural mechanisms is a central concern reviewed later in this chapter.

Systemic weaknesses in EU representative democracy stem from the lack of an EU-wide public space, which is captured in D. N. Chrysochoou's summary analysis of 'no demos, no democracy'.<sup>2</sup> A lack of 'we-feeling'<sup>3</sup> and the lack of an EU public space born of failings in the usual apparatus of representative democracy are frequently cited as the source of the EU's so-called democratic deficit. European Parliament (EP) elections are 'second-order' national contests,<sup>4</sup> and they do not change a government but merely alter the composition of one of the decision-making institutions of the EU political institutions. The absence of a mass-party system for popular identification and the absence of EU-wide media outlets are contributory factors to weaknesses of representative democracy models. Weakness in representative democracy models is emphasized by the generally low turnout in European Parliament elections comparative to that of national elections. This problem is illustrated by the lowest country turnout in an EP election: 17 per cent in Slovakia in 2004.

Set in this context, there is plenty of room for models that draw upon participatory democracy. The 2004 Treaty establishing a Constitution for Europe enshrines both representative and participatory democracy models in its Chapter on the Democratic Life of the Union and orders these with a secondary role for participatory democracy. Yet precisely because of the lack of a European public space the principal outlet of participatory democracy tends to be that of organized civil society. In practice, there is systemic reliance upon organized civil society to perform core democratic/accountability functions, funding citizen interest groups to ensure a system of checks and balances upon other types of civil society interests, and as agents exercising accountability upon the EU political system. As is evident from the account that follows, a wide range of procedural mechanisms are in place that aim to address traditional objections about the ways in which asymmetries of power can lead to the privatization of public policy making.

### **The EU system of organized civil society**

As agents of output and input legitimacy, civil society organizations play a role in everyday policy making and monitoring, as agents of political

support for EU political institutions in their search for further competencies, and as a means of civic participation in EU policy making. An estimated 1500<sup>5</sup> civil society groups represented at the EU level engage the EU political system together with national interest groups, politically active large firms and governmental organizations outside of the formal representative structures of Member States, particularly at territorial levels.

In the European Community Pillar of the European Union, legislation is made through the process of the European Commission as policy initiator and drafter, with the European Parliament and Council of Ministers as either legislators or co-legislators. This process is monitored by the European Commission and upheld in law by the European Court of Justice. This multilevel governance system facilitates access by organized interest groups that both respond to and seek to create EU provision in their own interest fields. The roles of the European Commission and its deficiencies of expert resources lead to intense relationships with organized interests. Despite this, the progressive acquisition of powers by the European Parliament through its claims as a democratic outlet has made it a target for organized civil society interests second only to the Commission. The establishment of producer interest groups coincided with the start of the European Economic Community in 1957. Citizen interest groups progressively arrived on the scene from the 1970s onwards, but they became particularly prominent amid attempts to give the EU some serious democratic underpinnings from the 1990s onwards. As aspects of the intergovernmental Justice and Home Affairs Pillar became decanted by Treaty agreements into Pillar 1 (and reduced to the 'Police and Judicial Cooperation in Criminal Matters' Pillar), so the number of related citizen interest groups increased. Around two-thirds of all EU interest groups are from business, with around one-fifth being citizen interest groups. This numerical superiority of business groups should not, however, be equated with influence. This is because incentives to organize around narrow specialisms in which collective action is easy ultimately result in a landscape of small, specialist and often competing business groups. Yet EU political institutions have been active in stimulating the presence of cognate 'families' of citizen interest groups adept at purposefully dividing resources between themselves for wider coverage. The degree of institutionalization of citizen interest groups constituted at the EU level is one of the two highly distinctive features that set such groups apart from groups elsewhere. The second feature concerns their federated nature: most EU interest groups are associations with roots in national organizations. This is the case even in business domains where direct company membership organizations exist. Each of these factors carries

significant implications for systemic issues of democratic legitimacy and accountability.

### **The institutionalization of interest groups in the EU political system**

The European Commission has been deeply responsible for the formation and maintenance of groups constituted at the EU level since its inception. Its notorious shortage of resources, its need for allies in its search for further European integration, and its continual quest for democratic legitimacy have led the Commission to stimulate the formation of a wide range of interest groups and to divert around 1 per cent of the EU annual budget (around €1000 million each year) through citizen interest groups.<sup>6</sup>

The Commission is like most bureaucracies in valuing the expert resources that outside interests bring to public policy making but is exceptional in the relatively low level of in-house expertise it can provide. Most Commission officials are generalists by training, and there is a chronic shortage of Commission staff resources relative to most comparable administrations. This is largely due to unwillingness on the part of Member States to fund an expansionist-seeking administration likely to challenge their prerogatives. N. Nugent has calculated that the EU institutions employ 0.8 staff for every 10,000 European citizens, set against 300 per 10,000 population in the Member States.<sup>7</sup> Under these circumstances it is imaginable that resource-rich interest groups enjoy an advantage, but the built-in system of checks and balances that is the multilevel decision-making system of the EU works against any such tendency. A more serious problem for the EU political system is the lack of popular legitimacy for the European Commission. This has led the Commission to seek contact with civil society through organized groups as a significant means to address this problem. This has always been an unlikely strategy if the goals have been to engage citizens in the Member States in EU politics, not least because almost all EU interest groups are associations of organizations (such as national or other European associations and/or, in the case of business associations, of companies). There is now some research to suggest that EU groups spend little time engaging their members in EU affairs; as one leading EU environmental group put it,

while ideally it would be good to get people involved, time pressures mean that the most effective use of my time is to get on with advocacy. In the end my role is not to encourage the most participatory governance, but to ensure the best results for the environment.<sup>8</sup>



Groups have also been used by the Commission as a channel of political communication to Member State governments, with mixed results in terms of achievements in securing the expansion of EU competencies in the Treaties. A typical pattern has emerged from one of the most expansionist-oriented services of the European Commission, namely the Directorate General (DG) Employment and Social Affairs (DG EMP). In this, a topic is selected on which there is likely to be popular public support for political action, such as extending equality provisions for women, anti-racism measures, and a conference event held, often coinciding with a designated European Year of Action. From the conference will emerge an interest group supported by Commission funding. The Commission will provide active support to the group during the group's subsequent nurturing phases, including delegating to it official functions such as collecting information under a designated 'observatory status'. Groups concerned with anti-racism, homelessness and women's equality have followed a similar pattern of development. The hope for the Commission is that the group will one day be strong enough to carry demands for more integration to the doors of Member States that, when presented with an irresistible case, will agree to further specific EU competencies in a forthcoming Treaty. Precisely this pattern appears to have happened in connection with the expansion of provisions for equality in the Treaty of Amsterdam. In a story told by the former Secretary General of the group<sup>9</sup> the Spanish member of the European Women's Lobby successfully encouraged the government of Spain to propose the relevant clause that finally appeared in the Treaty.

These roles help explain the centrality of organized civil society to EU-level policy making. A long-standing statement of the European Commission position displayed on the EU's official website reads that

the Commission has always been an institution open to outside input. The Commission believes this process to be fundamental to the development of its policies. This dialogue has proved valuable to both the Commission and to interested outside parties. Commission officials acknowledge the need for such outside input and welcome it.<sup>10</sup>

Beyond the social field, the Commission has also been active in stimulating and nurturing EU-level groups in a wide cross section of activity. In business domains the Commission has stimulated the formation of groups in key sectors where they did not exist previously, while trade union, consumer and virtually all other types of citizen interest groups operating at the EU level (estimated to be around 300 in number) receive

Commission funding.<sup>11</sup> Some of this is project-related funding for which groups undertake activities on behalf of the Commission, and some is core funding. For example, the European Social Platform is a very significant umbrella group of EU groups in the social field and was itself a creation of the European political institutions in an attempt to further the cause of civil dialogue. It receives 90 per cent of its income in the above-described way.<sup>12</sup> It is not unusual for citizen groups to receive most of their funding from EU political institutions, with many Social Platform members receiving the overwhelming majority of funding in this manner.<sup>13</sup> Resources from EU political institutions thus assist some citizen interest groups to achieve significant resource levels. This assistance may be in the form of supplements to those groups that derive their status as world wide movements from the EU. An example of this is the World Wide Fund for Nature, which has around 25 staff in their Brussels office. The support may also take the form of mainstay support. An example of a group operating on this type of support is the European Youth Forum and the European Women's Lobby, with 16–20 staff in a Brussels office.<sup>14</sup> Many such groups have a 'sponsor' department and have been heavily institutionalized into the Commission services. However, they often have 'revolving-door' relationships with their sponsor departments. This is the case between DG EMP and both the European Women's Lobby<sup>15</sup> and the European Trade Union Confederation.<sup>16</sup> It is also evident between DG Environment and a group of ten environmental organizations (including Greenpeace, Friends of the Earth, and WWF) known as the 'G10'.<sup>17</sup>

Funding and institutionalization at these levels raise questions in the minds of any observer about the independence of groups. Paradoxically, citizen groups tend to see such funding as a guarantor of their independence in that it prevents them from seeking otherwise compromising sources of funding from other potential donors such as business organizations. For example, one anti-globalization/capitalism organization held a leadership role in the Battle of Seattle protests. The group was involved at the director level and received funding from the European Commission. Such an example suggests that groups do not feel compromised by such funding. Moreover, institutionalization seems to be the fate of all groups, even those committed from the outset to 'outsider' tactics. There is the ironic example of another anti-globalization/capitalism group using outsider confrontation tactics to complain of too much corporate lobbying at the expense of others. This group ended up sitting at the table of a European Commissioner to discuss the details of a lobby regulatory scheme and achieved a link from the Commissioner's website for the initiative.<sup>18</sup> Though these groups may be classical outsider groups in other settings,

the reality is that Brussels politics tends to be centred on institutionalized dialogue. This leaves little option for groups in this category but to adopt insider strategies supplemented by outsider tactics as necessary. While a recent demonstration organized by the European Trade Union Confederation (ETUC) did defy the norm by achieving significant numbers, attempts at 'mass mobilization' usually require different tactics from that of drawing large numbers of potential supporters to Brussels because supporters are likely to be highly dispersed geographically. Many protest events tend to be symbolic and draw upon a circle of organizations that are already well established in Brussels. They also increasingly turn to the Internet as a solution to the problems of mass mobilization. In consequence, groups have chosen the route of institutionalization, finding a patron in DG EMP to the extent that one commentator famously dubbed it 'union lobby organisation, old style'.<sup>19</sup>

Dialogue between the political institutions and civil society is heavily institutionalized as a result of system design as well as geographical dispersal. As a multilevel governance system with a separation of legislative powers between the Commission as policy initiators and the Parliament and Council as co-legislators, and with the diversity of elements each of these institutions contains, the system is always likely to be oriented towards consensus rather than adversarial politics. From this and the ease of access to each of these institutions arises the opportunity for civil society interest groups to achieve some kind of benefit, with very few cases of outright winners and losers. Every issue has to be fought for afresh with no in-built majorities. The role of the Commission is policy initiation and drafting. This causes most civil society interest groups to head there in the first instance and be drawn into the details of policy making in either formalized committees or bilateral exchanges. These incentives deliver the type of response quoted earlier from the leading EU environmental group, whereby groups become inward looking towards policy outputs rather than encouraging member participation. Partly in response to this, the Commission has undertaken a series of measures concerned with making all of its exchanges with civil society more systematic. The measures are aimed at input legitimacy goals of broadening participation beyond a narrow range of civil society organizations based in Brussels, transparency, and keeping dialogue on a 'level playing field'. However, they are also an attempt to ask groups to conform to a number of standards. These measures principally originated in the European Commission's 2001 White Paper on Governance,<sup>20</sup> which examined how to enhance democracy in Europe and increase the legitimacy of the institutions, and are outlined in further detail below.

The European Parliament's approach to organized civil society carries a degree of ambiguity. This is because the EP is grounded in a representative model of democracy, whereas organized civil society belongs to the world of participatory democracy. Moreover, the relatively young degree of establishment of the EP has meant that it jealously guards its powers. Nonetheless, there is a vigorous operational exchange through the two worlds based on the EP's committee system. From the exchange arise the details of policy positions, and it is particularly geared to the detail of amending proposals from the other political institutions. This leads to intense exchanges between committee members, rapporteurs (leading on a given dossier), shadow rapporteurs and those who advise them. The intensity of these exchanges has occasionally given rise to tensions, although thus far these have only resulted in a narrowly focused, incentivized lobby regulatory system aimed more at the avoidance of excess than at issues of asymmetries of power: those who wish the incentive of an annual pass giving privileged access to certain areas of the EP buildings are required to sign up to a code of good conduct (developed by public affairs practitioners) and to appear on a public web register. The alternative is to queue up alongside members of the general public visiting the Parliament for a one-day pass. Any transgressions of the code can lead to its withdrawal.

### **The federated basis of EU interest groups**

The second striking feature about EU-organized civil society identified at the outset is that most groups are federations of national organizations. Almost none organize individuals directly, while those in the citizen field are either confederations of national organizations, European representative offices of international organizations, or cause groups without a membership base. While EU business associations represent either national associations or large companies, the majority have national associations as members. This means that EU interest groups and associations are quite different from national or local business associations or NGOs in that they do not offer special membership incentives by way of services. Instead, they are dedicated to political representation because their members are either political organizations or large companies. This narrow focus means that associations and interest groups appointed at the EU level are smaller than national groups, with a much more restricted income base concentrated on membership subscriptions rather than supplements through membership services. This resource dependence can lead to restricted autonomy for groups, which in turn may limit the ability of groups to take a leadership role for their members. Additionally, it may

lead to groups that are geared towards articulating the demands of their members rather than seeking to impose their own conceptions of what their interests are. This problem appears to be particularly acute in business groups because interests turn to specialism as an organizing device. This often occurs in the absence of alternative sources of cohesion. An example of an alternative would be state sponsorship in settings where a national government can license an association. The result of a narrow membership base is a high degree of control by members over the positions of associations. In contrast, interests with a diffuse membership base, commonly found in citizen domains, often have the freedom to define a position. The result is that business groups are weaker at the EU level than they otherwise might be, with a myriad of narrowly constituted, competing organizations that are relatively highly controlled by their members.

### **The role of groups in EU input legitimacy and democratic accountability**

The fragmentation of business interests, the consensual basis of EU policy making, and the fragmented nature of EU decision making are all consequences of a multilevel decision-making system. This system tends to result both in pluralistic outcomes and in organized interests holding centre stage. One factor contributing to these outcomes is the above-mentioned regime of institutionalization, which is aimed at creating and sustaining a constituency of citizen interest groups as a counterweight to business. The second factor is a system of procedures designed to support a level playing field of access and participation and possibly (as outlined later) to regulate it. Furthermore, the system enables a wide constituency of actors to keep the EU political system accountable, often through the use of transparency mechanisms. A significant number of these procedures arose from the 2001 White Paper on Governance and focused on interaction with civil society for policy-making purposes and the transparency of this process. Both of these foci involve the use of *Europa* for dissemination. From start to finish, an outline of the EU consultation process is:

1. The announcement of all legislative measures published as an advance annual programme of work.<sup>21</sup> This responded to earlier criticism that there was little systematic public announcement of the intention to legislate and the asymmetric effects this produced in privileging elites with inside knowledge.

2. The parallel publication (to (1) above) of a comprehensive consultation plan (in EU jargon, a consultation 'roadmap').
3. The presence of minimum consultation standards<sup>22</sup> embracing all legislation announced in (1) above, involving a series of detailed measures requiring clarity as to the issues being developed, the mechanisms being used to consult, who is being consulted and why, and what has influenced decisions in the formulation of policy.
4. The availability of a variety of consultative tools, including an open access Internet portal for consultations, with responses often made public.<sup>23</sup>
5. Commission justificatory commentary when the final policy proposal is published as to how it responded to the consultations it received.

The process is assisted by a number of accompanying transparency measures. One of these concerns registers of committees<sup>24</sup> and experts.<sup>25</sup> Detailed measures concerning the public use of expertise seek to advance both output and input legitimacy in that they are designed to help Commission departments mobilize and exploit a wide range of appropriate public expertise. They are also designed to ensure that the process of collecting and using expertise is credible. Among the transparency measures, however, the most striking is a 2001 Regulation on Access to Documents<sup>26</sup> supported by a web-based search facility of public document registers.<sup>27</sup> This makes most documents available, including those originating with third parties, within 15 working days of request, and most are available for free delivery by e-mail. A key expectation is that organized civil society will use this mechanism to exercise accountability functions on the EU political system, acting as checks and balances watchdogs. In doing so they also undertake a function on behalf of a wider public constituency and perhaps even bring politics to the people in the process. A logical development of this concerns the emphasis upon citizen groups to operationalize a 'Citizen's Initiative'. This Citizen's Initiative is found in the 2004 Treaty that established a Constitution for Europe, and it acts as a trigger for public policy action in response to a threshold of 1 million signatures from a number of different EU Member States. Although this measure is stalled while the Treaty awaits ratification, a campaign is now under way to introduce the measure as a simple EU regulation. If successful, this would further strengthen the role of EU-organized civil society groups as key agents of input legitimacy.<sup>28</sup> D. Curtin is one commentator who expects EU 'process democracy' to address the potential for asymmetries of power between producer and citizen interests.<sup>29</sup>

The White Paper on Governance paradoxically also opened up an agenda on interest groups that differed entirely from the thrust of the above in seeking a systematic basis of open, public consultation:

In some policy sectors, where consultative practices are already well established, the Commission could develop more extensive partnership arrangements. On the Commission's part, this will entail a commitment for additional consultations compared to the minimum standards. In return, the arrangements will prompt civil society organisations to tighten up their internal structures, furnish guarantees of openness and representativity, and prove their capacity to relay information or lead debates in the Member States.<sup>30</sup>

This statement carries striking ideas and implications about partnership arrangements in return for cherished deliverables in group structure and operation. The idea of extended policy partnerships brought a rebuke from the EP on the basis that it would create a two-tiered system of civil society groups with differential access to the EU political system and subsequent backtracking from the Commission. Nonetheless, a series of *de facto* extended policy partnerships already seem to be in place. These exist at a formal level, which is demonstrated by the ability for representative labour and employer organizations to opt to draft employment-related legislation. They also exist at progressively informal levels throughout the services of the Commission and embrace the full range of civil society interests. These range from the heavily institutionalized arrangements involving, for example, DG EMP and DG Environment in the creation of 'family' NGOs. Other examples include established dialogues for civil society organizations (with notable examples in the development, trade and consumer policy fields) and smaller bilateral actors. The Social Platform's leading role in the Forum of Civil Society was parallel to the Convention drafting a Constitutional Treaty for Europe, and representatives of the group were in attendance at informal preliminaries to Council meetings.<sup>31</sup> This is an example of such bilateral extended policy partnerships. Unsurprisingly, the Social Platform as a confederation of other EU groups in the social field has encouraged the development of the 'representativeness agenda' and has argued for the protection of its already elevated status and some kind of accreditation scheme.<sup>32</sup>

The reference to 'representativity' in the 2001 White Paper on Governance has persisted in successor policy initiatives. A 2002 policy document on public consultation states that

openness and accountability are important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent which interests they represent; how inclusive that representation is.

Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above . . . if this information is not provided, submissions will be considered as individual contributions.

[I]t is important for the Commission to consider how representative views are when taking a political decision following a consultation process.<sup>33</sup>

While an open question is precisely what the Commission means by 'representativity', almost all of the groups involved in the dialogues described above are able to demonstrate that they represent a given constituency of organizations in that they are federated organizations. This would appear to give such groups an advantage over 'cause' groups that derive their legitimacy more from their ability to speak up for a given cause than in representing a given membership constituency. The advantage is apparent in the detail of the very recent Commission practice in public consultation in that the Commission continues to state an explicit priority for organizations that can demonstrate criteria of representativeness. The Commission also warned those unable to meet such standards that their responses will instead be treated as individual contributions.<sup>34</sup> Despite the obvious attractions of interacting with groups whose legitimacy is based upon solid foundations of representativity, the pluralism of civil society provides no foundation for restricting legitimacy in this way, and any such restriction does not provide a basis for participatory democracy to support that of representative democracy.

Despite an apparent preference for representative organizations and the presence of and desire for extended policy partnerships, the Commission has a long record of rejecting a system of accreditation of interest groups. One such key statement appeared in 1992:

The Commission has a general policy not to grant privileges to special interest groups, such as the issuing of entry passes and favoured access to information. Nor does it give associations an official endorsement by granting them consultative status. This is because the Commission has always wanted to maintain a dialogue which is as open as possible with all interested parties.<sup>35</sup>



This position was confirmed a decade later, asserting that '(t)he Commission does not intend to create new bureaucratic hurdles in order to restrict the number of those that can participate in consultation processes'.<sup>36</sup>

Despite these statements, a further paradox from the White Paper on Governance initiatives is that they have led to the development of a public, Commission-maintained, web-based directory of interest groups able to meet certain criteria for access. The database carries with it the incentive for inclusion that it is used by the different Commission services to identify relevant groups for consultation:

The database enables both the general public and civil society organisations themselves to see what voices might be heard in the Commission's consultation processes, both within structured consultation forums and on a more informal basis. It provides a means for European civil society organisations to make themselves known to the Commission, thus increasing the list of potential consultation partners. It is a tool that can be used by the Commission itself to identify the appropriate mix of consultation partners who can offer the necessary geographical/sectoral/target group coverage.<sup>37</sup>

In order to gain access to the database groups first have to satisfy certain criteria of representativeness,<sup>38</sup> including geographic coverage and the authority to speak on behalf of members. Despite explicit statements by the Commission in its guidance notes to the database that the database neither constitutes a system of accreditation nor is intended to confer special privileges,<sup>39</sup> aspects of it bear a resemblance to one. These details reveal the presence of a *de facto* preference for organizations that can demonstrate their representativeness. While this simplifies the consultative life of the Commission and carries through concerns about groups that appear to be a 'one-man band with a website', it does appear to privilege representative, membership-based groups over certain 'cause' groups unattached to a membership constituency. At the EU level, nearly all federated groups and business associations representing companies are able to demonstrate their ability to meet the representative criteria. Yet inevitably some 'cause' groups operating in the EU political domain are unable to do so.

The European Commission's policy practice brings into sharp relief a series of issues concerning the engagement of organized civil society with political institutions – an engagement that goes well beyond the EU political system. At one end of the spectrum lies regulation, and at the other extreme lies a *laissez-faire* 'marketplace of ideas' approach, with

much middle ground in between. While blunt regulatory attempts to employ criteria such as representativity carry the sort of consequences described above, a distinction exists between political voice and participation. Clearly, no democratic system can contemplate the regulation of political voice, but the participation of organized civil society interests in public policy making does raise a series of issues by virtue of their public engagement. One issue is that of transparency. At the EU level, this issue is covered throughout the comprehensive consultation system together with the CONECCS (Consultation, the European Commission and Civil Society) initiative and may be further developed by a new Transparency Initiative. The consultative paper issued in May 2006 proposes a voluntary system of registration linked to political participation together with self-regulatory standards. The interesting details of what is meant by participation as well as what the sanctions and incentives are have yet to be revealed. The advance report suggests that the register would be on open access to all, providing information about registered organizations, whom they represent and who is funding them. This information would be linked to a code of conduct and 'lobbying disclosure'. While policy measures in pursuit of transparency are easy to champion, find a ready constituency of supporters, and are generally irresistible in open public arenas, multilevel governance political systems do require bargaining to produce outcomes, which in turn is facilitated by some degree of opacity. Pursuing the point, D. Naurin shows how the mechanisms of member monitoring in trade associations come into play when transparency measures are introduced. In particular, D. Naurin illustrates that these measures encourage general secretaries to play to the gallery of their member audiences rather than negotiating outcomes that may have wider distributional benefits.<sup>40</sup> His data arise from a content analysis of letters written by trade associations before and after the 2001 Access to Documents regulation came into effect. A key point is that the legislation was made retroactive and that the authors of letters pre-2001 would not have known that their correspondence would be in the public domain. Knowledge of this after the measure was introduced produced a marked increase in the use of self-interested references in letters with the understanding that trade association members (principals) would have the ability to monitor their agents. In this sense, 'full transparency' can produce self-interested outcomes rather than deliberative ones and needs to be carefully managed to produce public interest outcomes.

A second issue that arises when groups participate in public decision making is the question of accountability and, in particular, to whom such groups should be accountable. This embraces the ways in which interest

groups as collective entities undertake internal deliberation so as to arrive at policy positions and the ways in which they produce and use (or abuse) information put forward in support of policy positions.<sup>41</sup>

Beyond transparency and accountability, R. Plant continues to press the agenda of representativity:

Once groups seek to have a direct influence upon the political process and once they are drawn into the circle of consultation over policy they are no longer seen as just civil society organisations, and it is appropriate and important for the health of democratic policy making that searching questions are asked about representativeness and accountability.<sup>42</sup>

The definitional issues surrounding representativity and participation are likely to lead to soft rather than legalistic policy instruments. One of these soft policy instruments is employed in the United Kingdom, where a 'Compact' between government and voluntary organizations on consultation and policy appraisal pledges each to conform to a series of standards. These standards include a requirement for the voluntary sector to

define and demonstrate how they represent their stated constituency, by stating who they are, what groups or causes in society they represent and how they involved those interests in forming their policies and positions, and in responding to the consultation itself; ensure that the information they present to Government is accurate and that any research has been conducted in an objective and unbiased manner.<sup>43</sup>

The latest development in the initiative to pursue wider standards involves the appointment of a Compact Commissioner and the possibility of an accreditation Kitemark.<sup>44</sup> While the detail of these is yet to emerge, the developing Compact does seem to provide a promising pointer for other political systems, including the EU, in addressing a set of common issues.

## **Conclusion**

While a number of issues in the EU system of organized civil society are common to other political systems, the EU-related issues have a number of distinctive features. Many of these have their origins in multilevel governance, with some familiar to other political systems of a similar design. However, some are distinctive because of the transnational character of the EU and the limited basis of its authority. Of particular note is the way in which organized civil society is so heavily institutionalized in the EU

political system. It acts both as an agent of everyday policy making and as an agent of political demand from supranational political institutions to Member States. The extent of institutionalization is striking, with the EU political institutions playing a significant role in group formation and maintenance. The purposes of these roles span output and input legitimacy. Yet of note for the purpose of this volume are the roles of groups in input legitimacy and the efforts invested by EU political institutions to prevent groups from becoming dysfunctional to this legitimizing process. These efforts include the funding invested in groups for a system of checks and balances both in relation to outlets of organized civil society and to EU political institutions themselves. In pursuit of these roles, the comprehensive range of procedures is significant. Such procedures include those for public consultation and access to documents, which equip organized civil society with the ability to act as mechanisms of public accountability in the absence of structures such as an EU-wide mass media and public engagement with the EU. The result is a system of designed pluralism in which the potential for asymmetries of power between producer and citizen interests is addressed. An emerging challenge involves how to develop a series of operational standards of transparency and accountability for the participation in public policy making by organized civil society interest groups. Such standards demand a delicate balance between these canons without favour of one type of interest over another.

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## **Part IV**

# **EU Enlargement, Democracy and Multilevel Governance**

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# 10

## Euroscepticism as a Path for Inclusion: Multilevel Governance in the EU as Seen from the East

*David Ost*

### **Introduction**

Resolving the European Union's (EU) so-called democratic deficit means different things to different people. One view, more prevalent among Germans, looks to a broadened purview for Europe-wide representative bodies as the path for increasing the EU's democratic credentials. Another view, more common in Britain, would invest national legislatures with a more significant role in the decision-making process. In eastern Europe, a different perspective prevails. For many east Europeans, particularly Poles, realizing democracy in the EU primarily involves recognition of the sovereignty, equality and dignity of each Member State. Euroscepticism has been so high in the East precisely because so many have felt this is lacking. They have felt this in large part because of what they consider to be the humiliating dynamics of the long accession process.

People in the East do not talk much about a 'democratic deficit' in the EU. It is a phrase only rarely used in the press and then used chiefly to describe Western attitudes. Yet the feeling of exclusion among east Europeans has been even greater than in the West – precisely because these nations were so long excluded from the integration process. The language of 'democratic deficit' was unavailable to them because, until 2004, they simply were not in the club. Those trying to join an organization are in no position to demand how it must behave. The East was not required to join, and as westerners liked to say, 'they're the ones who are joining us, not us them'. Yet the very idea of the EU has always been the idea of a united continent that includes East and West. This has led to the peculiar situation that has caused such trouble: the eastern Member States, and Poland in particular, have long felt they justly have some rights in the EU. However, until about 2002 (when entry was assured) they could only be supplicants,

not equals. While the EU-15 was pushing a project of multilevel governance aimed at reducing the *West's* sense of democratic deficit, it was perpetuating the marginalization of the East that made the latter sceptical of the EU's real democratic commitments.

Multilevel governance (MLG) expanded dramatically beginning in the 1980s, first to pursue Single Market policies and then to protect such policies and pursue other integrationist measures in an enlarged EU. Many west Europeans looked upon MLG happily: it would pave the way towards a federalist Europe in which the continent could develop an identity closer to that of a state, and it would help resolve the democratic deficit by expanding the decision-making power of EU institutions and by making those institutions more representative of national constituencies. As we shall see, however, MLG has mostly perpetuated the East's sense of its own marginalization. Instead of providing for the smooth working of an enlarged EU, the MLG project has in some ways contaminated that enlargement. This is because it came to be seen in the East as a project devised by westerners to maintain their own dominance.

What this chapter will show, then, is that democratic legitimacy relates to multilevel governance quite differently in the East than in the EU-15. In the East, democratic legitimacy has more to do with the *status* of the new Member States within the EU than with the direct link between EU institutions and the citizenry. Because the MLG project developed simultaneously with an enlargement process that was so unequal, it appears in the East not as something to ease the democratic deficit but as yet another manifestation of it. Given that the eastern countries are now full EU members, changes are possible in the future. But this will require both East and West coming to a better understanding of what the accession process has been all about.

### **Multilevel governance as a defence of the privileged**

Frustration with patterns of MLG has been particularly strong in Poland. Poland has been the most sensitive to real and perceived slights by the EU-15 because it is the only one of the new Member States that has not just a moral but a realpolitik claim to be treated with dignity. Its population of nearly 40 million is larger than that of the other nine new entrants combined. Its economy accounts for nearly half of the ten states' combined GDP. Poland's geographic location has made its subjugation the first order of business for would-be European conquerors, and its borders with Russia, Belarus and Ukraine (among others) still give it central strategic importance. Then there is the moral capital that Poland has

accumulated, having twice been carved up by European neighbours (1792 and 1939) and having been the site of the great social movement, Solidarity, that helped make today's European unification possible. For all these reasons, no real European integration can be possible without a satisfied Poland. But as we shall see, many Poles have viewed MLG with great scepticism. The Nice Treaty of 2000, involving a system of representation in the Council that was favourable to Poland, temporarily allayed Polish suspicions. However, the West's own reaction to Nice, which dubbed the treaty as a temporary and poorly planned approach, confirmed Poland's fears. Efforts to revise Nice began in earnest at the Constitutional Convention of 2002–3, and these developments turned even Poland's most ardent EU advocates into critics.

Multilevel governance has rarely been studied from the point of view of the new Member States. L. Hooghe and G. Marks's seminal work on the subject contains no mention of eastern Europe even though it was written at a time when enlargement was imminent.<sup>1</sup> An entire volume on the implications of the Amsterdam Treaty published in 2001 has only one chapter dealing with enlargement. The chapter, written by a Pole, leaves the reader with the impression that enlargement only concerned the East.<sup>2</sup> In fact, it was the prospect of enlargement that led to the rash of new institutional designing, including more use of qualified majority voting (QMV) instead of single-government veto power as well as the pursuit of a European Constitution itself. Most accounts of such measures acknowledge that they were instituted to deal with the 'problems' of enlargement yet say little about the experiences of the acceding countries. In the western-centric literature the eastern countries are presented as objects, not subjects; they are 'problematic' countries whose incorporation into the EU poses 'troubles'. Standpoint theory has long demonstrated the way certain groups are discursively constructed as subordinate, and most EU talk constructs the East in just that way.

Hooghe and Marks describe multilevel governance as the 'dispersion of authoritative decision making across multiple territorial levels'.<sup>3</sup> They mention both the shifting of authority upwards from the state level to the European level and the shifting downward towards regionalization. Of course, it is the first level that has created the most dispute throughout Europe. The first major push towards MLG came with the Single European Act of 1986. The introduction of QMV in the Council of Ministers and the increase in the power of the European Parliament constituted the first major curtailment of the veto power possessed by each Member State – the singular provision that guaranteed each individual country that no major policies could be implemented without its consent.

Why did countries agree to give up some of their sovereignty to higher bodies? Hooghe and Marks cite three reasons all having to do with protecting governments from opposition to their pursuit of unpopular policies. Diffusing authority upwards, they say, can 'increase a government leader's bargaining leverage', 'insulate a particular policy from the efforts of the next elected government to change it' and 'relieve a government leader from the burden of responsibility' of implementing a particular policy.<sup>4</sup> Governments farmed off some of their sovereignty in order to pursue policies that might otherwise easily be opposed. It is no accident, then, that MLG initially centred on economic issues. For everyone knew that the Single Market was going to create downward pressure on the welfare state and that this would elicit political mobilization on national governments aimed at blocking the erosion of welfare provisions. MLG was expanded with the Single Market Act in order to prevent governments from caving in to such mobilization. Qualified majority voting meant that lone governments could 'safely' protest against neo-liberal economic policies. Their objection would not halt progress towards the Single Market – either their own progress or the EU's as a whole – since a country's objection would no longer be enough to derail the policy in question.

Indeed, it was only because it was raised in the context of economic policy that QMV was able to get through. On any other issue it would have been vetoed by Margaret Thatcher. But this fierce opponent of European integration was an even fiercer proponent of neo-liberalism. Recognizing that giving up the national veto in favour of QMV could prevent market liberalization from being held hostage by future governments, she opted for giving up the national veto.<sup>5</sup>

The breakthrough in MLG, in order to advance the Single Market, took place in 1986. Yet it was the events of 1989 and the prospect of enlargement that pushed MLG to a new level. First came the Maastricht Treaty, which was passed in 1993 but first proposed at the Maastricht Intergovernmental Council meeting (IGC) in 1992. The importance of Maastricht was that it launched the notion of a 'core' Europe. By promulgating the European Monetary Union with an opt-out clause designed to avoid a British veto, Maastricht established the principle that a group of countries in Europe can embark on a major policy innovation without the consent of the whole.

The Maastricht IGC avoided speaking directly of eastern Europe even though these countries had been free of Soviet tutelage for nearly three years and were pressing for an EU commitment to take them in. But Maastricht was in fact a crucial part of the eventual accession process: the

EU at this time was looking upon enlargement with a sense of foreboding, which Germany's difficult experience swallowing up its east had made palpable. The EU had set up Association Agreements with the eastern states and recognized that they would soon have to propose more, but the old Member States did not want to do anything that could box them in. West Germany could dictate conditions to the former East Germany because East Germany simply dissolved, but the eastern states, if they joined, would enter the EU as full Member States. By establishing the principle of an EU core that was able to pursue policies that Member States might object to, Maastricht played a crucial role in alleviating west European worries that east European accession would put a brake on their plans for integration. The MLG that was taken to a new stage in Maastricht constituted a way for influential actors to defend their own interests.

### **Selfish aid of the 1990s**

As in Maastricht, EU leaders in the early 1990s studiously avoided making any commitment to the eastern states, but they did create various institutions that indicated membership would eventually occur. The East had no choice but to treat these institutions as tests. It had to express gratitude, accept everything proffered as sincere, and abide by all strings attached in order to earn credit that, the East hoped, could soon be cashed in for full membership.

What were these institutions? At the most general level were the Association Agreements, also known as Europe Agreements, that establish a standard affiliation offered by the EU to non-Member States and create a general framework for cooperation. It is usually given as a carrot in return for promises of reform and has been used in a wide variety of contexts, with the first offered to Turkey in 1964 and the most recent, in 2006, extended to Lebanon. Although all future EU members began with Association Agreements, these two examples make clear that it constitutes anything but a guarantee.

Then came the aid institutions. The most important of these were PHARE, providing aid and training; the European Bank for Reconstruction and Development, for longer-term investment projects; and the East's incorporation into ERASMUS, facilitating higher education exchange for students. Easterners used to like to tell stories of the western advisers who came east, lavishly bankrolled by PHARE (or USAID), to instruct the 'natives' either on things that were irrelevant or things they already knew. J. Wedel wrote a book on this, documenting the ways and the reasons why eastern officials so often had to feign both ignorance and gratitude

in such encounters.<sup>6</sup> Of course, that was not the whole story. ERASMUS, for example, appears to have been a particularly beneficial and well-conceived programme, perhaps because it was not created specifically for the East. Nevertheless, the point is that these programmes were part of the dominant paradigm of West helping East, with the latter defined always as the object, needing to be grateful, and having to conceal real opinions.

Of course, there is nothing surprising about this. The cliché ‘beggars can’t be choosers’ anticipates such an outcome, as does bargaining theory and the notion of ‘asymmetrical interdependence’, according to which countries that need alliances the most are always in a weaker position and therefore must make the most concessions.<sup>7</sup> Perhaps it would not have been so grating if not for the new *trade* arrangements introduced by the EU. Accepting these was much harder.

The heart of the matter was that the East had to open up its markets to goods from the West, but the West did not have to reciprocate. In return for any of the aid or coquettish half-promises that membership might eventually be in the cards, the East had to lift both tariff and non-tariff barriers to trade, while the West maintained a slew of non-tariff barriers against eastern goods.

As P. Gowan describes it, the central European states

without exception . . . faced severe protectionist barriers from the EC under the Europe Agreements. The CAP was not modified significantly and the bulk of agricultural exports from Poland and Hungary – grain, livestock and dairy – [were] in core cap sectors. Chemicals [from the east] continued to be subject to . . . anti-dumping measures; textiles and apparel were subject to a form of managed trade which would be very damaging to the [east European] textile industry; steel would face restrictive price agreements and anti-dumping instruments, and other sectors like Polish cars were subject to so-called Voluntary Export Restraints (in other words, quotas).<sup>8</sup>

Z. Czubinski elaborates: ‘Imports from [eastern Europe] which have suffered from the EU’s protectionist measures tend[ed] to fall mainly within the so-called sensitive sectors and include: pig-iron, ferro-silicon imports, seamless steel and iron tubes, urea ammonium nitrate, cherries and plums, and beef and pork.’<sup>9</sup> In 1992, France, Germany and Italy imposed quotas on steel imports from the region, and the EC as a whole imposed anti-dumping duties on the East’s steel products.<sup>10</sup>

In other words, western trade policy made it very difficult for the candidate countries to build up their own economies. As has happened so

often in relations between the strong and weak, 'free trade' was merely a slogan masking a strategy to maintain the stronger's advantage. The balance of trade quickly reflected this: the East's \$1.5 billion trade deficit with the EU in the first half of 1992 ballooned to \$7.2 billion in the comparable period in 1993.<sup>11</sup> While only 3 per cent of the EU's 1993 imports came from Poland, Hungary and the former Czechoslovakia, nearly 70 per cent of Poland's imports that year came from the EU.<sup>12</sup>

As Czubinski concludes, east European

decision-makers have found an inherent contradiction in the European Union's demands for them to undertake the double transition from communism to market economies, and then to the adoption of EU standards in their economies while EU member states continue to maintain high levels of protection over certain key sectors. ... [This] has confirmed the widespread opinion ... that the EU ... has failed to fulfill the [east European] states' expectations, and has also failed to live up to the altruistic nature of the political rhetoric in the Europe Agreements.<sup>13</sup>

Just as in central Europe's first period of independence after the First World War, the West played the role of tutor; the educator who needs no education. If it wanted to be considered for entry, the East had to sit tight and bear it. Little surprise that when asked in June 2004 what they had to offer the EU, a majority of Poles, Czechs and Hungarians said, 'Cheap labour'.<sup>14</sup>

Nor did such unequal trade arrangements end quickly. In 2005, D. Bohle noted that 'Rather than exporting a solidaristic model of capitalism to Eastern Europe, the EU has preferred to protect its own political economies as far as possible against disruptive influences of enlargement.'<sup>15</sup> A. Sajo put it differently, comparing the relationship between western and eastern Europe to one between 'missionary and savage'. Continuing the religious simile, W. Jacoby described it as 'priest and penitent'.<sup>16</sup> These accounts capture not only the irrational aspects of the relationship, such as the reluctance of easterners to talk about their real needs in order not to provide additional reasons for the West to continue to delay accession, but even more so they capture its humiliating aspects.

### 'Nice or death!'

Such experience made Euroscepticism de rigueur in the East. Of course, economic rules can be one thing and political institutions another, but

Poles also had reason to be suspicious of the overall MLG project that was developing at the same time. Taken together, these developments made Poles increasingly dubious of the EU's claims to democratic legitimacy.

We have already seen that Maastricht made MLG compatible with the notion of a core Europe. For Poland, that core was already being developed and Poland was not part of it – despite the fact that upon entry it would become the sixth largest country in the EU. While the EU had asserted that Maastricht would be the last big IGC carried out behind closed doors in classic diplomatic style, the Amsterdam Treaty of 1997 was negotiated the same way.<sup>17</sup> In various ways, Poland was feeling excluded not just economically but politically as well.

However, what solidified bad feelings was still to come. The Amsterdam Treaty left numerous holes, and the EU decided they needed another IGC to fix it. These so-called 'leftovers' of Amsterdam included institutional issues such as the reweighting of votes in the European Council and the composition of the European Commission, issues that needed to be resolved before a new enlargement. The 'leftovers' also included more general matters such as the adoption of a Charter of Fundamental Rights, defining the role of the Commission President, and the future of a European Security and Defence Policy. The new IGC convened in Nice in 2000. Though not yet a member of the EU, Poland and the other eastern states were now all but certain to become members, and so the key issue of vote allocations was decided with those states in mind.

The previous weighting of the votes had the four largest countries – Germany, France, Great Britain and Italy – with ten votes each; two more than the next largest, Spain. Nice maintained this balance, with the four largest states now getting 29 votes each and Spain 27 (out of a total of 345) – a compromise that did not resolve Germany's complaint that its status as the EU's largest country was not reflected in the new voting weights, but did satisfy France's desire to maintain symbolic parity with Germany. Nice was beneficial to neither the largest state nor the smaller states, but it was an exceptionally good deal for the middle-size states – Spain and also Poland, which, because it had the same population as Spain, was also allocated 27 votes.

Nice then adopted a complicated 'triple majority' system of counting votes in the Council. Decisions would be adopted only if they received 72.3 per cent of total votes with more than half the Member States voting in favour and if the yes votes came from countries with 62 per cent of the EU's total population. Ninety votes would be needed to block a decision, meaning that Poland and Spain each had nearly a third of those, a proportion which Poland in particular would fight to protect.



And Poland needed to fight to protect it because even before Nice was concluded (and it was concluded in a hurry – this was the EU's shortest IGC), key EU members decided it too needed to be revisited. Instead of resolving the leftovers of Amsterdam, they said, it only created new problems. The 72 per cent threshold, they argued, would make it difficult to pass any new rules under Nice, and blocking decisions would be easy. The ink on the Nice Treaty was hardly dry when the EU's dominant western states said it would have to be revisited, which is what the Constitutional Convention convened in 2002 was created to do. The proposed Constitution came up with a different weighting of the votes in which only a dual majority was needed: a majority of Member States representing at least 60 per cent of the EU population.

It was this proposed change that sparked a dramatic new Polish Eurosceptic consensus. The perceived problem was not that Poland was losing votes in the Council as a whole. In fact, Poland's total share of the Council vote would increase slightly in the new arrangement, from 7.8 to 8.0 per cent of the total. The problem was that Poland's ability to *block* a proposal would diminish. Nice allowed a minority of 25.5 per cent to block a decision, and the Constitution increased that to 40 per cent. Poland's *share* in a vote-blocking coalition would thus be reduced by a third, from about 31 to 20 per cent. In fact, the Constitution reduced the relative clout of *all* members in a blocking coalition, except for Germany.

What exactly made the proposed departure from Nice so abhorrent to so many Polish observers? After all, as EU supporters noted, big decisions have never been made in the face of fierce opposition from key Member States, so it was unlikely it would happen now.<sup>18</sup> Mostly, the opposition came from those who did not want the EU to continue along its path towards greater federalization and greater powers for Brussels. They saw all the IGCs since Maastricht as an attempt to move in this direction. Of course, most westerners agreed that this was the aim, but, except for the UK, most western Member States *wanted* more federalization. On the other hand, Poland and other eastern states were just beginning to familiarize themselves with being sovereign countries in a world of states and tended to oppose federalization. In other words, it is precisely because Nice did *not* make it easy to implement big, new policies that Poles supported it while western elites pushed for a Constitution.

The proposed departure from Nice brought forth a barrage of Polish invective from across the political spectrum. It was the first time Poland or any eastern state spoke out with such vehemence, itself a sign that Poland now felt assured of accession. 'Nice or death!' rang as the new battle cry.<sup>19</sup> The passion for holding onto Nice was high not just because of the

accord itself. After all, even under the Constitution that would replace Nice, the most important decisions such as the budget, treaty revisions and accepting new members would still require unanimity. Rather, the passion, vehemence and virtual unanimity of the pro-Nice sentiment had to do with the past. This was the first time Poland could speak up to western Europe. It was the first time it could conflict with them on an issue. It was a way to vent not just about how the West treated Poland since 1989 but to yell about the past, too, from Europe's complicity in the partitions of Poland to its alleged unwillingness to challenge the Cold War consignment of Poland to the Soviet sphere. The debate about Nice was the first time Poland *could* speak out on an internal EU issue. It was the first time it could voice its opinion without any fear that the price would be postponement of accession. The pro-Nice passion was so widespread because it was a chance to assert that Poland existed, that it was a pretty large country, and that it could no longer be pushed around. Now that entry was assured, Poland could recover its dignity and demonstrate that it was a country with interests and desires of its own. Indeed, on this one point other eastern countries seemed to back Polish resolve. As small countries, they were not as committed to Nice as the Poles were, but on the matter of general treatment of the East by the West they felt solidarity. As one Hungarian scholar not otherwise enamoured of Poland's position told me in 2004, 'Poland at least showed them that *someone* in the east can be tough'.<sup>20</sup>

It was not hard to present the West's desire to revise Nice as evidence of an anti-Polish predisposition. After all, Poland finally gets a good deal in a treaty that only the EU-15 voted on, and then there is a rush to say it must be changed. As J. Saryusz-Wolski, Poland's first plenipotentiary for European integration, put it, 'We entered the EU on poor economic terms, but good political terms. And now, suddenly, it turns out that the political terms are changing for the worse.'<sup>21</sup>

Two different approaches can be discerned in Poland's widespread Euroscepticism. The first is the reactive or emotional approach, in which those who feel they can finally speak freely point out the ways in which the West – particularly France and Germany – has always sought to dominate the EU and to marginalize Poland as a player within it. The second is a bargaining approach, in which writers and politicians use the arguments put forth by the 'reactors' but differentiate themselves from the emotional conclusions and say they are interested not in rejecting the EU but in making a compromise. The first can be seen as a way to 'democratize' EU discourse; the second as an attempt to democratize EU practice.

'The history of Europe . . . is the history of political and cultural kidnapping.' Thus begins perhaps the best presentation of the reactive approach,

*The Capture of Europe*, by M. Cichocki, a political scientist at Warsaw University and one of Poland's leading writers on European affairs.<sup>22</sup> The book's central theme, as its title announces, is that Europe has been stolen and used by dominant powers for their own purposes. Particular European countries have sought to endow Europe with universal significance and then pretend to be the guardians of that universality in order to mask their own particular ambitions. For the French, Europe was the Enlightenment; for the Germans, the *Sonderweg*. For the French and Germans today, it is the EU. Cichocki is not worried about any other European powers, except Russia. But Russia's false claims to universality have long been exposed, and this book is a jeremiad directed at the new threat – the EU.

In Cichocki's view, France's aim is the integration cum subordination of Germany, while Germany's aim is the integration cum subordination of the East. It is entirely natural, then, that Poland has been treated with disrespect, as a bother rather than an actor in its own right. This follows from the main strands of western European foreign policy.

Cichocki calls Germany's approach that of 'soft colonization', saying it goes back to the argument presented by F. Neumann in his classic 1915 work, *Mitteleuropa*. According to Naumann, the nations of the East could not survive on their own. This was an age of bigness – the world, he wrote, now thinks in terms of continents, not countries – and for the survival and prosperity *both* of Germany and the nations in the East, the entire region must unite under German tutelage.<sup>23</sup> As Cichocki notes, the *Mitteleuropa* project 'to civilize and stabilize [the east] was a task the Germans saw as burdensome but necessary'.<sup>24</sup> It is the benevolent veneer that Cichocki sees as the most distinctive characteristic of this imperialism. Germany always claims to do what it does with Poland's interests in mind. Its policy combines indifference and contempt with missionary zeal. It treats Poland as a civilizational backwater and then sets out to civilize it.

And this, for Cichocki, is what Germany is doing with the EU. The end of the Cold War did not change Germany's view of the continent in terms of centre and periphery, civilizational beacon vs 'dysfunctional periphery'. On the contrary, it only 'highlighted the distinction, with all its ruthlessness'.<sup>25</sup> 'It is no accident that in the 1990s Germany was the most active proponent of enlargement.'<sup>26</sup> But has Germany ever treated Poland as a genuine partner? Cichocki quotes German historian A. Baring, who wrote in 1998: 'The Poles fear, not without reason, that just as in the past, we still don't take them seriously . . . It never even enters our mind to consider them partners with whom we can undertake something positive.' Instead, all Germany offers are 'gestures of friendship and declarations

of sincerity'.<sup>27</sup> Since 1989, Germany once again says it wants to protect the East, but once again in a way that preserves its dominant position.

The unequal economic arrangements and the patronizing nature of the accession process testify to this. So does the attempt to scrap Nice, allegedly in the interests of a deepened MLG that only a Constitution could provide. Cichocki describes the attempt to jettison Nice as an almost conspiratorial move by France and Germany. The departure from Nice 'is consistent with the interests of Germany . . . It is also consistent with the French interest, according to which nothing should be possible within the EU without France. The object of the new arrangement . . . is to secure the leading political role of France and Germany in an enlarged EU.'<sup>28</sup> And the two countries seek political control because they are unwilling to make the *economic* sacrifices that might bring them influence more naturally. France and Germany 'do not have much to offer the countries they propose to lead' since the Germans do not want to bear the financial costs of closer integration and the French will not give up the financial benefits they currently extract from the EU.<sup>29</sup> In the end, then, the EU is but the latest iteration of *Mittleuropa*: from 1914 to today it is the 'same old play – only the times, costumes, and decorations have changed'.<sup>30</sup>

Z. Krasnodebski agrees. One of the more prolific Polish writers on European affairs and one who has been teaching in Germany since 1995, Krasnodebski sees the EU as *Mittleuropa* finally realized. Did Naumann himself not write that 'whenever the French are willing, we shall be able to offer them the hand of friendship'?<sup>31</sup> Well, since the Second World War, the EU has been exactly that: the instrument for the would-be Franco-German domination of the continent. The EU, according to Krasnodebski, was set up in order to save France and ended up rehabilitating Germany. France freed itself from German control, Germany freed itself from British control, and 'today, Germany together with France stand at the head of a "European directorate"'.<sup>32</sup> The EU is thus a transnational institution in name only. In reality, it is an institution aimed at securing French and German prominence of an anti-American and pro-Russian Europe. Poland thus needs to reject the EU's universalist pretensions, which the notion of a 'core' Europe has only accelerated. It is only a cover for French and German dominance.

If Cichocki and Krasnodebski lead the way in denouncing the EU, Saryusz-Wolski takes such criticisms and seeks to turn them into bargaining chips. Unlike the others, Saryusz-Wolski has been actively engaged in Poland's EU accession process. He served as Poland's first plenipotentiary for EU integration, ran successfully for the European Parliament (from the right-liberal Civic Platform Party) in 2004, and then was elected

a vice-chairman of the European Parliament. From his position on the inside, Saryusz-Wolski knows that Poland has some clout. As noted above, for reasons of size, history and location, it is the one eastern Member State that does. Saryusz-Wolski knows the EU will reject his colleagues' litany of charges as unfair and wrong, so he distances himself slightly while simultaneously hanging onto the charges as a kind of baseline. If the West rejects such charges, he implies, it is up to the West to demonstrate that they are false. It can treat Poland differently and accept Poland's demands. Saryusz-Wolski adds a 'good cop' component to Cichoński's and Krasnodebski's 'bad cop': He uses the charges levelled by the latter as the bait with which he hopes to extract concessions.

These aspects of his approach were highlighted in a debate with A. Smolar that was published in late 2003 in Poland's leading daily under the title 'Shall We Die for Nice?' 'It's only a metaphor', Saryusz-Wolski says of the slogan put forth by his party, but it dramatizes our position and tells Europe that we can be tough. And the EU, he says, only understands toughness. 'That is how Britain got its rebate [and] Spain its structural funds.' Poland's problem so far is that it has taken whatever was offered. A hard-line position now will shape its role in Europe in the future. 'The question before us is: are we one of the large countries with whom others must talk, or one of the small ones they can ignore – which is how the "Big Four" still treat us. . . . We are fighting now for our place in Europe.'<sup>33</sup>

The theme of standing tough against the West's humiliating treatment resonates throughout his comments. They take advantage of us because we are a small country. Previous entrants got more assistance than us. We do not get the structural funds we deserve. And so now we have to resist. 'We won't get them to respect the principle of solidarity by persuasion or appeal. . . . Without a hardened political stance we'll never get treated the way we deserve. . . . Poland has been making compromises [since 1989]. We accepted an asymmetrical association agreement, and then an accession arrangement that in economic terms . . . was much below our expectations.' Polling data from 2004 shows that the population agrees, with 44 per cent saying Poland belongs to the least influential countries in the EU, and only 4 per cent considering it one of the most influential.<sup>34</sup> Being tough on Nice, says Saryusz-Wolski, is the only way to get the West to take us seriously.

Smolar points out the exaggerations in Saryusz-Wolski's position. Smolar is Poland's most forceful advocate for the EU, perhaps because he has lived much of his life in Paris. (He left Poland in 1968 and since 1989 lives and works in both Warsaw and Paris.) Against Saryusz-Wolski's claim that

the Constitution demonstrates the big powers' aim to ride roughshod over smaller countries, Smolar notes that it still entails one commissioner for each country, thus giving small powers considerable clout. (He might have noted that Saryusz-Wolski himself, before Nice, complained about an 'over-representation' of smaller states and said the next IGC would have to compensate the large states in the European Council for their giving up a second representative in the European Commission.)<sup>35</sup> Against the complaint that Poland receives less aid than previous entrants, Smolar notes that ten simultaneous New Members pose particular problems for the EU and argues that if Poland wants the West to demonstrate its solidarity with Poland, it must also demonstrate solidarity with the West. 'It is unacceptable for us to demand aid from the EU on the basis of principles, yet speak out against the EU in matters important to them on the basis of our interests.' Poland's position, he says, appears to be one of stubbornness and selfishness. Reduced to its fundamentals, it is a position of 'Give, give, give!'

For Saryusz-Wolski, Poland must stake out the hard line in order to obtain bargaining power in the future. Smolar also wants to get in a better bargaining position but argues that the hard-line way is counterproductive: 'In politics, slogans such as "Nice or death!" do not go unpunished.' But Saryusz-Wolski is undeterred. Only in this way, he argues, will they finally take us seriously.

### **The benefits of toughness**

In the short term, Poland's antagonistic way of presenting its position has surely exacted a toll. In 2004, former Polish Foreign Minister Bronislaw Geremek lamented that 'Poland has never had as bad reputation [in the EU] as it does today',<sup>36</sup> and the comportment of the right-wing government elected in 2005 has certainly made things worse. Still, it seems that Saryusz-Wolski was probably right. Poland is taken more seriously today. Even if relations today are not very good, the *potential* for a Poland satisfied with the EU and contributing to a satisfactory multilevel governance is greater than it has been in the past.

Why? For four reasons. First, Poland has now articulated its truculence. This was something it needed to do as perhaps the only way it could recover its dignity. Second, as a result of this, Europe understands that Poland demands to be taken seriously. Third, as Europeans come to realize this, Poles may no longer feel the need to assert themselves so provocatively. Finally, the failure of the Constitution means that the Nice Treaty in fact stands today as the EU's institutional arrangement. The Poles'

fight to defend Nice was successful – even if, paradoxically, only because of French and Dutch voters. Still, institutional fatigue in light of the constitutional fiasco means that Nice is not likely to be tampered with for a while. If East and West can get along under this arrangement, it might be possible to build the mutual trust that would allow more cooperative integration in the future.

Of course there is no guarantee this will happen. But the articulation of grievances is the first step to their management. G. Delanty's theory of 'discursive democracy' presented in Chapter 4 of this volume is useful here. Delanty presents discursive democracy both as a normative model and as an empirical description. It refers to a polity grounded not in a definition of a people but in an agreement to converse, to accept fundamental national differences, and to try to manage (but not reconcile) those differences through ongoing debate. This of course is what multilevel governance was intended to do. But because MLG was developed *before* the East's accession, it came to be seen as part of the plan of a hegemonic West and ended up causing disputes rather than managing them.

Delanty argues that the constant articulation of grievances is itself a way of resolving them. Pointing to the experience of western Europe, he rejects charges of a democratic deficit by saying that the EU's constant monitoring of such deficits 'produces an institutional reflexivity' which, if we understand democracy as an ongoing conversation, itself makes the EU 'a good deal more democratic than is often thought', especially when 'viewed from the outside'. This is a crucial point and helps explain the increasing attachment to a European identity coming from young people, who by definition look at the political system from the outside. Delanty neglects to mention that up to 2004 this internal monitoring and reflexivity concerned only the western Member States. Far from being included, the aspirants from the East were subject to *external* monitoring, thus setting up a pattern not of a conversation among equals but of directives issued from commander to subordinate. Now that the East is in, however, under a governance regime (Nice) that the West sought to jettison, there is finally a basis for Delanty's model to be relevant throughout the EU.

Is there any evidence that this is happening? Some. First, public support for the EU has grown markedly, and not just because the economic results are better than anticipated but because Poles feel more like they belong. In mid-2001, 55 per cent supported entry into the EU; in mid-2006, 80 per cent approved, while journalistic accounts tell of Poles who no longer feel they are somehow inferior when travelling in the West.<sup>37</sup>

Second, Polish decision makers believe they are noticed more than in the past. In part, that is inevitable since entering the EU as the sixth largest

country gives them a presence in EU institutions that they simply did not have before. But that is the point: inclusion brings recognition, and thus an end to the feeling of being snubbed. Of course, some of the notice comes as notoriety, as when the contingent of anti-EU deputies from Poland's Self-Defence Party came to their first European Parliament session equipped with gaudy red and white ties and a resolution calling on the Parliament to disband. Or in 2006, when government policy towards gays led to Poland's inclusion on a special European Parliament resolution condemning intolerance in four Member States.

In 2005, however, Poland distinguished itself in just the way its mainstream politicians had hoped – as the EU leader in dealing with the crisis in Ukraine. Deputy Jacek Saryusz-Wolski played a key role drumming up support for a European Parliament decision condemning the electoral falsification, while President Aleksander Kwasniewski's role as a mediator in the crisis was widely credited by the EU for helping lead to a peaceful democratic resolution of the crisis. This was the first time Poland played a role representing the EU as a whole. All in all, even A. Smolar, who complained in 2003 that Poland was behaving totally selfishly in EU affairs, thought that things had turned around in 2005 and suggested that the country's tough line had indeed brought it respect.<sup>38</sup>

Poland has gained some institutional concessions, too. For example, the EU backed down on its plan to continue close monitoring of the East after accession. This had been one of the deep humiliations of the enlargement process. Despite years of EU task forces and commissions to produce the harmonization of rules necessary for entry, the EU had decided to maintain a special monitoring regime for the new members even after accession, something that was never done to previous entrants. The abandonment of that provision has contributed to a growing sense in the East that its status as 'full Europeans' is gaining legitimacy.

Poland has long been stung by the United States' refusal to grant visa-free entry to its citizens. The snub smarted more when it was kept in place even after Poland alienated its key European sponsors by its strong support for the US in Iraq. This would not seem like anything the EU could address, or would even want to. Yet in 2006 the EU promised to take up the visa matter with Washington. The sense of a common European identity that such a gesture implies has also been aided by the huge number of mostly young Poles who have moved to western Europe since entry into the EU. It is estimated that between 2004 and 2006 up to a million Poles had moved to the UK alone, one of the few countries that allowed them to work. (The EU had allowed its members a seven-year window during which it could bar citizens of the acceding countries from



the right to work, but the UK, together with Ireland and Sweden, waived this window from the beginning. Finland, Greece, Portugal and Spain followed in 2006.)<sup>39</sup> The strong 'Euro-identity' that social scientists have long detected among young west Europeans has a good chance of becoming an identity of east and west European youth in relation to a Europe that fully embraces both.

One recent moment symbolizing both the imbalance that still prevails as well as the lessons being learned came when the recently elected Polish President Lech Kaczynski travelled to Germany in March 2006 and announced that this was not only his first official visit to Germany but his first *ever* visit to Germany. *This* was the symbolic moment. The stereotypical German view of Poles, after all, is that of poor neighbours who cross the border to work. No German would be surprised to learn that a prominent German politician was paying a first visit to Poland. (Neither would a Pole.) But for a German to learn that a Polish president had never set foot in Germany was like an American hearing that the new Mexican president or Canadian prime minister had never visited the United States. The reaction is one of shock, accompanied by the realization that those one has always treated as lesser might in fact have come of age.

The point is not that everything changed at this moment. President Kaczynski's defence of homophobia and other manifestations of cultural narrow-mindedness no doubt dispelled emerging self-doubts of some Germans. But one need not agree with Kaczynski to accept what he told *Der Spiegel* at the time of his visit: 'Some in the West apparently believe that Poland no longer has its own interests, and that it is all too willing to agree with the opinions of others. This is absolutely not the case.'<sup>40</sup> And it is this that sets in motion the basis for change. For Poland *is* in the EU now as one of the largest countries, and if it now brings to the table a dose of national narrow-mindedness, a modicum of self-reflection should lead dismayed westerners to realize that their own past behaviour is partly responsible. More realization of this should help Poles understand that they do not need to treat the West as a distant, haughty overseer. At that point, EU planners might be able to craft a multilevel governance arrangement that is more widely recognized to be in the general interest than any previous arrangement before accession could ever have been.

In the end, the EU's democratic legitimacy is constructed in the East more in national than in individual terms. But now that it has asserted its national dignity, in however a confrontational manner, Poland, and perhaps all of the East, should soon be able to find a common language with westerners about just what democracy entails.

## Notes

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- 34 'Stosunek do czlonkostwa w Unii Europejskiej', *Report of Centrum Badania Opinii Spolecznej*, Warsaw, July 2004, [http://www.cbos.com.pl/SPISKOM.POL/2004/K\\_115\\_04.PDF](http://www.cbos.com.pl/SPISKOM.POL/2004/K_115_04.PDF).
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- 36 B. Geremek, 'Niech wrzask ustapi racje', *Gazeta Wyborcza*, 3–4 July 2004.
- 37 *Reports of Centrum Badania Opinii Spolecznej*, Warsaw, 2001, <http://www.cbos.pl/SPISKOM.POL/2001/KOM073/KOM073.HTM> and 2006, [http://www.cbos.com.pl/SPISKOM.POL/2006/K\\_076\\_06.PDF](http://www.cbos.com.pl/SPISKOM.POL/2006/K_076_06.PDF). Also see M. Bunda, 'Rzeczpospolita Brytyjska', *Polityka*, 17 June 2006.
- 38 Conversation with Smolar, New York City, May 2005.
- 39 Bunda, 'Rzeczpospolita Brytyjska'; also G. Partos, 'EU Migrants Erode Old Divisions', *BBC News International Version*, 3 May 2006, <http://news.bbc.co.uk/2/hi/europe/4966410.stm>.
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# 11

## Gender Equality and Multilevel Governance in East Central Europe

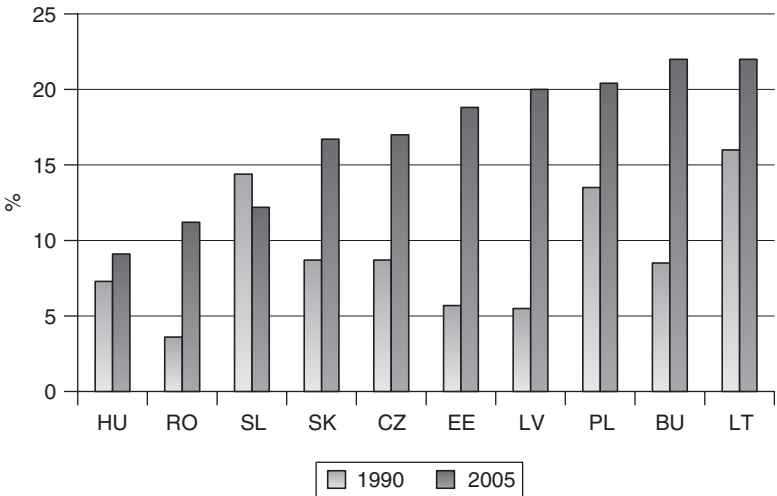
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### **Introduction**

The move from communism to liberal democracy in east central Europe (ECE) has resulted in women being left behind in these transition processes. Women continue to be disproportionately affected by cuts in employment, are more likely to be employed in the less dynamic services sector, and are more at risk of poverty than men.<sup>2</sup> In political participation, too, women are making only a gradual recovery from their virtual absence from national politics that marked the first democratic elections (Figure 11.1). The deterioration of the position of women is not only a consequence of macroeconomic changes, but it is also due to a strengthening of patriarchal values and traditional gender roles infusing policy and politics in ECE.<sup>3</sup>

In this rather bleak context for women, the influence of the EU's goal of gender equality takes on a particular relevance. Gender equality was incorporated into national and regional politics in ECE as countries prepared to join the EU. This chapter charts the extent to which this goal and its associated strategies have become embedded in the policy cultures of the new Member States. It throws light on the scope, and limits, to which the norm of gender equality and its realization can be imposed from the 'top' in a multilevel, multinational polity. It also yields insights into the administrative capacities of newly transitioned polities to address gender policy challenges and the opportunities for organized groups to represent women's interests.

The chapter begins with a discussion of the EU gender equality agenda and elaborates on the threefold approaches that underpin this policy goal. It examines national transposition of the EU equality directives and then assesses the capacity of individual states to give effect to this framework



*Figure 11.1* Women's parliamentary representation in east central Europe, 1990 and 2005

*Note:* HU Hungary; RO Romania; SL Slovenia; SK Slovakia; CZ Czech Republic; EE Estonia; LV Latvia; PL Poland; BU Bulgaria; LT Lithuania

*Source:* EGG database (2005) (see note 1)

through the newly created gender equality infrastructure. Finally, the chapter addresses the role of civil society, specifically women's groups, in engaging with policy makers to shape and influence national gender equality policies. The chapter concludes that while gender equality as a value in the legal framework reinforces national constitutional commitments in new Member States, the norm is not a deep-rooted one, and its accompanying strategies have a long way to go to be fully integrated into national policy processes. This case study, then, suggests that multilevel governance with respect to gender equality requires significant development before becoming fully integrated into national and subnational decision making.

### **The EU and gender equality: a case of multilevel governance**

The EU's commitment to gender equality has incrementally evolved from focusing on gender differences in pay and employment issues to the more all-embracing objective of promoting equality between women and men. This concern for gender equality is articulated in two different discourses within the Union – one focusing on deepening democratic practices and

one concerned with economic development. A democratic focus on gender equality emanates from the normative and practical consequences of women's exclusion from positions of economic, social and political significance within the Union. It also illuminates a desire to give deeper legitimacy to Union policies by addressing the needs and interests of one-half of its population. In this regard, gender equality policies are seen as supporting social cohesion across the Union and important for deepening democracy in Europe.<sup>4</sup> An economic rationale for gender equality argues that supporting women's integration into the workforce will result in increased competitiveness and prosperity in the Union. To that end, the Member States agreed in 2000 to achieve a minimum female employment rate of 60 per cent by 2010.<sup>5</sup> More recently, as the growing costs of an ageing population begin to impact on national social spending, women's increased labour market presence is seen as making an important contribution to the financial sustainability of pension programmes in EU Member States.<sup>6</sup>

Although it is tempting to infer from these strands of thinking that gender equality is integral to the long process of European integration, the reality is that gender policy has not been given central place in the construction of the Union. The absence of gender from the EU's White Paper on Governance, published in 2000 as a blueprint for future governance of the enlarged Union, acts as a reminder of the insecure place occupied by gender in EU priorities.<sup>7</sup> In response to the marginality of gender, considerable energy has been expended in alliances between feminists in the Commission, the European Parliament and the women's sector to ensure the inclusion of gender as an important consideration of policy making in a multi-polity context.<sup>8</sup>

In the Treaty of the European Union (TEU), Article 2 commits to promote equality between women and men, Article 3 seeks to remove gender inequalities and support equality across all Community policies, and Article 13 provides the capacity to take appropriate action to redress gender (and other) inequalities. Article 137 reaffirms equality between women and men in labour market opportunities and equal treatment in the workplace, and Article 141 ensures equal pay and equal opportunities in the workplace. It also empowers the use of positive actions to redress gender inequalities in the labour market.<sup>9</sup> These amendments provide the basic legal framework for the EU's gender equality policy, and go well beyond the rather tenuous constitutional basis for gender equality initially provided in Article 119 on equal pay between women and men.<sup>10</sup>

The gradual shift from an anti-discrimination policy frame to one of gender equality marks a broadening of the EU gender equality agenda in

the context of an ongoing enlargement and integration process. The policy context for the realization of this commitment incorporates a variety of mechanisms such as gender equality legislation, positive action measures, gender analysis of policies (gender mainstreaming) and, more generally, it highlights the 'gendering' of institutions and institutional practice.<sup>11</sup>

Thus, delivering gender equality combines three distinct, interrelated approaches. The 'hard' law of equal treatment or anti-discrimination (direct and indirect) has resulted in a series of equal opportunities directives guaranteeing individual rights to employment, vocational training and social protection. These laws, binding on Member States, initially framed gender equality in terms of combating sex discrimination and focused on issues such as equal pay and social security entitlements.

The legalistic approach was soon complemented by a 'positive action' focus which initially emerged through EU 'soft' measures such as the provision of vocational training and employment schemes for women underwritten by the European Social Fund.<sup>12</sup> This strategy emphasizes actions that redress structural inequalities by focusing on gender differences as distinct from the gender 'sameness' or gender neutral view dominant in an equal treatment/anti-discrimination approach. The recent revisions of the 1976 Equal Opportunities Directive (2002/73/EC) give positive action 'hard' law status by including it as a means for redressing gender inequality in the workplace. Another recent law that allows for the introduction of specific positive action measures 'to prevent or compensate for disadvantages linked to sex' is Directive 2004/13/EC, implementing the principle of equal treatment between women and men in their access to, and supply of, goods and services. Thus European law now recognizes that anti-discrimination rules on their own are not sufficient to combat gender inequality and that the more vigorous intervention of protectionist measures is required to tackle gender bias.

The third approach to delivering gender equality involves adopting a gender-sensitive perspective on policy – gender mainstreaming – that requires a level of technocratic expertise and gender consciousness for implementation.<sup>13</sup> This strategy shifts the focus away from a purely law-based approach to one focusing on the process and content of policy making. According to the European Commission, gender mainstreaming is understood as

mobilising all general policies and measures specifically for the purpose of achieving gender equality by actively and openly taking into account at the planning stage their possible effects on the respective situations of men and women . . . [gender mainstreaming entails] the systematic

consideration of the differences between the conditions, situations and needs of women and men in all Community policies and actions.<sup>14</sup>

Gender mainstreaming has its own set of analytical methods, including gender impact assessments, gender disaggregated statistics and indicators, and gender-sensitive training for bureaucrats and civil society participants. It has significant potential to transform gender relations in the public sphere<sup>15</sup> but as Stratigaki and others indicate, it can in fact be manipulated by policy makers to dilute progress towards gender equality in an inhospitable policy context.<sup>16</sup> Taken together, the three strategies constitute the EU's basic repertoire of policy paradigms and practices and are mutually reinforcing elements of the EU's gender equality strategy.<sup>17</sup>

The EU's ambitious approach to gender equality, if fully realized, holds implications for the substance of Union policies on monetary union, agriculture, foreign affairs, environmental and immigration policies, among others. It also has a potentially important influence on the substance of national, regional and local policies in these and other areas, as EU directives and regulations are transposed into domestic settings. In practice, however, gender is seldom a consideration in policy discussions beyond those directly relating to gender equality. With only rare exceptions (employment, science and social policies in the main), the commitment in Article 3 of the TEU to infuse gender equality across all activities and policies of the Union is more rhetorical than real. In some areas, such as in competition policy, there is overt resistance to the introduction of gender mainstreaming.<sup>18</sup> Nonetheless, gender equality as a norm constitutes an important aspect of the EU's construction of democratic governance, and gender mainstreaming constitutes the most important cross-cutting policy strategy for promoting gender equality at national and regional levels within the Union.

## **Gender mainstreaming and democracy**

While studies on gender mainstreaming have proliferated in recent years, there are very few that explore it in relation to democracy, though occasionally the connection between both concepts has been noted. The Council of Europe has emphasized the active involvement of a broad range of actors in policy processes as constituting one of the innovative features of gender mainstreaming. Such broad involvement 'might help to reduce the democratic deficit that characterises many current democracies'.<sup>19</sup> Others have invoked democracy as one of the underlying principles of gender mainstreaming insofar as it promotes and encourages civic participation in the



shaping, framing, designing and delivery of policies.<sup>20</sup> These claims represent a particular understanding of gender mainstreaming as an integral part of a wider process of developing a more inclusive democracy through the active participation of civil society and other key actors in policy making. This has been contrasted with other understandings of gender mainstreaming as a technical process for promoting 'efficiency', to be carried out by experts and bureaucrats.<sup>21</sup> Although national expressions of gender mainstreaming emphasize either one or other of the above two styles, both reveal the degree of responsiveness of a political system to gender concerns.

In brief, gender mainstreaming can be taken as a manifestation of democratic practice (through the integration of non-state actors in policy development) as well as a measure of government commitment to gender equality. Thus, assessments of gender mainstreaming offer an appraisal of the gender contract between women and the state that delves more deeply than analysis of official rhetoric statements on gender equality allow.

We now turn to ECE and examine in more detail how gender equality as envisioned by the EU expresses itself in national contexts. We address in particular the strides made in gender mainstreaming, given its attribute as a sensitive indicator of the gender-friendliness of a political system, and, by extension, its manifestation of democratic practice in the new Member States.

### **Accession, gender equality and ECE**

Gender equality as a democratic value was an assumed part of the accession 'package' to which all applicant states were required to adhere. Candidate countries were expected to adopt and transpose the body of European law (the *acquis communautaire*) including the gender directives into national legislation (see Table 11.1). During the accession period, the Commission reminded applicant countries that accession depended on the satisfactory transposition of the gender directives and action on their institutional requirements.

In addition, the Commission provided guidelines to the applicant states on mainstreaming gender in the Joint Memoranda on Social Inclusion – documents laying the framework for subsequent national social inclusion plans. Along with iterating the importance of gender equality and gender mainstreaming as prerequisites for accession, the Commission also invited candidate countries to apply for funding for equal opportunities programmes. This invitation was not taken up. This was partly because of the overwhelming pressure of accession work and also partly because the financial conditions – requiring co-financing by applicant states – were

Table 11.1 EU gender equality directives

| <i>Directive</i>  | <i>Title</i>   |
|---|--|
| 75/117/EEC of 10 February 1975  | The Approximation of Laws of the Member States Relating to the Implementation of the Principle of Equal Pay for Women and Men  |
| 76/207/EEC of 9 February 1976 as amended by Directive 2002/73/EC          | The Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions  |
| 79/7/EEC of 20 December 1978  | The Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security   |
| 86/378/EEC of 19 Dec 1978 as amended by Directive 96/97/EC of 20 Dec 1996 | The Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes   |
| 86/613/EEC of 11 December 1986  | The Application of the Principle of Equal Treatment between Women and Men Engaged in an Activity, including Agriculture, in a Self-Employed Capacity, and on the Protection of Self-Employed Women during Pregnancy and Motherhood |
| 92/85/EEC of 19 October 1992  | The Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or are Breastfeeding   |
| 96/34/EC of 3 June 1996   | The Framework Agreement on Parental Leave Concluded by UNICE, CEEP and the ETUC  |
| 97/80/EC of 15 December 1997  | The Burden of Proof in Cases of Discrimination Based on Sex  |
| 97/81/EC of 15 December 1997  | Concerning the Framework Agreement on Part-Time Work concluded by UNICE, CEEP and the ETUC   |

Source: European Commission (2005).

not attractive to the prospective new Member States. Moreover, it was partly due to the low priority given to gender matters by ECE governments. The point, however, is that from early in the EU accession negotiations, candidate countries were expected to address gender equality as a condition of entry to the EU.

The accession process involved a significant degree of top-down policy transposition from the supranational EU to the applicant states. The European Commission monitored this process on a regular basis, assessing individual country progress in adopting the *acquis*. In terms of gender

equality, this review was limited in its scope. The legal nature of the accession process, involving transposition of the directives rather than the adoption and formulation of a wider equality policy, resulted in a technocratic evaluation of compliance with the overall content of the gender directives. Thus, the Commission's final monitoring reports of the countries admitted in the 2004 enlargement found that all states were deemed to have reached EU standards in gender equality, even though in some instances important legal and institutional measures remained to be put in place. Given the enormity of the task of transposing over 1000 European legal regulations into national law in each of the accession countries, it is not surprising to find that the opportunity to give a substantive impact beyond that of legislative compliance to gender mainstreaming was not taken during the accession process by either the EU or the national states. This fact has led some observers to suggest that the EU gender mainstreaming paradigm among the new Member States was weakened in the process.<sup>22</sup>

The practical implementation of gender equality is indeed a significant challenge for the newly democratized Member States. Their efforts to address gender inequalities are hampered by their recent historical legacy – gender as a social construct was trivialized during the period of state socialism. They are further disadvantaged by the prevalence of traditional gender attitudes and stereotypes that have come to the fore since 1989. The embrace of neo-liberal political and economic values associated with privatization, individualization and the opening of markets has had highly gendered consequences. P. Watson remarks on the emergence of masculinist norms and the articulation of a 'family values' culture supporting traditional gender roles,<sup>23</sup> while S. Wolchik explains the post-communist backlash against women as a continuation of gender-role attitudes that emerged during later decades of communism.<sup>24</sup> S. Gal and G. Kligman illustrate how 'the practices of gender, and concomitant ideas about the differences between men and women, have fundamentally shaped the broad social changes that have followed the collapse of communism'.<sup>25</sup> The public of ECE is on the whole much more negative towards gender equality than that of western Europe, as shown in attitudes towards women and men in the political sphere (Table 11.2).

An additional obstacle to integrating gender equality in domestic policy for ECE countries is the absence of a gradual familiarization with a discourse of gender equality in civic, economic and political contexts. The older EU Member States have experienced four decades of a gender equality dialogue, leading to some degree of infusion and acceptance of equality norms in these societies. In the rapid processes of Europeanization,

Table 11.2 Attitudes towards women as political leaders

|                | 'On the whole, men make better political leaders than women',<br>% agreeing |      |
|----------------|---|------|
|                | Mid-1990s*  | 2005 |
| Bulgaria       | 52  | 45   |
| Czech Republic | 47  | 50   |
| Estonia        | 66  | 42   |
| Hungary        | 49  | 45   |
| Latvia         | 61  | 35   |
| Lithuania      | 50  | 41   |
| Poland         | 51  | 41   |
| Romania        | 59  | 63   |
| Slovakia       | 63  | 54   |
| Slovenia       | 42  | 40   |
| West Europe†   | 18.5  | 18   |

\*WVS data on the mid-1990s refers to the following years: 1995 (Slovenia); 1996 (Estonia, Latvia, Lithuania); 1997 (Bulgaria, Poland); 1998 (Czech Republic, Hungary, Romania, Slovakia).

†Average figure for west European countries in the mid-1990s has been calculated from data on the four following countries: Finland (1996), Spain (1995), Sweden (1996) and West Germany (1997).

Source: World Values Survey – mid-1990s wave; Eurobarometer Survey 2005; EGG database (2005).

marketization and democratization, societal discussion of gender relations was set to one side. Yet, the adoption of a gender equality policy has proceeded apace in the new Member States, spurred by the requirements of EU membership. In many cases, countries have consolidated their legislative response to transposition of the gender *acquis* into one law. In the rest of this chapter we explore the nature and emphasis of responses to gender equality in the new Member States, beginning with an evaluation of national compliance with equal opportunity laws.

### **Transposing the gender *acquis* into national law: governance from the top**

Gender equality laws make an important contribution to the overall acceptance of the equality norm as they provide for basic individual rights that are actionable in court if violated. Generally, these laws are predicated on equal treatment and anti-discrimination, constructing a status for women that is the same as, or similar to, that of men. Predominantly

focused on the workplace, the implementation of equal treatment legislation has provided women with a minimal, if imperfect, standard of equality with men. Given the construction of women as 'worker mothers' in the former socialist states, the concept of equal treatment of women and men in the labour force was recognized, and the need to make 'special provision' for women's childbearing and caring roles was also a familiar provision in socialist labour laws. Thus, in many cases, transposing EU directives on equal pay and equal opportunities in the workplace into national legislation appeared to be a relatively familiar method of providing for gender equality. However, the EU laws could not be easily mapped onto the old state-socialist provisions. Some directives that brought new equal treatment concepts into the legal framework of ECE countries – issues such as sexual harassment, protections for self-employed women, equality in social security provisions and equalizing pensions and the age of retirement for women and men – were not provided for in socialist law.

The EU gender laws, then, provide the new Member States with an expanded framework within which gender equality can be addressed. Of particular interest in this regard are the specific gender equality, anti-discrimination or equal opportunities Acts passed by seven of the ten new Member and Accession States. These individual Acts give an indication of the emphasis placed on the three broad strategies for pursuing gender equality outlined above – the combinations of equal treatment, woman-focused positive action and gender mainstreaming perspectives that frame gender policies. One must also remember that these Acts are not the only repository of gender equality provisions in a given country: they complement, reinforce and provide an overarching legal framework for transposition of the *acquis* in many other areas of social and employment law, especially in social security, pensions, health care and labour codes.

A review of the gender equality legislation introduced in the accession and early post-accession period ranges from a minimalist disruption of existing laws to a maximalist adoption of specific gender equality legislation (see Table 11.3). Two countries, Latvia and Poland, have amended existing labour and social security codes to conform to EU standards on equal opportunities. Three states have enacted an omnibus anti-discrimination law as their bedrock of equal opportunities (Bulgaria, Hungary and Slovakia), three countries adopted equal opportunities legislation (Slovenia, Romania and Lithuania), and Lithuania complemented this law with a separate general equal treatment provision. The Czech Republic is in the process of enacting wide-ranging equal treatment legislation. Only Estonia has passed legislation dealing exclusively with gender equality, the Gender Equality Act.

Table 11.3 Equal opportunities laws in east central Europe

| <i>Country</i> | <i>Title of Act</i>   | <i>EU directives covered</i>  | <i>Positive action</i>   | <i>Implementing body</i>   |
|----------------|---|---|--|--|
| Bulgaria       | Law on Protection Against Discrimination, 2003. In force from 1 January 2004  | 76/207/EEC, 97/80/EC, 75/117/EEC, 2000/43/EC (race), 2000/78/EC, 92/85/EEC  | Yes. Includes up to 40% quota for the 'underrepresented sex' in state, municipal and local government administrative positions               | Commission for Protection against Discrimination   |
| Czech Republic | Anti-discrimination law passed by parliament in December 2005   | 76/207/EEC as amended 2002/73/EC, 2000/43/EC (race), 2000/78/EC, 86/613/EEC | Unknown  | Public Defender of Rights  |
| Estonia        | Gender Equality Act   | 75/117/EEC, 76/207/EEC, 97/80/EC  | Yes. Allows for special measures to promote gender equality and grant advantages for the less represented gender or reduce gender inequality | Gender Equality Ombudsman  |
| Hungary        | Act on Equal Treatment and the Promotion of Equal Opportunities. In force January 2004  | 76/207/EEC, 97/80/EC 2002/73/EC   | Does not appear to contain positive action provisions  | Equal Treatment Authority  |
| Latvia         | No specific anti-discrimination law or gender equality law; draft anti-discrimination bill debated in 2004 but subsequently dropped | Not applicable  | No evidence of positive action provisions in Labour Code being implemented   | Latvian National Human Rights Office; Labour Inspectorate and the State Agency of Social Insurance |

*Continued*

|           |  |   |   |  |
|-----------|--|---|---|--|
| Lithuania | 1998 Act on Equal Opportunities for Women and Men, amended several times between 2002 and 2004<br>2003 Act on Equal Treatment. In force January 2005 | 75/117/EEC 76/207/EEC 2002/73/EC, 97/80/EC                                      | Positive action is provided for, and special temporary measures are permitted. Efforts to introduce such measures in candidate selection have so far failed | Equal Opportunities Ombudsperson   |
| Poland    | A draft law on the equal status of women and men has been debated periodically since 1993  | Not applicable  | Limited recognition of positive action in Labour Code relating to equal opportunities in the workplace  | Commissioner of Civil Rights Protection  |
| Romania   | 2002 Act on Equal Opportunities for Women and Men, amended in 2004   | 76/207/EEC 2002/73/EC 97/80/EC  | Unclear   | National Council for the Prevention of Discrimination; Work Inspection Authority |
| Slovakia  | 2004 Act on Equal Treatment in Some Fields and on Protection Against Discrimination [Act on Anti-Discrimination] In force from July 2004             | 75/117.EEC 76/207/EEC 2002/73/EC 86/613/EEC 92/85/EC 79/7/EEC 97/80/EC 97/81/EC | Positive discrimination for ethnic or national groups allowed   | Slovak National Centre for Human Rights  |
| Slovenia  | Equal Opportunities Act  | 75/117.EEC 76/207/EEC 2002/73/EC 86/378/EEC 86/613/EEC 79/7/EEC 97/80/EC        | Recognizes positive action and gender mainstreaming   | Ombudsperson in the Bureau of Equal Opportunities Labour Inspectorate            |

*Source:* International Labour Organisation (2005); Open Society Institute (2005); EGG database (2005); European Commission (2005).

The generic anti-discrimination acts adopted in the three countries above incorporate gender as one of a number of categories of discrimination. These acts are quite varied in the extent to which gender equality considerations are explicitly addressed as well as the extent to which they provide a regulatory framework for the implementation of a gender perspective in policy making. Thus, while the Bulgarian Act contains several provisions related to gender equality, in the Hungarian and Slovakian Acts respectively, there is little mention of gender equality as their focus is mainly on disadvantaged ethnic minority groups.

In other cases the equality laws are more gender-focused and provide a regulatory basis for gender mainstreaming as well as enshrining equal opportunities in law. The Estonian Gender Equality Act requires all local, regional and national policy documents and action plans to take the strategic and practical needs of women and men into account and make gender impact assessments. Similarly, the Slovenian Equal Opportunities for Women and Men Act provides a regulatory framework for the adoption of positive action measures – with the aim of removing obstacles and promoting gender equality – as well as the integration of gender considerations in the planning, design, implementation and evaluation of policies. In Lithuania, the Act on Equal Opportunities of Women and Men imposes a duty on state government and administration institutions to ensure and promote equal opportunities between women and men by way of drawing up and implementing action plans.

In Latvia and Poland gender equality legislation is more piecemeal and dispersed. In Poland, numerous attempts to introduce draft equal opportunities legislation have failed. These attempts date back to 1996, when the earliest draft bill was submitted to parliament. One of the arguments mobilized against the passing of this bill was that such a law was unnecessary, as the equal status of women and men was guaranteed in the Constitution. A controversial point in the most recent bill is that it imposes an obligation on the state to provide equal share for women and men in political, social and economic power. This is regarded as providing a legal framework for the introduction of affirmative action measures such as gender quotas and is strongly resisted by government.

All countries, with or without a specific equal opportunities act, have a mechanism in place to enforce their EU-derived gender equality laws. The institutions fall into two main categories – equal opportunities offices and human rights offices. With the exception of the Estonian Gender Equality Ombudsperson and the forthcoming Slovak Ombudsperson in the Bureau of Equal Opportunities, the majority of these offices deal with discrimination cases on a diverse range of grounds, including gender.



These offices are intended not only to provide a channel of redress against gender discrimination (among other grounds), but also are tasked with raising public awareness as to the rights of employees and citizens and the duties and responsibilities of employers and service providers with regard to equality.

In summarizing the legal framework for gender equality, it is obvious that the EU integration process has brought about a considerable improvement in the legal standing of women and of gender equality in the new Member States. This pattern conforms to the 'external governance' model of rule transfer identified by F. Schimmelfennig and U. Sedelmeier,<sup>26</sup> who note the extensive formal adoption of the *acquis communautaire* by ECE members while also pointing to the lag in implementation and enforcement. There is plenty of room for further developments in the gender equality rule-making process, though, as both the spirit and letter of the directives have not been fully transposed in each case. In Hungary, for instance, the standard for the 'burden of proof' in harassment cases is not compatible with EU requirements, while Poland and Romania do not have a general job classification system that is fundamental to realizing equal pay. The further elaboration of this legal structure of equal opportunities will depend on monitoring from the European Commission and the development of case law at national and European levels. In general, while there is much focus on equal treatment and the combating of discrimination in the legal frameworks of the new Member States, the possibilities of positive actions are downplayed. Moreover, there are only two instances – Estonia and Slovenia – in which gender mainstreaming is given legal status as part of a strategy for delivering gender equality.

### **A gender equality infrastructure: giving effect to 'top-down' governance**

The enactment of gender equality laws flowing from EU obligations also brought a requirement on Accession States to create institutions facilitating and supporting implementation of the equality goal. One of the main functions of these structures or 'gender machineries' is to represent women's interests to governance circuits at different levels. Since such a representative function can only have legitimacy through close contact with women's civil society organizations, gender machineries also can play an important role as conduits between civil society and the state.<sup>27</sup> These structures can be quite varied, ranging from specialized gender units at different levels of the administration, government advisory councils and gender focal points (i.e. individuals with a gender expertise) located in

the executive and in regional/local governments. Parliaments, too, have a role to play, and it is not uncommon to find instances of a parliamentary committee on gender issues contributing to the general gender equality dialogue between state and civil society.

The gender equality infrastructure in ECE Member States displays all of the diversity outlined above, with additional national initiatives in some instances. In the majority of countries under study, the principal institution representing women's interests in governance is a unit located in a government ministry. These units share very similar mandates. They are charged with responsibility to draft or initiate equal opportunities legislation; to elaborate national programmes and action plans on gender equality; to coordinate implementation of plans across different ministries; and to carry out policy monitoring and evaluation. In addition to these tasks, these units have also a mandate to raise awareness and disseminate knowledge on gender equality issues. Their function is mainly that of acting as a 'catalyst' for the delivery of gender equality and implementation of gender mainstreaming, since none have power to make decisions, nor do they have authority to sanction other ministries if they fail to fulfil their commitments in relation to gender equality.

As illustrated in Table 11.4, these units are located at the very periphery of the governmental structure, which in itself is an indication of the low status given to gender issues by national governments. Only in Slovenia and Estonia can we find the principal body in charge of gender equality given a prominent position within the governmental structure. While the European Commission placed gender mainstreaming on the policy agenda of Accession States, EU governance of this matter did not extend to prescribing the location of gender units or supporting gender mainstreaming capacity building among bureaucrats and other decision makers. In the absence of EC prescription, national governments quickly shaped an infrastructure that seemed to meet with EU requirements but fell short of empowering these units to carry out their mandates effectively.

Within the administrative apparatus of the state, then, the units and individuals charged with bringing gender concerns into the policy arena work under less than favourable conditions. Only in Estonia and Slovenia do we find a more robust and confident infrastructure in place. In the other eight countries, gender equality units are peripheral, undertrained and often lacking in expertise and interest. The evidence of our research points in the direction of a rhetorical commitment by governments to addressing gender inequalities. It also points to a 'hollow' infrastructure that appears impressive on the outside but lacks substance and commitment, similar to gender mainstreaming patterns in other EU Member States.<sup>29</sup>

Table 11.4 Gender equality: central government infrastructure

| <i>Country</i> | <i>Name</i>   | <i>Location</i>   | <i>Policy influence*</i> |
|----------------|---|---|--------------------------|
| Bulgaria       | Unit of Equal Opportunities for Women and Men           | Ministry of Labour and Social Policy                      | Low                      |
| Czech Republic | Department of Equal Opportunities between Women and Men | Ministry of Labour and Social Affairs                     | Low                      |
| Estonia        | Gender Equality Department                              | Ministry of Social Affairs                                | Medium                   |
| Hungary        | Gender Equality Unit                                    | Ministry of Youth, Social Affairs and Equal Opportunities | Low                      |
| Latvia         | Gender Equality Unit                                    | Ministry of Welfare                                       | Low                      |
| Lithuania      | Labour Market and Equal Opportunities Division          | Ministry of Labour and Social Affairs                     | Low                      |
| Poland         |   |   |                          |
| Romania        | National Agency for Equal Opportunities                 | Ministry of Labour, Social Solidarity and the Family      | Low                      |
| Slovakia       | Department of Family and Gender Policy                  | Ministry of Labour, Social Affairs and the Family         | Low                      |
| Slovenia       | Office for Equal Opportunities                          | Office of Prime Minister                                  | Medium                   |

\*The notion of policy influence used here is borrowed from Stetson and Mazur.<sup>28</sup> This is a summary indicator of the degree to which gender equality institutions have the power to influence, and give direction to, government policy in the country. The indicators take into account a variety of factors such as location of the institution (whether central or peripheral), its authority (whether the institution has been invested with power to make decisions) and size (number of staff).

Source: EGG database (2005) (see note 1).

### **Parliamentary committees: the bridge between state and civil society in gender equality**

Most studies of gender equality governance focus upon structures within the administrative, rather than parliamentary, settings. However, the importance of the latter in the successful implementation of gender mainstreaming has been noted in a number of studies.<sup>30</sup> Parliamentary bodies can play an important role in initiating, drafting and monitoring gender equality legislation. These bodies may also serve as a channel through which civil society and non-governmental organizations can influence legislative change. In addition, parliaments can provide 'best practice' examples in gender mainstreaming through submitting all

legislation to gender impact assessment or by developing parliamentary expertise on gender issues.

The role of parliaments in the development of gender equality policy varies across the countries under study. In four out of the ten countries (Latvia, Poland, Romania and Slovakia), there are specialized parliamentary committees dealing specifically with gender equality issues. However, with the exception of Romania, these are not stand-alone committees but rather have the status of a subcommittee under the aegis of a more senior committee with a broader remit. As already mentioned, these committees usually serve as a channel of dialogue between politicians and civil society. In this regard, the Slovakian Commission for Equal Opportunities and the Status of Women in Society is noteworthy. It advises the Parliamentary Committee for Human Rights, Nationalities and Women's Status in Society. This advisory commission was created through pressure from civil society organizations, and it is composed of representatives of women's non-governmental organizations, the media, academic and research institutions along with Members of Parliament. As with the other gender infrastructure, most of the parliamentary committees above were created in response to EU expectations on gender institutions.

Slovenia has gone through a different process with respect to parliamentary oversight of gender equality. A dedicated parliamentary committee on gender equality, first created in 1990 as part of the move to democracy, ceased its activities after the parliamentary elections in 2000. In its place, the Parliamentary Committee of Internal Policy was entrusted to be a focal point for gender equality issues, while all other parliamentary working bodies were made responsible for gender mainstreaming their initiatives and deliberations. This development has not drawn full support from women, however. Some women's organizations have criticized the move, since, according to them, the new arrangements have effectively rendered gender equality issues more invisible in the parliamentary arena. This feature of 'mainstreaming' gender across all government and parliamentary bodies, while ostensibly suggesting a welcome advance in the formulation of gender-sensitive policy, has often been viewed with dismay by feminists, who see it as a strategy to render gender concerns invisible. Whether such is the outcome in Slovenia remains to be seen.

### **Multilevel governance from the bottom-up: the contribution of women's groups**

The EU model of good governance envisages the active participation of civil society in informing the decision-making process. In addition, the

establishment of institutional mechanisms that ensure the active participation of women's organizations in policy processes constitutes an important requirement of gender mainstreaming.<sup>31</sup> This is not only because they, along with gender machineries and women's elected representatives, are an important source of pressure for the inclusion of women's interests in policy processes and outcomes,<sup>32</sup> but also because their participation in shaping gender equality is a feature of a democratic society.

However, in the majority of ECE countries engaging with the politics of gender equality as a generic code does not represent a priority for women's organizations. By and large, women's groups focus their energies on providing supportive services in reproductive health, poverty and domestic violence. This may have consequences for the potential of women's organizations to influence the policy agenda in relation to gender equality and for developing gender mainstreaming as a 'bottom-up' rather than 'top-down' process. Although the question of why women's organizations are not paying sufficient attention to gender equality as a policy priority is open to debate, we isolate several explanations which may throw some light upon the issue.

The first explanation is that women's organizations do not have a sufficient understanding of policy-making processes in general and of gender mainstreaming concepts and methods in particular. To be effective, representatives of women's interests require an understanding of the policy process and a willingness to engage in that process. Ensuring the effective participation of women's organizations in such processes often calls for specialized training, something which most of them lack and which is not readily made available to them by their governments. In addition, to be effective advocates for gender equality requires women's groups to have developed a 'gender lens' through which to critique policy proposals from a gender perspective. Again, this is a matter of training and also of disposition – a feminist perspective is viewed with some suspicion by many women's organizations in ECE.

Secondly, women's organizations do not appear interested in gender mainstreaming as a strategy for achieving gender equality. In the current socio-economic context of ECE, other issues are regarded as more urgent than gender mainstreaming, which is perceived as a long-term strategy that is not able to give a response to current needs. In some instances, too, the feminist perspective required by gender mainstreaming comes into conflict with the main ideological tenets of some active women's organizations.<sup>33</sup> The current landscape of the women's sector in Poland, for example, is unevenly divided between feminist-oriented organizations, women's groups attached to the Catholic Church, and non-ideological

women's NGOs. This serves to illustrate the dearth of organizations who would be active advocates of gender mainstreaming.

Finally, one can point to the lack of financial resources that are available to enable interested groups to engage in gender mainstreaming. Women's organizations tend to focus more on specific issues because their survival depends heavily on their capacity to secure grants from sponsors for projects mainly involving the provision of services for disadvantaged women. In this sense, the main function of many women's groups is that of filling the gaps in service provision left by the state sector as a result of the transition to a market economy.<sup>34</sup> It is almost impossible for such groups to obtain funding to develop their gender mainstreaming knowledge and capacity in order to influence policy. This hinders the potential of women's organizations for playing a role as political actors in gender mainstreaming processes.

Even though non-governmental and other civil society groups have been de facto excluded from the decision-making process in the majority of countries, in some they have played a key role in setting the agenda and in lobbying for the adoption of gender equality legislation. For example, in Bulgaria, the equality legislation appeared on the parliamentary agenda largely as a result of efforts of organizations such as the Bulgarian Gender Research Foundation, Gender Project for Bulgaria and the Women's Alliance for Development. Similarly, in Slovakia women's organizations played a very active role in lobbying for the introduction of the Anti-discrimination Act. In other countries, like Estonia, women's organizations did not play such an important role as agenda setters, but they nonetheless carried out important lobbying activities in support of the adoption of the Gender Equality Bill, especially at moments when its adoption seemed highly unlikely.

Across ECE, then, women's political empowerment is varied, and so too is the capacity of organized women to consult, discuss and engage with policy makers. This presents a conundrum for the development of democracy in the region. On the one hand, the multilevel governance context has introduced gender equality as a stated priority, and national governments have been required to accept it as both a democratic value and a policy goal. In this respect, the opportunity for women's advocates to press for equality across the full breadth of policy areas has been presented to them via membership in the EU. However, women's groups (with occasional notable exceptions) have not seized on this opportunity to influence policy development. The issue is not simply that of women's groups turning their backs on gender issues, for there is overwhelming evidence pointing to the contrary. It is more a case of women's organizations not being

engaged, and not encouraged to engage, with national decision-making processes. Even in political systems relatively open to pluralist politics, such as that of Slovenia, women's efforts to have their voices and perspectives on issues included in policy processes are limited. Much of this gap between organized women and decision makers rests in the absence of a tradition of social dialogue in ECE.

The above point illustrates an interesting aspect of the democratization trajectory in the countries of ECE: the rapid pace of political reform, spurred further by membership of the EU, has advanced further than the pace of transformation in civil society. In addition, the Europeanization of national laws has proceeded more quickly than the development of national political system processes, especially the process of instituting a dialogue between the state and civil society. Thus, there is a lag between the creation of gender institutions and gender equality laws and policies, on the one hand, and the participation of women's advocates in shaping and implementing these policies on the other. This lag points to the fact that democratic politics takes its own time to develop. It also indicates the limits of supranational governance, in the short term, on policy implementation in national contexts. While women's groups do not sufficiently engage as social partners with the state in developing gender policies, this should not be construed as a conscious rejection by women of the gender equality agenda and the gender mainstreaming architecture underpinning this goal. In time, women's groups will come to focus on the political arena and will claim their place as policy influencers. That point in time can be hastened by a more robust encouragement of women's involvement by the state and by more directive approaches by the EU in supporting social dialogue.

### **Conclusion: EU gender equality – how deep are its roots in ECE?**

This chapter has argued that gender equality is perceived by the EU as an important dimension of democracy. The EU has chosen to implement the gender equality norm in three main ways – constitutionalizing it as a value and a goal of the Union, developing specific equality laws that are binding on Member States, and by requiring national governments to adopt a gender mainstreaming approach to all policies. The objective is to deepen democratic norms and practices across the Member States of the Union. The EU has had mixed success in this regard, with a significant level of variation in the development of gender equality among the ECE countries. There is a strong reluctance to legislate on gender equality

specifically by way of adopting one single, integrated gender equality act. Instead, the preferred strategy is to introduce a law encompassing different grounds of discrimination that bans sex discrimination among others. The main reason for this resistance to the introduction of gender equality legislation is an idea that such legislation is not necessary, as gender equality is not perceived as a 'problem' requiring a legislative response apart from those provisions already present in the Constitution. Moreover, in some countries, such generic legislation makes no specific reference to gender whatsoever, giving priority to other discrimination grounds. Apart from this, it should be noted that these pieces of legislation incorporate a concept of equality that is framed as an absence of sex discrimination. Therefore, reference to more 'proactive' tools to achieve gender equality – such as positive action and gender analyses of policies – is still rare. Only in Estonia and Slovenia does gender equality legislation permit the introduction of positive action measures, something that may be regarded as an important step towards gender equality.

The future issue is to what extent these national laws conform to the EU directives. At this point, it is rather too early to tell, as the most definitive assessment of national laws awaits the monitoring of the Commission and the judgement of the European Court of Justice. Nonetheless, evidence to date suggests that countries have not fully complied with the letter and spirit of EU legislation, although in the main national legislation has significantly expanded the framework for gender equality beyond that which existed under the socialist regime.

If there is some degree of conformity with EU gender equality policy in legal terms across ECE, there is much more diversity in terms of the gender equality infrastructure that is in place to facilitate gender mainstreaming. A plethora of units, commissions, parliamentary committees, advisory councils and gender focal points exist, with each country creating its own combination. One common feature is the marginality of the gender units within the administrative structure, while a second is the lack of governmental resources devoted to making gender mainstreaming an integrated part of the policy process. Given the lack of attention by successive governments to gender equality as a policy issue, gender mainstreaming practices are barely perceptible in the majority of these countries. In particular, the vehicles for ensuring that women's interests are represented in governance (gender units and women's civil society organizations) do not have the level of political power and resources that are necessary for effective advocacy of gender interests. Only in Estonia and Slovenia have we been able to detect consistent signs of a robust appreciation of gender equality and a serious effort at gender mainstreaming.



The inclusion of women's civil society organizations in the policy processes is more formal than substantive. Their participation consists in formal consultative exercises – where their opinion is rarely fed into the process of policy formation – rather than consisting in a social dialogue, where their interests and concerns are discussed and taken into account from the initial policy planning process. In addition, a major obstacle to progress in representing women's interests and perspectives in decision making is the work of women's organizations as service providers in the context of a shrinking state service sector. Having to rely on meagre funds, these organizations lack the political influence, expertise and resources that are necessary to engage in dialogue with the state on gender equality.

In conclusion, the question as to whether there has been a successful transfer of gender equality policy from the supranational EU to the national programmes of the new and accession Member States evokes a mixed response. On the one hand, it is evident that the EU's gender equality policy has made an impact on the national laws of ECE countries, even though many countries have opted for an 'omnibus' equality act and many have chosen an anti-discrimination response. It is also clear that at the urgings of the European Commission, adopting a gender equality policy and a gender mainstreaming strategy has met with a general response, even if it is notably lacking in enthusiasm. The most critical weakness in making gender equality policy work rests in the exclusion of civil society from the process. This is partly through lack of progress in constructing an engaged and empowered women's sector – an issue whose significance for democratic decision making many ECE governments have yet to grasp. It is also partly due to women's groups not yet finding their political role as advocates for gender equality. Yet it must be remembered that democratic governance is a relatively recent practice in ECE, and democratic practices are evolving rapidly. The evaluation of gender equality in this chapter is taken at a particular point in time, in the period of early membership of the EU. Future years could see more convergence with the European norm on this issue, between states and between the EU and its members, especially if enforced by EU institutions. Nonetheless, the goal of gender equality is a permanent element of ECE democracies. It will raise continuing issues for multilevel governance and the nature of democratic decision making in the EU for some considerable time to come.

## Notes

- 1 This chapter draws from the findings of a research project entitled 'Enlargement, Gender and Governance: the Civic and Political Participation

and Representation of Women in EU Candidate Countries' (EGG). This 42-month project (12/03–5/06) was funded by the EU 5th Framework Programme (HPSE-CT2002-00115) and directed by Yvonne Galligan at Queen's University Belfast. The authors would like to thank Eva Bahovec, Alexandra Bitusikova, Marina Calloni, Ausma Cimдина, Eva Eberhardt, Malgorzata Fuszara, Georgeta Ghebrea, Hana Haskova, Anu Laas, Meilute Taljunaite and Nedyalka Videva for their research on gender mainstreaming in the context of this project.

The completion of this chapter was made possible by a UK Arts and Humanities Research Council Award (Award No. 113117) given to Y. Galligan for research leave to pursue scholarship on women and politics in east central Europe.

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- 6 European Commission, *Report 2005*, p. 6.
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- 10 Shaw, 'European Governance', p. 3.
- 11 'Gendering' of institutions and institutional practice refers here to sensitivity to gender inequalities in the distribution of power in organizations, along with efforts to address gender biases in the priorities, objectives and resources allocated to gender activities.
- 12 Stratigiaki, 'Gender Mainstreaming', p. 170.
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- 14 European Commission, 'Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities', Communication from the Commission, COM 96(67) Final, 21 February 1996, pp. 2 and 5.

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- 16 Stratigaki, 'Gender Mainstreaming', p. 168.
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- 20 Rees, *Mainstreaming Equality*, p. 8.
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- 31 Beveridge et al., 'Mainstreaming and Engendering', p. 390.
- 32 A. Mazur, *Theorizing Feminist Policy* (Oxford: Oxford University Press, 2002).
- 33 Wolchik, 'Women', p. 105.
- 34 B. Einhorn, 'Gender and Citizenship in the Context of Democratisation and Economic Reform in East Central Europe', in S. M. Rai (ed.), *International Perspectives on Gender and Democratisation* (Basingstoke and London: Macmillan, 2000), p. 11.

# Conclusion

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On the basis of the analysis in this volume, what conclusions can be drawn about the implications of multilevel governance (MLG) for democratic legitimacy? To answer this question, it makes sense to revisit the three dilemmas of multilevel governance discussed in the Introduction. There, it was hypothesized: (1) that efforts to bring an otherwise unregulated transnational process under democratic control may falter due to the absence of crucial social preconditions of democracy, or in other words, a lack of congruence between political and sociocultural spheres (*Dilemma 1*); (2) that while multilevel governance is likely to increase output legitimacy (effectiveness of problem-solving and control over power holders), it is also likely to reduce input legitimacy because of increased difficulties in calling leaders to account (*Dilemma 2*); and (3) that while MLG may open up new spaces for participation and deliberation, it also may undermine the equal representation of all citizens in the decision-making process (*Dilemma 3*).

Discussion in the individual chapters, focusing mainly on the European Union (EU), has revealed that these dilemmas are indeed virulent in MLG arrangements. Most attention in this volume has been given to *Dilemma 1*, which is rooted in the absence of a *demos* that could provide the necessary 'social infrastructure' for transnational democracy. As the empirical analysis presented by Wessler et al., Hurrelmann and LeDuc shows, it is precisely the lack of core social conditions – like a public sphere that enables communicative exchange, common identities that provide a basis for majority decisions and redistributive policies, or the willingness of the citizens to participate in the EU's democratic life – that prevent, or at least enormously complicate, the transfer of national democratic arrangements to the EU level. Furthermore, the chapters by Ost as well as by Galligan and Clavero suggest that the extent to which the citizens

assume ownership of the EU's democratic arrangements is even weaker in the new Member States than in the old ones. To be sure, all this does not rule out that attachments to EU institutions and to fellow Euro-citizens might grow – especially in ‘thin’ forms like the ‘cosmopolitan public culture’ envisaged by Delanty. Yet the empirical evidence presented in this volume suggests that there is still a long way to go until Dilemma 1 can be considered resolved.

The fact that the social preconditions for democracy are precarious in the EU undermines attempts to shape EU democracy in a way that simply mirrors the Member States' democratic structures. But no easy alternative suggests itself: given the transnational scope that characterizes many political problems in today's Europe, traditional forms of state-centric governance, even if supplemented by intergovernmental cooperation, can no longer guarantee effective policy making. And as the chapter by Germain makes clear, the legitimacy of new forms of transnational democratic governance based on the inclusion of selected stakeholders into policy deliberations also depends on conditions that cannot be taken for granted in all policy domains: a small target constituency, a technocratic subject matter, and the absence of large-scale redistribution that would engage broad public interest. It is against this background that Hurrelmann, in his discussion of ‘multilevel legitimacy’, points out that the EU's best prospects for legitimation may lie in *combining* different legitimation strategies, each highlighting specific vehicles of democratic input.

In the same vein, F. Scharpf has also suggested that a theory of multi-level governance should be based on a combination of different ‘modules’ describing ‘distinct governing modes’ that coexist in the EU polity.<sup>1</sup> Yet it has to be noted that it is precisely this combination of various logics of governance, and the ensuing complexity of MLG arrangements, that to a large part accounts for the other two dilemmas discussed in this volume. As the chapters by Smith and Raunio make clear, Dilemma 2, namely the difficulty of squaring strong capacity to solve common problems with weak sanctions for unpopular or failed policies, arises precisely because the interplay of different channels of democratic input in MLG arrangements blurs lines of accountability, equips politicians with options for ‘blame shifting’ and ‘credit claiming’, and leaves the public confused about who is responsible for a decision and how those responsible can be held accountable. Similarly, relating to Dilemma 3, Germain and Greenwood observe that combining different modes of governance also results in a juxtaposition of multiple logics of representation – representation of citizens, of Member States, of functional groups – that might be beneficial in terms of deliberation but raises concerns about whether all

members of the population can equally contribute to the political decisions that affect them.

Our analysis suggests that Dilemma 1 is the most 'basic' difficulty impeding the democratization of multilevel governance, as Dilemmas 2 and 3 are at least to some extent derived from it. However, the EU, as the paradigmatic multilevel governance system, may face greater challenges than federal systems in resolving its democratic dilemmas precisely because of the primacy of Dilemma 1. To be sure, the democratic legitimacy of some federal systems also suffers due to fragmented identities, which can produce incongruities between federal political structures and sociocultural spaces; the disintegration of several federations in post-communist Europe (Yugoslavia, the USSR and Czechoslovakia) once democratization was embarked upon illustrates the strength of these contradictions. However, in many democratic federations (the United States, Germany and Canada, with a caveat regarding Quebec) an adequate level of congruence between sociocultural identity and the federal state not only reduces the importance of Dilemma 1 but also keeps concerns about democratic accountability and representation (Dilemmas 2 and 3) within the scope of 'normal' garden-variety politics, rather than turning them into issues of fundamental democratic legitimacy.

For the EU, on the other hand, the primacy of Dilemma 1 reinforces the intensity of concerns about accountability and representation, contributing to a larger problem of democratic legitimation. In a discussion of the failure of the European Constitution, Hooghe and Marks have recently expressed a similar idea, arguing that governance is not only about the coordination of human activities, but also about 'the expression of community':

Citizens care – passionately – about who exercises authority over them. The functional need for human cooperation rarely coincides with the territorial scope of community. This tension is, we believe, a key to understanding the path of European integration.<sup>2</sup>

However, on the basis of the analysis in this volume, the solutions that they propose – avoiding policies that elicit high levels of public interest and delegating further powers to independent EU agencies<sup>3</sup> – are not very convincing, as they would aggravate existing problems of accountability and representativeness, stemming from Dilemmas 2 and 3.

Regardless of the central importance of Dilemma 1, this volume nonetheless suggests that further thinking about a democratic theory of multilevel governance should be informed by all three dilemmas, and the relationships between them. This will only be possible if, in addition to

identifying various 'modes of multilevel interaction',<sup>4</sup> attention is also paid to their *interplay*. How does the interaction of different governing modes affect the congruence of political and sociocultural spheres, and what implications does it have for attempts to secure accountability and representation? Which design of democratic institutions and which conceptions of collective identity or public culture offer the best chances to secure congruence, accountability and representation? Some concepts that might be helpful in answering these questions have been presented in this volume: Hurrelmann's idea of 'second-order legitimacy relationships' linking different channels of democratic input, Smith's insistence on the utility of referenda as an accountability mechanism that may be employed in various governing modes, or Delanty's concept of 'cosmopolitan solidarities' that might be detached from a territorial sense of belonging, to name but three.

Nevertheless, it is clear that efforts to construct a democratic theory of multilevel governance have only just begun. The democratic dilemmas discussed in this volume highlight the range of problems that this theory will have to address. Even if the EU represents par excellence the complex decision-making structure and the ensuing problems of democratic legitimation associated with multilevel governance, these problems are not unique to the EU. Rather, they do increasingly arise in federal states as well, and indeed even in 'unitary' states, since the emergence of multilevel governance is itself a response to the multilevel and complex nature of virtually every policy challenge that confronts them in a globalizing world. The pervasiveness of the democratic dilemmas of multilevel governance means that it is high time for democratic theory to address them.

## Notes

- 1 F. W. Scharpf, 'Notes Toward a Theory of Multilevel Governing in Europe', *Scandinavian Political Studies*, 24 (2001) p. 4. The governing modes that Scharpf discusses are 'mutual adjustment' of Member States, 'intergovernmental cooperation' among them, 'hierarchical direction' through the European Court of Justice or the European Central Bank, and 'joint decisions' involving the Commission, the Council of Ministers and the European Parliament.
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- 4 Scharpf, 'Notes', p. 20.

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