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Legitimacy, Democracy and the EU:
when abstract questions become practical
policy problems

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Abstract

This paper reviews the range of theoretical discussions of democracy, legitimacy and European integration and suggests how they might be useful in framing practical proposals for institutional change at Union level. For reasons of space, it only provides a brief summary of a rich and complex literature that has recently sought to show how the lessons of political theory might be used to fashion EU institutions that are acceptable to the public they are designed to serve.

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1. Introduction: Legitimacy Dilemmas in European Integration

Why should an abstract concept like political legitimacy be of any interest to policy-makers? The answer is that legitimacy concerns the acceptability of policy to the public. It, therefore, goes to the heart of whether institutions of government can get their way. Without widely agreed views of who has a right to make publicly-binding decisions, when and how, governing bodies find it difficult to achieve the unforced co-operation of citizens.

Why should the legitimacy of the European Union (EU) be of interest to national policy-makers, and not just those at Union level? The answer to this question is that each level of government — supranational, national and sub-national — is increasingly implicated in the legitimacy of the other. Although the EU is often presented as a challenge to national governments, the relationship may be more accurately described as one of fusion and symbiosis (Wessels, 1992). National governments devote enormous administrative resources to their participation in the EU. In their different ways, most governments of member states look to Union policies to enhance *their own* performance in tackling practical problems and meeting citizen expectations.

Political legitimacy is, however, a many-sided quality. The sociologist Max Weber (1918) distinguished between substantive and procedural legitimacy: acts of government that are acceptable either for what they achieve (substantive) or for how they do it (procedural). Fritz Scharpf (1997) makes a similar point that legitimacy can be won or lost either on the input or on the output side of government: democratic selection of office holders, electoral approval of programmes, public consultation and so on are common ways of securing input legitimacy; meeting public needs and values, and ensuring that policy tracks public opinion, are sources of output legitimacy.

Another distinction is offered by the political theorist David Beetham (1991), who argues that there are three components to legitimacy in liberal democratic societies: the performance of institutions; their conformity to democratic values of consent, representation and accountability; and political identity, without which citizens may question the right of a particular collectivity to make decisions on their behalf, however useful those policies, or impeccable the procedures by which they are made.

There are many reasons to expect legitimacy to be an acute problem for the EU. It is a new and unfamiliar political system; it has substantial powers to go into the nooks and crannies of member societies; its rules over-ride those made by national institutions; it takes decisions that affect ordinary lives; it demands sacrifices, sometimes with uncertain long-term reward; it takes from some in order to give to others; it affects deeply held values, including basic feelings of identity; and it is a large political system that often seems physically distant to its citizens.

Yet, until the 1990s it was commonly assumed that there was no urgent need to address the legitimacy exercised by the then European Community (EC). This was for three reasons. One was the idea that the EU would be accepted for exclusively instrumental or technocratic reasons: so long as it was useful it would not matter very much if it was only weakly democratic or distant from popular identification. Another idea was that it could be indirectly legitimated through its member states, on the grounds that a body composed of legitimate governments would itself be legitimate. A third notion was that legitimacy could function as a form of deferred gratification: it might be less than ideal to rely on a mixture of technocratic and indirect legitimation, but tricky problems of democratisation and identity formation could always be tackled after people gained practical experience with the very institutions that were in need of legitimation (Wallace and Smith, 1995).

More than any other single event, it was the crisis in 1992-3, provoked by the ratification of the Maastricht Treaty on European Union (TEU), which shattered any illusion that the legitimation of EU power was a 'non-problem'. By nudging the EU in the direction of a political system in its own right (Hix, 1999), the Single European Act and the Maastricht Treaty undercut all arguments by which the legitimation of the Union had previously been avoided. Majority voting and more autonomous supranational institutions made it more difficult for the Union to claim indirect legitimation through the concurrent consent of all of its member states to each decision taken. The involvement of Union institutions in settling questions of value - on matters as varied as fishing quotas and abortion rights (Dehousse, 1995) — made it hard for them to claim legitimacy on the grounds of performance or efficiency alone. The EU also needed a basis of legitimacy that gave it the right to please some and disappoint others.

Yet, the foregoing explains only why legitimacy has become a problem for the EU, not why it has been such a struggle to find solutions. One account of the elusiveness of solutions is to be found in the work of David Beetham and Christopher Lord (1998), who argue that the EU has come under pressure to satisfy all three standards of legitimacy that apply to the liberal democratic state - performance, democracy and identity — in circumstances in which it is difficult for it to meet such a challenge (see also Höreth, 1999). The main difficulty, in their view, lies in a tension between democracy and identity. Democracy requires at least enough of an identity for people to accept that they should deliberate and vote as a group, yet, there is no guarantee that an adequate sense of identity will be available at the exact moment that a political system comes under pressure to democratise its decision-making. *Eurobarometer* surveys consistently indicate that publics identify overwhelmingly more strongly with their member states than with the EU. As long as this is so, some approaches to the democratisation of the Union, particularly those which entail a high probability of national democratic institutions being over-ridden by European ones, could even have negative effects for the legitimacy of the EU (Dehousse, 1995). If special care is needed in combining democracy-building and identity-formation, there is at least a wide menu of options under both heads, as the next two sections demonstrate.

2. The Democracy Menu

Proposals for the further democratisation of EU decision-making can be pieced together from at least the following four different dimensions of choice.

Intergovernmental vs Supranational

Under intergovernmental approaches, the EU is democratised through the elected institutions of its member states. In the contemporary EU, for example, each member country has to ratify any change to EU Treaties according to the democratic mechanism of its choice, with referendums being used in some cases and national parliamentary votes in others. In addition, most important decisions have to be taken by the Council of Ministers on which all national governments are represented.

Even with majority voting, this allows national parliaments scope to influence the development of EU policy and hold their governments responsible for their behaviour at Union level (Norton, 1996). They can review the negotiating positions of their governments before meetings of the Council of Ministers. They can scrutinise draft legislation, which has to be circulated to each national parliament in its own language at least six weeks before it is voted in the Council (Duff 1997: 174). They also have important discretion in deciding how Union legislation is to be transposed into national law, since directives only require member states to achieve certain results, without specifying the methods to be employed. In the case of the Danish *Folketing*, for example, the government of the day has to secure the agreement of a parliamentary committee for its negotiating position in the Council of Ministers. Council minutes and agendas are then used to check that the government has, indeed, followed the position agreed with the *Folketing* (Arter, 1996: 110-24).

Under supranational approaches, entirely new democratic institutions are established at the European level. They are purpose-made for the EU's political system, and they operate with at least some consistency across the Union as whole. So, for example, the European Parliament is directly elected by all adult citizens of the EU. Its powers, are directed to making law for the Union as a whole, and at scrutinising, criticising and controlling the overall performance of Commission and Council in their role as the EU's double-headed executive. In brief, it has the power to:

- Approve or reject the member states' choice of Commission and Commission President;

- Dismiss the Commission on a double majority (two-thirds of votes cast, provided that those voting for a censure comprise more than half of the Parliament's membership). The resignation of the Santer Commision in March 1999 undermined the argument that this was unlikely ever to happen.

- Reject legislation in some areas (Co-decision) and amend it in others (Co-operation). The increasing use of the former means that the EP approaches bicameral status with the Council in a political system where rule-making is,

arguably, the main activity. Even the latter allows the EP to structure the choices that are subsequently available to the Council (Tsebelis, 1994).

As the previous examples imply, the EU currently mixes and matches intergovernmental and supranational approaches to democratic politics.

Consensus vs Majoritarian Democracy

Majoritarian democracy is where decisions can be taken by a bare majority of the public or its representatives. Its proponents argue that any alternative amounts to minority rule. Consensus democracy is where the aim is to align policies with the preferences of the greatest number of citizens or their representatives, rather than with those of a simple majority (Lijphart, 1984). Its defenders argue that any alternative allows minorities to be excluded and is not, therefore, rule by the people as a whole. Amongst examples of consensus democracy are the following:

- **Supermajoritarian decision-rules**: these require decisions to be approved by more than 50 per cent of representatives. At present the EU employs supermajorities twice over, in both the Council and the EP. Majority voting in the Council requires 71 per cent of the weighted votes of member states. Most powers of the EP can only be exercised on an absolute majority of its membership (314 out of 626). Given normal rates of absenteeism (Hix, 2000), this effectively means that a majority of around two-thirds is usually needed in the EP, as well as the Council of Ministers.

- **Federal systems**: these parcel decision-making out between layers of government. It is rare for the EU to be the only body with powers in an issue area. It normally shares jurisdiction with national and sub-national authorities with which it has to co-ordinate its activities (Scharpf, 1988).

- **Consociational systems**: these guarantee the participation of all main cultural units in the most important decisions of a political system (Chryssochou, 1994; Lijphart, 1997). In the EU, for example, all governments nominate at least one Commissioner; all member states have a seat on the Council and the opportunity

to hold its rotating Presidency for a period of six months; both Council and Parliament over-represent smaller member states in a manner that underlines the principle that it is national communities — and not just citizens — that are units of value in the EU's political system; and even the Governing Council of the European Central Bank works on the principle 'one national central bank, one vote'.

Direct vs Indirect Democracy

Direct democracy is where the people itself takes major decisions of government. The alternative is that they only exercise public control indirectly through appointed representatives. As will be seen below, this distinction is mainly relevant to prescriptions for the democratisation of the EU, rather than to its current practice.

Strategic vs Communicative Democracy

Strategic models of democracy presuppose that actors have clear and fixed views of their interests. The main goal of democratic institutions is then to find the most efficient means of aggregating the preferences of individuals into collective actions, albeit subject to various standards of fairness. Communicative models of democracy hold that preferences also need to be debated within the political system, either because they are not fully formed prior to a process of discussion, or because group action is so very different from individual action, both actually and morally (Habermas, 1996). A big question for the EU is whether it can develop a public sphere that all citizens can access as equals, and through the medium of which all points of view can be debated and compared (Habermas, 1989 [1962]). Connecting European citizens to one another — and to EU institutions — raises problems of language, media, party systems and the associational structure of society, almost all of which are presently organised to support national forms of democracy, rather than a European equivalent.

3. The Identity Menu

Amongst the different ways in which an EU democracy might be under-pinned by a shared identity are the following:

Communitarian Identity

A communitarian form of EU identity would involve emphasising various characteristics — real or imagined — that are intrinsic to being European: ethnic background; cultural heritage; a common past and so on (see Bellamy and Warleigh, 1998, for further discussion of the Communitarian/Cosmopolitan discussion used here). As with many concepts of nationhood, it would be a form of Europeanness into which people are born. It can, therefore be understood negatively as an identity that is *not* chosen; *not* open to all comers; and *not* extrinsically justified as a means of promoting other values. Rather than being rationalised, it is more likely to consist of symbols and sentiments.

Cosmopolitan/Civic Identity

In contrast to the foregoing, a 'civic approach' would involve constructing a European identity around freely chosen values, rather than common characteristics that people either possess or lack from birth. Democracy, human rights, rule of law and a commitment to peace through integration are often mentioned as examples. At one level such values can be seen as defining what is *essential* if a state and its citizens are to belong to the Union. They are, for instance, all included in the Copenhagen criteria for Union membership (www/europa.eu.int/ comm/enlarge/intro/criteria). At another level, they can be understood as commitments that are *consequential* to belonging. In other words, they tells us what the Union is for. In this second sense, they suggest a 'forward-looking' identity in contrast to a communitarian emphasis on a shared past. Amongst arguments that are made for a European identity based on values are, first, that it is open to all comers, and not just to those who happen to have the required ethnicity, history or culture (Habermas, 1992); and, second, that it would differentiate EU identity from most forms of national identity — which tend to be ethno-cultural in character — so improving the chances of forming a multi-tiered sense of identity in which each layer is complementary, rather than competitive (Weiler, 1997*b*).

Thin Identity

Some authors question whether identity should be given the same importance as democracy and performance in determining legitimacy. They argue that while expectations of democracy have become more precise and demanding, the formation of an identity needed to support democracy has become easier, more flexible and voluntaristic. In their view, the (post)modern world allows common arenas to be formed around little more than a shared commitment to a few basic rules of communication and deliberation (Eriksen, 1999). Anthony Giddens, for example, contrasts a traditional world of face-to-face contacts in static communities with a modern world in which collective action requires relationships to be formed between those who may never get to see one another (1990). If sentiments and traditions are the basis for identity in the first case, it is codes for establishing and maintaining trust that allow those who develop relationships at a distance to recognise one another and underpin their collective endeavours with the required sense of obligation.

4. Practical Proposals to Improve the Legitimacy of the EU

<u>General Suggestions</u>

Transparency

The central claim of those who believe in the legitimating effects of transparency is that by reducing their procedures to a few simple rules that are known, predictable and acknowledged to be fair, Union institutions might achieve sufficient public trust to compensate for other weaknesses in their democratic credentials. Giandomenico Majone, for example, argues that the difficulty of creating elected insitutions at Union level could even be put to good legitimating effect by using the EU as an arena for the development of independent agencies where there is a good case for putting certain tasks beyond the control of partisan majorities (Majone, 1996). In such instances, the appropriate mechanism for accountability would be for Union bodies to be set up on tight policy mandates. They should then be required to act transparently by providing full justifications for all decisions taken, with poor explanations being sanctionable by judicial challenge, loss of public credibility, and loss or amendment of delegated powers.

Checks and Balances

A second suggestion is that power is more likely to be accepted where there are guarantees against its abuse. The Union might, therefore, be expected to be more legitimate in proportion to its success in establishing any of the following:

- A dispersion of powers between its main institutions;
- Decision-rules that eliminate risk of majority domination and institutionalise an inclusive approach to consensus-building;
- Clear and credible means of protecting individual and group rights in relation to all decisions taken by the Union;
- A workable system of subsidiarity that inspires public confidence that decisions are only taken at Union level where citizen expectations cannot adequately be achieved at other levels of government;
- The development of informal networks that require Union policies to be developed in consultation with 'stakeholders' (Peterson, 1995*a*; Kohler-Koch, 1996), without prejudice to more diffuse and less organised interests (Pollack, 1997).

Deliberation and Participation

This is best understood as a plea to give citizens 'ownership' of the Union by treating them as the active subjects rather than the passive objects of the integration process (Bellamy and Warleigh, 1998: 455). For example a recent study by the European Commission's Forward Studies Unit (FSU) argued for an alternative to conventional approaches in which 'representatives are democratically elected, formulate broad policies in legislative chambers, oversee their detailed implementation by bureaucratic departments' and 'impose a particular understanding of the problem and the means to resolve it'. Instead, it proposed that social actors should negotiate a process of self-regulation between themselves, with the European public authority acting as a mixture of referee, co-ordinator and tutor (in the preferences of others and the lessons of previous policy experience) (European Commission, 1997).

Flexibility

A fourth possibility is that flexible integration could help to reduce the Union's legitimation problems. No institution faces a single set of opportunities when it comes to establishing its legitimacy. Instead, possibilities vary markedly across issue areas, geographical regions, patterns of actor involvement, and methods of policy-making (Blondel *et al.*, 1998: 8; Héritier, 1999: 270-1). A flexi-polity at the European level might, therefore, maximise legitimacy by concentrating on issues where citizen support for its role is most established; by bringing countries into policies at different speeds; and by concentrating on tasks where a wide variety of actors (supranational, national, subnational) can be mobilised into the Union arena, as stakeholders in the continuing success of the Union policy regime.

5. Practical proposals to improve EU legitimacy

<u>Specific Institutional Changes</u>

Option 1: Strengthening National Parliaments

Various suggestions have been made to extend the involvement of national parliaments in Union politics: the Folketing model (see above) could be generalised to all member states; the EP and national parliaments could form an interparliamentary network to exchange information and collaborate in the supervision of executive power (Lord, 1991); a further chamber of national parliamentarians could be added to the European Parliament (Heseltine, 1989). Although the 1990s saw incremental development of the first two of these suggestions, there are limits to all three options. To mention just a few:

- There is a risk of introducing too many veto points to EU decisions. A 'senate' of national parliamentarians would effectively make the EU into a tricameral legislature (The Council of Ministers, the present EP and national parliamentarians). The generalisation of the Folketing model to all member states could reduce negotiating flexibility and the capacity of governments to deliberate points of view at the European level;

- National parliaments are 'executive dominated'. On the one hand, this reduces their capacity to hold national governments to account for their behaviour in the

Council of Ministers. On the other, it limits prospects for fruitful collaboration with the European Parliament, which has more scope and motive to take an 'oppositional' attitude to governments represented on the Council;

- The representation of opinions through the democratic institutions of member states may not be satisfactory where political differences cross-cut national boundaries. Under such conditions, there will always be some citizens and organised groups whose views cannot be adequately represented at Union level by their own government or by the majority of the day in their national parliaments. Only a representative structure at Union level would allow them to align with like-minded groups in other member states to articulate shared views;

- National democratic processes could come under stress if subjected to the double load of institutionalising representation and accountability in both the domestic and European arenas. Since divisions on European integration cuts across the left-right divide on which most national party systems were formed, EU questions often create splits in the latter. In addition, representation through national parliaments implies that citizens have similar preferences in relation to both the domestic and European arenas, and that they will not feel frustrated by being unable to vote in different ways at the two levels.

Option 2: Further Strengthening of the European Parliament

In spite of the powers set out above, the European Parliament falls short of a full model of representative democracy. One difficulty is that it does not have scope to exercise control over all aspects of Union decision-making: the limitation of most EP powers to the first pillar — and the unevenness of its powers within that pillar — means that the Union is only a 'semi-parliamentary' political system (Magnette, 1998). A second problem is lack of political competition in the EP. Up to now, most parliamentary votes have been dominated by a grand coalition of the centre right and left (Hix and Lord, 1997; Hix, 2000; Lord, 2000). A final shortcoming is that the EP has been unable to forge a credible electoral link. Most studies of European elections conclude that they are 'second-order' in nature (Reif and Schmitt, 1980). This means that they are dominated by national politics, with the result that it is difficult for the EP to claim to represent voter preferences on EU policies.

There are two routes that the EU could take to a fully developed parliamentary politics. It could either model itself on national parliamentary practice in Western Europe, or on the US Congress. The first would extend its powers over the appointment or dismissal of the EU's executive. The second would increase its law-making powers, for instance by making Co-decision a general requirement.

There is, however, a trade-off between these approaches, since executives appointed by parliaments need to organise stable and disciplined majorities, at obvious cost to the independence of the legislature. An advantage, therefore, of modelling a European parliamentary democracy on the US Congress is that this would allow for fluid alignments in which different majorities can (in principle) be formed on each piece of legislation. This, would in turn, minimise the risk of fixed divisions between 'winners' and 'losers' in a political system whose legitimacy depends on a perception that benefits are evenly distributed between countries and social groups.

There are, however, difficulties common to either approach to parliamentarianisation. To mention just three:

- There is no guarantee that strengthening the powers of the Parliament would be enough to induce voters to treat European elections as first-order contests in which choices are made on European issues. A recent study, for example, doubts whether low voter participation is linked to a perception that the EP is lacking in power. There would appear to be little difference between participators and abstainers in the estimate they make of the EP's powers (Blondel *et al.*, 1998);

- Following on from the last point, the EU has only made minimal progress in developing the elaborate infrastructure of links between political system and society that is needed for representative democracy. One requirement is political parties capable of offering voters choices relevant to the institutions in question, and of co-ordinating the behaviour of voters no matter where they are physically located in the political system. Another is a media capable of bringing all opinions into contact with one another;

- A final difficulty is that parliamentary democracy adds an element of majoritarianism to a political system, though it should be noted that the EU currently tempers this effect through institutional incentives to build consensus within the Parliament (over-sized majority rules) and between Council and Parliament (the Co-operation and Co-decision procedures).

Option 3: Direct Election of the EU's Political Leadership

If the indirect election of a European Union executive by the EP seems neither practical nor desirable, an alternative might be to have allow all adult citizens the opportunity to elect the Commission or its President (Bogdanor, 1986). This might be accompanied by some combination of the following:

- Procedures for candidate selection could be designed either to stimulate public interest in the contest or to require those in search of nomination to build coalitions from across a wide range of member states. Possibilities include US-style primaries; or an obligation to seek the endorsement of MP's, MEPs or political parties from several member states (Hix, 1999);

- Campaigning arrangements might be designed to arouse debate on European issues, and mobilise voters around choices relevant to the EU. The former Irish Prime Minister, John Bruton, once suggested that candidates for the Commission Presidency might be required to take part in televised debates in each member state (EPP conference, Brussels, April 1995);

- The voting mechanism for the final election of the Commission or its Presidency could either be designed to require high levels of general support or a wide coalition from across member states. A two-round, French-style, election would, for example, mean that the eventual winner would end up with at least 50 per cent of final votes cast. Another possibility might be to combine a public elections for the Commission Presidency with an electoral college in which MEPs cast votes for individual Commissioners in propotion to votes received by their parties in European Parliamentary elections. This would ensure that the Commission continued to be recruited from politicians with a range of party political and

national backgrounds (e.g. by employing the D'Hondt system in the electoral college) so counter-balancing the effects of electing a President from just one party family.

The advantage of a directly elected chief executive is that there would be a single office holder of strategic importance that the electorate could hold accountable for the performance of the EU. Amongst difficulties would be the following:

- It is questionable whether the public or member states are yet prepared to invest so much democratic legitimacy in the hands of one supranationally elected office-holder. This difficulty might be lessened to the extent it continued to be necessary for the Commission to function within a complex balance of powers in which final decisions remained with member states;

- An elected Commission (or Commission Presidency) would mean abandoning any fiction that the Commission is an apolitical and technocratic agenda-setter. According to some commentators there are already potential conflicts between its roles as a supranational policy entrepreneur and its obligation to provide impartial public administration of policies (Christiansen, 1997).

*Option 4: Referendum*s

In addition to referendums in particular member states on issues of European integration, it has been suggested that pan-European elections could also be introduced. One proposal is for Swiss-style referendums, which allow laws to be challenged by being put to popular vote, on collection of a certain number of signatures (Abromeit, 1998). One advantage of creating a democracy based on the possibility of contestation is that it would give the public some sense that it could control and reverse decisions, while avoiding the difficulties of constructing the institutions and procedures needed for a democracy based on political aggregation: first-order elections, programmatic political parties, and competitive party government. Swiss-style referendums may also be suited to political systems in which there is little alternative to including all the main political forces in processes of consenus-building. Where politicians do not compete against one another as government and opposition, there is at least a safety valve in which key policies can be challenged and reversed by direct

popular initiative. Referendum questions could also be put to the public at the same time as European elections, so providing an incentive for those competing for the EP to address European level issues, and increasing the incentive for participation in both the plebiscitary and parliamentary votes.

6. An Aside on IGC 2000

At the time of writing the Commission, European Parliament and various Member States have made public statements of the institutional reforms they would be prepared to support in the IGC. A report has also been received from a group of wise persons. In terms of the options for improving the legitimacy of the EU set out above, the following points seem to stand out.

- The further strengthening of the European Parliament continues to monopolise proposals for the further democratisation of the EU. 'Alternative models' such as direct election of the Commission or its President, or Euro-referendums have attracted little attention. In comments to the Constitutional Affairs Committee of the EP, German Foreign Joshka Fischer does seem to have suggested that the Presidency of the Commission could eventually develop into a directly elected position. But this would not seem to be something for decision at this IGC (See *Financial Times*, 7 July 2000). There are, likewise, no concrete proposals that would formalise or extend the participation of national parliaments;

- Proposals for the strengthening of the European Parliament are largely framed as incremental developments to existing practice or as lessons from recent experience. Thus an extension of Co-decision is widely accepted as a corollary of further Qualified Majority Voting (QMV). A new power for the EP to dismiss individual Commissioners is widely (but not universally) supported as a means of avoiding a re-run of the events of March 1999, when the only sanction against individual Commissioners was to demand the removal of the Commission as a whole. Once again, the exception is provided by Joshka Fischer. In his May 2000 speech to Humboldt University, he endorsed the idea of an upper-house to the European Parliament which would add representatives of national parliaments to the present directly elected body;

- There is more agreement on extending the legislative powers of the Parliament by means of Co-decision than on giving it extra powers over the EU's executive. On the one hand, the British and Finnish governments see little case for changing the *status quo* in which the EP can only dismiss the Commission collectively and not individually. On the other, the Benelux countries have floated the idea of a major change under which there would be provision for the 'dissolution of the EP' in the event of enhanced powers of 'individual and collective dismissal' producing an inter-institutional deadlock;

- The initiative to draft a charter of fundamental rights in parallel with the IGC suggests an approach to identity formation based on shared civic values. It should, however, be noted that there is disagreement on whether the Charter should eventually be incorporated into the reform of the Treaty, or have legal status at all. This, in turn, raises the question of whether citizenship rights can be considered as such at all without an obligation on the part of public bodies to deliver them;

- A split Treaty is the main initiative on offer for the improvement of transparency. Its supporters argue that a basic text would clarify who does what in the Union. However, the implication of the EP's position is that it is insufficient to clarify rules without doing the same for processes. It, accordingly, proposes that there should be a distinction between executive and legislative meetings of the Councils, and that verbatim reports of the second should be published;

- A problematic relationship between legitimacy and flexibility can be detected from positions adopted in the IGC. Both flexibility - and the frustration of it - have a potential to implicate the legitimacy of the Union in conflict between the rights of its member states. Flexibility will increase the probability of Union legitimacy being judged on its capacity to balance the rights of 'ins' and 'outs', in conditions in which its supranational institutions are unlikely to be considered impartial between the two types of state.

Table 1a

Member State positions on Legitimacy Issues raised in Intergovernmental Conference 2000.

For full texts see http :www.eu.int/comm/igc2000

N.b. the Fischer speech is not included (though some details can be found in the analysis above) as the German Foreign Ministers were given in a personal capacity. The Chirac speech is, on the other hand, included as it represents the official position of the French Presidency, even if not of the French Government.

	Democratic/Representative Process	Citizenship/Identity	Transparency	Flexibility
Austria	Consider EP Powers to dismiss individual Commissioners			
Benelux	Reconsider rules for individual and collective dismissal of Commissioners, with possibile provision for dissolution of EP. Extend Co-decision in line with QMV.			Make reinforced co-operation easier to achieve, available to the second pillar, and do NOT increase minimum threshold of participants in line with enlargement
Denmark	Any change in Treaty to allow for individual responsibility of Commisssioners must respect inter-institutional balance	Charter should demonstrate that citizens should have rights in relation to EU institutions but it should be a 'political' document.		
Finland	Individual Commissioners should not be responsible to the EP. Instead, arrangements for their accountability to the President of the Commission should be strengthened	Proceed with a Charter of Fundamental Rights AND integrate the European Convention of Human Rights into the Treaties of the EU		Flexibility should be available under supervision and according to jointly agreed rules.
France. (Chirac speech)		The content of the Charter should be decided immediately, but its nature (i.e.status) should only be determined as part of an overall constitutional settlement, which should await the inclusion of all new members to be brought in under enlargement		Those countries making regular use of a new flexibility clause should form a 'pioneering group' in the period imbetween Nice and the achievement of the long-term goal of a constitutional settlement.
Germany	Individual responsibility of Commissioners should be covered in the Treaty			
Greece	EP should be able to dismiss individual Commissioners. Co-decision for all legislative acts with QMV. Consider extension of assent procedure to Treaty change			Flexibility must be accompanied by solidarity clause to protect the rights of those states not immediately able to participate in a policy.
Italy	Consider role for Council in the dismissal of individual Commissioners. Consider extension of EP's assent procedure to Treaty change.	Charter should be basis for constitution building with rights that are 'indivisible, inviolable and legally enforceable'	Treaties should be split to achieve 'reader friendliness'.	Flexibility should a) be extended to pillar 2 b) be available to lower thresholds in terms of minimum participants and votes of Council needed for approval.
UK	Individual Commissioners should not be dismissed by EP. Co-decision is 'likely to be appropriate where there is QMV.			

Table 1b

Positions of the European Commission and European Parliament on Legitimacy Issues raised in Intergovernmental Conference 2000. For full texts see http://www.eu.int/comm/igc2000.

	Representative Process	Citizenship/Identity	Transparency	Flexibility
Commission	Need for 'formalisation' of individual responsbility of Commissioners.		Split the Treaty to produce 'clearer commitments and transparent tasks, making the text a better tool for democracy'	
European Parliament	EP should elect President of Commission from candidates proposed by the Council		Verbatim report of Council proceedings. Divide Council into executive and legislative bodies. Split Treaty to achieve simplification	A third of the EU membership should be able to develop closer co-operation on a QM vote of the Council, following a proposal from the Commission, and with the assent of a

7. Conclusion: A Plea for Dialogue Between Academics and Practitioners

This paper has deliberately sought to move the debate about the legitimacy of the EU on from a concern with a 'democratic deficit', real or imagined. There are four reasons for wanting to see things differently:

- It is important not to confuse legitimacy and democracy. Some approaches to plugging a 'democratic deficit' could even be 'legitimacy negative' for the European Union;

- The term 'democratic deficit' often masks an unjustified presupposition that the EU should follow similar democratic practices to those found in national arenas. Attempts to replicate national democratic institutions could well lead to poor solutions at Union level. Conversely, a legitimate and democratic Union may involve innovations for which there are no precedents in national experiences of democratic politics;

- It is impossible to talk about a democratic deficit — to estimate its size, to

- understand its nature and to pinpoint where it is located in the EU's political system — without first being clear why a Euro-democracy is needed, what values it should exist to promote, and so on (Bellamy and Castiglione, 2000);

- Some elements of democratic politics have already developed in the EU. There are many ways in which citizen views can be channeled into Union institutions. Thus Arthur Benz and Thomas Esslinger describe the EU as a system that 'compounds' different approaches to democratic representation: consociationalism through member states; parliamentarianism through the EP; and federalism through the participation of regions (Benz and Esslinger, 2000). It is as important to understand why such practices are shaped as they are — and why they are mixed and matched in their present form — as it is to focus on deficits in the system. Not the least reason for this is that deficits and achievements may turn out to be so inter-related that it is impossible to understand the one without the other. For example, many of the difficulties in determining who is politically responsibile for Union decisions may be associated with the painstaking efforts that are made to involve so many actors in the building of a consensus . If so, efforts to achieve a satisfactory representation of opinions may create the very conditions that complicate accountability (Lord, 1999).

All of this suggests the need for two kinds of research that bridge the practitioner/academic divide. As a first step, it is important to clarify the standards of legitimate and democratic governance that the Union should be expected to meet; as a second step, reliable survey methods need to be developed to assess Union institutions against those standards. A possible template is to be found in the work of David Beetham and Stuart Weir, who have developed a means of auditing political systems against minimal tests of democratic governance (Weir and Beetham, 1998). The *One Europe or Several? Programme* has, accordingly, commissioned the author of this paper to adjust the democratic audit methodology and then apply it to the case of European institutions. This will aid policy formulation by clarifying what is the starting point for change at any one moment; and by making it easier to identify — and compare — 'good practice' from across the many institutions associated with European integration. The

research will not only develop a method for the inter-institutional comparison of democratic process across the three pillars, and the contributions of Commission, Council and European Parliament to each. It will also allow evaluations to be made in relation to autonomous agencies (such as the ECB), practices of flexible integration, and bodies that give the EU a measure of extra-territorial jurisdiction over non-member countries.

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