

# A HISTORICAL FRAMEWORK OF BARGAINING AND CONTENTION – LEGITIMACY AND DEMOCRACY IN THE EU

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*member states and to the history of the EU.*

–“*He that buildeth in the street, many masters has to meet*”– English saying

## Abstract

*The European Union legitimacy deficit is much debated in practice and science. Solutions for this deficit focus primarily on the institutional level. Democratic reforms would shape the EU more according to the national parliamentary model. This article argues that such democratic reforms are doomed to fail as a result of the absence of bargaining between political elites and citizens in EU history. From a historical perspective, the process of bargaining between rulers and citizens is crucial to the development of a thriving democratic system. Citizens do not engage in public contention about EU issues, because the EU has developed through processes of elite bargaining. A European public sphere is underdeveloped and the European Parliament is not capable of evoking civic attention, preference formation, and contention. Therefore, the article concludes that the EU legitimacy deficit can be most effectively harnessed through politicization of EU issues at the national level. Instead of unitary democratic reform at the EU level, national level politicization would do more justice to differences between*

## Introduction<sup>1</sup>

For over a decade, scholars and practitioners have debated about the legitimacy deficit of the European Union (EU). At the heart of the debate lies the question to what degree the EU is in need of democratization. That is, does the EU need to reform itself to the resemblance of its member states’ democratic institutions, and if so, in which ways? This article argues that democratic reforms are fruitless given the history of the EU. Modern liberal democracies have developed through a process of bargaining between rulers and citizens. Conversely, contemporary European history has been written by means of political elite bargaining. The European Coal and Steel Community has matured through various treaties, rounds of enlargement, and policy development. It was not until the Intergovernmental Conference in Maastricht (1992) that the debate about European integration got politicized and citizen attention was evoked. The rejection of the constitution treaty through referenda in France and the

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<sup>1</sup> The author wishes to thank the anonymous reviewers for their helpful comments. The instructive comments of Frank the Zwart on several earlier drafts of this article are gratefully acknowledged.

Netherlands has further raged the debate. Engaging citizens proved to be more than a question of institutional design and planning.

Democracy is inextricably linked to modern government. Particularly for the EU it seems true that “democracy bestows an aura of legitimacy on modern political life”<sup>2</sup>. Why? The answer this article provides is that democracy has historically grown as the most legitimate form of governing. In Western Europe, processes of bargaining between rulers and citizens gradually produced democratic institutions<sup>3</sup>. Citizens regard current political systems as legitimate because these constitutional democracies carry a historical “aura of legitimacy”.

This article argues that the EU is not regarded as legitimate, because it has not developed itself along this historical path of bargaining. EU integration has commenced through elite bargaining instead of interaction with the population. However, modeling the EU after national constitutional democracies<sup>4</sup> is not a solution, because institutional design is fruitless in the absence of institutionalization. That is, it is unlikely that citizens will start to focus their claims on the European Parliament instead of their national parliaments.

In general, this article thrives on the idea that a consideration of the historical development of modern political systems teaches us what reform strategies are appropriate to deal with current problems<sup>5</sup>. In order to harness the legitimacy deficit, the EU has to be politicized at the national level. National parliaments are the arenas where contention over political issues yields citizen attention and engagement. Instead of providing an EU level single solution for all member states national level solutions have to be sought to increase EU legitimacy. The differences between the role the EU plays in Western member states and Central and Eastern European Countries (CEEC) underlines that national level politicization is the only effective way in which the EU can build a “reserve of support”.

This conclusion is based on amalgamation of Tilly’s theory of bargaining and the scientific literature on EU legitimacy and democracy. It should be emphasized that the goal of this article is an analysis of theory<sup>6</sup>. The proposed “solution” is hypothetical and deserves empirical analysis in future research. The article is built up in the following steps. First, it will be explained why legitimacy and democracy are so closely affiliated that

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<sup>2</sup> David Held, *Models of Democracy* (Cambridge: Polity Press, 1996). 291.

<sup>3</sup> Charles Tilly, *Coercion, Capital and European States* (Cambridge: Blackwell, 1992).

<sup>4</sup> Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998). 115-116.

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<sup>5</sup> Cf. Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

<sup>6</sup> In order to give the theoretical statements some empirical grounded, several important claims are backed up by some preliminary empirical data, mainly from Eurobarometer research.

weakness or absence of democratic institutions implies a problem for legitimacy. Democracy is crucial for the legitimacy of a political system for historical reasons. Therefore, the discussion will continue by clarifying how processes of bargaining are crucial to the development of democracy. The absence of bargaining is detrimental to the legitimacy of a political system. The EU's legitimacy deficit is explained by the absence of bargaining in its history. Next, a review of the academic debate shows that the desirability of democratic reforms is in the end an empirical question. In any case, democratization is argued to be ineffective, because the European Parliament (EP) is for historical reasons not able to be the focal point of civic contention. Instead, the status of the EP and the role of the EU in CEEC teach us that politicization at the national level is the most effective way to harness the EU's legitimacy deficit. In the end, this article reaches the somewhat ironic conclusion that the meeting point for EU and citizens is not in Brussels, but in capitals of the member states.

### Legitimacy, democracy, and deficit

Legitimacy is often explained as legitimate democracy<sup>7</sup>. However, legitimacy and democracy are distinct concepts. Legitimacy refers to

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<sup>7</sup> Thomas Banchoff and Michael P. Smith, "Introduction," in *Legitimacy and the European Union: the contested polity*, ed. Thomas Banchoff and Michael P. Smith (New York: Routledge, 1999). 4.

justification, or authorization, of a political system. If citizens believe that authority is exercised legitimately, this means that they accept, or comply, with that authority. It is important to note that citizen support for an authority depends on the *belief* in its legitimacy. Citizens usually hold an innate conviction of the moral validity of their political system, even after it has produced serious deprivations. If the belief of legitimacy disappears, citizens withdraw their support and try to overthrow the political system<sup>8</sup>. There are several ways in which legitimacy can be maintained, one of which is democracy. Democracy is related to legitimacy on two levels: beliefs and institutions.

The institutional level of democracy is related to the basic characteristics of the *Rechtsstaat*. Democracy embodies "broad and relatively equal citizenship with (a) binding consultation of citizens in regard to state personnel and policies as well as (b) protection of citizens from arbitrary state action"<sup>9</sup>. These two underpinnings of constitutional democracy imply that state authorities are *authorized by* the citizens and

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<sup>8</sup> Max Weber, *Economy and Society: an outline of interpretative sociology*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978). 213. David Easton, "An Approach to the Analysis of Political Systems," *World Politics* 9 (Apr. 1957): 383-400. David Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965). Held, *Models of Democracy*, 195.

<sup>9</sup> Charles Tilly, *Roads from Past to Future* (New York: Rowman & Littlefield Publishers Inc, 1997). 198.

*accountable to them*<sup>10</sup>. Ideally, an authoritative institution is held accountable for an outcome insofar as it has causally contributed to this outcome<sup>11</sup>. Authorities can be accountable through different institutional mechanisms, such as electoral accountability, independent expertise (administrative or judicial), intergovernmental agreement, and pluralist policy networks<sup>12</sup>. The specific set of institutional arrangements differs per country. Whatever their specific mixture, no political system can do without representative institutions that contribute to its input legitimacy.

Input legitimacy implies that the will of the people somehow has to be articulated as input into the system. Citizens can make public claims on the political system to act in certain ways in a direct way, or in an indirect way, through representative institutions. Legitimacy is enhanced to the degree that outputs of the system are effectively based on these claims and to the degree these claims are actually articulated. Directing demands at a system implies that one accepts that this system is a legitimate actor to enhance these demands. Thus, the process of contention refers to acts within a public

sphere shared by public officials, political representatives and citizens<sup>13</sup>.

Institutional arrangements of a political system are also related to output legitimacy. Outputs have to effectively solve collective social problems. In the long run, a political system will lose support if it does not effectively promote the common welfare of the citizens<sup>14</sup>. Harnessing low output legitimacy is a matter of institutional design and reform which is not necessarily related to democratic institutions<sup>15</sup>. Nonrepresentative institutions such as markets or dictatorial regimes may enjoy more output legitimacy than a democratic state.

On the level of beliefs, democracy can be seen as a source of process legitimacy, or “Legitimation durch Verfahren”. This form of legitimacy refers to intrinsic acquiescence. Citizens accept the system’s authority even

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<sup>10</sup> John Parkinson, *Deliberating in the Real World. Problems of Legitimacy in Deliberative Democracy* (New York: Oxford University Press, 2006), 29-32.

<sup>11</sup> Herbert J. Spiro, *Responsibility in Government: Theory and Practice* (New York: Van Nostrand Reinhold Company, 1969).

<sup>12</sup> Fritz W. Scharpf, *Governing in Europe. Effective and Democratic?* (New York: Oxford University Press, 1999).

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<sup>13</sup> See Easton, “An Approach”. Easton, *A systems analysis*. Max Weber, *From Max Weber: essays in sociology*, ed. Hans H. Gerth and Charles Wright Mills (London: Kegan Paul, Trench, Trubner, 1977). 60-62. Frank Schimmelfennig, “Legitimate Rule in the European Union. The Academic Debate,” *Tübinger Arbeitspapiere Zur Internationalen Politik Und Friedensforschung* no 27 (1996). Scharpf, *Governing in Europe*, chap. 1. <sup>14</sup> Ibidem.

<sup>15</sup> See Vincent Ostrom and Elinor Ostrom, “Public Choice: A Different Approach to Public Administration,” *Public Administration Review* 31, no 2 (Mar/Apr. 1971): 203-216. David Lowery, “Answering the Public Choice Challenge to Progressive Reform Institutions: A Neoprogressive Research Agenda,” *Governance* 12, no 1 (Jan. 1999): 29-56.

despite deprivations. The fact that a system directs its attention to a certain issue and takes responsibility for solving it may be enough for legitimacy to passively persist. A political system does not need to meet all the demands of its citizens, because it can appeal to a “reserve of support”. Within a political community such a buffer is usually promoted through a process of civic political socialization<sup>16</sup>. In the Western world, constitutional democracies in particular enjoy a “reserve of support”, because democracy has historically developed as the most legitimate form of governing in the minds of citizens.

More in general, historical processes explain what kind of authority citizens accept. Citizens are socially conditioned with regard to what kind of state behaviour they regard as deprivation and which policies are appropriate<sup>17</sup>. Authoritarian regimes in Asia, for example China and Singapore, are ruled by leaders who are not elected freely, but enjoy considerable legitimacy

nonetheless<sup>18</sup>. For a large part, these regimes thrive on process legitimacy, because citizens strongly believe in the traditional authority of their leaders<sup>19</sup>. In the Western world, such authoritarian process legitimacy could not exist, because democracy is an indisputable core value.

The concept deficit indicates a shortage, failure, or insufficiency. The centrality of democracy in Western thinking explains why the legitimacy deficit of the EU is often explained as a democratic deficit. The absence of a public sphere of contention and democratic institutions equivalent to those in member states is perceived as a problem. However, the absence of democratic institutions is not necessarily a problem for a political system, as long as it can rely on output or process legitimacy. Output legitimacy is generally low, because of the EU's low problem solving capacity<sup>20</sup>. Since the EU does not live up to the idea of democracy, we can deduce that process legitimacy is low<sup>21</sup>.

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<sup>16</sup> Niklas Luhmann, *Legitimation durch Verfahren* (Darmstadt: Luchterhand, 1978). See also Easton, “An Approach”. Easton, *A systems analysis*. Max Weber, *From Max Weber: essays in sociology*, ed. Hans H. Gerth and Charles Wright Mills (London: Kegan Paul, Trench, Trubner, 1977). 60-62. Schimmelfennig, “Legitimate Rule in the European Union”. Scharpf, *Governing in Europe*, chap. 1. Andreas Føllesdal, “Legitimacy Theories of the European Union,” *Arena Working Papers WP 04/15* (2004). 13-14. Pippa Norris (Ed.), *Critical Citizens: Global Support for Democratic Government* (Oxford: Oxford University Press, 1999).

<sup>17</sup> Pierson, *Politics in Time*.

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<sup>18</sup> Francis Fukuyama, “The Primacy of Culture,” *Journal of Democracy* 6 (Jan. 1995): 7-14. Samuel Huntington, “Democracy for the Long Haul,” *Journal of Democracy* 7 (Apr. 1996): 3-13.

<sup>19</sup> For a typology of sources of authority see Weber, *Economy and Society*.

<sup>20</sup> Scharpf, *Governing in Europe*.

<sup>21</sup> This deduction seems to be supported by rudimentary results from Eurobarometer research on the level of citizen satisfaction with the way in which democracy works in the EU and home country. For each year, citizens are on average less satisfied with the way democracy works in the EU than in their home country. See

Therefore, the *absence* of democracy is phrased as a *deficit*. Lack of democratic institutions that leads to low input legitimacy is thus not compensated by process legitimacy, because process legitimacy also depends on democracy. Citizens regard a political system illegitimate if it does not live up to the idea of democracy. The discussion will now turn to the historical explanation for this peculiarity.

### **Bargaining: a historical perspective on democracy**

The centrality of democracy in Western political thinking is the result of the historical development of democracy. Democracy developed over a period of 400 years through a protracted process of mutual bargaining between rulers and citizens. Bargaining is a mechanism fundamental to the development of democracy. In fact, a vigorous democracy will not emerge if rulers refrain from bargaining with citizens. Hence, the presence or absence of bargaining can guide our understanding of current problems with levels of democracy in various political systems<sup>22</sup>.

Tilly distils the mechanism of bargaining from his historical study of the development of Western European

states. He argues that democratization is fostered through demands from the population and responsiveness to them by rulers. In the long process of state building in Western Europe, rulers tried to establish boundaries to their territory by means of war making. Rulers were dependent on financial and human capital for their expensive wars, which forced them to extract resources (soldiers, goods, and funds) from their population. The population demanded something in return for paying taxes and sending their sons to war. So, they started to bargain for promotion of their interests. Interaction between ruler and population increasingly forced the state to become “vulnerable to popular resistance, and answerable to popular demands”<sup>23</sup>. Gradually, the idea of democracy emerged: equal citizens whose consultation is binding and who are protected from arbitrary state action<sup>24</sup>.

Democracy does not emerge if there is no bargaining between state and population. In fact, absence of bargaining leads to unconstrained state action. In post communist countries, political elites prevented citizens from acquiring a bargaining position. Resources were in the hands of the state and not in possession of the population. This socialist legacy implied that rulers were not dependent on citizens for raising money, goods, and services. The

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[http://ec.europa.eu/public\\_opinion/cf/subquestion\\_en.cfm](http://ec.europa.eu/public_opinion/cf/subquestion_en.cfm)

<sup>22</sup> Venelin Ganev, “Post-communism as an Episode of State Building: A Reversed Tillyan Perspective”, *Journal of Communist and Post-Communist studies* 38, no 4 (Dec. 2005): 425-445. 435.

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<sup>23</sup> Tilly, *Coercion, Capital and European States*, 83. Italics added.

<sup>24</sup> Tilly, *Coercion, Capital and European States*, 69-70, 76, 83. Ganev, “Post-communism,” 432-437.

political elite did not have to enter into a bargaining process vis-à-vis the population, because they effectively managed to maintain control over resources. In their turn, citizens could organize little resistance to constrain state action, since they did not exert control over resources<sup>25</sup>. Thus, bargaining does not emerge when there is only a one way dependency relationship between citizens and rulers. The same pattern can be seen in other contexts<sup>26</sup>. For instance, oil producing Islamic states have little need for taxation, because the political elites control the oil. These states are so rich that their dependence on their citizens is low. State services and democratic representation are only modestly developed.<sup>27</sup>

Processes of bargaining accompanied a multitude of developments, all contributing to the constitution of modern liberal democracies. Bargaining not only led to the emergence of democratic institutions, but also augmented the development of state structures and patriotism. First, rulers initially developed state structures to support the army directly and also indirectly by means of taxation. Bargaining caused state structures to develop further. Citizens demanded more services and goods from the state if taxes were more burdensome. In that sense, bargaining is related to output

legitimacy of a political system. Second, citizens got socialized into the emerging nation state. Citizens started to attach moral value to paying taxes, i.e. the idea emerged that paying your taxes was the duty of any good citizen<sup>28</sup>. In this way, bargaining is related to a political system's process legitimacy. Thus, democratization processes are related to more than just the development of democratic institutions. Nevertheless, the emergence of democratic institutions is a vital feature of democratization.

Bargaining has caused the emergence of specific institutional structures that still function as object and modifier of public contention. Tilly's study of parliamentarization in Great Britain between 1758 and 1834 demonstrates that parliaments are crucial for democracy. "The relation between parliamentary institutions and the expansion of popular participation in national politics defines the possibilities for democracy"<sup>29</sup>. Parliamentarization developed simultaneously with and aided the development of deliberate mass organization and electoral system and dynamics. Parliament became a more prominent actor within the political system and simultaneously increasingly became the primary object of civic contention. It has to be stressed that coinciding development of social movements enhances processes of public preference formation, organization, and contention. A mature

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<sup>25</sup> Ganev, "Post-communism," 435-437.

<sup>26</sup> Ganev, "Post-communism," 434-435.

<sup>27</sup> Bernard Lewis, "Islam and Liberal Democracy. A Historical Overview," *Journal of Democracy* 7 (Apr. 1996): 2.

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<sup>28</sup> Tilly, *Roads from Past to Future*. 89.

<sup>29</sup> Tilly, *Roads from Past to Future*, 242.

field of interest groups is an important factor in forcing direct links of contention between citizens and rulers<sup>30</sup>. On the whole, parliamentarization implied that public claim making increased in general, issues of parliament became more central to popular contention, and connections with parliament became more central for public claim making.

In sum, democracy has become the central concept in our modern political systems over 400 years. Evaluating current problems with levels of democracy necessitates a focus on the level of bargaining between rulers and citizens in relation to resources and the production of state commodities and policies. Also, an analysis has to be made of the emergence of a public sphere of contention in relation to the role of parliament. The EU's legitimacy deficit will now be considered on the basis of these historical dimensions of bargaining.

### **Bargaining in the EU**

“The EU is engaged in a difficult legitimation process” and “there is no denying the *perception* of a legitimacy crisis, whether justified or not”<sup>31</sup>. This legitimacy deficit is caused by the absence of democracy on the *belief*

level. This section argues that the legitimacy deficit is not a matter of deficient institutions per se, but rather of perception. Process legitimacy is low, because citizens do not perceive the EU as a democratic system. Despite the presence of democratic institutions, citizen satisfaction with the way democracy works in the EU is of a critical level<sup>32</sup>. Main reason is the absence of processes of bargaining between political elites and citizens.

It is difficult to reach a final conclusion about the level of democracy in the EU, yet it does become clear that one cannot deny problems with EU democracy in the eyes of the citizens. Official EU surveys held among citizens portray a complex and mixed pattern of results<sup>33</sup>. Scientific literature seems to rest in an impasse. There is evidence that makes the claims of Euroscepticism disputable<sup>34</sup> while also is argued that

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<sup>30</sup> See Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (New York: Cambridge University Press, 1998). Charles Tilly, *Social Movements, 1768-2004* (Boulder: Paradigm Publishers, 2004).

<sup>31</sup> Banchoff and Smith, “Introduction,” 3. Italics added.

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<sup>32</sup> On average, about 40% of the EU citizens are satisfied with the way in which democracy works in the EU. Although one can argue about the threshold for a system to be judged democratic, a minority of 40% surely does not indicate that there is no problem with the level of democracy. See [http://ec.europa.eu/public\\_opinion/cf/subquestion\\_en.cfm](http://ec.europa.eu/public_opinion/cf/subquestion_en.cfm)

<sup>33</sup> European Commission, *The Future of Europe* (Brussels: The European Union, 2000). Directorate-General Communication, *How Europeans see themselves* (Brussels: The European Union, 2006).

<sup>34</sup> See for instance Lieven De Winter and Marc Swyngedouw, “The Scope of EU Government,” in *Political Representation and Legitimacy in the European Union*, ed. Hermann Schmitt and Jacques Thomassen (New York: Oxford University Press, 1999), 67. Jacques Thomassen and Hermann Schmitt, “In Conclusion: Political Representation and Legitimacy in the European

“the democratization of the Union might not have kept pace with this [economic and legislative] progress”<sup>35</sup>. By and large, the EU seems to live up to the definition of democracy: equal citizens whose consultation is binding and who are protected from arbitrary state action. As in any member state, citizens are treated equal before the law, the European Parliament is elected freely and fairly, representatives of elected national governments participate in the Council of Ministers, and the EU is bound by the rule of law<sup>36</sup>. On the other hand, it is claimed that democracy is underdeveloped in the EU, because representation and accountability are too weak<sup>37</sup>. In general, the EU does possess at least the basic characteristics of a democratic system. Why is the level of democracy in the EU then still such a salient issue?

This discrepancy can be explained by the absence of bargaining between elites and citizens in the development of the EU. The EU has always been an

elite driven project<sup>38</sup> that gradually got politicized.

Intergovernmental negotiations by representatives of national elected representatives have characterized the gradual development of the EU over the past fifty years. Originally, the European Coal and Steel Community started out as a political project. Democracy was not an initial goal, but nevertheless became a top priority since the establishment of the Treaty of Maastricht in 1992. Further development of the EU has faced considerable critique and resistance<sup>39</sup>. The EU has become a more central issue in the public sphere, because of several enlargement rounds of CEEC, the ratification of the constitutional treaty, and the membership of Turkey. Increased attention framed the EU mainly in a negative way as an opaque, distant, and undemocratic system. This critique demonstrates that the EU is perceived as illegitimate, because it does not connect to its citizens.

The absence of attachment between EU and citizens is explained by the absence of bargaining between political elites and citizens. The EU has never been directly dependent on citizen resources or support. Member states make

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Union,” in *Political Representation and Legitimacy in the European Union*, ed. Hermann Schmitt and Jacques Thomassen (New York: Oxford University Press, 1999b), 260.

<sup>35</sup> Jacques Thomassen and Hermann Schmitt, “Introduction: Political Representation and Legitimacy in the European Union,” in *Political Representation and Legitimacy in the European Union*, ed. Hermann Schmitt and Jacques Thomassen (New York: Oxford University Press, 1999a), 3.

<sup>36</sup> Nugent, *The Government and Politics*, 212-213, 235-245.

<sup>37</sup> Liesbeth Hooghe and Gary Marks, *Multi-Level Governance and European Integration* (Lanham: Rowman & Littlefield Publishers, 2001), 41.

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<sup>38</sup> Neil Nugent, *The Government and Politics of the European Union* (New York: Palgrave MacMillan, 2003), 3-53, 107, 366-374.

<sup>39</sup> See for instance Thomas Banchoff and Michael P. Smith, “Introduction,” in *Legitimacy and the European Union - The Contested Polity*, ed. Thomas Banchoff and Michael P. Smith (New York: Routledge, 1999), 1.

financial contributions, which are derived from national taxes. Citizens only indirectly provide the EU with the scarce amount of resources it needs. Processes of bargaining about EU issues between political elites and citizens did not emerge, so that a European public sphere never really developed. Moreover, EU policies were developed in various areas, mainly common market policies, which did not induce any civic mobilization that could lead to democratic representation. The absence of a process of parliamentarization is congruent with this weak public sphere.

In conclusion, the EU has gradually become a more politicized system with democratic institutions. However, democracy did not evolve on the belief level, because direct bargaining about EU issues between political elites and citizens has not occurred. Nevertheless, academic debate approaches the legitimacy deficit primarily by concentrating on the institutional level. The next section discusses several scholars concerning the degree to which they deem democratic reform necessary and which particular institutions they prefer. The subsequent section will show that the belief level of democracy is more fundamental to the EU's legitimacy deficit than the institutional level.

### **Democratization and Redistributive Effects**

The scholarly field is divided about the need for democratic reform of the EU.

On one side, Hérítier, Majone, and Moravcsik each argue that the EU does not need any further democratization. On the other side, Hooghe and Marks, and Føllesdahl and Hix claim that the EU needs more representative democratic institutions. The debate hinges on the point of whether the EU decides autonomously on (re)distributive policies or not.

According to Hérítier<sup>40</sup>, there is no need for democratic reform, because the EU already operates in a legitimate way. She asserts that empirical and normative scrutiny of the EU shows that current processes reinforce legitimation. To be sure, this kind of legitimacy is not the kind required by representative democracy. However, Hérítier judges democracy to be not an appropriate yardstick for the EU. In practice, the EU is engaged in a transparency program and in the creation of supportive networks. Moreover, the EU system consists of mechanisms of internal accountability that provide unanimity driven checks and balances. Although this nonmajoritarian democracy system embodies the potential danger of stalemate, it also provides the EU with *sui generis* accountability mechanisms. Low levels of representation and external accountability are counterbalanced by the transparency program and internal accountability.

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<sup>40</sup> Adrienne Hérítier, "Elements of democratic legitimation in Europe: an alternative perspective," *Journal of European Public Policy* 6 (Jun. 1999): 269-282.

Thus, the EU possesses distinct mechanisms that ensure the legitimate exercise of authority, despite the absence of representative democracy.

Majone<sup>41</sup> argues that the EU does not need more democratic institutions because of its focus on output legitimacy. Nonmajoritarian institutions such as the Commission are constructed to work in an insulated way, as this enhances their capacity to promote (Pareto)efficient solutions. The Commission possesses only a limited set of competences and, moreover, is held accountable to a sufficient degree by parliamentary and judiciary scrutiny at the European level. Politicization of the European Commission's activities would frustrate its long term goals of stable economic integration. Moreover, it would damage the Commission's legitimacy by creating unrealistic assumptions about its competences.

Moravcsik<sup>42</sup> comes to a similar conclusion as Majone, but for different reasons. Moravcsik asserts that national sovereignty and control remain predominant within the EU framework. The empirical claim underlying this argument is that the EU does not produce policies which have (re)distributive effects. At least, none

which are not subdue to national governments' sovereignty and accountability. He assumes that the EU's supranational institutions do not act outside the domain of member states' preferences. What is more, the EU system puts legal, institutional, fiscal, and administrative constraints on its actors.

Modern liberal democracies also embody a lot of nonmajoritarian institutions that operate insulated from public accountability. These institutions usually enjoy a considerable high degree of legitimacy. It is inappropriate to stimulate civic contestation, because issues dealt with by these institutions have low political salience. In a word, EU policies do not have to be politicized, because decisions by supranational institutions do not affect the lives of citizens outside the control of national level control.

Conversely, Hooghe and Marks<sup>43</sup> claim that representative democracy is weak at the EU level. The EU needs more democratic institutions because democratic deliberation will lead to better policy outcomes, citizen trust in EU institutions, and an increase in conscious reflection by citizens about their preferences and feelings towards the EU. Preferences and identity cannot be formed endogenously, but have to be produced in an exogenous public deliberative process. Politicizing EU

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<sup>41</sup> Giandomenico Majone, "The European Commission: The Limits of Centralization and the Perils of Parliamentarization," *Governance* 15 (Jul. 2002): 375-392.

<sup>42</sup> Andrew Moravcsik, "In Defense of the "Democratic Deficit": Reassessing Legitimacy in the European Union," *Journal of Common Market Studies* 40 (Nov. 2002): 603-624.

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<sup>43</sup> Hooghe and Marks, *Multi-Level Governance*, 41. See also Schimmelfennig, "Legitimate Rule in the European Union", 2-3.

politics will induce citizens to discover the true and salient nature of policies. Føllesdal and Hix<sup>44</sup> take the same stance because, according to them, EU policies do have (re)distributive consequences. If this is so, then public debate and an engaged citizenry are needed for EU legitimacy. The current system is an opaque framework of checks and balances that focuses on internal proceedings, and blocks majority interests because of veto points. This does not promote the formation of political opposition or public contestation<sup>45</sup>.

The crux of the debate is whether EU supranational institutions decide about policies that have (re)distributive effects. The stance Føllesdahl and Hix take is opposed to Majone's theoretical claim that supranational institutions of the EU are able to foster Pareto efficient outcomes, and to Moravcsik's empirical claim that these institutions do not produce policies which have (re)distributive effects. Up to date, there is no empirical evidence that supports either of these positions. Such empirical research would have to determine who decides on policies that have (re)distributive consequences. Subsequently, it could be determined whether democratic reform is necessary on the basis of the *Rechtsstaat* maxim

that public accountability is appropriate only insofar as an authority has made a significant causal contribution to the outcomes of the policy<sup>46</sup>.

For the moment, we can only contemplate "what if". Democratic reform is only appropriate and, more importantly, will only succeed if it is related to policies which have real redistributive effects among the majority of the population. It seems likely that EU policies influence the lives of citizens to some degree, because in reality pure Pareto efficient policies are nonexistent<sup>47</sup>. Therefore, a more realistic maxim would be that public accountability has to be present insofar as policies affect the lives of citizens in a *significant* way. But for which policies would this be the case? For now it seems that agricultural and internal market policies are the primary areas –although the Council also seems to decide increasingly on justice and home affairs– on which research has to focus. Central to this research would have to be the scope of the population it affects. Few citizens would be motivated to contest policies if only farmers are deprived. The situation would be different in the hypothetical situation that the EU would decide to spend several billions of euros of

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<sup>44</sup> Andreas Føllesdal and Simon Hix, "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik," *Journal of Common Market Studies* 44 (Sep. 2006): 533-562.

<sup>45</sup> See also Peter Mair, "Political Opposition and the European Union," *Government and Opposition* 42 (Winter 2007): 1-17.

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<sup>46</sup> Spiro, *Responsibility in Government*.

<sup>47</sup> Føllesdal and Hix, "Why There is a Democratic Deficit," 543. See Francis M. Bator, "The Anatomy of Market Failure," *The Quarterly Journal of Economics* 72, no 3 (Aug. 1958): 351-379. Julien Le Grand, "The Theory of Government Failure," *British Journal of Political Science* 21, no 4 (Oct. 1991): 423-442.

national tax money on building a European army. However, currently it remains an unresolved issue whether citizens will be motivated by EU policies to involve themselves in contestation in the future.

All the same, any kind of democratic reform of EU institutions will have few chances of success, because of the absence of bargaining. This historical factor is related to the belief level of democracy and is more fundamental to legitimacy than the institutional level. Would citizens really get more engaged with the EU if the EU decided to democratize –informed by empirical research or not– by enhancing the role of the European Parliament? The next section argues that politicization of EU issues would only be successful at the national level.

### **European Parliamentarization**

According to Steven Fish, a powerful parliament can play an important role in democratization<sup>48</sup>. Thus, strengthening the role of the European Parliament (EP) might promote democratization and legitimacy. However, institutional reforms in this direction are not very promising, because the EP has not become, and is not likely to become, the central arena for public contention. Citizens are more likely to direct their

claims to national parliaments. Therefore democratization of the EU can best be harnessed by increasing contention about EU issues at the national level.

EP's competencies were enlarged several times, so that it developed into a powerful legislative institution that yields considerable influence in the EU<sup>49</sup>. Since the clash between the EP and Commission in 1999<sup>50</sup>, the EU has developed more into the direction of a parliamentarian model<sup>51</sup>. In this model, parliament is the central legislature and the Commission functions as a cabinet that is responsible to parliament. Føllesdal and Hix argue in favour of further parliamentarization, by means of election of the Commissioners, and particularly the Commission president. Such reforms would require major changes of the status quo. First, the Commission suited to function would have to function as a political representative body. Commission conduct would have to be significantly

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<sup>48</sup> M. Steven Fish, "Stronger Legislatures, Stronger Democracies," *Journal of Democracy* 17 (Jan. 2006): 5-20. See also Tilly, *Roads from Past to Future*. M. Steven Fish, "Stronger Legislatures, Stronger Democracies," *Journal of Democracy* 17 (Jan. 2006): 5-20.

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<sup>49</sup> Scharpf, *Governing in Europe*, 9, 157. Wolfgang Wessels and Udo Diedrichs, "The European Parliament and EU legitimacy," in *Legitimacy and the European Union - The Contested Polity*, ed. Thomas Banchoff and Michael P. Smith (New York: Routledge, 1999), 148-149. George Tsebelis and Geoffrey Garrett, "The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union," *International Organization* 55 (Jun. 2002): 359.

<sup>50</sup> See David Judge and David Earnshaw, "The European Parliament and the Commission Crisis: A New Assertiveness?," *Governance* 15 (July 2002): 345-374.

<sup>51</sup> See Føllesdal and Hix, "Why There is a Democratic Deficit".

politicized and Commissioners should be transformed from member state representatives to political executives. This means a fundamental change of Commission practices. Second, and more importantly, the EP would have to function like a national parliament.

It is unlikely that the EP would reach a status equivalent to national parliaments, because it is not able to evoke civic contention. To be sure, the EP does have considerable legislative influence, but it is certainly not the most prominent actor in the EU. Originally, the EP was intended not so much as a delegated body to secure public accountability, but rather as a strawman to secure process legitimacy. The EP was installed as representative body to enhance the belief among citizens that the EU was a system similar to constitutional democracies. It gradually gained more influence under guise of the democratic deficit. It developed into a real parliament with actual legislative competences<sup>52</sup>. The EP tries to become more of a democratic institution that yields input legitimacy. However, it has mainly gained internal influence instead of external influence in the public sphere. Currently, the EP does not seem to be able to demonstrate to citizens the salience, deprivations, and benefits of policies.

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<sup>52</sup> Berthold Rittberger, "The Creation and Empowerment of the European Parliament," *Journal of Common Market Studies* 41 (Apr. 2003): 203-225.

It is unlikely that citizens will actually involve themselves in making claims upon European parliamentarians, nor that these parliamentarians are able to increase contention of the population vis-à-vis the EP. To be sure, one cannot undisputedly state that members of the EP do not share the same ideas and preferences as their constituency *per se*<sup>53</sup>. However, correspondence does not mean connection. For example, constituents are not well aware of the positions European parties take<sup>54</sup>. Increasing the role of the EP is useless if there is no real connection with the citizens through a process of contention<sup>55</sup>. Citizens will not quickly turn to the EP if they want to get something done. Citizen protests will continue to be in national capitals rather than Brussels, even if decisions are made by the EU. Citizens are more likely to react to contention from national parliaments, because these have emerged as the most central representative bodies that ensured and still ensure that citizen demands are articulated<sup>56</sup>.

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<sup>53</sup> Sören Holmberg, "Wishful Thinking Among European Parliamentarians," in *Political Representation and Legitimacy in the European Union*, ed. Hermann Schmitt and Jacques Thomassen (New York: Oxford University Press, 1999), 249.

<sup>54</sup> Wouter Van der Brug and Cees Van Der Eijk, "The Cognitive Basis of Voting," in *Political Representation and Legitimacy in the European Union*, ed. Hermann Schmitt and Jacques Thomassen (New York: Oxford University Press, 1999), 153.

<sup>55</sup> Føllesdal and Hix, "Why There is a Democratic Deficit," 553.

<sup>56</sup> See Gary Marks and Carole J. Wilson, "National parties and the contestation of Europe,"

What is more, the EP does not have a European public sphere at its disposal. There is no real *public* sphere where politicians, citizens, and social movements incite political debate. Public preference formation, organization, and contention are crucial to the process of parliamentarization. The congruent development of parliament and social movements is a crucial factor in this process<sup>57</sup>. Interest groups are the most dominant forms of social movements at the EU level. Interest groups have undeniably reached a level of maturity and considerable influence at the EU level, but they operate through private sphere bargaining with political elites. Interest groups do not function as representatives of a broad public at the EU level, but represent small groups of constituents and business corporations which are affected by EU policies on market integration and the Common Agricultural Policy. These policy areas are one of the few which actually do seem to have redistributive consequences. Thus, contention about EU policies does exist, yet it lingers in the private sphere of elite level bargaining. As such, European interest

groups are not able to forge links between citizens and political elites. In the absence of a European public sphere in which the EP is the central actor, the most appropriate way of politicizing seems to lie at the national level. This is not to marginalize the influence EU institutions have, nor to overstate the accountability of national governments, but simply observing that mechanisms for successful contention at EU level are absent. Contrary to its national counterparts, the EP does not function as central forum in the public sphere where contestation takes place over salient policies. It seems unlikely that the EU will gain sovereignty in these policy areas in the near future, since salient issues are the key to national sovereignty<sup>58</sup>. Member states will most likely be unwilling to transfer these vital competences to the EU. Politicizing EU issues in national parliaments is the most likely strategy to evoke civic attention, preference formation, and contention.

How politicization should take form is an open question. In general, politicization of an issue entails that it becomes part of political debate and discourse. A politicized issue is discussed in the political arena and as such engages citizens in the debate. The more politicized an issue, the more prominent it becomes to citizen orientation on the political landscape. In light of Tilly's theory of bargaining, politicization thus serves to connect citizens and rulers to each other.

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in *Legitimacy and the European Union - The Contested Polity*, ed. Thomas Banchoff and Michael P. Smith (New York: Routledge, 1999). Robert Ladrech, "Political Parties and the problem of legitimacy in the European Union," in *Legitimacy and the European Union - The Contested Polity*, ed. Thomas Banchoff and Michael P. Smith (New York: Routledge, 1999), 110. Scharpf, *Governing in Europe*, 10.

<sup>57</sup> Tilly, *Roads from Past to Future*. Tarrow, *Power in Movement*. Tilly, *Social Movements*.

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<sup>58</sup> See Scharpf, *Governing in Europe*.

Although by no means the only strategy to democratize the EU, politicization seems a crucial strategy if one considers the importance of the historical development of democratic systems. Furthermore, the next section will discuss that historical legacies require context-specific approaches to politicization. How to politicize EU issues at the national level is a topic I wish to bring forward as subject for debate between EU scholars and country experts.

In sum, as far as there is a European public sphere, the EP is certainly not its most dominant institution. The EP is not the central actor towards which citizens direct their claims. It is not likely that it will become so, because of the absence of processes of bargaining and parliamentarization. Institutional reforms that would promote a European parliamentary model are not likely to promote parliamentarization, because the EP does not decide about salient policies. That is, the EP does not have anything to bargain about with citizens. The EP may try to demonstrate the salience of EU policies it does decide about, but they will be talking to themselves. When national parliaments involve themselves in public contention about EU policies, they may actually get citizens' attention and stimulate them to contest in the public arena about EU issues.

### **Revitalizing the EU and CEEC**

Historical legacies matter for explaining problems in modern democracies. The

historical process of bargaining explains why the EU has a legitimacy deficit and also why the EP is not likely to function as a national parliament. However, the "solution" to the EU legitimacy deficit proposed here is neither simple nor unilateral. Instead, politicization will require different strategies in different historical contexts. The historical legacies of CEEC support the claim that national level politicization of EU issues is needed rather than democratic reforms at the EU level. Their socialist legacies also imply a different relationship between CEEC citizens and the EU. What is more, from the perspective of CEEC citizens the EU might not suffer from a legitimacy deficit. This section argues in favour of a context-specific approach rather than an EU level approach by briefly discussing the historical legacies of CEEC.

On the one hand, CEEC citizens might contend that the EU is yet another elite driven not negotiated project. CEEC citizens have already experienced this elite style during the transition from communism to democracy. Political elites kept power at the state level by making intelligent use of existing traditions and structures. Elites were able to pursue their own interests, while citizens were not able to organize any counterforce, since the state still possessed resources<sup>59</sup>. The absence any reference to citizen consent could cause citizens to take little interest in the EU. On the other hand, the EU offers CEEC

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<sup>59</sup>Ganev, "Post-communism".

citizens benefits by securing certain standards of income, security, rights, power, wealth, freedom, etcetera. In contrast to citizens of Western member states, the EU granted CEEC citizens with benefits they previously did not have. Consequently, CEEC citizens might be more aware of EU issues, because the EU has had a bigger, and positive, impact on their lives.

What is more, the EU might also positively affect the level of democracy in CEEC. First, new member states have to abide by formal democratic criteria. Second, for CEEC politicization of policy issues and EU competencies might render the EU more legitimate, as well as benefit democratization at the national level. If competences of the EU are politicized by opposition parties in parliament, social movements, and/or in the media, debate on the division of power between the nation state and the EU may be aroused. Evoking debate on this issue could augment public scrutiny and demarcation of state sovereignty and power.

In sum, politicization of EU issues could contribute to the development of a public sphere of contention and demarcation of state powers in CEEC. Although the situation is different in CEEC than in Western member states, the underlying mechanism of bargaining is crucial to democracy in all cases. That is, “it is through popular mobilization and participation that

domains subservient to “checks and balances” are demarcated”.<sup>60</sup>

Awareness of historical differences is vital to get a grasp of the possible effects of solutions to the EU legitimacy deficit.

## Conclusion

The EU suffers from a legitimacy deficit because of the presence of a democratic deficit. In Western thought, the belief in democracy is so deeply ingrained that the absence of powerful democratic institutions is perceived as a problem, as a deficit. Citizens do not perceive the EU legitimate even while the level of democratic institutions and conduct might be sufficient for EU standards<sup>61</sup>. The EU lacks a “reserve of support”, because it has not effectuated process legitimacy through processes of bargaining vis-à-vis its citizens.

Legitimacy and democracy are almost inseparable in Western thought. However, it is necessary to separate them conceptually to promote understanding of the EU legitimacy deficit. Legitimacy and democracy are strongly interrelated because of historical reasons. We consider a political system legitimate when it is democratic, because democracy has gradually developed over the course of four centuries into the core of political

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<sup>60</sup> Ganev, “Post-communism,” 434.

<sup>61</sup> See Héritier, “Elements of democratic legitimation”. Majone, “The European Commission”. Moravcsik, “In Defense of the “Democratic Deficit””.

practice and theory. Democracy developed through processes of mutual bargaining between rulers and citizens. Citizens started to demand something in return for the resources rulers extracted from them. State structures developed that provided security and commodities to citizens in return for the taxes they paid and the sons they sent to war. Simultaneously, a public sphere of contention emerged in which parliament became a central actor. Citizen awareness and participation in public debate became more normal and was increasingly directed towards parliament. Thus, the process of bargaining is vital for the development of a thriving democratic political system.

Absence of a history of bargaining between political elites and citizens renders a political system illegitimate. Instead of bargaining with the population, the EU has developed through processes of elite bargaining. Over the last decade EU issues have been increasingly politicized, but did not force a connection with citizens. If citizens are not really dependent on the EU, why should they bother paying attention to it? This line of thinking suggests that democratic reforms at the EU level are doomed to fail.

The academic debate consists of different stances towards the presence of a democratic deficit and the need to democratize. EU scholars focus primarily on the institutional level of democracy. Democratization is found necessary to the degree that

supranational EU institutions decide about policies that have (re)distributive consequences for the population. However, up to date there is no empirical evidence available that provides clarity on this issue.

On the belief level of democracy, this article asserts that it will be ineffective to model the EU more according to the national parliamentary model. The EP will not be able to act like a national parliament, because there are no policies within its jurisdiction that can be bargained about with citizens. The absence of mutual dependency between the EP and citizens has withheld a process of European parliamentarization. The European public sphere is underdeveloped and the EP is certainly not the institution citizens direct their demands to. Citizens will rather focus their claims on national parliaments. Therefore, instead of democratic reforms at the EU level, it will be more effective to politicize EU issues at the national level.

Politicization at the national level is more likely to be effective because national public spheres and parliaments are better able to facilitate the development of civic awareness, preferences, and contention about the EU. Moreover, national level politicization offers room for variation in national strategies. The different historical legacies of Western member states and CEEC stipulate that a unitary approach will have diverging effects across Europe. The only unitary change

that would provoke civic contention and bargaining is the creation of European taxes and a European army. Citizens would surely start to bargain with the EU about the benefits the EU should provide in return for their tax money. However, this change is not likely to occur. Therefore, national level politicization remains the most fruitful strategy to harness the EU's legitimacy deficit.

How national parliaments should exactly embark upon this task would be an interesting topic for future research and debate. In any case, it is clear that politicization is a delicate task that cannot be fully planned or designed *ex ante*. Instead, it requires politicians, media, social movements, and citizens to contend in the public sphere. First and foremost, the ball is in the court of national politicians. They have to take the first step by taking EU issues out onto the street. That is the place where the EU will then meet its masters.

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