

# The Politics of Democratic Legitimation in the European Union

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**Abstract** Since the early 1990s, the infamous ‘democratic deficit’ has become one of the most widely addressed research themes in the study of European integration. This paper begins by elucidating a paradox: Despite the flourishing of the literature on the EU’s democratic credentials, this literature has hitherto not contributed to our understanding of why policy-makers from the member states recurrently employ the model of ‘representative democracy’ in shaping and reforming the institutional set-up of the EU. This paper asks why the institutional setting of the EU bears such strong imprints of the model of ‘representative democracy’ which is mirrored primarily in the existence and influence of the European Parliament but also in the role attributed to national parliaments in EU decision-making. This paper develops and empirically tests a set of propositions which will shed light on the question why policy-makers from EU member states have successively empowered a representative institution at the European level, the European Parliament, and – as of the early nineties – also attributed national parliaments a more prominent role in EU decision-making.

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History is a gallery of pictures in which there are few originals and many copies.

Alexis de Tocqueville, *The Old Regime and the Revolution*.

## 1. Introduction

Since the early 1990s, the question about the state of 'Democracy in Europe' (Siedentop, 2000) has occupied ever increasing space in scholarly journals and newspaper articles, and has also left a noticeable imprint on political rhetoric. The infamous 'democratic deficit' has become one of the most widely addressed research themes in the study of European integration in the past decade. Scores of articles and books have been written with the objective to develop adequate benchmarks against which the quality and potential of democracy in the EU can be assessed. This paper does not follow the trend of "standard setting" (Majone, 1998) prevalent in the literature. Instead, the paper begins by stating a paradox. Despite the flourishing of the literature on the EU's democratic credentials, we lack a systematic explanation that illuminates why the institutional set-up of the EU is actually informed by policy-makers' concerns for maintaining and spurring the democratic legitimacy. How could we otherwise explain the fact that the EU displays the imprints of the model of 'representative democracy', a characteristic feature for *national* democratic political systems but much less so for international institutions? Not only is there a directly elected parliamentary organ on the European level – the European Parliament – with powers of scrutiny and appointment, budgetary and legislative powers; in the more recent past, the role of national parliaments in European decision-making has also been enhanced, culminating in the adoption of a 'subsidiarity control'-mechanism in the Draft Treaty Establishing a Constitution for Europe adopted in the summer of 2003.

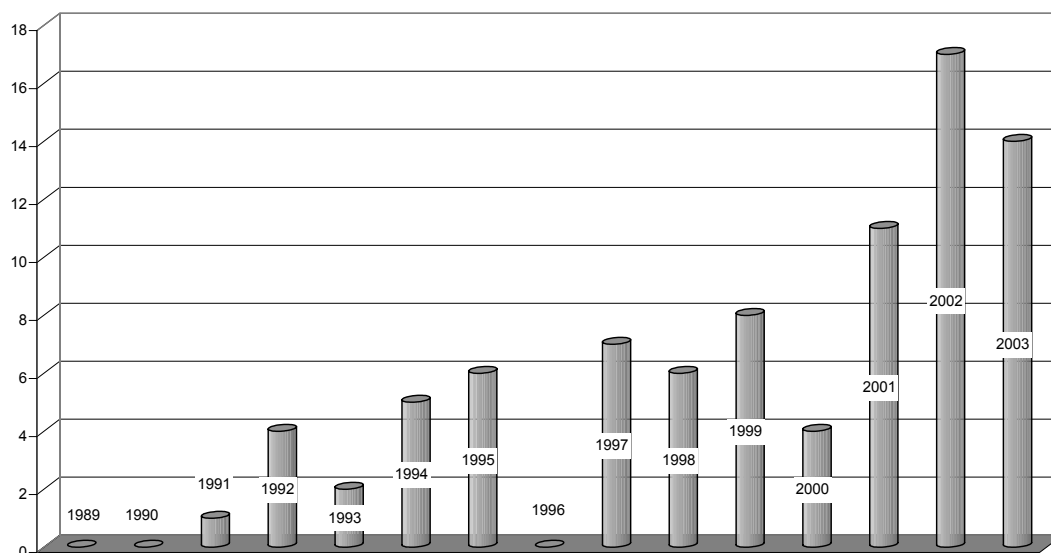
This paper hence intends to mark a counter-point to the prevailing "standard setting"-approach in the debate on the EU's 'democratic deficit'. Its objective is to contribute to developing a positive democratic theory of European integration in order to shed light on the politics of democratic legitimation in the EU. The paper proceeds in the following steps: In the ensuing section, the paradox which persists in the literature on the 'democratic deficit' – namely that this literature does not tell us much about the motivation of policy-makers to seek solutions for its reduction – will be elaborated (2.). In section 3, a set of propositions is developed with a view to explaining the conditions under which the model of 'representative democracy' is likely to leave its imprint on the institutional make-up of the EU. Furthermore, it is being argued that

the model of 'representative democracy' is implemented not uniformly but can take different institutional forms. In the ensuing section (4.) the propositions will be subjected to empirical testing. Section 5 offers some reflections on whether the crisis of the model of 'representative democracy' diagnosed for modern industrialised societies also impinges on the EU.

## 2. A paradox in the literature on 'Democracy in Europe'

Since the early 1990s, there has been a steady increase in the number of academic articles published in social science journals addressing the 'Democracy in Europe'-theme. Figure 1 displays the number of academic articles containing either the term 'democratic deficit', 'legitimacy deficit' or 'democratic legitimacy' in connection with 'European Union/Community' in title, abstract or as keyword.<sup>1</sup>

**Figure 1: Academic articles containing terms 'democratic deficit', 'legitimacy deficit' and 'democratic legitimacy' in the EU context** (Source: BIDS-IBSS)



According to Majone the literature on the democratic credentials of the EU can be best characterised by its individual and collective efforts in "standard setting". Writing in 1998, Majone claimed that "we are still groping for normative criteria appropriate to the *sui generis* character of the European Community ... Since the legitimacy debate is still in the standard-setting state, current evaluations start from different normative premises to reach different, even contradictory, conclusions." (Majone, 1998: 6)

<sup>1</sup> The information was retrieved from the BIDS-IBSS bibliographic database (Bath Information and Data Services – International Bibliography of the Social Sciences). The database was accessed on 04/02/2004.

Majone's point can be easily illustrated by looking at a selection of the literature on the EU's democratic credentials. Much of this scholarship derives standards for democratic legitimate governance in the EU from the three core principles that Abraham Lincoln has espoused in his Gettysburg address and identified as core tenets for legitimising governance: According to Lincoln legitimacy derives from "government *of* the people, *by* the people, *for* the people."<sup>2</sup> While the first principle ('government *of* the people') presupposes that there exists a definition as to who 'the people' are, thereby engendering questions of exclusion/inclusion (the boundaries of the polity) and its social identity, the principle of 'government *by* the people' rests on the intrinsic importance attributed to procedural mechanisms for participation and interest representation. The third principle ('government *for* the people') proclaims that political choices – in order to command legitimacy – need to effectively solve the problems citizens of a polity collectively care about (see, inter alia, Höreth, 1999; Scharpf, 1997, 1999).

Table 1 presents an illustrative overview of the 'democratic deficit'-literature which intends to underline Majone's point about the consequences of exercises in "standard-setting": The adoption of alternative normative or empirical democratic theories provides a variety of possible standards or benchmarks against which the democratic legitimacy of the EU can be assessed. It comes as no surprise that not only the assessments as to the existence and severity of a 'democratic deficit' vary considerably (and even within) the different dimensions, but also that the prospects for its remedy display substantial variation.

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<sup>2</sup> See <<http://www.loc.gov/exhibits/gadd/4403.html>>, accessed on 05/02/2004, emphasis added.

**Table 1: Is there a 'democratic deficit'? A question of standards**

|  | <b>Standards / conditions for democratically legitimate governance in the EU</b>   | <b>Is there a 'democratic deficit'? How can it be alleviated?</b>  |
|--|--|--|
| 'Government by the people'                                       | <ul style="list-style-type: none"> <li>➤ Real 'European' elections and cohesive, competitive parties (Hix, 1998)</li> <li>➤ Application of established scales of democracy (civil liberties, political rights, democratic rule) (Zweifel, 2003)</li> </ul>   | <ul style="list-style-type: none"> <li>➤ Yes: institutional design and reform (short/medium term solution)</li> <li>➤ No (or: not greater than in most liberal democracies)</li> </ul>   |
| 'Government for the people'                                      | <ul style="list-style-type: none"> <li>➤ Regulatory credibility through non majoritarian institutions (Majone, 1996a, 1996b, 2000)</li> </ul>  | <ul style="list-style-type: none"> <li>➤ No (but: parliamentarisation of Commission threatens regulatory credibility) (Majone 2000)</li> </ul>   |
| 'Government of the people'                                       | <ul style="list-style-type: none"> <li>➤ Community of memory, experience, and of communication (Kielmansegg, 1996)</li> </ul>  | <ul style="list-style-type: none"> <li>➤ Yes (low 'democratic capacity'): identity-building (long term solution)</li> </ul>  |
| Hybrid category (combination of different legitimacy dimensions) | <ul style="list-style-type: none"> <li>➤ Congruence between rulers and ruled, collective identity, reversibility (of substantive decisions), de-selection (of office holders) (Zürn, 1996)</li> <li>➤ Democratic self-determination (input legitimacy) and effective self-determination through social and welfare policy provisions (output legitimacy) (Scharpf, 1999, 2001)</li> <li>➤ Constitutional checks and constraints on exercising power, accountability of 'technocratic' governance, participation (Moravcsik, 2002)</li> </ul> | <ul style="list-style-type: none"> <li>➤ Yes: institutional design, identity-building measures (medium/long term solution)</li> <li>➤ Yes: identity-building measures to legitimise EU-wide redistributive policy measures (long-term solution)</li> <li>➤ No</li> </ul> |

Even half a decade after Majone's bemoaning of the state of the 'democratic deficit'-literature, the key challenge perceived by most scholars remains that of finding adequate standards. Eriksen and Neyer (2003) voice Majone's concern, pondering over the question of "[w]here ... a normative standard [can] be derived from if neither nation state democracy theory nor the minimal normative standards in IR theory are directly applicable?" (Eriksen and Neyer, 2003: 6)

Some of the more recent literature offers a new take on the problem of how to find an adequate standard to assess the EU's democratic credentials. Importing the concept of 'deliberative democracy' from Political Theory, the 'Gettysburg principles' – as cornerstones for democratic legitimacy – are considered too narrow as standards or benchmarks against which the democratic legitimacy of a polity is to be assessed. Proponents of deliberative democracy argue that democratic legitimacy is spurred by

processes of deliberation and not by “fixed conceptions of the common good ... [or] from the aggregation of preferences of all.” (Eriksen and Neyer, 2003: 8; see also Eriksen and Fossum, 2000) Democracy is thus conceived of in a more abstract fashion, not as a principle that prescribes a particular organisational form (e.g. a representative democracy) but as a legitimisation principle which lays out the conditions necessary for finding out what constitutes the “common interest” and what can be considered “fair” and “just” (Eriksen and Neyer, 2003: 9). The ‘deliberative-turn’ in the study of the EU’s ‘democratic deficit’ has undoubtedly enriched the debate about “standard-setting”. However, it has little to offer with regard to *explaining* why the EU has experienced a gradual process of democratisation ‘from above’ whereby member state governments have attributed new and increasingly important roles to parliamentary institutions on the European as well as on the national level.

### **3. Explaining the politics of democratic legitimisation in the European Union**

Against this background, this paper claims that it is important that the question about the EU’s democratic credentials be addressed from a new angle. Concerns about the democratic credentials of the EU abound, what are actually the conditions under which policy-makers from the EU member states take recourse to the model of ‘representative democracy’ as a guiding principle for institutional design and reform? Putting it more concretely: Why have policy-makers from the national governments of the member states employed the model of ‘representative democracy’ as a blueprint for institutional reform since the early days of supranational integration, mirrored in the successive empowerment of the European Parliament in EU decision-making and, as of more recent origin, the increasing role attributed to national parliaments?

#### **3.1. The model of ‘representative democracy and institutional reform in the EU**

Tables 2-3 offer an overview of those instances of Treaty reform which have addressed the role and competencies of the European Parliament and national parliaments. The events displayed in the two tables suggest that member states take recourse to the domestically prevailing model of ‘representative democracy’ which offers a prescription as to how a democratic polity should be institutionally organised.

##### *The dependent variable*

As already indicated, Tables 2-3 display the marks which the model of representative democracy has left on the European Union’s organisational surface: The existence and gradual empowerment of both the European Parliament and the enhanced role of national parliaments in European Union decision-making are key indicators of this

observation (irrespective of the scope of these changes in terms of decision-making competencies).

**Table 2: 'Representative democracy' in the EU I – the European Parliament-path**

| <b>Role/Competencies of the European Parliament and legal base</b>            |  |
|---|--|
| Treaty establishing the European Coal and Steel Community (1951) <sup>3</sup> | <ul style="list-style-type: none"> <li>➤ Creation of Common Assembly with right to censure High Authority upon presentation of annual report by 2/3 majority of votes (Art. 24 ECSC)</li> </ul>  |
| Treaty establishing the European Economic Community (1957)                    | <ul style="list-style-type: none"> <li>➤ 'Consultation' procedure (22 articles in EEC Treaty and 11 in Euratom Treaty)</li> <li>➤ Right to censure Commission with 2/3 majority of votes (Art. 144 EEC)</li> </ul>   |
| Treaty of Luxembourg (1970)   | <ul style="list-style-type: none"> <li>➤ Introduction of 'own resources': EP has the power to increase/reduce expenditure, redistribute spending (Art. 203 EEC)</li> <li>➤ EP with power to grant discharge to Commission (in conjunction with Council, Art. 206 EEC)</li> </ul>   |
| Treaty of Brussels (1975)   | <ul style="list-style-type: none"> <li>➤ Consolidation of 1970-changes: EP with sole right to grant discharge Art. 205a EEC), power to reject the whole budget (Art. 203 EEC)</li> </ul>   |
| Single European Act (1986)  | <ul style="list-style-type: none"> <li>➤ Introduction of 'cooperation' (Art. 189C EEC) and 'assent' procedures (applies, e.g., to association agreements and accession of new Member States)</li> </ul>  |
| Maastricht Treaty (1991)  | <ul style="list-style-type: none"> <li>➤ Introduction of 'co-decision' procedure (Art. 189B ECT), extension of other procedures</li> <li>➤ EP consulted on Member States' nominee for Commission President; college of Commissioners subject of vote of approval (Art. 158 ECT)</li> </ul>   |
| Treaty of Amsterdam (1997)  | <ul style="list-style-type: none"> <li>➤ Reform and extension of 'co-decision' procedure (Art. 251 ECT)</li> <li>➤ Nominee for Commission President has to be approved by EP plus vote of approval for the college of Commissioners (Art. 214 ECT)</li> </ul>  |
| Treaty of Nice (2000)   | <ul style="list-style-type: none"> <li>➤ Extension of 'co-decision' procedure (Art. 251 ECT)</li> </ul>  |
| Draft Treaty Establishing a Constitution for Europe (2003)                    | <ul style="list-style-type: none"> <li>➤ 'Co-decision' to be "ordinary legislative procedure" (Art. I-33 I and Art. III-302)</li> <li>➤ Nominee for Commission President is elected by EP with member states taking into account the elections to the EP (Art. I-26 I)</li> <li>➤ Reform annual budgetary procedure (removal of distinction between compulsory and non-compulsory expenditure, Art. III-310); constitutionalisation of multi-annual financial framework (Art. I-54 and III-308)</li> </ul> |

<sup>3</sup> Dates in brackets refer to the signing of the relevant Treaty unless indicated otherwise.

**Table 3: ‘Representative democracy’ in the EU II – the National Parliament-path**

|  | <b>Role/Competencies of National Parliaments</b>   | <b>Legal/Treaty base</b>   |
|--|--|--|
| Maastricht Treaty (1991) <sup>4</sup>                      | <ul style="list-style-type: none"> <li>➤ National parliaments to receive Commission proposals in “good time” for information and examination</li> <li>➤ Representatives from national parliaments and EP encouraged to discuss “main features” of the EU</li> </ul>  | <ul style="list-style-type: none"> <li>‘Declaration on the Role of National Parliaments in the European Union’ (No. 13)</li> <li>‘Declaration on the Conference of the Parliaments’ (No. 14)</li> </ul>  |
| Treaty of Amsterdam (1997)                                 | <ul style="list-style-type: none"> <li>➤ Information for national parliaments; fixed six week period between Commission proposal submitted to national parliaments and the Council adopting a position</li> <li>➤ COSAC (Conference of European Affairs Committees) to examine legislative proposals and make “contributions” relating to fundamental rights, subsidiarity, establishment of an area of freedom, security and justice</li> </ul> | ‘Protocol on the Role of National Parliaments in the European Union’   |
| Treaty of Nice (2000)                                      | <ul style="list-style-type: none"> <li>➤ Inter alia, calls upon role of national parliaments in the EU architecture to be debated</li> </ul>   | ‘Declaration on the Future of the Union’ (No. 23)  |
| Draft Treaty Establishing a Constitution for Europe (2003) | <ul style="list-style-type: none"> <li>➤ Information for national parliaments; fixed six week period between Commission proposal submitted to national parliaments and the Council adopting a position</li> <li>➤ ‘Subsidiarity’ control by national parliaments on Commission proposals; initiation of infringement proceedings before the ECJ (national governments on behalf of national parliaments)</li> </ul>                              | <ul style="list-style-type: none"> <li>Art. 24 IV (inter alia) and annexed ‘Protocol on the Role of National Parliaments in the European Union’</li> <li>Art. 9 III and annexed ‘Protocol on the Application of the Principles of Subsidiarity and Proportionality’</li> </ul> |

*The independent variable: transfers of sovereignty*

How can we explain the motivations of policy-makers from EU member states to project the model of ‘representative democracy’, which is so indicative of the liberal democratic nation state, onto the EU polity? In previous work, Rittberger (2003a, b; forthcoming) has studied the causes underlying member states’ decisions to take recourse to the model of ‘representative democracy’. He found that they do so as a response to transfers of national sovereignty from the domestic to the EU-level: To empirically underpin his argument, he analysed three episodes in the history of European integration, the creation of the supranational European Coal and Steel Community (1951), the creation of an own resources-system for the Community

<sup>4</sup> Dates in brackets refer to the signing of the relevant Treaty unless indicated otherwise.



(1970) and the introduction of qualified majority voting with the Single European Act (SEA) adopted in 1986. Decisions to delegate and pool sovereignty – by creating supranational actors who are empowered to make authoritative decisions or by instituting supermajority voting procedures among the member state governments in the Council – were perceived by policy-makers as situations which impelled them to reflect and act upon the implications of creating a new layer of governance for domestic mechanisms of interest representation and democratic accountability. The decision by the member states of the European Coal and Steel Community to delegate sovereignty to a supranational High Authority raised the question about its democratic accountability: Since one of the key motivations to create a High Authority was to ensure its independence from member state governments' interventions in the policy-making process, the question as to who it should be accountable to was answered by the member states in creating a supranational parliamentary assembly and endowing this body with 'executive' control powers. The introduction of an own resources-system in 1970 led the member state governments to reflect on the question of who should be entitled to make decisions about Community expenditures. The member state governments' reasoning went as follows: With an own resources-system on the Community-level, national parliaments would be stripped off their role to approve funds for the Community budget and consequently, it was considered appropriate that some parliamentary involvement in deciding on the expenditure of own resources should ensue. Similarly, the decision of member state governments to apply qualified majority voting (QMV) in the Council of Ministers as a result of the negotiations leading to the SEA (and the extensions of QMV in subsequent treaty reform) have led policy-makers to ask how the increasing marginalisation of national parliaments in exercising control and influence over EU decision-making could be compensated for.

From this argument and evidence, the general expectation can be derived that the creation of a new layer of governance induces policy-makers to ask questions about the procedural mechanisms through which democratic participation and accountability can be guaranteed, issues which policy-makers do not perceive as overly problematic in 'traditional' international organisations with an intergovernmental decision-making mode granting each member a unilateral veto power (Rittberger, 2001; see also Stein, 2001). In his work, Rittberger has shown that the creation of the new supranational polity was perceived to pose a challenge and potential threat by policy-makers for domestic processes warranting the democratic accountability of political institutions and democratic participation of its citizens: Since

authoritative decision-making at the European level was now a possibility, policy-makers responded by projecting domestically established (and hence: familiar) procedures for democratic participation and accountability onto the European level informed by the model of 'representative democracy'.

When policy-makers adopt the model of 'representative democracy' as a template for projecting institutional solutions onto the EU level, this does not automatically imply that the same answers will be offered as to how the model is translated into institutional design choices 'on the ground'. To translate the model of 'representative democracy' into cues for action, policy-makers must possess causal beliefs which offer concrete prescriptions regarding the implementation of the model. Causal beliefs are "beliefs about cause-effect relationships" which "provide guides for individuals on how to achieve their objectives." (Goldstein and Keohane, 1993: 10) Causal beliefs engender strategies for the attainment of an overarching goal or principle. It is possible to envisage that policy-makers possess and employ different causal beliefs and hence different strategies to achieve the same objective, namely to ensure the democratic legitimacy of the polity when instances of sovereignty-transfers threaten to challenge the democratic legitimacy of the EU polity. In the following, these strategies will be called *legitimation strategies*, since they provide policy-makers with prescriptions as to how the model of 'representative democracy' can be most appropriately implemented.

The information conveyed in Tables 2-3 (see above) suggests that policy-makers across EU member states consider both their domestic national parliaments as well as the European Parliament as central components in implementing the model of 'representative democracy'. Research has demonstrated that policy-makers from different member states or even from different political parties within individual countries do not necessarily agree on the role and relative importance national parliaments and the European Parliament should play in the EU polity (see Jachtenfuchs, 1999, 2002; Rittberger, 2003a, b; forthcoming). This suggests that policy-makers hold different 'causal beliefs' which serve as filters translating the model of 'representative democracy' into concrete responses as to how the model of 'representative democracy' can be served most appropriately. These causal beliefs are derived from what Markus Jachtenfuchs et al. (1998) have coined 'polity ideas' which are defined as "normative orders in which specific constructions of the legitimacy of a political system are (re)produced through the ascription of purpose and meaning." (Jachtenfuchs et al., 1998: 413) Polity ideas are conditioned by

historical and cultural factors: They reflect historical events as well as economic and political organising principles which themselves are reflected in the constitutions and political systems of individual EU member states. It has been shown that different polity ideas thus offer different responses to the question to what degree national parliaments and/or the European Parliament should be given a role in influencing and controlling EU decision-making processes (Jachtenfuchs, 1999, 2002; Katz, 2001; Rittberger, 2003). Based on extensive empirical research, Jachtenfuchs and collaborators have developed a set of analytically distinct polity ideas: *Federal State*, *Intergovernmental Cooperation*, *Economic Community* and *Network Governance* (see Jachtenfuchs et al., 1998). Conditional upon which polity idea is held be policy-makers, alternative solutions as to how the 'transfer of sovereignty'-problem shall be solved will be advanced.<sup>5</sup> For instance, policy-makers adhering to the *Federal State* polity idea see legitimacy as the expression of dual popular sovereignty which is split and shared across different levels of governance (the state- and union-level). Consequently, this polity idea is most appropriately implemented via a popularly elected assembly representing the *people* of the polity (in the European Parliament) and member state representation at the federal- or union-level (the Council). In contrast, the *Intergovernmental Cooperation* polity idea is based on the principle of 'social legitimacy' which vests legitimate rule in the nation state. Democratic legitimacy thus emanates from national parliaments and member state governments which are ultimately accountable to their national constituents. In sum, the advocates of both the European Parliament and national parliament legitimisation strategies derive their proposals for institutional reform from different polity ideas.

Drawing the threads of the preceding discussion together, the following expectation can be stated:

*Proposition 1* (the 'Parliamentarisation-thesis')

Transfers of sovereignty are perceived by policy-makers to undermine domestic procedures of democratic accountability and participation. In order to find an appropriate response to these types of challenges, policy-makers take recourse to the model of 'representative democracy' from which they

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<sup>5</sup> See Jachtenfuchs (1999: 129-137). The discussion will be limited to the *Federal State* and *Intergovernmental Cooperation* polity ideas (excluding the other two) since, thus far, they constitute the most prominent causal beliefs for 'implementing' the model of 'representative democracy'.

derive legitimation strategies as more concrete cues for institutional design and reform choices.

### **3.2. Explaining the relative ‘success’ of alternative legitimation strategies**

The existence of alternative legitimation strategies implies the possibility that not each of the alternatives is necessarily equally ‘successful’ in informing policy-makers’ institutional reform choices. We therefore have to inquire into the factors that affect the relative success of a legitimation strategy.

#### *The dependent variable*

It has been argued previously that – under the conditions stated in the ‘Parliamentarisation-thesis’ – legitimation strategies inform institutional reform decisions. Consequently, we should be able to measure the relative success of alternative legitimation strategies by tracing institutional reform decisions in the Treaty. In this context, we will focus on two sets of indicators, one referring to the *frequency* the other to the *scope* of institutional changes affecting the European Parliament and national parliaments.

- *Frequency*: Those formal changes in the Treaty will be traced which address the role and competencies of the European Parliament and the national parliaments in the context of EU decision-making.
- *Scope*: The frequency of institutional changes does not tap changes in the relative power of European Parliament and national parliaments in EU decision-making. In analysing the scope of Treaty changes regarding the European Parliament and national parliaments, assessments as to changes in their relative powers will be made.

Tables 2-3 (see above) also offer an overview of the relative success of the two dominant legitimation strategies, dubbed the *European Parliament-path* and the *National Parliament-path*. A glance at the two tables indicates that changes in the relative power of the European Parliament have been much more frequent and far-reaching in scope than those affecting national parliaments in EU decision-making. National parliaments entered the Treaty reform-scene in the nineties while the European Parliament’s role in EU decision-making has been the object of Treaty reform since the inception of the European Coal and Steel Community. Furthermore, while the role of national parliaments in EU decision-making is chiefly restricted to a consultative one and destined at improving domestic scrutiny processes, the

European Parliament's powers of scrutiny and appointment as well as of legislative and budgetary decision-making have been gradually extended.

*The independent variables: specificity, coherence and prominence*

We now turn to the factors explaining the relative success of alternative legitimization strategies. There exists a broad literature on the evolution and impact of norms in both International Relations theory (see, for instance, Florini, 1996; Legro, 1997; Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Risse et al., 1999) and Comparative Politics (see, for instance, Hall, 1989, 1993; Jacobson, 1995; McNamara, 1998; Blyth, 2002) which can be fruitfully employed to help explain the relative success of alternative legitimization strategies. Akin to norms, legitimization strategies are collectively held beliefs which prescribe the goals actors should strive towards and the behaviours associated with achieving these goals: Legitimation strategies – such as European Parliament-path or the National Parliament-path – provide actors with prescriptions about the appropriate means through which the model of 'representative democracy' can be most appropriately implemented. The degree to which alternative legitimization strategies 'succeed', however, depends specific properties: their specificity, coherence and prominence.

The *specificity* of a legitimization strategy refers to its simplicity and clarity with regard to the prescriptions (the "Do's") or prohibitions (the "Don'ts") offered. According to Legro, specificity can be assessed by examining policy-makers' understandings of the simplicity and clarity of the prescription or prohibition inherent in a particular legitimization strategy (see Legro, 1997: 34). Hence, the more specific a legitimization strategy, the better policy-makers understand the concomitant behavioural prescriptions and prohibitions and will be able to act upon them.

The *coherence* of a legitimization strategy refers to the degree to which a legitimization strategy fits coherently with the surrounding normative structure. According to Florini, "[a] new norm acquires legitimacy within the rule community when it is itself a reasonable behavioural response to environmental conditions facing the members of the community and when it "fits" coherently with other prevailing norms accepted by the members of the community." (Florini, 1996: 376-377) Existing norms can provide a hospitable environment for a particular legitimization strategy, and a less hospitable one for another. Similarly, norm shifts can breathe new life into a 'latent' legitimization strategy increasing its standing relative to other legitimization strategies.

The *prominence* of a legitimization strategy refers to the condition that a legitimization strategy needs to be supported through the efforts of “norm entrepreneurs” (see Finnemore and Sikkink, 1998) such as individual, corporate or collective actors, in order to obtain an initial foothold (Florini, 1996). The success of norm entrepreneurs depends on the existence and accessibility of organisational platforms through which they can promote their norms or legitimization strategies (Finnemore and Sikkink, 1998: 900). Theorising the impact of “norm entrepreneurs” is, however, problematic since deliberate efforts to promote particular norm may sometimes work and sometimes they may not. The prominence of a particular legitimization strategy thus marks a necessary but not a sufficient condition for the success of a particular legitimization strategy. From the preceding discussion, the following expectation about the ‘success’ of legitimization strategies can be derived:

*Proposition 2*

*Ceteris paribus*, the more specific, the more coherent and the more prominent a legitimization strategy, the more likely is its success relative to other legitimization strategies.<sup>6</sup>

#### **4. Empirical analysis**

In this section, the above propositions will be subjected to empirical testing. What are the empirically observable implications of the propositions? With regard to proposition 1 we would expect policy-makers from the member states to react to instances of sovereignty transfers (as a result of Treaty reforms) – which are perceived to challenge domestic channels of democratic participation and accountability – by employing legitimating strategies which, in turn, guide the search for institutional solutions to the perceived challenges posed by transfers of sovereignty. According to proposition 2 we would expect a legitimization strategy to fare best (be most ‘successful’), the more specific, coherent and the more prominent it is. What are the observable implications of this proposition? First, bearing the asymmetrical ‘success’ of both legitimization strategies in mind, we would expect the European Parliament-path to display higher degrees of specificity, coherence and prominence throughout the integration process. However, since the early 1990s we would expect the National Parliament-path to become more “robust” (Legro, 1997) than in the previous period, i.e. displaying higher degrees of specificity, coherence

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<sup>6</sup> The *ceteris paribus* condition alludes to the specific conditions that were laid out in proposition 1, i.e. for a legitimization strategy to become effective in the first place, the conditions elaborated in the previous proposition have to be met.

and prominence. With a view to the outcomes of the Convention's deliberations, the planned instigation of a subsidiarity control-mechanism endows national parliaments with a prominent role in monitoring and enforcing subsidiarity. To make sense of this development, we would expect the specificity, coherence and/or prominence of the national parliament legitimisation strategy to increase.

#### **4.1. The European Parliament-path**

If the 'Parliamentarisation-thesis' (proposition 1) is correct, member state governments employ legitimisation strategies – whether the emphasis is on increasing the powers of the European Parliament or of national parliaments in EU decision-making – as a response of decisions to transfer sovereignty from the domestic to the EU level. Decisions to transfer sovereignty are perceived by policy-makers as situations which prompt them to reflect and act upon the implications for creating a new layer of governance on domestic mechanisms of interest representation and democratic accountability. In this vein, the 'Parliamentarisation-thesis' implies that – as a response to the introduction and extension of QMV – policy-makers from member state governments will ask how the increasing marginalisation of national parliaments in exercising control and influence over EU decision-making can be adequately compensated for once ever more policy-decisions are taken at the EU level. The central implication of the Parliamentarisation-thesis thus is that we would actually expect member state governments to address the issue of the powers and role of the European Parliament and national parliaments whenever the discussion centres on the extension of QMV.

Regarding the IGC leading towards the adoption of the Maastricht Treaty, Rittberger (2003b) provides evidence suggesting that the extension of QMV prompted national governments and domestic political parties to activate the link between the extension of QMV and enhancing the European Parliament's legislative role in areas where QMV applies. Although some member states opposed the European Parliament's demand for legislative 'co-decision' – whereby Denmark and the United Kingdom, in particular, were anxious that the relative influence of the European Parliament over the substance of legislation would be increased –, there was widespread agreement on the basic principle that the European Parliament should be able to exercise influence in legislative decision-making wherever EU policies were decided by QMV.<sup>7</sup>

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<sup>7</sup> In a Danish government memorandum, it reads: "As regards strengthening of the European Parliament's role, the Danish government suggests extending the cooperation procedure to include all cases of internal policy decided on by qualified

Similarly, during the IGCs leading to the adoption of the Amsterdam and Nice Treaties, none of the member states disputed the link between QMV and legislative influence exercised by the European Parliament,<sup>8</sup> while disagreement continued to be pungent regarding the scope of the European Parliaments influence and the scope of extension of QMV to new policy areas. In declaration No. 23 of the Nice Treaty the member states called for an encompassing debate about the future of the EU which should, among other things, eventually produce “a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning.”<sup>9</sup> Following the Laeken summit of December 2001 and the establishment of the European Convention which was to be endowed with this task, a working group on ‘Simplification’ (Working Group IX) was instituted which set itself the twin objectives of making the European system of governance more clear, more comprehensible and thus more legitimate.<sup>10</sup> With respect to the simplification and reform of legislative procedures, the report issued by the working group stipulated that “the logic of the codecision procedure requires qualified-majority voting in the Council in all cases”<sup>11</sup> and that the codecision procedure should also “become the general rule for the adoption of legislative acts.”<sup>12</sup> The logic inherent in the “QMV equals European Parliament legislative involvement”-formula had thus not only gained an uncontested status – being accepted among the member states – but also offered a clear behavioural prescription regarding its implementation: ‘If you extend QMV, you have to allow for parliamentary participation in the legislative process’. In light of proposition 2, the European Parliament legitimisation strategy thus possessed a high degree of specificity.<sup>13</sup>

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majority. It should not be necessary to amend the cooperation procedure itself.” (Corbett, 1992: 160)

<sup>8</sup> For instance, the Benelux governments issued a memorandum in which the explicitly acknowledged the link between the application of QMV and legislative co-decision for the European Parliament (European Parliament, 1996: 20). Similarly, a Spanish government document on the IGC foresees that “there will be considerable scope for progress through an extension of the field of application of the codecision procedure; this concept should ... logically be viewed in close relation to majority decision-making.” (European Parliament, 1996: 47)

<sup>9</sup> Treaty of Nice, ‘Declaration on the Future of the Union’ (No. 23, paragraph 5).

<sup>10</sup> See European Convention, CONV 424/02.

<sup>11</sup> See European Convention, CONV 424/02, p. 14.

<sup>12</sup> See European Convention, CONV 424/02, p. 15.

<sup>13</sup> Interestingly, commentators refer to this ‘formula’ as a “technical” one ignoring its underlying normative logic: The recommendation by the working group that QMV and codecision should go hand in hand “transformed the debate over the group’s reports from the technical to the political and drew the plenary into discussion as to whether the EU should retain unanimity at all.” (Norman, 2003: 102)



But the success of the European Parliament legitimation strategy cannot only be attributed to its high degree of specificity. The coherence of the European Parliament legitimation strategy with its normative environment played an important role. For instance, the European Parliament legitimation strategy did not face a particularly 'friendly' normative environment during the IGC leading towards the adoption of the Single European Act: Since one of the key conditions to implement the single market-enterprise was to increase the efficiency of decision-making by introducing QMV, the call for greater parliamentary involvement in legislative decision-making motivated by democratic legitimacy-concerns ran counter to the efficiency objective since including another potential 'veto-point' in the legislative process cannot easily be squared with the efficiency postulate. While, thus, during the negotiations leading to the adoption of the SEA democratic legitimacy-concerns clashed with efficiency-concerns (see Rittberger, 2002: chapter 6), the situation reversed once the IGC leading to the adoption of the Amsterdam Treaty was under way. During the IGC, efficiency-based arguments were used to support the reform of the codecision procedure (the famous scrapping of that part of the third reading whereby Council can reaffirm its Common Position and the European Parliament can only vote it up or down) which, eventually, led to its simplification. Simplification also implied, in the case of codecision reform, that the increase in the European Parliament's influence over legislation became formally enshrined in the Treaty (see Hix, 2002). Similarly, the Convention process which called for a simplification of the existing plethora of legal instruments played in the hands of the European Parliament: The decision to reduce the number of legal instruments and applying codecision as "ordinary legislative procedure" (Article I-33 I DTC and Article III-302 DTC) for the passage of laws and framework laws did not only serve calls for efficiency but equally those for more democratic legitimacy. In sum, although the efficiency norm was 'hostile' to an increase in the European Parliament's legislative powers at first, this situation reversed in the mid-nineties once the European Parliament's legislative powers were firmly enshrined in the Treaties. Calls for efficiency (*cum* simplification) thus played into the hands of the European Parliament. Since the mid-late nineties, thus, the coherence of the European Parliament legitimation strategy with its normative environment became an additional factor conducive for its success. As far as the prominence of the European Parliament legitimation strategy is concerned, throughout the different episodes of Treaty reform, there has always been considerable member state support for more parliamentary prerogatives (see, for example, Rittberger, 2002: chapters 3-6, 2003b and Jachtenfuchs, 2002). In the Convention process, the voice of those supporting the European Parliament legitimation strategy gained considerable support from the

participation of 16 MEPs but also from many of the national parliament representatives.

#### **4.2. The National Parliament-path**

To analyse the success of the National Parliament-path, three phases will be distinguished. Referring back to Table 3, the national parliament legitimisation strategy has not left its imprint on institutional design in the Treaties in the pre-Maastricht era (1<sup>st</sup> phase). At subsequent IGCs, several declarations and one protocol have been added to the Treaties primarily destined to improve the information national parliaments receive with respect to EU legislative initiatives (2<sup>nd</sup> phase). The 3<sup>rd</sup> phase begins with the 'Post Nice-process' and ends with the adoption of the Draft Constitutional Treaty (Convention process). As a result of the adoption of the Draft Constitutional Treaty, the information-clause was included in the text of the Constitution. Moreover, the Draft Constitutional Treaty entitles national parliaments to exercise a 'subsidiarity control' on Commission proposals and initiate infringement proceedings before the ECJ (which, however, national governments will have to do on behalf of their national parliaments).

##### *1<sup>st</sup> phase: Pre-Maastricht*

How can we explain that the issue of the involvement of national parliaments in EU decision-making cropped up in the early 90s, making its way into the Maastricht Treaty as declaration No. 13 on the 'Role of National Parliaments in the European Union' and as declaration No. 14 on the 'Conference of the Parliaments'? As this paper argued previously, for a legitimisation strategy to inform decisions for institutional reform, sovereignty has to be transferred to the European level (the 'Parliamentarisation-thesis'). Although discussions about the role of national parliaments in legitimising EU decision-making in the era of QMV have not materialised in terms of a Treaty declaration or even a Treaty article in the SEA, there existed, nevertheless, a shared concern among member state policy-makers at the time that the role of national parliaments in affecting EU decision-making was fading and that something had to be done about (see Rittberger, 2002: chapter 6). Although countries like the United Kingdom were staunch supporters of the belief that democratic legitimacy rests in the domestic parliament and cannot be granted by the European Parliament, the National Parliament-path as a legitimisation strategy did not leave its mark on the SEA. The explanation for its 'absence' lies in the low degree of specificity and prominence of the national parliament legitimisation strategy at the time. At the advent of the signing of the SEA, the member state governments had

difficulties to foresee the impact of the introduction of QMV on the role of national parliaments in EU policy-making. There was a sense among member state governments that the pooling of sovereignty, which shifted legislative decision-making to the European level, would come to the detriment of national parliaments. However, even the staunchest supporters of the National Parliament-path, such as the governments of the United Kingdom and Denmark, did not articulate a specific strategy as to how the potential weakening of the national parliaments' powers could be counteracted (apart from resisting the transfer of legislative powers to the European Parliament). Some domestic parliamentarians even viewed this as part of a strategy on behalf of their governments to further weaken the national parliaments.<sup>14</sup> Domestic conditions regarding the strength of national parliaments in scrutinising their executives' European endeavours also varied. The Danish parliament, for example, could rely on an effective parliamentary control mechanism over the government on European policy-issues exercised by the European Affairs Committee of the Folketing.<sup>15</sup> Since there was no prior experience with regard to the repercussions of QMV on the workings of domestic parliaments and no clear prescription as to how national parliaments should be connected to European decision-making, the specificity of the national parliament-path can be attributed a low value. Furthermore, it lacked prominence: On the one hand, a legitimisation

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<sup>14</sup> Many British MPs argued that the introduction of QMV constituted a serious threat to national parliamentary sovereignty. To mention just one example, Michael Knowles, a pro-Europe Conservative MP, voiced disapprovingly that "[t]his House is effectively chopped off from the European Parliament, and that is no accident. The Select Committee [of the House of Commons on European Legislation] therefore cannot act effectively. Indeed, it is designed not to act effectively. Yet any suggestion that its mandate should be widened is constantly resisted by the Executive because that would shrink the powers of the Executive." (Hansard, House of Commons, 5 December 1985: 356) The government sought to downplay this concern. Only when directly confronted with a question by Robert Jackson, Conservative MP, did Foreign Secretary Geoffrey Howe try to give assurances that national parliamentary sovereignty would not be undermined by the outcomes of the SEA (see Hansard, House of Commons, 23 April 1986: 323).

<sup>15</sup> Malcolm Rifkin, Minister of State in the Foreign and Commonwealth Office has stated before the House of Lords Select Committee on the European Communities: "I think there are a number of countries, perhaps even a majority of countries, which would have the gravest of reservations about increased powers for the European Parliament and their improvement to the conciliation procedure. ... I'm conscious that when Danish ministers are negotiating within the Council of Ministers they have to refer back to their own national parliament if they wish to change their negotiating mandate. There is a much tighter control as regards the relationship between the Danish Parliament and the Danish Minister than exists between other national parliaments and ministers in other Member States. Anything that directly or indirectly seems to affect the powers of the Danish Parliament vis-à-vis the European Parliament is treated with much more sensitivity and is much more controversial than is the case in other countries." (House of Lords, 1985: 48)

strategy that does not offer clear behavioural prescriptions is difficult to support. On the other hand, governments, such as the UK government, were initially not too concerned about the prospect that the introduction of QMV could weaken the domestic parliaments and thereby strengthen the autonomy of the executive (see Rittberger, 2002: chapter 6). In spite of the lack of impact of the national parliament-path on institutional reform in the Single European Act, the early experiences with the substantial increase in Community legislation passed under QMV prompted national parliaments to consider ways to reinforce their role in the Community decision-making: COSAC (Conférence des Organes Spécialisées dans les Affaires Communautaires) was created as a response to this development. The idea behind COSAC was to regularly bring together representatives of national parliamentary committees dealing with European affairs to exchange information and to debate issues of common concern.

### *2<sup>nd</sup> phase: Maastricht and post-Maastricht*

The entry into force of the Maastricht and Amsterdam Treaties in 1993 and 1999 was accompanied by considerable transfers of national sovereignty through the extension of QMV. In accordance with the 'Parliamentarisation-thesis', member state governments voiced concerns about the consequences of pooling for processes of democratic accountability and interest representation. Consequently, the roles of the European Parliament and of national parliaments in EU decision-making were mentioned as significant themes for discussion at the IGCs under the banner of 'democratic legitimacy' (see House of Commons, 1990a).<sup>16</sup>

While the National Parliament-path had not directly left its imprint on the SEA, the Maastricht Treaty explicitly acknowledged the role of national parliaments in European decision-making in two annexed declarations, one calling for better informing national parliaments on legislative initiatives (declaration No. 13) and the other encouraging national parliaments to contribute to substantive policy issues

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<sup>16</sup> In an exchange with Ted Rowlands, Labour MP, Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs, indicated that both legitimisation strategies had supporters among the EU member states: While Rowlands argued that the "Spaniards, French, Italians and even the Germans did not see sovereignty in terms of national parliamentary institutional powers and, in fact, there was great willingness to forsake a lot of national parliamentary power to bridge the European parliamentary deficit ...", Douglas Hurd replied: "I think we do think more clearly and strongly in terms of national parliamentary sovereignty than probably any other Member States. The Danes, of course, have a sovereignty system which puts a big accent on it." (House of Commons, 1990a: 13)

(declaration No. 14). The Amsterdam Treaty annexed a protocol on the 'Role of National Parliaments in the European Union' which specified some of the provisions of declaration No. 13 attached to the Maastricht Treaty. These formal Treaty changes have to be qualified as being very modest in scope. They were chiefly about improving information for national parliaments regarding EU legislative initiatives which they could to improve the scrutiny process vis-à-vis their national governments. Nevertheless, even a modest increase in the 'success' of the national parliament legitimisation strategy has to be accounted for. The answer lies in a modest change in the specificity of the national parliament legitimisation strategy and a sufficiently high degree in the prominence.

Analysing statements and memoranda outlining the positions of member state governments during the IGCs leading to the adoption of the Maastricht and Amsterdam Treaties, it is striking that there was little agreement among member states as to how national parliaments should be involved in EU decision-making in order bring Europe 'closer to the citizens'. The responses offered by member states varied substantially, falling into broadly three categories:

- I. Improvement of domestic scrutiny-procedures vis-à-vis national governments (unilateral action) by improving the information flow from the EU to the domestic level.
- II. Improvement of scrutiny-procedures vis-à-vis national governments by drawing on forums such a COSAC (joint coordination).
- III. Instituting a (second) chamber at the European level constituted of national MPs with roles other than merely scrutiny

With regard to the first issue – the 'upgrading' of domestic scrutiny-procedures vis-à-vis national governments by improving the information flow from the EU to the domestic level – there was widespread agreement among the member state governments that it was paramount to improve domestic scrutiny procedures. For instance, in the run-up to Maastricht, the British Government issued a statement in which it stipulated that the role of national parliaments in scrutinising EC legislation should be increased. It stressed, however, that the modalities regarding the increasing of their role "is a matter for member states, not for the Community ... We would welcome if national parliaments in other states were to increase their own role in scrutinising EC legislation." (House of Commons, 1990b: 6) A Danish government memorandum echoed the British government's position. The Danish government avers that "a considerable part of what is known as democratic shortfall is attributable

to the fact that not all national parliaments have an adequate say in the decisions taken at Community level.” (Corbett, 1992: 160) It was also the Danish government in the preparation for the IGC leading to the adoption of the Amsterdam Treaty which stressed that national parliaments should be enabled to play a more prominent role in EU decision-making via their national governments by obtaining timely information on EU level legislative initiatives (European Parliament, 1996: 24). The Spanish government echoed the Danish position holding that the main role of national parliaments “in relation to EU decisions should concern the monitoring and control exercised by each Member State parliament on the actions of its government in the Council, and that it is up to each member State, not the Union, to determine how this activity should be exercised.” (European Parliament, 1996: 60) To fulfil this role properly, the Spanish government called for the European institutions, the Commission in particular, to supply national parliaments with all the requisite information.

As far as the second and third category of measures regarding the role of national parliaments in EU decision-making are concerned, both the Maastricht and Amsterdam IGCs saw selective support for closer cooperation between national parliaments and their MPs in weakly institutionalised forums such as COSAC and a Conference of Parliaments, modelled on the idea of the *Assizes*.<sup>17</sup> The question as to whether a second chamber of national parliamentarians should be instituted alongside the European Parliament was even more controversial.<sup>18</sup> In the run-up to Maastricht, proposals were brought forward for a *Congress* of national parliamentarians, which was later modified to being a conference of national parliamentarians and MEPs. This proposal gained initial support from the United Kingdom, Portugal, Spain and Greece (Corbett, 1992: 61). In a debate in the French National Assembly, the French Minister for European Affairs, Elisabeth Guigou, laid out the core function of such a “Congress” composed of national parliamentarians

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<sup>17</sup> The so-called *Assizes* are based on an idea expressed by French President Mitterrand which he expressed in 1989 in a speech to the European Parliament: “Why should”, he asked, “the European Parliament not organise assizes on the future of the Community in which, alongside your Assembly, delegations from national parliaments, the Commission, and the governments would participate?” (quoted in Corbett, 1998: 296) The European Parliament quickly conceived of the *Assizes* as a possibility for a joint parliamentary preparation of the IGC leading to the Maastricht Treaty (see Corbett, 1998: 296).

<sup>18</sup> The idea of instituting a second chamber has been voiced by French politicians with Laurent Fabius (then President of the French National Assembly) or President Mitterrand advocating the creation of a second chamber in 1989 and 1990 respectively.

and MEPs: Its role should be to discuss “themes of common interest and issue an opinion on the broad orientations of the Union.”<sup>19</sup> While even among the supporters of a second chamber there was no uniform view as to what exact role and competencies it should be endowed with, other governments expressly opposed the idea. Regarding measures for cooperation between national parliaments which were of a less formal and institutionalised nature, such as COSAC, there was equally disagreement as to its exact role and status. In the run-up to Amsterdam, the Spanish government opposed a formalisation of the COSAC structure arguing that “closer links with the national parliaments should not lead to the creation of a new institution or permanent body with its own staff and premises, or of a second chamber of national MPs.” (European Parliament, 1996: 60) The Spanish government expressed its opposition to a regular convening of a Conference of Parliaments as laid down in declaration No. 14 annexed to the Maastricht Treaty given their lack of success. Other member state governments, such as Austria, called for a consolidation of COSAC, yet were in stark opposition to any proposals establishing a second chamber.

Table 4 illustrates that in the run up to the Amsterdam Treaty negotiations, there was a unanimous trend in favour of improving information for national parliaments on EU legislative initiatives and projects. Yet, as already indicated above, this was the only area where the national parliament legitimisation strategy displayed a high level of specificity. With respect to improve the role of joint coordination mechanisms, such as COASAC, or even the creation of a ‘Congress’ or second chamber, there was partial support at most (COSAC) and almost unanimous opposition at worst (second chamber).

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<sup>19</sup> *Le Monde*, 21 June 1991.

**Table 4: Positions of member states on the role of national parliaments in EU decision-making ('Amsterdam IGC')<sup>20</sup>**

|   | A   | B   | D   | DK  | E | F | GB | GR   | I | IRL | L | P   | S    | SF   |
|---|-----|-----|-----|-----|---|---|----|------|---|-----|---|-----|------|------|
| Improving Information                       | +   | +   | +   | +   | + | + | +  | +    | + | +   | + | +   | +    | +    |
| Joint coordination mechanisms <sup>21</sup> | +/- | +/- | +/- | +/- | - | + | -  | n.a. | - | -   | - | +/- | n.a. | n.a. |
| Second chamber / Congress                   | -   | -   | -   | -   | - | + | -  | -    | - | -   | - | -   | -    | -    |

'+' Supports proposed measure

'-' Opposes proposed measure

'+/-' Partial support

Another factor which was crucial in accounting for the success of the national parliament legitimisation strategy is the degree to which a particular legitimisation strategy is 'prominent'. As already indicated, scepticism was widespread regarding moves to increase the role of national parliaments in EU decision-making. The vast majority of member states, however, agreed that the involvement of national parliaments in EU decision-making is effectively a question of the internal organisation in each member state. Improving the flow information received by national parliaments from the EU-level marked a lowest common denominator since it allowed national parliaments, irrespective of domestic practises of scrutiny and control, to exercise this role more effectively vis-à-vis their national governments.

### *3<sup>rd</sup> phase: the Convention process*

Only a few years after the adoption of the Amsterdam Treaty, German Foreign Minister Fischer's speech of May 2000 at the Humboldt University triggered a debate among major European political leaders, from Blair to Chirac, proclaiming an enhanced role for national parliaments in EU decision-making "suggesting they send representatives to a second chamber in Brussels." (Norman, 2003: 97; see also House of Lords, 2001) Yet, there existed widespread disagreement regarding the features of said second chamber, the major being "[w]hether what is proposed is a

<sup>20</sup> The location of the member states' positions on these issues was extracted from <[http://www.europarl.eu.int/igc1996/fiches/fiche6\\_en.htm](http://www.europarl.eu.int/igc1996/fiches/fiche6_en.htm)>, accessed on 20 February 2004.

<sup>21</sup> Partial support for joint coordination mechanisms is mirrored in the relatively widespread support for improving the informal role of COSAC and in the equally widespread opposition to formalise COSAC. Only a small number of member states suggests a greater role, in particular in certain policy areas (such as subsidiarity, justice and home affairs, own resources, enlargement and general CFSP guidelines).



second chamber with specific powers, or what might perhaps be better described as community or committee of parliaments, coming together to perform specific tasks, but mainly advising rather than deciding.” (House of Lords, 2001) During the Convention, the issue of a Congress or second chamber, expressly favoured by Giscard d’Estaing himself, was taken up. Among the Convention members there was considerable disagreement not only as to its desirability but also among the proponents of the Congress-idea as to how its exact role and competencies should be defined.<sup>22</sup> The idea of a Congress/second chamber displayed a low level of specificity and, as was already hinted at, a low level prominence, although rhetoric sometimes suggested otherwise. Yet, the Convention process brought about some substantial change in the role exercised by national parliaments. By instituting an ‘early warning mechanism’ with respect to guarding the subsidiarity principle, national parliaments were attributed a substantially new role as laid down in the Draft Constitutional Treaty. Although the Convention members quarrelled over the modalities of how national parliaments’ should be allowed to intervene when they objected to Commission legislative proposal on subsidiarity grounds (‘yellow’ or ‘red card’), there was widespread agreement among the members on the general idea that national parliaments should not only be better informed on the legislative intentions of the EU, but that they should also be able to express their objections where legislative proposals were considered to run counter to the principle of subsidiarity.<sup>23</sup> To explain the introduction of the ‘early warning mechanism’ which can be triggered by national parliaments, we have to take a closer look at the coherence and prominence of the national parliament legitimisation strategy. As regards its coherence, the question of the delineation of the EU’s competences – becoming an ever more fervently debated theme following the adoption of the Nice Treaty and its ‘Declaration on the Future of the Union’ – made subsidiarity a guiding principle. This debate proved to be extremely conducive for the ‘success’ of national parliament legitimisation strategy.

The principle of subsidiarity has been “a fixture in the political and constitutional debate” (Sypris, 2002: 13) since it was first espoused in the Maastricht Treaty and further specified at Amsterdam in the ‘Protocol on the application of the principles of subsidiarity and proportionality’.<sup>24</sup> In declaration No. 23 of the Nice Treaty, the EU

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<sup>22</sup> European Convention, debate of 28/10/2002.

<sup>23</sup> European Convention, debate of 18/03/2003.

<sup>24</sup> The Edinburgh European Council of December 1992 defined the basic principles underlying subsidiarity and laid down guidelines for interpreting Article 5 (former

member states explicitly recognised “the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States.”<sup>25</sup> For this purpose, they called for a broad debate about the future of the EU which should address, inter alia, the following questions: How can “a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity” be established and monitored? What role should national parliaments play in the “European architecture”?<sup>26</sup> At its December meeting in Laeken in 2001, the European Council adopted a ‘Declaration on the Future of the European Union’ committing the EU to become more democratic, transparent and effective. The declaration laid down 60 questions targeting different themes concerning the future of the EU, such as the division and definition of powers, the simplification of the treaties, the EU’s institutional setting and the move towards a Constitution for Europe. It also foresaw the convening of a Convention to examine these questions and themes. It was early in the Convention-phase that two working groups (among others) were established which dealt with ‘The principle of subsidiarity’ (Working Group I) and ‘The role of national parliaments’ (Working Group IV) to meet the demands of the ‘Laeken-mandate’. While both themes, the role of subsidiarity and of national parliaments in organising and legitimising EU governance, had been on the member states’ EU reform agendas since the early nineties, member state policy-makers had not established a firm connection between subsidiarity and national parliaments until the convening of the Convention.<sup>27</sup> The working group on subsidiarity was guided by the assumption that the application and monitoring of subsidiarity should and could be improved upon. In its final report, the group proposed to the Convention that national parliaments should play an important role in monitoring the compliance of Commission legislative initiatives with the principle of subsidiarity (*ex ante* control) via an “early warning system” and that they should also be enabled to appeal to the

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Article 3b), which enshrines subsidiarity in the EU Treaty. In Article 5 ECT it reads: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.”

<sup>25</sup> Treaty of Nice, ‘Declaration on the Future of the Union’ (No. 23, paragraph 6).

<sup>26</sup> Treaty of Nice, ‘Declaration on the Future of the Union’ (No. 23, paragraph 5).

<sup>27</sup> The French government tried to establish such a connection calling on national parliaments to monitor the appropriate application of the subsidiarity principle. Addressing the French National Assembly on 3 February 1994, then French Foreign Minister Alain Juppé expressed his hope that national parliaments would be empowered to challenge EU legislation on the grounds that the subsidiarity was violated (European Parliament, 1996: 66).

European Court of Justice against violations of subsidiarity (*ex post* control).<sup>28</sup> The working group was not shy to assert “the innovative and bold nature” of its proposals regarding the role of national parliaments in ‘guarding’ subsidiarity.<sup>29</sup> The working group on national parliaments, in turn, “reinforced the main findings of the subsidiarity working group by underlining that national parliaments should play a key role in monitoring the principle of subsidiarity.” (Norman, 2003: 98)<sup>30</sup> The elevation of the subsidiarity principle to a guiding norm in the discussion about delineation of the levels at which policies and competencies shall be allocated proved to be ‘hospitable’ for the national parliament legitimisation strategy: It was a commonly held view among member state policy makers that national parliaments were key in strengthening the democratic legitimacy of the EU by bringing it ‘closer to the citizens’. It was thus seen as a logical and widely accepted argument that the political institutions that were seen to have suffered most from ever more transfers of sovereignty to the European level – national parliaments – should be entitled to have a say regarding the application of the principle of subsidiarity, putting – if deemed necessary – a brake on the appropriation of policy-making competencies by the Commission.

While the coherence of the national parliament legitimisation strategy with its ‘normative environment’ must be seen as a necessary condition to account for the ‘Post Nice-success’ of the national parliament legitimisation strategy, it is not a sufficient condition. Without the Convention as an ‘organisational platform’ which promoted the linkage between subsidiarity and the national parliament legitimisation strategy, the latter’s success would have been all but a foregone conclusion. In this respect, the timing aspect is crucial. Although the national parliament legitimisation strategy and the principle of subsidiarity had been the objects of much debate throughout the nineties, it was through the Convention process that a link between national parliaments and the monitoring of subsidiarity was firmly established. Among the 105 members of the Convention the majority consisted of national parliamentarians (56) outnumbering the 28 representatives of the national governments and the 16 representatives from the European Parliament. It is thus of little surprise that representatives of national parliaments sought to step-up the role of national parliaments in the system of EU decision-making. Table 5 provides a summary of the empirical findings.

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<sup>28</sup> See European Convention, CONV 286/02.

<sup>29</sup> See European Convention, CONV 286/02, p. 5.

<sup>30</sup> See also European Convention, CONV 353/02.

**Table 5: Summary – legitimization strategies and their success**

|  | European Parliament-path  |  | National Parliament-path  |   |   |
|--|---|--|---|---|---|
|  |   |  | Pre Maastricht<br>(1 <sup>st</sup> phase)   | Maastricht and post<br>Maastricht<br>(2 <sup>nd</sup> phase)  | Convention process<br>(3 <sup>rd</sup> phase)   |
| <b>Specificity</b><br>(simplicity and clarity of prescription) | <i>medium/high</i> : the formula “QMV=EP-legislative involvement” gains uncontested status; disagreement persists as to the degree of EP involvement (SEA, Maastricht, Amsterdam)   |  | <i>low</i> : the post SEA-phase poses the first (and hitherto unknown) challenge to NPs’ legislative prerogatives | <i>low/medium</i> : disagreement over NP involvement in EU decision-making due to differences in domestic traditions; agreement on improving information for and coordination between NPs | <i>medium</i> : NPs are viewed as potential guardians of subsidiarity principle via ex ante and ex post controls; differences as to additional roles of NPs in EU decision-making persist |
| <b>Coherence</b><br>(‘fit’ with the normative environment)     | <i>low</i> (SEA): efficiency norm (introduction QMV) conflicts with EP participation in legislative process which has efficiency-reducing effects                                   | <i>medium/high</i> (since Amsterdam): simplification of the Treaties (norms of transparency and efficiency) conducive for EP legitimization strategy | --  | --  | <i>high</i> : since early 90s emergence of subsidiarity-principle (‘norm shift’); NPs shall play a role in guarding subsidiarity  |
| <b>Prominence</b><br>(actor support)                           | <i>medium/high</i> : ‘critical mass’ of member state governments support extension of EP powers throughout the integration process; 16 MEPs as EP representatives in the Convention |  | <i>low</i> : UK and Denmark defend parliamentary sovereignty  | <i>low/medium</i> : until convening of EU Convention only member states governments negotiate during IGC; governments not ultimately committed to empowering their NPs                    | <i>medium/high</i> : national parliamentarians in Convention ‘push’ for greater NP involvement  |
| <b>Overall impact</b>  | medium/high   |  | n.a./low  | low/medium  | medium/high   |



## 5. Outlook: a democratic transformation?

The principal aim of this paper was to advance a positive (empirically testable) theory of the politics of democratic legitimation in the EU. In a first step, this paper has elaborated the conditions that induce policy-makers from member state governments to project the model of 'representative democracy' onto the EU polity. It has been argued, that the new supranational polity is perceived by policy-makers to pose a challenge and potential threat for domestic democratic processes: Since authoritative decision-making is 'now' possible beyond the confines of the nation state, policy-makers respond by projecting domestically established procedures for democratic participation and accountability onto the European level. However, it was also argued and shown that these 'projections' of the model of 'representative democracy' are not necessarily uniform. Enhancing the role and participation of both national parliaments and the European Parliament in EU decision-making processes serve as legitimation strategies which are attributed important functions by policy-makers in 'implementing' the model of 'representative democracy'.

In a second step, this paper has demonstrated that the implementation of the model of 'representative democracy' on the EU level is 'biased' towards the European Parliament-path as the dominant 'legitimation strategy'. However, it has also been shown that national parliaments 'have caught' up since the early nineties and are considered to fulfil an ever more important role in legitimising EU governance. To explain these developments, it was argued and shown that the *properties* of the two legitimation strategies – their individual and relative specificity, coherence and prominence – are key in determining their differential 'success'. It has been shown that one of the main factors 'promoting' the national parliament legitimation strategy has to be seen in the rise of the principle of subsidiarity.

In subsequent IGCs, not to forget the Convention process, member state governments have relentlessly declared that Europe has to 'brought closer to its citizens' and that the principle of subsidiarity plays a crucial role in realising this 'objective'. Can this ever repeated formula be dismissed as mere legitimising rhetoric? Or does it actually reflect EU governments' (slight) unease with dropping 'popularity ratings' of the European integration project, declining voter turnouts at European Parliament elections or the increasing popular demands to alleviate the asymmetry between the 'economic' and 'social Europe', as expressed fervently by the masses attending the European Social Forums in Florence and Paris? To put it bluntly: Does the recurrent talk about 'bringing Europe closer to its people' and a 'democratic

deficit' reflect a perceived crisis of the model of 'representative democracy' on the EU level? Do, in the eyes of the European and national political elites, both the European Parliament and national parliaments fall short of fulfilling their part of the legitimating 'equation'?

Hitherto, this paper has argued that policy makers will take recourse to the model of 'representative democracy' from which they then derive alternative legitimisation strategies to legitimise EU governance. It follows from this paper that changes in the relative success of alternative legitimisation strategies do *not* pose a challenge to the overarching model of 'representative democracy'. Peter Hall (1993) has dubbed this type of change "first order-change": Legitimising strategies can be 'adjusted' without challenging the model of 'representative democracy'. But is it conceivable that we will observe more radical and fundamental changes than the aforementioned first order-changes? Do alternative models of governance exist that policy-makers could employ to legitimise EU policy-making? Under what conditions would the model of 'representative democracy' itself be the object of a debate regarding its appropriateness in securing and maintaining democratic legitimacy? These questions cannot be answered in this paper.<sup>31</sup> Maybe, they cannot be even answered for another few decades. What can be done, however, is to ask whether we can observe any indications that policy-makers can conceive of or even propose legitimisation strategies which they derive from models other than that of 'representative democracy'?

The literature in Comparative Politics has identified a trend in advanced industrial societies of a growing readiness on behalf of citizens and policy-makers "to question whether a fundamental commitment to the principles and institutions of representative democracy is sufficient to sustain the legitimacy and effectiveness of current mechanisms of self-government." (Dalton et al., 2003a: 1) There exists a "spreading dissatisfaction with the institutions and processes of representative democracy" (Dalton et al., 2003a: 1) mirrored, inter alia, in declining electoral participation and party membership. At the same time, modes of participation which put strong emphasis on direct citizen involvement enjoy growing popularity such as referenda or citizen advisory committees for policy formation at the local level. Capturing this trend, Ralf Dahrendorf argues that "representative government is no

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<sup>31</sup> One useful starting point for theorising the potential impact of the rhetoric on subsidiarity and the 'bringing the EU closer to its citizens'-theme is Frank Schimmelfennig's theory of rhetorical action (Schimmelfennig, 2001, 2003).

longer as compelling a proposition as it once was. Instead, a search for new institutional forms to express conflicts of interests has begun.” (Dahrendorf quoted in Dalton et al., 2003a: 2) What are the characteristics of these new institutional forms or modes of democratic governance? Dalton et al. (2003a: 9-11) argue that the model of ‘representative democracy’ is increasingly complemented by instruments of ‘direct democracy’ and ‘advocacy democracy. Both models – ‘direct’<sup>32</sup> and ‘advocacy democracy’<sup>33</sup> – are distinct from ‘representative democracy’ in that they represent unmediated forms of participation. Existing research suggests that democracy in advanced industrial societies is undergoing a transformation: All three models of democratic governance have undergone institutional reform in the past decades which has led to an overall expansion of citizen access and more direct participation in the political process (see Dalton et al., 2003b). This strand of research also demonstrates that different models of democratic governance are not necessarily competing but can be seen as complementing in nature. Has the democratic life of the EU has been affected by these processes of transformation?

Two recent European level-initiatives provide an indication that the democratic transformations which leave their marks on the democratic life and institutions in modern industrialised democracies do not halt before the European level. The Commission White Paper on European Governance (CEC, 2001) contains elements which strongly mirror the tenets of the model of ‘advocacy democracy’ by emphasising the prominence of non-electoral channels for citizen participation (see CEC, 2001: 11-18). To fight against peoples’ “distrust” (CEC, 2001: 3) and lack of interest vis-à-vis political institutions, the Commission advocates that the democratic institutions at both, the national and European level, “can and must try to connect Europe with its citizens” (CEC, 2001: 3). Therefore, the “Union must renew the Community method by following a less top-down approach and complementing its policy tools more effectively with non-legislative instruments.” (CEC, 2001: 4) To attain the objective of connecting Europe with its citizens, the Commission proposes

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<sup>32</sup> ‘Direct democracy’ bears the following features: “[C]itizens both participate in the discussion and deliberation about policies, and they make the final policy choice: it is unmediated participation in both policy formation and policy decision.” (Dalton et al., 2003a: 10) For instance, referenda – as the ‘classical’ instrument of the model of ‘direct democracy’ – are enjoying growing popularity throughout the OECD world in the past decades (see Scarrow, 2003).

<sup>33</sup> ‘Advocacy democracy’ is a form of non-electoral participation “in which citizens directly participate in the process of policy formation or administration (or participate through surrogates such as environmental groups and other public interest groups), although the final decisions are still made by elites.” (Dalton et al., 2003a: 10-11)



to improve the involvement of citizens' interests by improving information on and the transparency of EU policy-making and -formulating processes. Furthermore, the Commission seeks to reach out to the citizens by improving consultation and dialogue with both *territorial* and *sectoral* interests. With regard to the former, the Commission's White Paper stipulates, inter alia, the establishment of a "more systematic dialogue with European and national associations of regional and local government at an early stage of policy shaping." (CEC, 2001: 14) As to the latter, the Commission's White Paper proposes to intensify the use of existing venues for consultation and dialogues with civil society groups representing sectoral interests (e.g., 'social partners') through instruments such as advisory committees, business test panels, venues for ad hoc and on-line consultation (see CEC, 2001: 15).

The Draft Treaty establishing a Constitution for Europe which was adopted by the European Convention in summer 2003 carries explicit marks of the new modes of democratic governance mirroring the increasing prominence of unmediated channels for citizen participation. In a 'last minute operation', the European Convention inserted an element of 'direct democracy' into the constitutional architecture of the EU providing for citizens' initiatives. Article 46 of the Draft Treaty establishing a Constitution for Europe (DTC) stipulates that "[n]o less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution." Next to this instrument of 'direct democracy', the DTC also provides for measures which are informed by the model of 'advocacy democracy'. Title VI of the DTC contains provisions which make reference to the principles of openness, transparency and dialogue with civil society (Art. 46 I-III; see also Art. 48 on transparency). Article 46 makes explicit mention of the principle of 'participatory democracy'. The purpose of this article is to provide a framework for the dialogue between civil society and EU institutions as well as for the instruments through which this can be achieved. Article 47 DTC explicitly acknowledges the role of the social partners and calls for facilitating the dialogue among social partners and for promoting their role at the EU-level. However, the DTC does not only restrict itself to 'promoting' the new models of democratic governance which assert unmediated citizen influence. In Article 45, the model of 'representative democracy' also finds explicit mention in the DTC. Article 45 IV emphasises the contribution of European political parties "to forming European political awareness and to expressing the will of Union citizens." Table 6 provides a summary-view of the different models of democratic governance – 'representative

democracy', 'direct democracy' and 'advocacy democracy' – as well as of the most recent European level initiatives for far-reaching institutional reform, the Commission White Paper on European Governance and the Draft Constitutional Treaty.

**Table 6: A democratic transformation at the European level?**

|   | <b>Representative democracy</b>  | <b>Direct democracy</b>   | <b>Advocacy democracy</b>   |
|---|--|---|---|
| Core characteristics                        | Citizen influence mediated by representatives (organised in political parties) who take decisions on behalf of citizens  | Unmediated citizen influence in policy formulation and policy choice    | Unmediated citizen influence in policy formulation and implementation (policy choices rest with political elites)   |
| Decision-making institutions                | Electoral institutions (affecting inter- and intra-party competition)  | Electoral institutions (e.g., referenda and popular initiatives)        | Non-electoral institutions (e.g., transparency enhancing measures; consultation with citizen groups)  |
| Recent EU-level initiatives: CWP* and DTC** | --<br><br><u>DTC</u> : Enhancing the role of national parliaments through 'subsidiarity' control (Art. 9 III) and informational measures (Art. 24 IV); Art. 45 ('The principle of representative democracy', inter alia, European political party statute <sup>+</sup> ) | --<br><br><u>DTC</u> : Art. 46 IV (possibility of citizens' initiative) | <u>CWP</u> : Better involvement of civil society, more openness and transparency<br><u>DTC</u> : Arts. 46 ('The principle of participatory democracy'), 47 ('The social partners and autonomous social dialogue'), 48 ('The European Ombudsman' <sup>++</sup> ), 49 ('Transparency of proceedings of Union Institutions') |

\* CWP: Commission White Paper on European Governance (CEC, 2001)

\*\*DTC: Draft Treaty establishing a Constitution for Europe (The European Convention, 2003)

<sup>+</sup>European political parties were first recognised explicitly in the Maastricht Treaty (Art. 191 ECT, ex Art. 138a).

<sup>++</sup>The position of the European Ombudsman was first created by the Maastricht Treaty (Arts. 21, ex 8d and 195, ex 138e of the ECT).

Since neither the measures proposed in the Commission's White Paper nor those laid down in the DCT have (as of yet) achieved a legally enforceable status, it is impossible to assess the actual impact and perceived 'effectiveness' of these measures in 'bringing Europe closer to its citizens'. It may also be too premature to talk about trend or a transformation of democracy on the European level.

This paper has demonstrated that the model of 'representative democracy' is alive and well. It still is the key reference point for policy-makers when they think about

and debate mechanisms to legitimise EU governance. However, as policy-makers' perception intensifies that European citizens become ever more alienated from the project of European integration; they may come to consider institutional solutions which lie beyond the purview of the model of 'representative democracy'. If this was the case, the key challenge for research on European integration in the coming decades lies in tracing these developments and in answering the question, how we can account for a move towards alternative models of democratic governance on the European level.

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