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Multi-level legitimacy: conceptualizing legitimacy relationships between the EU and national democracies

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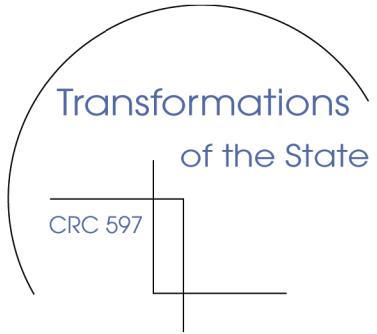Leibniz Information Centre for Economics

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Multi-Level Legitimacy:
Conceptualizing Legitimacy
Relationships between
the EU and National
Democracies

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ABSTRACT

This paper deals with the ways in which the interconnectedness of multiple political levels in increasingly internationalized structures of governance impacts on these levels' democratic legitimation. Focusing on the European Union (EU), it argues that in the EU's multi-level system, the legitimacy of the European level of governance is systematically influenced by the legitimacy of the EU Member States. Insights into such legitimacy relationships – and different logics of their construction – can be used to identify a number of distinct legitimation strategies for EU institutions, and to sketch some options of institutional design that might help to implement them. It is unclear, however, to what extent any kind of institutional design can actually affect the citizens' empirical legitimacy evaluations of the EU, since these are often characterized by a lack of information about the EU's institutional structure.

CONTENTS

Multi-Level Legitimacy: Conceptualizing Legitimacy Relationships between the EU and National Democracies

1. INTRODUCTION

According to most observers, political globalization – the shift of many of the nation-state's traditional competences to international or supranational regimes or organizations – creates problems of democratic legitimacy for both national and international governance. At the national level, democratic processes are undermined by the growing interdependence of national and international institutions, which results in shrinking capacities of national 'demoi' to exercise full control over political developments affecting their members. At the international or supranational levels, mechanisms of democratic participation and collective self-government are fragmentary compared to the nation-state, a deficit that cannot be easily remedied as many of the social conditions on which national democracies rely are not met in extra-national contexts. As the nation-state's autonomy dwindles and international or supranational institutions are found wanting in democratic quality, the democratic form of government as a whole seems to be in danger, as the citizens, in Robert Dahl's words, 'participate extensively in political decisions that do not matter much but cannot participate much in decisions that really matter a great deal' (Dahl 1994: 28).

This development should not only concern political theorists, but constitutes a challenge for policy makers and government elites as well. After all, globalization threatens to undermine not just the normative legitimacy of national and international institutions, i.e. their acceptability in the light of democratic standards, but also their empirical legitimacy, i.e. the support they enjoy in the population. Concerning national democracies, many commentators argue that the nation-state's loss of autonomy has led to a mismatch between citizen expectations, presumed responsibilities of national governments, and actual capacities of governance, thus fostering profound disaffection with democratic institutions (Albrow 1996; Burns 1999; Alesina & Wacziarg 2000; Scharpf 2000). At the same time, the growing influence of international and supranational organizations increasingly threatens support for these institutions as well, as it highlights their democratic deficits and turns their legitimacy from a largely academic problem into an object of intense political contestation. Michael Zürn describes this development as a process of *reflexive denationalization*: As citizens become aware of the importance of international and supranational organizations, they increasingly challenge their democratic credentials. 'As a result of this process, denationalization becomes reflexive, and thus politicized. At the same time, the politicization of international politics harbours the potential for resistance to political denationalization, which increases the need

– both from a normative and descriptive perspective – for the legitimation of such international organizations' (Zürn 2005: 152).

Both in a normative and in an empirical sense, there thus seems to be a need to develop new *legitimation strategies* for political institutions in multi-level systems. For if the arguments presented here are correct, processes of political globalization – or, in Zürn's phrase, denationalization – lead to a loss of democratic quality and of public support at the same time, and affecting all levels of governance.[1] Yet as I want to argue in this paper, another likely effect of reflexive denationalization, which has been given far less attention in the relevant literature, should be taken into account as well: If it is true that citizens become aware of the interconnectedness between different levels of governance and increasingly question the demarcation lines between national and international politics (ibid.: 153), it becomes ever less plausible to assume that they assess the legitimacy of nation-state institutions without at the same time taking into account their evaluations of international and supranational governance structures. And by the same token, evaluations of international or supranational organizations are likely to be connected to attitudes towards national democracies as well. In other words, we should be witnessing the growing importance of *relational assessments of legitimacy*: The legitimacy of institutions at multiple levels of governance should increasingly be assessed in comparative and/or interconnected ways.

In this paper, I want to explore what role such relational assessments of legitimacy can play for the democratic legitimation of the European Union (EU). I conceptualize different forms of legitimacy relationships, and demonstrate that an insight into their construction can help to gain a better understanding of different legitimation strategies that are – or can be – used to underscore the Union's acceptability, either in rhetoric or in fact. I proceed in four steps: First, I develop a typology of legitimacy relationships that distinguishes zero-sum, negative-sum, and positive-sum linkages between the EU and its Member States, and show that relational assessments of all types can not only be found in academic discourses about the EU, but also seem to influence the citizens' attitudes towards EU institutions. Secondly, I demonstrate how an insight into the construction of legitimacy relationship can be used to analyze and devise legitimation strategies for the EU. Thirdly, and on this basis, I sketch some options of institutional design that might help to better implement these strategies, and identify contradictions between them that complicate this task. Finally, I develop the idea of second-order legitimacy relationship as a way to overcome these contradictions. I close with a discussion of

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[1] For an empirical test of this argument, focusing on the empirical legitimacy of nation-state institutions in Germany, Switzerland, and Great Britain, see Hurrelmann et al. (2005a; 2005b).

whether such design options are relevant only to the normative legitimacy of the EU, or whether they promise to increase its empirical legitimacy as well.

2. TYPES OF LEGITIMACY RELATIONSHIPS: RELATIONAL ASSESSMENTS OF THE EU AND ITS MEMBER STATES

A legitimacy relationship between different polities or different levels of governance can be said to exist if two conditions are met. In the first place, the legitimacy of more than one political unit or level has to become relevant to a political actor's legitimacy evaluations, for otherwise no relationship can be established. In other words, relational assessments of legitimacy require *multi-unit or multi-level evaluations*.[2] To gain a first impression of what this might mean for legitimacy evaluations of the EU and its Member States, it makes sense to work with a four-fold typology, cross-tabulating assessments of EU and Member State institutions on the basis of simple positive vs. negative dichotomies. Starting from this model, Guido Martinotti and Sonia Stefanizzi (1995) distinguish between four types of citizen orientations in the European multi-level system: 'integrated' (positive orientations towards both the EU and one's Member State), 'nation-statist' (negative orientation towards the EU, positive orientation towards one's Member State), 'innovative/escapist' (positive orientation towards the EU, negative orientation towards one's Member State) and 'alienated' (negative orientations towards both the EU and one's Member State).

This typology of orientations, however, does not tell us whether there is actually a *connection* between the legitimacy evaluations of European and national institutions, or whether the respective assessments rely on evaluations that take place at the same time, but are performed independently of each other. Against this background, it makes sense to introduce a second criterion, specifying that a legitimacy relationship only exists if the evaluations of two (or more) units or levels of governance are indeed connected. Taking both conditions into account, a relational legitimacy assessment can then be defined as an *evaluation of political institutions in one political system (or at one level of governance) that is systematically linked to the evaluation of institutions in another system (or at another level)*. Note that this definition encompasses not only vertical legitimacy relationships in multi-level systems (e.g. between German and EU institutions) that constitute the focus of this paper, but can also be applied to horizontal relationships (e.g. comparisons between the German and British political systems).

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[2] For the sake of simplicity, the discussion in this paper will be restricted to legitimacy relationships between just two political units or levels. However, the results can in principle be applied to relationships between three or more units or levels as well.

Figure 1: Types of Legitimacy Relationships between EU and Nation-State

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

What consequences does the construction of a legitimacy relationship have for the outcome of the assessment, i.e. for the evaluations of the political institutions and systems involved? When turning to this question, three types of relationships can be distinguished: zero-sum, negative-sum, and positive-sum linkages (Figure 1). Each kind of relationship might come about as the result of more or less implicit and unintentional interpretations that underlie a person's legitimacy beliefs, but they may also be intentionally constructed by political entrepreneurs – e.g. government elites, but potentially also academics – in an attempt to induce other people to treat an institution or political system as either legitimate or illegitimate.

➢ In the *zero-sum* case, the legitimacy relationship serves to boost the legitimacy of one level of governance by pointing to the weaknesses of the other – or vice versa to delegitimate the first level or government by legitimating the second. In the European context, this construction is especially prominent in Eurosceptic arguments that reaffirm the legitimacy of the nation-state by pointing to the legitimacy deficits of the EU.[3] In Martinotti and Stefanizzi's typology, such zero-sum evaluations thus tend to result in 'nation-statist' orientations. In principle, however, the same logic might also be applied in reverse, for example in 'innovative/escapist' arguments that dismiss the nation-state as anachronistic and portray regional integration as the only up-to-date form of political organization.

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[3] For instance, John Laughland argued in the debate about European monetary union: 'An independent nation-state is the political expression of a people taking up the challenge of running its own affairs, and throwing off the torpor of empire. An independent nation-state is one in which decisions are taken politically, in virtue of public debate and opposition.' By contrast, in the EU, 'all essential executive and legislative powers [are] divided between three equally unaccountable and unelected institutions: the Central Bank, the Council of Ministers, and the European Commission' (Laughland 1998: 6f.).

➢ By contrast, a *negative-sum* relationship exists if the legitimacy deficits of one level of governance do not serve to underscore the legitimacy of the other, but rather encroach on its legitimacy as well. In this case, the construction of a legitimacy relationship results in negative evaluations of both levels, and thus in 'alienated' orientations. Arguments of this type are also not uncommon in discussions of globalization and Europeanization. For instance, it is often suggested that due to the transfer of political power from national to international or supranational organizations, the nation-state loses legitimacy as its governance capacities decrease, but the legitimacy of international or supranational organizations also suffers as they are charged with new tasks beyond their original mandate which they cannot fulfill as appropriately or justifiably as nation-state institutions (once) could.[4]

➢ Finally, it is possible to conceive of *positive-sum* relationships in which the legitimacy of one level of governance reinforces that of the other. The multi-level connection constructed in these kinds of evaluations assumes either a transfer of legitimacy from one governance level to the other, or a relationship of mutual support between them. An example is Kees van Kersbergen's idea of a 'double allegiance' of Europeans to the EU and their respective Member State: In this model, the EU contributes to the Member States' legitimacy by helping them to achieve social and economic goals, while the Member States prop up the legitimacy of the EU by making available national loyalties as a source of EU support (Kersbergen 2000: 9f.). In cases such as this, which will be discussed in greater detail in the next section, an 'integrated' citizen orientation results.

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[4] The following argument by Fritz W. Scharpf provides an example: 'There is no longer any question that European democracies discredit themselves when, for an ever growing number of urgent problems, national political leaders admit their importance by calling for "European solutions", while in Brussels interminable negotiations will, at best, lead to compromises that are declared unsatisfactory by all concerned, and for which nobody is willing to assume political responsibility' (Scharpf 1994: 220).

While it is not difficult to find examples of argumentative constructions of one or another of these types in academic debates,[5] empirical studies that systematically assess their importance for citizens' legitimacy evaluations are thus far lacking. It is not unreasonable to expect that relational assessments play a greater role in elite debates about the EU than in the citizens' everyday evaluations of its legitimacy. Yet a number of recent studies on public support for the EU, mainly relying on survey research and drawing on 'Eurobarometer' data, suggest that relational evaluations are relevant even in this context. Especially some of the more recent studies argue that variations in citizen attitudes towards the EU do not just depend on factors like value orientations and levels of cognitive mobilization (Inglehart 1977; Inglehart & Reif 1991), or on the perceived economic benefits and costs of EU membership (Eichenberg & Dalton 1993; Anderson & Reichert 1995; Gabel & Palmer 1995; Anderson & Kaltenthaler 1996; Gabel 1998), but are also in some way or the other connected to the respondents' attitudes towards their home country (Marks & Hooghe 2003: 8ff.; Hooghe & Marks 2005: 422ff.). There is some controversy, however, whether this connection can best be described as a zero-sum, or as a negative/positive-sum relationship: Some studies suggest that citizens with a positive orientation towards national institutions or a strong attachment to their own nation-state tend to have a critical view of European integration or EU institutions (Sánchez-Cuenca 2000; Rohrschneider 2002; Kritzinger 2003). Other models reach the opposite conclusion, finding that evaluations of national institutions or strong national identities are a positive predictor of evaluations of European governance. Hence, citizens who are supportive of the way political institutions work at home, and identify with their nation-state, are more likely to support European institutions as well, and vice versa (Anderson 1998; Marks & Hooghe 2003: 19ff.; Hooghe & Marks 2005: 431f.). But most of these studies also agree that all kinds of general findings have to be qualified in several respects.[6]

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[5]   The question of possible connections between public support for the EU and its Member States constitutes a classical topic of European integration theory. For instance, Ernst B. Haas' (1958) functionalist theory assumes a gradual 'shift of loyalties' from the nation-state to the European level, a process which is also expected to lead to the development of 'multiple loyalties'. By contrast, in Stanley Hoffmann's (1966) intergovernmentalist approach, the citizens' continuing attachment to their nation-states is perceived as an obstacle to European integration. Hoffmann argues that while transnational integration presupposes a minimum level of integration of the nation-states involved, the strong attachments of Europeans to their nation-states, based on long-standing and important historical experiences, severely hamper the chances of European integration.

[6]   For instance, Robert Rohrschneider's (2002) model of a zero-sum relationship between the legitimacy of the EU and its Member States is asymmetrical in the sense that a positive assessment of national institutions results in

One factor that contributes to this ambiguity is probably that relational legitimacy assessments do not follow one and the same logic in all parts of the population. Instead, it is to be expected that different forms of legitimacy relationships prevail at different times, in different places, or among different subgroups of the population. This picture, in any case, is suggested by studies on the relationship between European and national identities, a topic that has attracted greater research interest than legitimacy relationships in a strict sense. Evidence obtained by various techniques – survey research (Duchesne & Frognier 1995; Marks 1999; Medrano & Gutiérrez 2001; Citrin & Sides 2004), studies of elite discourses (Risse et al. 1999; Risse 2001; Marcussen et al. 1999; Siapera 2004), as well as small group experiments (Mlicki & Ellemers 1996; Cinnirella 1997) – all show that while there is no necessary contradiction between a person's attachment to her nation-state and to the EU, the relationship between national and European identities can take many forms, depending on the ways in which these identities are constructed in public discourses and/or an individual's self-image.

By the same token, relational assessments of legitimacy should also be seen as an *object of political construction*. Against this background, it might not be of utmost importance in discussions about the democratic legitimation of the EU to decide which kind of legitimacy relationship presently dominates in the European population, and which of the two general accounts referred to above better captures this aggregate picture. For the purposes of this conceptual paper, at any rate, it is sufficient to take these studies as an indication that legitimacy relationships between the European and the national levels of governance do indeed play a role in influencing popular support for the EU, even if the pattern that emerges on the precise extent and direction of this influence remains unclear. But if legitimacy relationships are an existing empirical phenomenon, and can be shaped by processes of political construction, the most important conceptual question that has to be asked is how different kinds of such constructions can influence strategies of democratic legitimation for the EU. My discussion in what follows will therefore seek to identify arguments that use legitimacy relationships to underscore the legitimacy

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lower legitimacy of the EU, whereas a negative assessment of national institutions does not increase the EU's legitimacy. Sylvia Kritzinger's (2003) model shows that attitudes towards the nation-state negatively affect attitudes towards the principle of European unification, but positively affect attitudes towards concrete EU institutions. In her interpretation, this contradictory result suggests that 'people attribute more than just one dimension to the EU' (ibid.: 233). And even in the studies that generally find positive correlations between national identities and EU support, research consistently shows that *exclusive* national identities – i.e. identity constructions that perceive a contradiction between national and European attachments – result in *lower* support for European integration (Carey 2002; McLaren 2002; Marks & Hooghe 2003; Hooghe & Marks 2005).

of the EU, and sketch options of institutional design that can make these arguments normatively (more) convincing.

3. LEGITIMACY RELATIONSHIPS AND THE DEMOCRATIC LEGITIMATION OF THE EU: WAYS TO CONSTRUCT POSITIVE-SUM LEGITIMACY RELATIONSHIPS

Looking at the three types of legitimacy relationships, it is clear that only zero-sum and positive-sum relationships can in principle form the basis for positive legitimacy assessments regarding the EU. While zero-sum constructions at present seem to be employed almost exclusively in attempts to legitimate the nation-state by shifting blame to the EU, it is certainly not inconceivable to reverse this relationship. Still, it is doubtful whether a strategy of legitimating the EU mainly *against* its Member States can be empirically successful,[7] let alone normatively convincing. For this reason, I shall restrict my attention to positive-sum relationships. If it were possible to construct positive-sum linkages between the EU and its Member States, and also to adequately ground them in normative democratic theory, this would clearly represent the most desirable state of affairs in the European multi-level system. Therefore, the argumentative construction of this kind of relationship merits special attention.

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

> ➢ If the *logic of analogy* is applied, the legitimacy of EU institutions is justified by pointing out that EU institutions conform to the same principles that underlie the legitimacy of the Member States. In most cases, this argument implicitly presupposes that these principles themselves are appropriate, that they are adequately met in the Member States, and that they can be applied to the EU as well. The legitimacy of EU institutions is then supported by pointing out that they are structurally similar – or at least functionally equivalent – to national institutions. Thus, the Member States' (presumed) legitimacy is transferred to the EU. As a strategy of democratic legitimation, this kind of relationship

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[7] Studies of empirical legitimation processes at the nation-state level show that the legitimacy of core nation-state institutions is remarkably stable. One reason that might account for this finding is that these institutions have a decisive influence on national political cultures, and thus to some extent shape the very legitimation standards by which they are evaluated in public discourse (Hurrelmann et al. 2005a; 2005b).

translates into what David Beetham and Christopher Lord call the 'supranational model' of legitimating the EU. In this model, the state-like features of the EU are at the core of its legitimacy, both as anchors of the existing public support for its institutions and as foundation-stones to build on in making the EU more legitimate: 'The EU already has its own directly elected parliament, a system of transnational party federations and parliamentary party groups [...] and an active set of political lobbies that provides possibilities for interest intermediation [...]. It is, accordingly, possible to imagine a variety of ways in which a supranational democracy might be more systematically constructed at the European level' (Beetham & Lord 1998: 75f.). In short, the EU is legitimate because – or if – European and national institutions are more or less 'alike'.

➤ By contrast, the *logic of complementarity* justifies the legitimacy of the EU by pointing to the systematic differences between European and national institutions, arguing that their specific capacities supplement each other in an effective way. To make this argument, it is necessary to assign to each level of governance specific functions which this level's institutions are supposed to fulfill. This functional perspective has a clear affinity to output-oriented conceptions of democratic legitimacy, such as that developed by Fritz W. Scharpf (1999; 2000). Scharpf argues that democracy is defined not only by the goal to secure 'government by the people' (input-oriented legitimacy), but also by the goal of 'government for the people' (output-oriented legitimacy). In an output-oriented perspective, it can be claimed that the citizens' interests can only be advanced effectively if European institutions systematically differ from the institutions of national democracies. For example, Giandomenico Majone (1994; 1998) argues that the EU's specific competences of economic regulation can be exercised most successfully by non-majoritarian institutions like the European Commission, whose independence from electoral pressures enables it to act in the general interest. In this conception, European institutions are legitimate because, as an 'independent fourth branch of government', they can reach policy outputs that cannot be reached by the nation-states, and hence complement their governance capacities.

➤ While the first two logics do not necessarily imply a clear hierarchy between the two levels of governance that enter into a legitimacy relationship, the *logic of derivation* treats one level as normatively superior to the other. In the European context, most arguments grant this privilege to the nation-state. The legitimacy of the EU is then grounded in the fact that it can be controlled by its Member States, and is thus no more than an instrument of their policy making.

As in the logic of analogy, a transfer of legitimacy from the Member States to the EU takes place, but this time its basis does not lie in the structural similarity of institutions at both levels, but in a relationship of dependency between them. As a strategy of democratic legitimation, this idea conforms to what Beetham and Lord call the 'intergovernmental model' of legitimating the EU, which posits that 'the best way of conferring democratic legitimacy on the Union [is] by the ratification of EU Treaties by the democratic institutions of each member state and the election of national governments, whose members then go on to serve on the European Council and Council of Ministers' (Beetham & Lord 1998: 61). In the intergovernmental perspective, input legitimacy is guaranteed as long as EU competences have been explicitly delegated to the EU by national representatives and are exercised under their permanent and full control; output legitimacy depends on the EU's capacity to enhance the regulatory power of the Member States.[8] In both arguments, European institutions derive their legitimacy from the Member States, either because they are controlled by national institutions and actors, or because they constitute an instrument the Member States can use to increase the effectiveness of their policies.

It thus turns out that all of the most important legitimation strategies for EU governance usually distinguished in the literature – the supranational, the output-oriented (or 'technocratic'), and the intergovernmental one (Beetham & Lord 1998; Höreth 1999; Moravcsik 2002) – are based at least to some extent on the construction of a positive-sum legitimacy relationship between EU and Member State institutions. It is important to note that if these strategies are successful, i.e. the claims they advance are accepted by their addressees, they not only underscore the democratic legitimacy of the EU, but that of its Member States as well: If EU institutions stand in a relationship of analogy, complementarity or derivation to national ones, it becomes much more difficult to argue that they undermine the Member States' democratic quality. Europeanization – the most important aspect of political globalization in the European context – can no longer be portrayed as a general threat to the democratic form of government.

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[8] An example for the output-oriented version of the intergovernmental argument can be found in Alan S. Milward's portrayal of Europe as 'rescue' of the nation-state, which is based on the ability of the EU to increase the efficiency of nation-state policies: '[H]istorical evidence points to the […] conclusion that without the process of integration the west European nation-state might well not have retained the allegiance and support of its citizens in the way that it has. The European Community has been its buttress, and indispensable part of the nation-state's post-war construction. Without it, the nation-state could not have offered to its citizens the same measure of security and prosperity which it has provided and which has justified its survival' (Milward 1992: 2).

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

4. IMPLICATIONS FOR INSTITUTIONAL DESIGN: THE DIFFICULTY OF INSTITUTIONALIZING POSITIVE-SUM CONSTRUCTIONS

A useful starting point for an inquiry into the institutional implications of the three legitimation strategies is the recent constitutional debate in the EU. This debate was predominantly a debate about the EU's legitimacy: Not only did the Laeken Declaration establishing the European Convention explicitly call for an investigation of how the Union's 'democratic legitimacy' could be improved, but the discussions that ensued were also mainly focused on questions of its 'legitimation in the light of normative criteria', as Fritz W. Scharpf put it (2003a: 49; translation A.H.). In the constitutional debate, all three legitimation strategies were drawn on by political actors to justify their proposals for institutional reform, even if the legitimacy relationships at the heart of these models were not always made explicit.[9]

> ➤ The supranational model and the underlying *logic of analogy* – which have always been particularly influential among German elites (Kohler-Koch 1999: 2) – in large part account for the fact that the Draft Treaty was called a 'Constitution' at all, as well as for much of its structure (e.g. the prominent place of the Charter of Fundamental Rights), language (e.g. the new, state-like names given to EU legal acts), and symbolism (e.g. the articles about the Union's values and symbols). All of these provisions are reminiscent of the 'instruments used by nation-states to anchor the polity in the population through the foundation of a visible identity, thus constructing an additional legitimacy and loyalty basis' for its institutions (Wessels 2003: 298; translation A.H.). However, although

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[9] To be sure, these proposals did not necessarily constitute attempts to implement a certain normatively appropriate legitimation strategy, but were – at least in part – also advanced for instrumental reasons by political actors trying to secure their own powers. Even in this latter case, however, they were often defended with reference to normative arguments. – For a more detailed analysis of the models of European constitutionalism advanced in the constitutional debate, see Hurrelmann (2005c; 2005d).

the competences of the EU were also expanded in the direction of a 'quasi-state catalogue of tasks and functions' (ibid.: 286), and the powers of the European Parliament were increased, the logic of analogy was clearly less influential in shaping the Draft Constitution's instrumental provisions – the 'efficient parts' of the Constitution, in Walter Bagehot's words – than its symbolic ones. Most importantly, even under the Constitution, the EU's political system still differs from national democracies by protecting the independence of the Commission and its right of initiative, as well as by retaining the national veto in the Council of Ministers in many of the most important policy fields (e.g. taxes, domestic security, foreign affairs).

➢ The technocratic model and its *logic of complementarity* have had a less visible influence on the Draft Constitution. However, elements of this legitimation strategy can be discerned in the Commission White Paper on 'European Governance', published in time to influence the reform debate. In this document, the Commission not only stresses its role as guardian of the common interest in the EU, but also sketches a model of 'good governance' that relies on direct consultation between the Commission and selected groups of experts and stakeholders outside of the representative institutions at either the national or European level (Commission 2001).[10] The White Paper can thus be interpreted as seeking to build an independent 'expertocratic' legitimation base for the EU that supplements legitimation through procedures of representative democracy (Gbikpi & Grote 2002). In the Draft Constitution itself, the provisions about 'participatory democracy' allude to this concept, but contain few specifics.

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

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[10] Commenting on the White Paper, Fritz W. Scharpf stated that 'the greatly enhanced role of the Commission envisaged by the White Paper is not that of a faithful agent of either the Council of the Parliament. Instead, what the authors have in mind amounts to the creation of a benevolent dictatorship' (Scharpf 2001: 7).

> it difficult for national governments in various Member States to defend the Constitution against the charge of further diluting the powers of national democracies.

As the difficulties in ratifying the Constitution illustrate, there are two related problems with the three legitimation strategies and their attempts to construct positive-sum legitimacy relationships between European and national institutions. Firstly, none of them suffices on its own to legitimate the EU in its present institutional shape, nor to sketch a convincing blueprint of how the EU could be reformed to make it more legitimate. This is due to the fact that when really taken seriously, the legitimation relationships on which the three strategies rely establish standards that are too strict to be met. The attempt to legitimate the Union based on a *logic of analogy* fails as the European Parliament is still too weak and the accountability of the Commission and the Council too indirect to conform to the democratic standards dominant in the Member States. Institutional reform to strengthen supranational elements in the EU system, on the other hand, is impeded by the fact that many of the social conditions of decision-making by supranational majorities, like a common identity of the citizens, a coherent public sphere, and a minimum extent of socio-economic equality in the population, are not adequately met in the EU (Abromeit 1998). Strategies of legitimation that rely on a *logic of complementarity* perform no better. They would presuppose that the outputs of EU governance can indeed be clearly distinguished from those of national governance, differing either in scope by referring to completely different policy issues, or in kind by avoiding all redistributive implications. Both conditions are not met: National and EU governance is inextricably linked in most policy fields, and many EU policies are clearly not in the general interest, but have identifiable winners and losers. To change this situation, a complete disentanglement of competences and a reversal of many EU powers back to the Member States would be necessary, a solution that appears neither feasible nor desirable given the interconnectedness and European scope of many of the problems to be solved in Europe's multi-level system (Follesdal & Hix 2005). By the same token, a pure *logic of derivation* can also not adequately legitimate the EU. In the present institutional structure, both supranational elements like qualified majority voting in the Council of Ministers and technocratic elements like the independence of the Commission reduce the Member States' ability to exercise full control over EU institutions. On the other hand, if all supranational and technocratic elements were scrapped and each national government obtained a right to veto all Council decisions, effective decision-making in a Union of 25 or more members would be impossible.

For these reasons, most analysts of European politics – and also most politicians participating in the constitutional debate – would probably agree that the EU can only base its legitimacy on a combination of the different strategies. Yet this solution, reasonable

as it is, is complicated by a second problem: In many cases, the supranational, technocratic, and intergovernmental strategies have contradictory institutional implications, and thus undercut each other. For instance, if the European Parliament was given additional powers to strengthen analogies with national parliaments, this would most likely weaken both the independent regulatory powers of the Commission (on which the EU's legitimacy is based in a logic of complementarity) and the extent of national control over EU policies (which is stressed in a logic of derivation). Likewise, if the Commission was empowered, legitimacy assessments based on the logics of analogy and derivation would probably turn more negative, and if national governments obtained more powers, arguments based on the logics of analogy and complementarity would become less convincing. Against this background, Marcus Höreth argues that the EU is faced with a 'legitimacy trilemma': 'This means that the proposals for institutional reform in the EU which target any of the three sources of legitimacy tend to weaken another. [...] The quest for reforms to bestow greater legitimacy on the governance of the EU appears to be a zero-sum game: the multidimensional problem of legitimacy may be reshuffled to a degree, but it cannot be reduced in total' (Höreth 1999: 258). He concludes that the current system of EU governance is likely to persist for the foreseeable future, as it can only be improved in piecemeal ways.

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

5. SECOND-ORDER LEGITIMACY RELATIONSHIPS: A WAY TO OVERCOME CONTRADICTIONS BETWEEN DIFFERENT LEGITIMATION STRATEGIES?

Conceiving of the relationship between the three legitimation strategies – each of which is itself built on a specific kind of positive-sum linkage between the legitimacy of the EU and its Member States – as a second-order legitimacy relationship necessarily results in an argument that is somewhat abstract. The underlying problem, however, is simple: We are looking for ways that make it possible to ground the legitimacy of the EU on different legitimating linkages to the Member States – analogy, complementarity, derivation – at the same time, while avoiding constellations in which these different linkages undercut each other. Or in other words: What is needed is an institutional structure for the EU that allows for a positive-sum linkage to be made between these three positive-sum linkages. An obvious starting point for solving this problem are the three

logics that have been identified before as the basis for positive-sum legitimacy relationships: analogy, complementarity, and derivation. What would a second-order application of these logics amount to?

➢ The *logic of analogy* constitutes the most difficult case in this respect. What, after all, would it mean to claim that two different legitimation strategies are 'analogous'? The most promising approach in my view is to focus on an analogy of institutional implications. In this case, one could speak of positive-sum relationships between different legitimation strategies if it were possible to identify or design institutions that can be justified according to two or more of the strategies at the same time. This is not as unrealistic as it might at first appear, especially if one keeps in mind that the European Parliament, the Commission, and the Council of Ministers in their present shapes are not the only institutions conceivable that conform, respectively, to the (first-order) logics of analogy, complementarity, and derivation. For example, attempts to construct analogies between national and European institutions do not have to focus exclusively on parliamentarism, but might also refer to elements of presidentialism and direct democracy in the Member States' political systems. A reform of EU institutions in line with such models might make it possible to overcome some of the contradictions between the different legitimation strategies. For instance, if national delegations in the Council were not made up of government representatives, but were directly elected by the electorate in each Member State (as proposed by Zürn 2000), the EU's system of governance would bear greater resemblance with national systems of democratic accountability (as demanded in a first-order logic of analogy) without giving up national control over European decisions (as demanded in a first-order logic of derivation). Similar effects could be reached if national veto rights were exercised not by national governments, but by the people in referenda (as proposed by Abromeit 1998). Furthermore, even when sticking to a parliamentary logic, a more harmonious combination of legitimation strategies based on analogy and derivation could be achieved by strengthening the role of national parliaments in forming Council delegations or in exercising national veto rights (for proposals in this vein, see Maurer 2002).

➢ In a *logic of complementarity*, the construction of positive-sum relationships between the three legitimation strategies would be possible if specific spheres could be identified and demarcated in which each is appropriate, thus making it clear why and in which ways the strategies supplement each other. Instead of stressing the distinction between exclusive, shared, and coordination competences of the Union as in the current draft, an EU Constitution should therefore

more explicitly differentiate between (1) policy fields in which decision-making by supranational majorities is deemed acceptable even under the problematic social conditions – the weakness of European identities, the fragmentation of a European public sphere, and the socio-economic inequalities – that exist in the EU (e.g. trade or environmental issues); (2) policy fields in which decision-making requires particular expertise, and should thus be delegated to independent agencies, experts, and participatory arenas that allow for the consultation of stakeholders (e.g. currency matters or issues of food safety); and (3) policy fields in which national representatives have to retain ultimate control because supranational majority decisions would probably not be accepted by the population (e.g. social policy matters or other explicitly redistributive issues). Although this kind of demarcation already underlies the Draft Constitution, it is not made transparent to the lay reader. Furthermore, as there is no full agreement between the Member States about the classification of policies according to these three groups, mechanisms of flexible integration, like national opt-outs or enhanced cooperation, could be used more extensively (Scharpf 2003b; Wind 2003).

➢ Finally, in a *logic of derivation*, positive-sum relationships between the three legitimation strategies can be constructed if one strategy is used to justify the application of the others. While in principle, any of the three strategies might be given this privileged role, it appears most appropriate in the European context to grant this position to the intergovernmental strategy (and its first-order logic of derivation), since the Member States constitute the 'masters' of the EU treaties in a legal sense. Applying a logic of derivation to the relationship between the intergovernmental, supranational, and technocratic strategies would then imply that all applications of the latter two strategies should be explicitly authorized by nation-state institutions. This would require that all loopholes in the European political system that allow for an incremental shift to supranational or technocratic modes of decision-making without explicit treaty revisions, like the flexibility clause of Art. 308 ECT (Art. I-17 in the Draft Constitution),[11] should be closed. In addition, it would make sense to amend the new

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[11] This clause, which allows the Council of Ministers by unanimous decision to authorize EU organs to act in areas beyond the limits of their competences, was slightly amended by the European Convention. As phrased in the Draft Constitution, the European Parliament now has to assent to the application of the clause as well. However, the assent of national parliaments is not required. On the importance of the flexibility clause for the development of the EC, see Weiler (1999: 51ff.).

provisions for simplified treaty revision in the Constitution (Art. IV-7a),[12] so that they do not just enable a shift from intergovernmental to supranational forms of decision-making, but also a recall of supranational competences if this is demanded by a certain number of Member States. The relationship between the different legitimation strategies would thus be politicized in a comprehensive way, allowing for a more flexible development of EU governance arrangements.

These suggestions certainly do not constitute fully developed blueprints for the design of EU institutions, and some are clearly more realistic and feasible than others. They show, however, that contrary to Höreth's suggestion, the relationship between the three dominant legitimation strategies in the EU does not necessarily have to be conceived as a zero-sum game. Rather, one can come up with a number of design options that allow for the construction of positive-sum relationships between them. One obvious question that remains to be asked concerns the relationship between these second-order relationships, and the threat of being trapped in an infinite regress. But the different solutions for constructing second-order relationships discussed above do not appear to be mutually incompatible, and it seems possible to apply more than one of them at the same time. When further elaborated and adequately operationalized, they could thus form the basis for the development of a European political system that can justifiably claim to ground its legitimacy at the same time on relationships of analogy, complementarity, and derivation to the national level of governance.

An entirely other matter, however, is whether this construction, even if normatively convincing, would actually have a positive influence on the EU's legitimacy in an empirical sense. In other words: Is it plausible to expect that the design of institutions that allow for the construction of second-order legitimacy relationships between the three legitimation strategies will actually contribute to greater empirical support for the EU? Given the limited knowledge that large parts of the citizenry have of the EU's institutional structure, there are of course ample reasons to doubt whether institutional changes of any kind – and thus also those necessary to implement second-order legitimacy relationships – will translate into modified legitimacy evaluations.[13] And if this is not the

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[12] This clause enables the European Council by unanimous decision to give up national veto rights in the Council of Ministers and to subject a policy to the standard 'legislative procedure', based on co-decision by the European Parliament and qualified majority voting in the Council. In contrast to Art. I-17, the application of this clause can be blocked by any national parliament.

[13] In fact, it has even been argued that (first-order) legitimacy relationships between the European and the national level of governance are important in the EU precisely because the people know so little about EU institutions,

case, institutional changes at the EU level are unlikely to affect the citizens' legitimacy assessments: They might be relevant for the EU's *normative* legitimacy, but their effects on its *empirical* legitimacy will be limited.

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

6. CONCLUSION

This paper has sought to demonstrate that an insight into the construction of legitimacy relationships linking different levels of governance facilitates a better understanding of different strategies that are – or can be – used to underscore the EU's legitimacy, both in a normative and an empirical sense. My argument has been mainly theoretical: The hypothesis of reflexive denationalization implies that citizens should increasingly assess the legitimacy of institutions at multiple levels of governance in comparative and/or interconnected ways. For this reason, it also makes sense to frame normative and em-

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which leads them to resort to national 'proxies' when forming an opinion about them (Anderson 1998; Kritzinger 2003). This argument is based on the presupposition that any 'mature' political system is evaluated independently from all other systems. The empirical importance of legitimacy relationships is therefore seen as in indication that '[c]itizens are not yet fully aware of the new political system and they lack knowledge regarding the EU. Thus, the integration process has not resulted in independent assessment and citizens still use national proxies when expressing attitudes towards the EU' (Kritzinger 2003: 237). This argument neglects, however, that in a context of increasing interconnectedness between national and EU institutions, there may be many other good reasons – in addition to information deficits – for interdependent legitimacy assessments.

pirical legitimation strategies for EU institutions explicitly in these terms, and to design such institutions in ways that conform to these relational strategies.

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

However, my analysis of the different legitimation strategies for the EU, and of their implications for institutional design, does not prove that the claims these strategies (and their adherents) advance are actually accepted by the citizens. Empirical research is needed to determine the actual importance of different types of legitimacy relationships for citizens' legitimacy assessments. While the empirical results discussed in this paper suggest that Europeans are at least receptive to such constructions, it should be examined more closely how exactly such arguments are framed by actors from different sub-groups of the population. Furthermore, such studies should also investigate to what extent more than two levels of governance enter into relational legitimacy assessments. Which role, for instance, do attitudes towards sub-national or global institutions play for the evaluation of European and national institutions? In principle, there are no reasons to suppose that the arguments sketched here are restricted to the relationship between the EU and its Member States. Rather, the legitimation strategies that have been identified in the European context might become relevant for institutions at other political levels as well.

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