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Democracy and Legitimacy in the European Union Revisited

Input, Output and Throughput

Vivien Schmidt

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Abstract

Whether their analytic frameworks focus on institutional form and practices or on its interactive construction, scholars have analyzed the EU's democratic legitimacy mainly in terms of the trade-offs between the output effectiveness of EU's policies outcomes for the people and the input participation by and representation of the people. Missing is theorization of the "throughput" efficiency, accountability, transparency, and openness to consultation with the people of the EU's internal governance processes. The paper argues that adding this analytic category facilitates assessment of these legitimizing mechanisms' interdependencies and facilitates consideration of reforms that could turn this democratic trilemma into a "virtuous circle".

The Author

Vivien Schmidt is Jean Monnet Professor of European Integration, Professor of International Relations, and Director of the Center for International Relations at Boston University as well as Visiting Professor at Sciences Po, Paris. She is past head of the European Union Studies Association-USA and has consulted widely in the US and Europe on issues related to European government, business and US-EU relations. Contact: vschmidt@bu.edu

Contents

1. Introduction[1]

Is the European Union democratic? And even if democratic, is it legitimate? The answers to these questions divide those who argue that the European Union (EU) has a democratic deficit from those who argue the contrary and those who would see the remedy as coming through greater integration and politicization from those who recommend the opposite. Underpinning these divisions are different understandings of what democracy in the EU is, how it can be legitimated, and whether it can or should be improved. In addition to these substantive differences are the ones in terms of analytic frameworks, dividing those who define democracy in Europe in terms of its institutional form and practice as a system of "governance" and those who focus on its interactive construction by a *demos* in the "European public sphere".

Whatever their differences in substantive theory and analytic framework, however, scholars have tended to summarize their main arguments in concepts borrowed from systems theory, as they analyze the trade-offs between *output* legitimacy, judged in terms of the effectiveness of the EU's policy outcomes *for* the people, and *input* legitimacy, judged in terms of the EU's responsiveness to citizen concerns as a result of participation *by* and representativeness *of* the people. Missing, this paper will argue, is sufficient theorization of what we call *throughput* legitimacy, building upon yet another term from systems theory, judged in terms of the accountability, transparency and efficiency of the EU's decision-making processes along with their openness to pluralist consultation *with* the people. With this added analytic category, we are better able to assess the interdependencies of the different legitimizing mechanisms and to see that increasing any one, two or all three need not solely be to the detriment of the others, but could instead be mutually reinforcing. In other words, rather than a democratic trilemma making for a zero-sum game, they could instead constitute a "virtuous circle" with a "win-win" solution for democracy and legitimacy in Europe.

This paper begins with a theoretical discussion of the three democratic legitimizing mechanisms: output *for* the people, input *by* and *of* the people, and, throughput *with* the people. It then considers democracy and legitimacy within each of these democratic legitimizing mechanisms while distinguishing in each section between accounts focused on the institutional forms and practices of the EU. In the first set of accounts, the framework for analysis is mainly historical and rational choice institutionalist, as scholars explore the historical logics of path dependent institutions and the rationalist logics of calculation in the EU's institutions (see Scharpf 1997, 1999; Pierson 1996; Bulmer 1998, 2009). In the second set, concerned with the interactive construction of democracy and legitimacy, the framework for analysis is mainly sociological and discursive institutionalist, as scholars explore the sociological logics of appropriateness and the discursive logics of communication in the EU's deliberative public sphere (see Diez 1999; Parsons 2003; Jabko 2006; Schmidt 2006: Chapter 5, 2008). The conclusion considers how one could turn the "vicious circle" of the democratic trilemma into a virtuous one, by pointing to possible reform initiatives for the EU.

2.   EU Legitimizing Mechanisms: Output, Input and Throughput

Debates about general concepts of EU legitimacy have for the most part been focused on mechanisms that Scharpf (1999) has delineated in terms of output legitimacy – a performance criterion centering on the ability of EU institutions to govern effectively for the people – and input legitimacy – involving political participation by and citizen representation of the people. These definitions pick up on Abraham Lincoln's famous dictum about democracy requiring government *by* the people, *of* the people and *for* the people at the same time that the terms themselves have been borrowed from systems theories. They originate in particular in the work of David Easton (1965), who defined input into the political system as consisting of citizens' demands and support (conferred not only through elections but also by citizen identity and sense of system legitimacy) and output as government decisions and actions, leaving what went on in the political system itself largely blank. For Scharpf (1999) input legitimacy refers to the participatory quality of the process leading to laws and rules, output to the problem-solving quality of the laws and rules, both of which he finds necessary. But he concludes that one needs to focus on the problem-solving logics of institutional output because the EU lacks the constructive preconditions for input (as support), consisting of collective identity and a European *demos*.

Many EU scholars follow Scharpf's institutional lead. They generally employ analytic frameworks that can be characterized as historical institutionalist because they detail the development of political institutions as regularized patterns and routinized practices subject to a "logic of path-dependence" (Pierson 1996; Bulmer 1998, 2009) and/or as rational choice institutionalist because they posit "rational" actors who pursue their preferences following a "logic of calculation" within political institutions that serve as structures of incentives (Scharpf 1997, 1999; Majone 1999; Moravcsik 1998). Other scholars, by contrast, debate the presence (or absence) of the EU's interactive construction, using analytic frameworks that can be characterized as sociological institutionalist because they focus on social agents who act according to a "logic of appropriateness" within political institutions that are defined as socially constituted and culturally framed rules and norms (March/Olsen 1989; Fligstein 2008) and/or discursive institutionalist (also social constructivism in International Relations). This analytic framework is more concerned with sentient (thinking and speaking) agents who convey ideas through discourse according to an interactive "logic of communication" in political institutions that embody meaning-based structures and constructs (Habermas 1996, 2001; Risse 2010; Schmidt 2006, 2008; Wodak 2009).

Most of the scholarly literature, in fact, separates these two kinds of analyses, focusing attention either on the logics of institutional form and decision-making practices or on the ideational constructions and discursive interactions of identity and community.[2] But both are necessary to assess the nature, problems and potential of EU democratic legitimacy.

For scholars who focus on institutional form and practice, EU output legitimacy has mostly been tied to the performance of the policy decisions of its "non-majoritarian" forms of institutions (e.g. Majone

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2   It should be noted that all of the scholars in these fields acknowledge the significance of both institutional logic and interactive construction. It is just that they treat one or the other as residual. Most scholars who focus on interactive construction see it as embedded within given institutional contexts while most concerned with institutional form and practice see it as contingent to some extent on interactive construction. What differentiates these scholars most, therefore, is what they choose to examine in depth, and how they choose to theorize this.

1998) such as the European Central Bank (ECB), the European Commission's Competition Authority, the European Court of Justice (ECJ) and other regulatory bodies; to the policy outcomes of the EU's multiple veto structures taken as a whole (e.g. Moravcsik 2002); as well as to the community enhancing performance of the policies themselves (e.g. Menon/Weatherill 2008; Caporaso/Tarrow 2008). For scholars who concentrate on interactive construction, in contrast, output legitimacy depends not just on policy performance but on how such EU policies resonate with citizen values and build identity, mediated by how well elites' discourse serves to legitimate those policies and how citizens respond in the context of media-carried "communicative discourses" of deliberation or even contestation (Koopmans 2004; Eder/Trenz 2007; Risse 2010). Such discourses may be focused on internal EU economic and social policies (e.g. Dyson 2002; Barbier 2008), on the EU's external role as a global actor (e.g. Manners 2002; Howorth 2010) or on "grand narratives" of the origins and purpose of the EU as a whole (e.g. Leca 2010).

With regard to input, scholars of institutional form and practice situate legitimization in the EU's "majoritarian" representative practices involving citizens' articulation of their demands through electoral participation as well as in other ways (e.g. interest group membership, grassroot campaigns, demonstrations) and the representation of those demands at the EU level by the Council and the European Parliament (EP) (e.g. Mair 2006; Hix 2008) although some scholars add representation through EU-active civil society organizations (e.g. Kohler-Koch 2010). Scholars of interactive construction in contrast are more concerned with the legitimacy built again through the "communicative" discourse of public deliberation, contestation and legitimization (Schmidt 2005, 2006), which follows from the communicative processes involved in elections and other forms of deliberative interactions with the public and civil society, and how these may contribute to the construction of a sense of collective identity and/or the formation of a collective political will in a European "public sphere" (e.g. Zürn 2000; Habermas 2001; Steffek 2003; Lucarelli et al. 2011). Responses to output policies, moreover, also feed into both input institutional practices and constructive interactions as feedback effects.

Missing from this theorization, however, is a general theory about the practices that constitute what I will call, borrowing again from systems theory, throughput legitimacy (but expanding on Easton's concept, which is limited to bureaucratic practice). This conceptualization of throughput legitimacy is intended to encompass not only the internal processes and practices of EU governance but also what I have termed, adding a preposition to Abraham Lincoln's phrase, interest consultation with the people (Schmidt 2006). Throughput legitimacy is a performance criterion centering on what goes on inside the "black box" of the political system, between the input and the output. Legitimacy here is focused on the quality of the processes of EU governance, which means not just their efficiency but also, and most importantly, their accountability, meaning that policy actors are responsive and can be held responsible for output decisions (Bovens 2007; Curtin/Wille 2008; Harlow/Rawlins 2007); transparency, meaning that citizens have access to information (Héritier 2003); and openness to "civil society", meaning that citizens organized in interest-based organizations have access to and influence in the decision-making process.

Curiously enough, there has been little theorization about the throughput legitimacy of EU governance processes taken as a whole, despite the fact that there is a vast literature focused on the legitimacy of individual aspects of such processes within the Commission, the Council and the EP as well as within civil society. The only exception has been a cluster of scholars mainly in Germany and bordering countries (see, e.g. Zürn 2000; Benz/Papadopoulos 2006; Dingwerth 2007; Holzhacker 2007; Risse/Kleine 2007; Bekkers/

Edwards 2007; Wimmel 2009) who have for the most part defined throughput as a question of procedural legitimacy involving the quality of decision-making, and who have examined this more widely in terms of governance beyond the state (e.g. Zürn 1998) and private governance (e.g. Dingwerth 2007). Most leave out explicit discussion of interest group participation (e.g. Risse/Kleine 2007; but see Bekkers/Edwards 2007), or include it as part of input to representative institutions. But interest input – involving the ways in which civil society articulates its demands through interest groups, protest, demonstrations, letter-writing campaigns, social movement activism and the like – does not capture the ways in which interest articulation has become an integral part of the very throughput process of EU governance (see Smismans 2003; Kohler-Koch 2008; Kroger 2008; Liebert/Trenz 2009).

In terms of institutional form and practice, throughput denotes the procedural legitimacy with which the EU produces policies that begin with the Commission-generated formulation of legislation with the people through access to "minority" interests from "civil society" as well as to state actors; that then continue through the various co-decision-making processes that garner input by and of the people via the Council and EP as well as further interest intermediation with the people; and that end in the decisions that deliver output for the people. This entire process is often summed up as the "Community Method", although it could also be termed "pluralist" policymaking (Coen/Richardson 2009). But it encompasses a much wider range of decision-making processes than the community method *stricto sensu* connotes, including the "open method of coordination" and other "new governance" modes in the social, employment and monetary policy arenas, comitology, supranational coordination in the justice and policing domains and more.

Institutional throughput, however, could be defined more fully by taking into account EU processes within the whole of the EU's highly compound governance system (Schmidt 2004, 2006; Fabbrini 2007) which is not only multi-level by including EU, national and regional levels (Marks/Hooghe 2001) and "multi-centred" as a result of the geographical dispersion of its governing activities (Nicolaïdes 2001) but also "multi-form" along a continuum from "simple" polities where governing activity tends to be channelled through a single authority, as in France or the United Kingdom, to more "compound" polities where governing activity is more dispersed across multiple authorities, as in Germany and Italy (Schmidt 2006). Such differences can make for additional legitimacy problems as a result of a lack of institutional "fit" between the highly compound EU, in which legitimacy is focused on the multiple authorities of the system as a whole, and simple national polities, in which legitimacy is concentrated on the executive (Schmidt 2006). But there are also more specific problems of multi-level legitimacy involving horizontal and vertical processes of integration (Benz 2006).

In terms of interactive construction, throughput legitimacy focuses on the ideational constructions and deliberative processes that promote accountability, transparency and access to civil society. As such, constructive throughput is focused more on the quality of the relationship among actors than on the quality of the social and political rules, which is the focus of institutional throughput (see Risse/Kleine 2007). These interactive relationships can be found primarily in the "coordinative" sphere of policy construction (see Schmidt 2006), such as in the deliberations of experts (e.g. Joerges/Neyer 1997), in the debates of the European Parliament (Eriksen/Fossum 2002; Wodak 2009) and their interactions with the Council and the Commission, in the involvement of organized interest groups with EU institutions (Smismans 2003; Kröger 2008; Liebert/Trenz 2009) or social movements (Della Porta 2005), as well as how

ad hoc deliberative moments like the Constitutional Convention can bring EU elites, civil society and social movements into a deliberative democratic process (e.g. Risse/Kleine 2007). Equally important, however, constructive throughput can also spill over into the output processes of public deliberation, contestation and legitimization in the "communicative" sphere – as elites involved in EU decision-making communicate about these to national publics as well as engage with opinion-makers, the media and citizens in an effort to demonstrate their accountability, to increase their transparency, as well as to legitimate their performance. And this output may in its turn produce feedback in the form of citizen input processes, especially once referenda are on the agenda.

At what point throughput becomes output or input within the context of constructive interaction can appear a bit fuzzy, then. This is also the case for institutional form and practice, in particular with regard to determining whether civil society groups' articulation of interests constitutes throughput, when such groups are directly involved in EU decision-making processes; input, when they represent their constituencies' concerns directly to EU institutions and/or those concerns are articulated by political representatives; or even output, if their recommendations become policy.

Generally speaking, however, these three legitimizing mechanisms are readily differentiable. Output legitimacy requires policies that work effectively while resonating with citizens' democratic ideals, values and identity. Input legitimacy depends on citizens expressing demands institutionally and deliberatively through representative politics while providing constructive support via their sense of identity and community. And throughput legitimacy needs processes that work efficiently and inclusively while promoting constructive interaction (see Figure 1). But although differentiable, these mechanisms are nonetheless interdependent in the sense that increasing or decreasing any one, whether output, input or throughput, has effects on the workings of the other two – for better or for worse.

Complicating matters for the EU is the fact that this interdependence affects both the EU taken as a whole and its member states qua national democracies. But while EU member states have all three such mechanisms, in the EU these mechanisms are largely split between the EU and national levels of governance. At the EU level, output governing effectiveness *for* the people and throughput interest consultation *with* the people are the primary legitimizing mechanisms while input legitimacy comes largely from the national level, where political participation *by* the people and citizen representation of the people tend to be situated (see Schmidt 2004, 2006: 21-29). This creates a dynamic in which EU level output policies and throughput processes alter the equilibria of national legitimizing mechanisms, by putting pressure on national level input politics while diminishing the importance of national throughput processes and the amount of purely national output policies. This can generate legitimacy problems for EU member states generally, and in turn for the EU itself. But given this, how then do we establish the EU's legitimacy, whatever the legitimizing mechanisms, whichever the analytic framework?

My general definition of legitimacy here, building on Max Weber, relates to the extent to which institutional and interactive input politics, throughput processes and output policies are acceptable to and accepted by the citizenry, such that citizens believe that these are morally authoritative and they therefore voluntarily comply with government acts even when these go against their own interests and desires. Determining what citizens accept or find acceptable is another matter, however, and depends on legitimizing arguments based in the culture, history and values that contribute to citizens' ideas about the nature, purposes

and appropriate outcomes of governing. And this can be very varied indeed, given differences among EU member states on their conceptions of national democracy and their visions of the EU.[3] Substantive legitimacy in the EU as a result allows for no universal generalizations, given that it involves multiple levels of institutional practices and constructive interactions in input politics, throughput processes and output policies that are interlinked in such a way that changes in any one affect all the others. In what follows, therefore, I seek mainly to sketch out the broad patterns and major problems involved in the legitimization of the EU. I begin with output because EU legitimacy was all about output, way before EU officials and scholars became concerned about input, let alone throughput.

Figure 1: A System Theory of the EU: Input, Output and *"Throughput"*
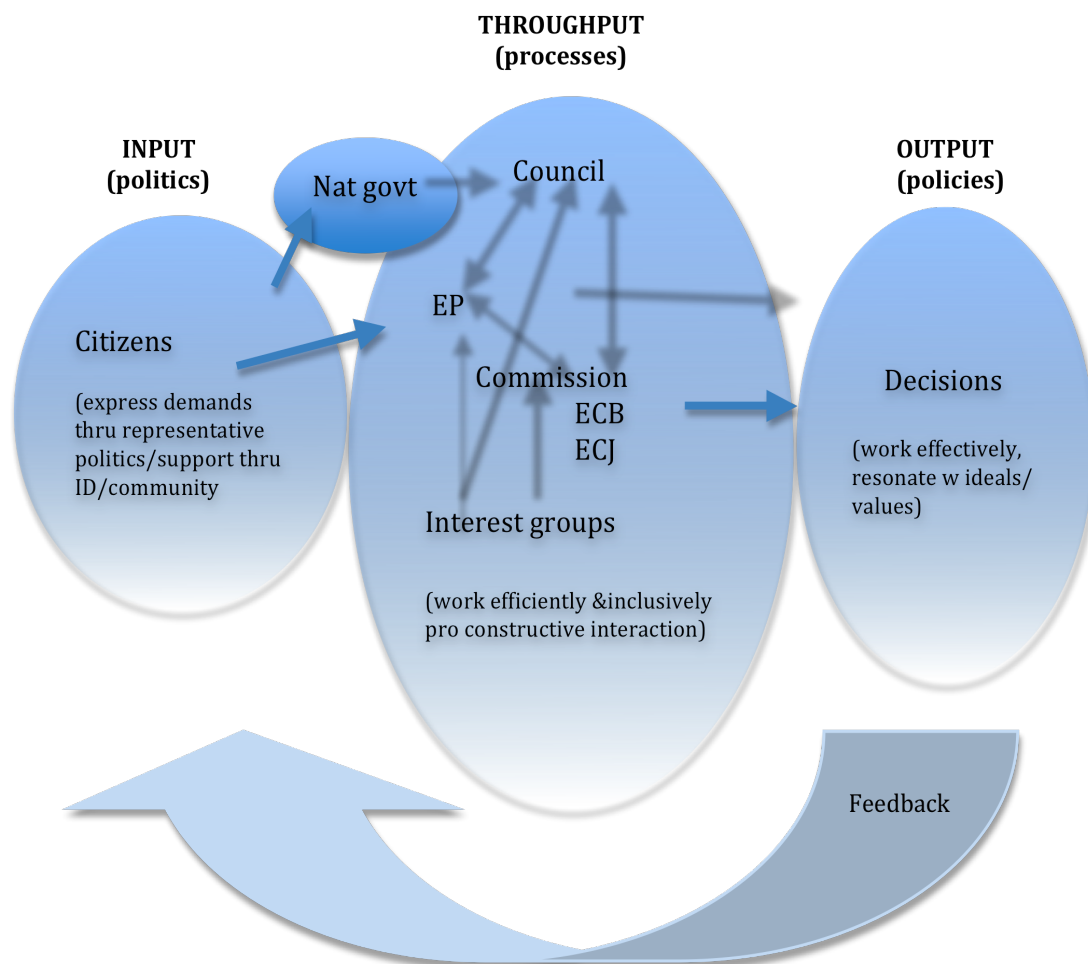
(Dark arrows = direct effects; transparent arrows = less direct effects)

3. Output Legitimacy

While a few scholars argue that the EU already benefits from output legitimacy in terms of its institutional form and practice, in particular with regard to its "non-majoritarian" institutions, the large majority of scholars of the European Union have tended to argue that the EU suffers from a democratic deficit. Scholars who focus on constructive interaction add that output legitimacy problems for EU policies stem not just from their non-majoritarian sources but also from their potential lack of resonance with national ideals and values, made worse by the fact that EU elites have done little in recent years to produce the narratives and discourses that would serve to legitimize most of its policies or to build identity.

3.1 Institutional Regulatory Output

Only a few scholars defend the EU as democratic enough already and they generally tend to base their defense on the output legitimacy of non-majoritarian institutions in form and/or in practice. Majone (1996, 1998) argues that as a "regulatory state" the EU's output legitimacy is based on the delegated responsibility of its "expertocracy" to produce effective policies and decisions *for* the people. Moravcsik (2002), who characterizes the EU as more of an intergovernmental organization than a regulatory state, maintains that the EU's institutional checks and balances along with its delegated authorities ensure that the EU is no worse than other democracies in terms of the output legitimacy of its decisions. Menon and Weatherill (2008) argue that the EU's institutional practices ensure output legitimacy, based on the EU's ability to serve an "efficiency promoting function" by doing things for the member states that they cannot do on their own such as creating the internal market, speaking for the member states in international trade negotiations and acting through the European Central Bank (ECB) to coordinate responses to the economic meltdown. Caporaso and Tarrow have additionally contended that output comes out of what Polanyi (2001) in "The Great Transformation" argued was the constant process of social re-equilibration of economic liberalization through the simultaneous movement/counter movement of disembedding and re-embedding markets in society with EU market-correcting alongside EU market-making. This can be seen in European Court of Justice (ECJ) rulings in such areas as gender equality (Cichowski 2004), regional equality, environmental protection and laws promoting family solidarity in the case of labor mobility.

Although these views of the EU's output legitimacy make important points about the ways in which EU institutional forms and practices have ensured a certain kind of non-majoritarian legitimacy, they make three questionable assumptions. Grounding output legitimacy primarily in institutional form or practice, whether through the EU's regulatory functions or its structural checks and balances, seems to assume that output is necessarily good simply because it is produced by independent regulators that its output cannot be bad simply because it has multiple vetoes; and that its policies intrinsically serve the general interest. Majone (2009) himself now questions this assumption.[4]

First, the problem with assuming that output is necessarily good because produced by independent regulators fails to deal with the difference between non-majoritarian institutions at the EU and national

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4   Note that Majone's (2009) now argues that the EU as a regulatory state has lost legitimacy because its regulatory agencies have overstepped their remit. But this does not do much to counter the initial formulation that the regulatory state by its very nature, as opposed to its performance, assures output legitimacy in the EU.

levels. At the national level, the decisions of non-majoritarian institutions are accepted as legitimate because they operate in the "shadow of politics", as the product of political institutions, with political actors who have the capacity not only to create them but also to alter them and their decisions if they so choose. They are balanced by institutional input legitimacy. At the EU level, there is no such political balancing, given the EU's decision rules that make it almost impossible to alter such decisions, let alone to alter the non-majoritarian institutions that produce those decisions, in the absence of any kind of political government that could force the issue – as in the United States in the case of Franklin Delano Roosevelt's threat to pack the Supreme Court if it did not stop ruling his decisions unconstitutional. ECJ rulings, for example, are not only not reversible by individual member states because of the "habit of the law" (Maduro 1998: 11), in which national courts enforce and reinforce ECJ decisions, but also by the member states collectively, which would need unanimously voted Treaty amendments to overturn decisions based on primary European law, Commission initiative plus qualified majorities in the Council and absolute majorities in the EP for interpretations of secondary law (Scharpf 2010).

Second, as to the output benefits of the EU's multiple-veto institutional structures, Scharpf (1988) has also convincingly argued that the "joint decision trap" of the EU's quasi-federal structure is even worse than that of Germany, raising questions about its output effectiveness or its output *tout court*, while the rationalist logic of its multiple veto structure often produces sub-optimal substantive policy outcomes (Scharpf 1999). What is more, a structural logic that sees checks and balances as in themselves democratic and legitimate is also problematic because it takes as a fundamental premise the thwarting of majoritarian expressions of the popular will. This federal way of structuring democracy and establishing legitimacy may work for the US, born in a particular historical context in reaction against a unitary governmental power (Mény 2010), as well as for Germany, constructed in reaction against the Nazi behemoth with the help of the American occupation authority. But the US and Germany, as compound polities, are at opposite ends of the spectrum as compared to democracies such as France or the UK, simple polities in which the concentration of executive power in unitary governing structures in order to carry out the will of the people – whether as "l'État républicain" or "Crown in Parliament" – is regarded as most legitimate and democratic (Schmidt 2006).

Third, with regard to the blanket assumption that the EU's non-majoritarian output policies are legitimate because in the general interest an increasing number of contested decisions by the EU Commission and the ECJ throw this too into question. These decisions include the Commission's services initiative that privileged home country rules, including pensions and wage rates for service workers in host countries, and the ECJ decisions focusing on freedom of movement that curtailed national unions' rights to strike in the Laval and Viking cases or struck down Austrian medical schools' quotas on German medical students. Although these could be seen positively from a EU level perspective as promoting a Polanyian, market-correcting governance for all Europeans, it can just as readily be seen negatively from a national level perspective as a neo-liberal post-Polanyian destruction of national labor relations and welfare systems (Höpner/Schäfer, 2007; see also Scharpf 2010). Additionally, because of the differences among member states, it is likely that the more the EU Commission and ECJ push an integrating agenda into areas that touch on deeply held values, the more the EU's output legitimacy is likely to become contested – in particular because the decision rules are such that any individual member-state or groups of states are unlikely to be able to stop such decisions.

These examples illustrate a fourth drawback to output, which takes us to the interactive construction of legitimacy. As Cerutti has argued, the performance-based legitimacy of the output variety is insufficient for legitimization, since outcomes also require a kind of "Weberian legitimacy", by which he means the substantive values and principles guiding the performance, that make the performance valued (2008). In other words, even if policy performance is optimal, if the actual content of the policies clashes with national values and principles, as reflected in European citizens' perceptions of EU policies as acceptable and appropriate (or not), then its output legitimacy is in question.

3.2 Constructive Discursive Output

Output legitimacy does not depend on the policy performance of EU institutions alone, but must be considered in terms of how its policies resonate with citizens' substantive values (read also identity) as well as fit with their interests. This need not be a passive exercise. Political elites generally actively seek to legitimate policies through normative arguments that appeal to values, as well as to justify them through cognitive arguments that show how the community can gain from them. This at least is the theory. In practice, European elites engage in much less discursive re-conceptualization of interests or promotion of substantive values than one might expect or is necessary for the constructive output legitimacy of EU policies. Moreover, national publics engage in much less discussion, deliberation and contestation about EU policy performance than one might expect, given the phenomenal amount of EU legislation affecting national policies and policymaking.

Output policy legitimization for the most part occurs in the communicative discourse of the political sphere. This may be top-down, as political elites engage in legitimating discourses about the EU and its policies, or bottom-up, as EU-related policies and discourses generate responses and debate from the national media and opinion leaders along with the general public. Such communicative discourses can be centered on internal policies, in efforts to highlight the institutional output performance of, say, the single currency (Dyson 2002), the internal market, and environmental policies or to foster positive attitudes toward certain kinds of EU norms and values, such as Commission campaigns to promote gender equality, oppose racism or build the concept of a "social Europe" to counter perceptions of an EU neo-liberal policy focus (Barbier 2008). Alternatively, they may be concerned with external policies, say, by promoting human rights among its trading partners, casting the EU as a "normative power" in its "neighborhood" as well as in the world more generally (Manners 2002; Laïdi 2008).

In the course of generating discussion, deliberation and even contestation about EU policies, the communicative discourse may also perform an identity-building function, since the sense of *being* European is generally built not just on *doing*, as in institutional policy outputs, but also on *saying* what the EU is doing, which makes for constructive interactive outputs (Schmidt 2006: Chapter. 1; 2009b). The problem here is that national politicians in recent years have tended to engage in comparatively little *saying* about what the EU is doing. Instead, when national politicians do speak on the EU, they have tended to engage mainly in blame-shifting on unpopular policies, claiming that "the EU made me do it", or credit-taking on popular policies, often without even letting on that the policy was generated in Brussels (Schmidt 2006). Studies of media discourse and debate about the EU in the 1990s and early 2000s show that, with the

exception of the big events like monetary policy in the run-up to European Monetary Union, enlargement in the run-up to 2004, or debates on the Constitutional Treaty, there has been relatively little increase in attention to EU policies over time, whether on pensions, education, troop deployment or immigration (Koopmans 2004). They also suggest that attention which has been there, might be more of an elite than a mass public phenomenon, given that studies of quality newspapers show significant Europeanization in a number of spheres, but not the tabloids or television (Risse 2010: 128-133). Nonetheless, scholars have demonstrated that there has been a developing transnational "community of communication" creating a European public sphere in which national publics by means of the media increasingly debate the same issues at the same time using the same frames of reference, and that this has also promoted the Europeanization of national identities (Risse 2010; Trenz/Eder 2004).

EU-related identity has been and still is being built, albeit very slowly (see Hermann et al. 2004; Hooghe/ Marks 2005). Exclusive EU identity remains at a very low albeit increasing level, and encompasses mainly well-educated, well-traveled, European elites (Fligstein 2008). This said, a majority of citizens do express some sort of secondary EU identity, although these numbers have not increased markedly over time. More significantly, however, is the fact that identification with Europe varies tremendously among member states, with the UK at the lowest end, Italy, France, Spain and Germany at the highest end (Schmidt 2006; Risse 2010). And even more importantly, within countries, there are further internal divisions between pro and anti European elites and citizens which has significant effects on institutional input legitimacy, discussed below.

Why has a sense of identity not increased more significantly over time? Beyond the problems related to the poverty of the policy discourse and national political divisions is the fact that the EU has in recent years lacked any kind of common, legitimizing "grand narrative" about what the EU is, what it has done, and what it should do in the world. A major problem is that the founding, legitimating "grand narrative" of European integration, that the EU is all about "peace and prosperity" – which helped persuade national publics as to the benefits and legitimacy of the EU – no longer works, given that peace appears assured while prosperity is in question. And there are no persuasive new grand narratives either about what the EU is or does, as Jean Leca (n/a) has convincingly argued, whether those focused on the EU as "empire", neo-medieval (Zielonka 2006) or cosmopolitan (Beck/Grande 2007), or as a new form of international organization, such as my own notion of the "regional state" (Schmidt 2006, 2009a).

Instead, each of the member states could be said to have its very own (often not very grand) narrative about the EU (Nicolaïdis/Lacroix 2010). How this plays itself out at the national level depends in large measure on the extent to which national political elites have been unified in supporting European integration and in creating a narrative that includes Europe as part of national identity, as in Germany and Spain; divided in their support and their narratives embedding the EU in national identity, making for France's uneasy consensus and for Poland's profound disagreements; or divided in their support and with national narratives that do not include Europe in national identity, making for the views of Britain among other Euroskeptic countries (Risse 2010; see also Schmidt 2009b).

The member states have very different visions not only of national identity in Europe but also of EU identity, that is, what it should be and do internally and externally. Here, we can identify four basic, non-mutually-exclusive legitimating discourses about the EU that national elites have articulated (see Schmidt 2009b;

following Eriksen/Fossum 2004 and Sjursen 2007 for the first three kinds of discourse, Howorth 2007 for the fourth). The first is the pragmatic discourse about the EU as a borderless problem-solving entity ensuring free markets and regional security, which is generally characteristic of the UK and Scandinavian countries and which provides the thinnest of identities based on trading together or securing the European space, and leaving the borders amorphous, open and undefined. The second is the normative discourse about the EU as a bordered values-based community, most identified with France and Germany, which is also most likely to build the thickest of identities, since it most closely approximates the kind found in nation-states based on common values, solidarity and clear borders. The third is a principled discourse about the EU as a border-free, rights-based post-national union, attributable to the Commission and to philosophers like Habermas (2001) and Beck and Grande (2007), which establishes a rather thin identity given the lack of borders or values-based "we-feeling", notwithstanding Habermas' (2001) suggestion that "constitutional patriotism" could be the basis for a common European identity. And the fourth is a strategic discourse about the EU as global actor "doing international relations differently" through multilateralism, humanitarian aid and peace keeping which has increasingly become the preferred one of member-state leaders generally in their efforts to respond to global challenges such as economic crisis, climate change, poverty and terrorism.

This fourth, strategic discourse arguably provides the basis for a thicker identity than the principled discourse, because it adds doing to the universalist being, by putting troops on the ground to guarantee human rights. But putting troops on the ground often demands a greater sense of values-based community solidarity. Without this, the first body-bags coming home could raise questions in member states not only about "why we fight" but also about why we are doing this as part of the EU in the first place, unless it were accompanied by a sufficiently persuasive legitimating discourse focused on building a strong "member-state in Europe" identity. This may help explain why, so far, most European Security and Defense Policy (ESDP) missions also go out under the flag of the United Nations (UN).

No one legitimizing discourse, in short, is entirely independent of the others. With regard to the fourth discourse, for example, even where there is agreement on what to do strategically, this can always be undermined by disagreements on what the EU legitimately is – whether a widening free market, deepening values-based community or democratizing rights-based union. Moreover, no amount of discourse can serve to legitimate the EU if words are not followed by actions, that is, by institutional output. After all, with regard to the principled discourse, what does "normative power" Europe really mean if the EU cannot deliver, as with the Copenhagen Summit on Climate Change or the slowdown in its progress on developing European Security and Defense Policy (Howorth 2010). In addition, on the pragmatic discourse of the EU as free market, how much longer will this be seen as legitimate if inequalities rise massively, giving the lie to "Social Europe", especially in light of the decision to send Central and Eastern European countries to the International Monetary Fund (IMF) in 2008 and Greece in 2010 to a IMF-EU bailout that will mean economic recession for these countries for years to come. This said, the decision to create a financial loan guarantee instrument to protect EU member states from default was a major step forward with regard to economic solidarity. But to make the EU truly live up to the rhetoric, as well as to build greater EU identity and community, it would need much more imagination as well as leadership across domains, say, internally, by creating a European Monetary Fund and a European solidarity tax to alleviate poverty (see Schmidt 2009a), or externally, by promoting a "global grand bargain" in world security (see

Howorth 2010). But however much these kinds of actions might help increase output legitimacy, they remain no substitute for increasing input legitimacy.

4. Input Legitimacy

Input, defined by scholars focused on institutional form and practice, is mostly about the quality of the EU's representative bodies and electoral processes, and how this serves to ensure EU legitimacy. Defined by scholars focused on interactive construction, it is also all about the quality of the ideas, discourses, political deliberations and contestations that may go on in such institutional settings that may help build citizens' sense of EU legitimacy. And for both of these, there are problematic elements.

4.1 Institutional Representative Input

When it comes to the EU's institutional input legitimacy, although the European Parliament does provide for direct citizen representation, it does not make the grade as input legitimacy by and of the people, in particular with regard to the nature and (low) degree of political participation. Arguably most problematic from the vantage point of traditional (read national) understandings of input legitimacy here is the absence of a government that citizens could vote in or out, which makes it impossible for "the people" to express their approval or disapproval of EU policies directly. This helps explain why citizens voting in referenda on the Constitutional and Lisbon Treaties largely chose to make clear their views on EU policies and their impact on national policies, identity or sovereignty, despite the fact that they were asked to vote on EU institutional reform.

Another problem is that the EU has lacked the kind of politics to which citizens are most likely to relate, since EU decision-making has not really been much about politics in the traditional sense of party and partisanship (although this has been growing). Instead, it is mostly about the politics of interests, whether the politics of the national interest in the Council, the public interest in the European Parliament or of organized interests in the Commission. Moreover, at the EU level, party differences and left-right political contestation have long been submerged by the general quest for consensus and compromise – even though politicization has been growing in Council and EP votes while appointments to EU leadership positions (i.e. Commission President, Council President, and High Representative) now take politics into account. The co-decision procedures with the Council, voted mostly by super-majorities in the EP, also have the effect of submerging partisan divides, as does the Commission's consensus oriented, technical approach to policy initiation and development, which deliberately seeks to avoid left-right divides as it attempts to balance the representation of all interests. In addition, European political parties remain weak, underdeveloped and not very cohesive, with an amalgam in the EP of different national parties with divergent agendas and ideologies in any given European party grouping (Ladrech 2002, 2010; Klingemann 2005; Mair 2006). Finally, European Parliament elections suffer from high rates of abstention, as in the 2009 EP parliamentary elections, in which a sizeable number of extreme right parties were elected by the lowest turnout ever in such elections (43 per cent).

All of this makes for what I have called the "policy without politics" of EU policy making (Schmidt 2006, 2009a), which in turn makes for national "politics without policy" as increasing numbers of policies are transferred from the national political arena to the EU, leaving national citizens with little direct input on the EU-related policies that affect them, and only national politicians to hold to account for them (Schmidt 2006). This has already had a variety of destabilizing effects on national politics, including citizen demobilization on the one hand or radicalization on the other (Mair 2006; van der Eijk/Franklin 2004; Schmidt 2006).

At the EU level, moreover, all of these issues have led to a decline in the kind of diffuse support that Easton identified as a key factor in input legitimacy. This is because the "permissive consensus" of the early years, in which citizens largely ignored the EU and its outcomes, has been replaced by a "constraining dissensus" along with a rise in Euroskepticism (Hooghe/Marks 2009). What makes matters worse is that new cleavages have developed between citizens whose ideas for Europe are more open, liberal and cosmopolitan in orientation and those whose ideas are more closed, xenophobic and nationalist or even EU-regionalist oriented (Kriesi et al. 2008). The result has been that national electorates have typically been less mobilized along left/right party lines on EU-related issues than in terms of identity politics, especially on the right (Marks/Hooghe 2009). And with the gradual awakening of the "sleeping giant" of cross-cutting cleavages between pro-European "cosmopolitans" and Euroskeptic "nationalists" in mainstream parties of the right and the left, the EU is likely to see much more hotly contested, politicized EP elections than in the past, even if they remain second-order elections (van der Eijk/Franklin 2004; Franklin/van der Eijk 2007; Kriesi et al. 2008; Hooghe/Marks 2009).

So is the answer to bring in more "policy with politics" at the EU level, as many scholars advocate, in the effort to diminish the EU's input "democratic deficit" (e.g., Magnette 2003; Hix, 2008)? Some have resisted this suggestion because they see politicization as deleterious to the EU's output governing effectiveness for the people, by introducing yet another source of division into deliberations already burdened by considerations of national, public and special interests among 27 or more member states (Majone 1998; Scharpf 2003, 2007; Schmidt 2006:270). And more politics in such complex institutional structures could also lead to stalemates that would only increase citizens' disaffection from and dissatisfaction with the EU – thus further undermining diffuse input support. Yet others worry that it is too soon for any such politicization given legitimacy problems related to the lack of citizen identity, collective will and a fully developed public sphere – which speaks to the interactive construction side of EU input legitimacy.

But the cat is already out of the bag, so the question is how to politicize within the context of the current institutional set-up. Simon Hix' (2008) proposal for a greater majoritarian component to the politics of the Council and the EP in order to make it possible to have more clearly demarcated policies of the left or right, while a step in the right direction, is premature, since EU political parties lack the kind of cohesion and EU citizens the kind of collective identity necessary for any kind of majoritarian politics. The EU might do better with the kind of proportional representation system of Germany in which, once the right-left polarization of elections campaigns is over, compromise and consensus-seeking rule, in particular at times of grand coalitions. Beyond this, greater parliamentarization is imperative, for example, by facilitating greater EP input at the beginning stages of policy formulation, by more fully connecting the EP to national parliaments – now facilitated by the Lisbon Treaty – and by ensuring greater citizen access to the EP.

Were these kinds of institutional input politics increase, it is conceivable that the problems of institutional output decisions could be alleviated. However, this would be the case only if there were also more and better constructive input involving substantive political debates tied to politicization.

4.2   Constructive Deliberative Input

Input legitimacy is not limited to the institutional practices involved in EU citizen participation and representation since the success of such practices along with the policies they support depends in large measure on the political deliberations and contestations that inform them. Political discourses and debates about the content, purposes, instruments and objectives of policies, as well as about the nature, goals and future of the "polity" are fundamental to democracies and contribute to the building of legitimacy as well as identity. For democratic nation-states, such debates usually occur in the context of elections and other forms of public engagement in representative processes. In the EU's highly compound polity, this is more problematic, given the institutional limits to citizen participation and the absence of much "policy with politics".

There have been real problems for the EU with regard to its interactive input construction both in terms of discursive interactions and ideas – beyond those related to the poverty of the ideas in leaders' output-focused narratives and discourse. This has to do with the fact that EU political actors' "communicative" discourse to the general public is very thin. Part of the reason comes not only from the fact that the EU's institutional input governance by and of the people is so underdeveloped, given the absence of a fully representative, directly elected EU government. It is equally a result of the paucity of EU political actors able to speak directly to a European public in a common language, reported by a European media and considered by a European public opinion (Grimm 1997; Weiler 1999). Instead, the communicative discourse comes largely by way of national political actors speaking to national publics in national languages reported by national media and considered by national opinion. The problems with such fragmentation in discourse are admittedly somewhat attenuated if one recognizes that there is indeed a developing European public sphere, only one made up of European member state "publics" – rather than some idealized single "public" – in which national publics are increasingly aware of European issues and the views of other member-state publics (Risse 2003, 2010; Koopmans 2004). However, this does not get around the institutional input reality that without a Europe-wide representative politics around which debate could be structured, European political leaders have little opportunity to speak directly to the issues and European publics have little ability to deliberate about them or to state their conclusions directly, through the ballot box.

Worse yet, politicians mainly engage in blame-shifting and credit-taking when dealing with EU-related policies, as noted above, while they remain silent on polity issues, that is, on the impact of the EU on national democracy and legitimacy, in which the national communicative sphere is impoverished as more and more policies are removed to the EU level and dealt with through policy without politics. All of this becomes problematic at times of European Parliamentary elections, let alone referenda, as in France and the Netherlands on the Constitutional Treaty, and Ireland on the Lisbon Treaty, by which time the damage has already been done. In electoral or referenda campaigns it is a bit late to try to reverse negative perceptions of EU policies formed over the long-term in constructive output debate with the short-term positive arguments about the EU's output performance – assuming that politicians actually know how

to make them, a questionable assumption judging from the "yes" campaigns in the above-mentioned countries. Moreover, the blame-shifting itself only increases citizens' sense of powerlessness in the face of supranational forces to which they must adapt and over which they have no control, while the absence of discussion about the impact of the EU on national polities has allowed the Euroskeptics of the political extremes to exploit citizen concerns, whether about the impact of immigration on national identity and sovereignty on the right or of the "neo-liberal" single market on national social rights on the left (Schmidt 2006: 37-43). This lack of EU-focused discourse also derives from institutional input realities. Politicians are reluctant to expend their scarce political resources on the EU, given political incentive structures and institutional rewards that push national politicians to tout their national level successes and to turn popular EU policies into national ones, since national politicians are elected by national electorates.

This said, where debates have occurred during referenda or major EU initiatives, even where the results for the EU's institutional input are negative and de-legitimizing, the results for constructive input could be seen as positive and even re-legitimizing. For example, even the services directive, which – seen from an institutional output perspective – in its initial phases as delegitimizing the EU for citizens in some member states (esp. France and Germany), could be seen from a constructive input perspective as re-legitimizing the EU in the subsequent EP-led deliberations with Commission members, member-state leaders, and representatives of social movements (Crespy 2010).[5] Similarly, the referendum on the Constitutional Treaty in France, the negative results of which suggest a blow for institutional input legitimacy, can nevertheless be seen positively as contributing to constructive input legitimacy, given the highly deliberative and inclusive process of public debate that preceded the vote (Schmidt 2007; WRR 2007). It is in this sense that democratic theorists have considered referenda more generally as building democratic legitimacy, whatever the outcome (Abromeit 1998; Zürn 2000). But a more positive instance of legitimacy-building in the EU public sphere could be seen in European political leaders' response to the inclusion of the right-wing extremist party of Jörg Haider in the Conservative governing coalition in Austria in 2000, which generated a Europe wide debate focused on issues of anti-discrimination and the dangers of anti-democratic governments (Van de Steeg 2006). This in turn led to significant institutional output with the production of a EU directive in record time (Geddes/Guiraudon 2004), plus the exclusion procedure now enshrined in the Treaty of the European Union.

There are again, however, other even more basic problems for constructive input legitimacy that involve differences among member states in foundational ideas about the nature of "legitimate government" as well as what the EU's ultimate purpose should be. These can be conceived in terms of differences in the philosophical bases of legitimacy that Scharpf (2009) characterizes as "liberal" – which emphasizes the output bases to non-majoritarian or federal institutional structures and the throughput benefits of interest intermediation – vs. "republican" – which critiques both throughput and output mechanisms as failing to consider the lack of substantive legitimacy based on community values and redistributive goals or the absence of significant input legitimacy. Such divisions alternatively can focus on the normative ideals – or nightmares – about what EU democracy is or ought to be, such as those identified by Erikson and Fossum (2009) in the RECON project as a minimalist "audit democracy" that would be even less than

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5   The fact that this changed legislation has not stopped the Commission from pursuing further initiatives and the ECJ from making further rulings that extend services liberalization around the limits established by the Council/ EP approved directive suggests a conflict between representative input legitimacy and performance-based output legitimacy (S. Schmidt 2009; Scharpf 2010).

Euroskeptics would want, a maximalist "federalist multinational democracy" that goes beyond what even the most pro-European federalist could expect, and an idealist "cosmopolitan democracy" that appears unworkable because devoid of state apparatus or other regional counterparts.

The failures of constructive input legitimacy, thus, result from the primacy of national political ideas and discourse and the paucity of ideas and discourse about the EU. This, added to the inadequacies of constructive output legitimacy, given the lack of narratives or discursive promotion of EU policies, only complicate the legitimization of throughput processes.

5.   Throughput Legitimacy

For scholars concerned with institutional form and practice, throughput legitimacy involves the policymaking processes through which decisions go from input to output within the "black box" of EU governance. Throughput includes not only the workings of the decision-making processes as a whole – that they work efficiently and appropriately in accountable and transparent manner – but also the intermediation processes through which citizens *qua* interests as opposed to *qua* voters have an influence. For scholars more concerned with constructive interaction, throughput refers also to the ideas and deliberative interactions involved in who is persuading whom and on what grounds within the EU institutional context. And here, in contrast to the EU's thin communicative discourse to the general public, the "coordinative" discourse among EU policy actors engaged in throughput governance *with* the people is highly elaborate (Schmidt 2006).

5.1   *Institutional Pluralist Throughput*

Throughput legitimacy via interest-based intermediation and consultation with the people, to begin with, represents a way in which minority interests can gain a voice even without a majority vote. In the EU, such interests include not only well-organized special interests, such as business, but also more diffuse difficult-to-organize majority interests such as consumer groups and public interest oriented groups such as environmental groups, policy think-tanks or even social movements. This kind of legitimacy has been theorized not only by the pluralist political scientists of the 1950s and 1960s in America such as David Truman and Robert Dahl to legitimate interest participation in policymaking that was seen as in contradiction to citizen representation through the electoral process. Theorists of "associative democracy" have also identified interest group access – in this case of public interests – as another form of democracy in its own right, as well as a corrective to representative democracy (Cohen/Rogers 1992; Hirst 1994). For the EU, throughput governance *with* the people through pluralist-type consultation – mainly as part of the joint decision-making process involving a wide range of governmental and non-governmental actors commonly known as the "Community Method" – has deliberately been encouraged as a way of counterbalancing the paucity of governance by or of the people through political participation and citizen representation. But it is only in recent years that such "functional representation" through interest groups has come to be seen as an additional form of democratic legitimization in the EU (see Kohler-Koch 2007; Kröger 2008).

Within the EU, the Commission and increasingly the European Parliament have sought to promote more

pluralist consultation *with* the people, meaning interest groups and members of "civil society", as a way to counterbalance the lack of governance by the people and to promote democratic legitimacy (Greenwood 2007). The Commission in particular sought to find ways to make policymaking "more inclusive and accountable" to "civil society" – defined as including special interests like business and labor along with activist citizens – as well as more transparent, as per the EU Commission's (2001) *White Paper on European Governance* (Kohler-Koch 2007, 2010; Kröger 2008). Accountability was to be improved through closer controls on expenditures and appointments and transparency, by providing greater access to EU documentation for the media and interest groups (Héritier 2003) as well as through the internet and the development of e-government (Hüller 2010) – which often leads to information overload for any individual trying to sort through the massive amounts of materials available while navigating through EU websites.

As for access and openness to civil society, the EU Commission sought to create a more balanced and open playing field among interests groups, although how effective it has been is open to question (see Kröger 2008). This has included creating "grassroots" interest groups (e.g. of women and consumers) at the EU level to counter-balance the more powerful, already present business groups, with the resulting networks in which mutually suspicious actors can ensure more demanding forms of reciprocal accountability (Héritier 1999). Moreover, the EU has given voice to a whole range of public interest groups which may be marginalized in their national polities and whose common interests are better expressed at the EU level, such as in gender equality (Cichowski 2004) and sexual harassment laws (Zippel 2006). Even social movements have been able to exercise informal influence (Della Porta 2005, 2009). Take for example the case of ATTAC, the French-originated social movement, which exercises this informal influence through its contacts with the Commission and the membership of Members of the European Parliament (MEPs), in its mobilization against the services directive (Crespy 2010).

With regard to such interest intermediation, the EU avoids some of the worst problems of US style pluralism, in which the politics of money and influence play a major role and partisan considerations take precedence over technical ones. This is the upside of the EU's "policy without politics". Moreover, rather than competition among interests, the EU Commission fosters cooperation in its consensus-based policy formulation process, with rules of the game that entail that in order to play, participants must gain and maintain credibility as trusted actors providing accurate technical information (Coen 2008; Coen/ Richardson 2009). This has been seen not only in the consultation processes in policy formulation but also in the comitology processes of the EU-anointed national experts, government representatives and interests. The growing co-decision powers of the EU, especially following the Lisbon Treaty, have also made it an increasingly important arena for interest intermediation and lobbying.

Such increasing opening to interest intermediation also has a downside, however. There is always the danger that unequal access could undermine the throughput legitimacy built in the Commission consultation processes by becoming "a paradise for lobbyists" as outgoing Danish Commissioner of Agriculture Mariann Fischer Boel complained with regard to the EP's new co-decision powers in the agricultural sector (New York Times, 1 February 2010). Moreover, regardless of how open to public interest consultation *with* the people the EU may be, the problem for national citizens is that this kind of supranational policymaking is very far from the kind of representative democracy *by* and *of* the people they tend to see as the most legitimate. And such throughput processes are in any case not open to most citizens, given the difficulties of transnational mobilization (see e.g. Guiraudon 2001; Della Porta

2009). To remedy this, national governments would need to find ways of encouraging citizen involvement in supranational decision-making by helping them to organize themselves transnationally so as to gain access and influence in European decision-making – providing funding, information and strategic advice. Social movements, moreover, could also do more on their own to try to get their message through to Brussels through transnational organization and representation (Della Porta 2009), rather than spending so much of their time and energy organizing "no" votes in treaty referenda. But national governments would need also to improve the national level inputs by bringing civil society into national formulation processes focused on EU decision-making.

Importantly, however, stakeholder democracy, even if improved, is not necessarily public interest oriented democracy. And however much the EU and national governments seek to promote "policy with pluralist politics" to enhance throughput legitimacy, this cannot be a substitute for input legitimacy, although it can be a supplement to it as well as a way of ensuring better output legitimacy.

5.2 Institutional Rules-Based Throughput

Another problem for throughput legitimacy lies in the processes of decision-making themselves. The Lisbon Treaty was touted as the remedy to the institutional decision-making problems of the EU, as all three institutional actors – Commission, Council and EP – had their powers enhanced. But big legitimacy problems remain with the EU's institutional rules, in particular the fact that once decisions are made, they are nearly impossible to overturn by the member states in the Council; the EU's transparency, given that the Commission-based drive toward greater access to the massive volume of EU-generated information on EU decisions perversely may make it less transparent; and the EU's accountability, given Council rules on the secrecy of meetings. There are also problems with regard to the EP's role, since it has little influence over initiation, no connection to comitology and so far also little connection to national parliaments – although this could change for the better, given that a procedure for consultation was written into the Lisbon Treaty. Finally, and arguably most problematic for throughput, are the unanimity rule for treaties and the uniformity ideal for further integration.

The continued use of the unanimity rule for treaties, in which the ability of any member-state to veto any agreement can lead to treaty delays, dilution or deadlock, means that even incremental change in an ever-enlarging Union may be stymied in the future – to the detriment not only of throughput legitimacy but also output, since new policies will not be agreed, and input, since a couple of veto-imposing member states can frustrate the desires of the large majority (Schmidt 2009a: 26-8). The failure of the Constitutional Treaty following the French and Dutch referenda, along with the myriad delays on the Lisbon Treaty, not only the Irish referenda but also the last minute horse-trading by the Czech President, are object lessons for why the EU needs another way of reaching binding agreements for the member states. The EU would do better, for institutional rules-based throughput legitimacy, to do away with the unanimity rule and replace it instead with supermajorities (whether two-thirds, four-fifths or even more)[6] plus opt-outs

6   This idea was first suggested by former head of legal services for the Council, Jean-Claude Piris (1995:258-9), when he talked of a "very strong majority" and most recently taken up by former Competition Commissioner Mario Monti (2009) who proposed numerical supermajorities.

agreed, say, by Council vote (see Scharpf 2009), and so long as the opt-out does not negatively affect the functioning of the proposed political community (e.g. as in fiscal harmonization, where an opt-out might vitiate its very purpose) (Schmidt 2009a). In the interim, however, the member states have other ways around this, such as through the enhanced cooperation mechanism of the Lisbon Treaty, in which nine or more member states can move forward in areas in which agreements have proven difficult to reach, the first instance of which, the choice of venue for divorce, is in process for twelve member states after much delay.[7] Another way is through multiple bilateral (intergovernmental) agreements, as with the new financial loan guarantee instrument created in the attempt to stop the contagion effect of the Greek on other Southern Mediterranean countries.

The other major problem for the EU is the uniformity ideal, in which EU institutional players resist the very idea of differentiated integration, for fear that this will unleash centripetal forces that will pull the EU apart, or at the very least undermine an already diffuse sense of solidarity. What they fail to recognize is that maintaining uniformity is to the detriment not only of deeper integration but also of any form of enlargement through graduated membership (Schmidt 2009a: 28-32). The danger with the uniformity ideal is that the EU cannot move forward in those policy areas in which member-state divergence makes it unlikely for agreement any time soon, such as in social and tax policies, or that it will seek to impose uniformity even where this causes substantial output legitimacy problems, as in the recent European Court of Justice court cases noted above. With regard to enlargement, the worry is that the EU will lose its democratizing "power of attraction" (Leonard 2005) as neighboring countries that aspire to membership get tired of knocking on the door, waiting to be let "in" or told that they are "out" even as they attempt to comply with an ever growing number of policy requirements over which they have no voice let alone vote (which as such is an affront to input legitimacy).

The uniformity ideal, however, is just that, an ideal – and thus an interactive construction – since the institutional reality is already one of a high degree of differentiated integration, given opt-outs in a wide range of EU policy communities beyond the Single Market, such as the Eurozone, Schengen, Common Security and Defence Policy (CSDP), and the Charter of Fundamental Rights; the presence of "outside insiders" like Norway, Iceland and Switzerland; and the increasing integration of prospective and non-prospective members into EU policy communities, without institutional voice or vote, such as Turkey or the Eastern Partnership countries. In giving up the uniformity ideal, the EU could have a future of more differentiated integration via informally agreed, exceptional treaty opt-outs as well as through enhanced cooperation in a wide range of domains – not just in defense and security through "permanent structured cooperation" (Howorth 2009) but also, say, with differentiated immigration zones for East European, Nordic and Southern Mediterranean member states; health care pools among member states with cross-border health care shopping or even fiscal harmonization in Eurozone countries. In addition, the EU could retain its power of attraction if it were to offer "graduated membership" for potential candidate members, allowing them voice and vote in the policy communities in which they participate – once certain key requirements are fulfilled, including democratic practice, respect for human rights, and a commitment

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7   The initial proposal was by nine member states, under the Nice Treaty. It was at first delayed, then moved forward again after the Lisbon Treaty rules, but one (Greece) dropped out while three more came on board (Germany, Belgium and Latvia). The eight remaining are Austria, Bulgaria, France, Hungary, Italy, Luxembourg, Romania, Slovakia and Spain.

to free markets – thereby guaranteeing more input legitimacy (Schmidt, 2009a: 28-32). This is important not only for the EU to continue to be a democratizing and socializing force in its neighborhood but also to ensure that the policy decisions are thereby the most legitimate (in input terms) and most effective (in output terms) – not only for countries on the periphery but also for countries like Norway and Switzerland, which have a major national democratic deficit as a result of the lack of institutional engagement.

5.3   Constructive Deliberative Throughput

Throughput legitimacy requires not just more accountable, transparent and accessible processes that also get beyond the unanimity and uniformity traps. It additionally requires more productive deliberative interrelationships among actors in the throughput processes of the "coordinative" policy sphere. And it can be evaluated in terms of all of the governance processes of the EU – not only in the countless discussions, debates and contestations in formal EU processes but also in the more ad hoc and informal processes.

With regard to the constructive throughput legitimization of the formal processes of EU interactive construction, we could start with Habermas' (1996) focus on the quality of the deliberative procedures as a "counter-steering mechanism" ensuring that citizens' community power is adequately channeled in societal and administrative decision-making, thereby improving accountability (see Bekkers/Edwards 2007:53). More empirical examples have been elaborated for the Commission-led, consensus-focused intermediation with experts in comitology and public interest groups, described as a form of "supranational deliberative democracy" (Joerges/Neyer 1999) or "directly-deliberative polyarchy" (Gerstenberg/Sabel 2000). One might add here the "strong publics" of the European Parliament with the debates contributing to the greater accountability and transparency of the decision-making process, although one could also see this as contributing to input legitimacy, through the representative nature of MEPs (see Eriksen/ Fossum 2002).

More ad hoc processes of throughput legitimization include the Constitutional Convention. The constitutional debates were arguably the first (and only) creation of an EU deliberative public sphere of communication in which ideas about how to democratize the EU flowed freely, at least at first, in contrast to the Intergovernmental Conference that followed, which went back to the same-old closed door bargaining routine (Zürn 2001; Risse 2000; Magnette 2004; Maurer 2003; Eriksen/Fossum 2004; Risse/Kleine 2007). The Bologna process by which most European countries both within and outside the EU harmonized their higher education degree requirements and trajectories is another example of ad hoc deliberative processes, with the EU Commission serving as an institutional facilitator for ideas generated, deliberated and institutionalized outside the EU institutional framework (Ravinet 2007). Other informal processes of discursive interaction contribute to throughput legitimacy "from below" and include the role of social movements (Eder/Trenz 2007: 171-2), as in the case of the European Social Forum (ESF), which improved the deliberative quality of communication among its own grassroots activists in European assemblies in ways that also contributed to output legitimacy by increasing these social activists' identification with Europe despite their continuing suspicion of the EU's overly neo-liberal policies (Doerr 2009).

All this may make it appear that constructive throughput legitimacy is assured. But serious problems

remain here, too. Generally speaking, the Commission has consciously sought to depoliticize EU policy by presenting its initiatives in neutral or "reasonable" language and by using communications techniques such as its "Plan D" for democracy (Barbier 2008: 231-2). National leaders, moreover, have been perfectly happy with the depoliticized language of EU level "policy without politics" because this leaves them free in their national capitals to put any kind of political "spin" of the left, right or centre on EU policies. Add this to the fact that their discourse about Europe tends to be blame-shifting or credit-taking on policy issues, with silence on the polity issues and it should come as no surprise that the lack of throughput political deliberation added to the lack of any overall output legitimizing narrative or direct citizen communicative input should lead to institutional input disasters such as failed referenda and rising Euroskeptic nationalism.

4. Conclusion: Input, Output and Throughout as Democratic Trilemma or Virtuous Circle?

The problems for legitimacy are not only structural and path dependent, in the way the EU was and is institutionally organized, split between national and EU levels. Nor are they mainly the result of the logic of rationalist interaction within the existing incentive structures. They are also ideational and discursive, as leaders fail to legitimate and citizens fail to deliberate. How citizens think and talk about the EU and its institutions, that is, their identities, values and discourse, is as important for the democratic construction of legitimacy as are the democratic practices that infuse the institutions with legitimacy. Moreover, the problems of European democratic legitimacy are not confined to the EU level but are arguably as serious if not more so for the EU's member states. And only by reinforcing democracy at the national level as well as by improving national citizens' access to EU decision-making through input and throughput processes can we be sure to shore up legitimacy at the EU level, in input, output and throughput.

It is important to recognize, however, that any attempts to improve democracy through any one legitimizing mechanism may have interaction effects on the other two, as well as on the legitimizing mechanisms of national democracies. These interactions can be portrayed as a democratic trilemma involving a zero-sum game, in which increasing any one mechanism decreases the other two. However, it could instead be seen as a virtuous circle, with the increase in any one as possibly invigorating either one or both of the other mechanisms.

For example, the democratic trilemma with regard to input legitimacy suggests that increasing representative input at the EU level could be deleterious to the EU's regulatory output, since this would politicize decisions that were efficiently dealt with as technocratic in the past, and to the EU's pluralist throughput, by reducing the influence of minority interests not effectively represented through majoritarian institutions. Not to increase institutional input, however, fails to respond to the increasing dissatisfaction of citizens with regulatory outputs and their distrust of EU pluralist and rules-based throughputs, for which no amount of EU narrative outputs or deliberative throughputs can make up. To promote the creation of a virtuous circle, one might instead politicize carefully, say, by moving to more partisan politics with primaries for candidates for Commission President as leaders of the largest left or right parliamentary party groupings,

and then forming German-like grand coalitions. The resulting increase in representative and deliberative input might lead citizens to be more accepting of the EU's pluralist throughput and regulatory output – so long, of course, as these are now genuinely more in the shadow of EU politics. But this, in turn, assumes adjustments in output policies – to become more attuned to substantive legitimacy issues – and throughput rules – so that unanimity and uniformity do not thwart representative input.

The democratic trilemma with regard to output legitimacy is even more complicated, as is any solution. Here, just maintaining let alone increasing regulatory output can be problematic when EU policies clash with deeply legitimate national social practices and values, while more constructive output debate about such policies may only serve to delegitimate them even further in the eyes of the most affected citizens. And this necessarily undermines any kind of constructive output identity-building along with diffuse citizen input support, especially in the absence of any attempt at legitimizing narrative output by national leaders. More generally, any increase in the output of non-majoritarian institutions also necessarily reduces the space for input from majoritarian institutions and deliberations and throughput via minority access and deliberation. The only way out of this aspect of the trilemma toward a more virtuous circle is not just more and better output discourse and narratives as well as greater representative input to lengthen the "shadow of politics" but also remedies involving throughput, to change the institutional rules that put regulatory output beyond the reach of representative and deliberative input or pluralist and deliberative throughput.

Finally, the democratic trilemma also affects throughput. If one increases pluralist throughput, this could effectively decrease not just the EU's output effectiveness and its input representativeness but even their throughput accountability. And yet, if one does not increase access to minority interests in this transnational democracy of over 500 million citizens, majoritarian representative input is certainly not to be perceived as legitimate by large numbers of citizens. This is not only because their interests are not reflected in that majority but also because the EU as a whole lacks the output-built, input-required community identity that ensures that majority outcomes are seen as legitimate. Increasing pluralist throughput could therefore improve output acceptance at the same time that reforming the unanimity and uniformity rules might help with input as well, by enabling the majority demands to work their way through the process. Better rules-based throughput, however, whether by way of greater transparency and accountability or even an end to the unanimity rule and uniformity ideal, is not likely to mobilize citizens or to build the identity and community necessary for diffuse citizen support. All it can do is not demobilize citizens, by avoiding corruption scandals or by facilitating decision-making. Only by increasing representative and deliberative input and/or improving regulatory and discursive output more positive citizen mobilization and identification is likely to occur.

Any recommendations for the reform of the EU have to face up to the democratic trilemma. To turn the democratic trilemma into a virtuous circle demands both leadership and imagination, with innovative institutional reform ideas along with persuasive discourse and deliberative interactions. What is clear is that the problems the EU faces with regard to democratic legitimacy are such that it cannot stand still – either it tries to do more to create win-win solutions across output, input and throughput practices and constructions or the interaction among legitimacy mechanisms will become increasingly a zero-sum game with a downward spiral for the EU's legitimacy.

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