1. The Quest for Legitimacy in the European Union

It is a truth universally acknowledged that a European Union in possession of increasing powers must be in want of legitimacy. At least this is what seems to be the case if one has a look at the scholarly attention which has now been directed towards this subject for more than a decade. Of course, the debate has been evolving. Reflections on a democratic deficit and Europe's possible *Staatswerdung* have been gradually turning into debates on good governance, *finalité*, and a European constitution. There is a less visible but important thread running through these discussions which points to an essential question of political theory: the quest for viable mechanisms to legitimise European rule. Hence I will start my analysis by asking how we might define legitimacy. After having established the theoretical terms (1.1.) I will then turn to the different dimensions of the Union's legitimacy (1.2.) and eventually discuss the quest for legitimacy in the European Union (1.3.).

1.1. Parameters of Legitimacy

Legitimacy is too complex a phenomenon to be analysed in all its different aspects, world-wide occurring types and concepts. Any attempt to make general statements on legitimacy aimed at being applicable to all possible types of social organisation would, therefore, generate very broad and insufficiently concise findings. Hence I will only deal with the notion of legitimacy as it has been developing in Europe since the emergence of the modern state because today's quest for the legitimacy of the European Union is taking place on these grounds.

In his reflections on a Social Contract, Rousseau starts out with a rather simple, yet fundamental observation:

> The stronger is never strong enough to be forever master, unless he transforms his force into right, and obedience into duty. [...] Let us agree, then, that force

does not make right, and that one is only obliged to obey legitimate powers. (Rousseau 1997: 43-4; I, 3)

Typically for his time, Rousseau defines legitimacy in terms of obedience. Which kind of authority can rightfully claim to be obeyed? Under which conditions is there obligation to follow the ruler? Does a right to resistance exist, and how should it be justified? Rousseau's Social Contract, first published in 1762, provided a radical answer to a centuries-long quest for legitimacy and good societal order during the early modern period. Had Rousseau lived during the Middle-Ages, his answers would have been derived from fundamentally different assumptions on the nature of human existence and the justification of authority. But on the verge of the modern era it gradually became accepted that men's existence is defined by rationality, no longer by God: *cogito ergo sum*, as René Descartes put it, I think, therefore I am. This new conception represented a fundamental break with the past. It severely affected the concept of truth that had been central to medieval thinking.

Truth was no longer conceived as pre-existent but could only be defined through man's rational understanding. As a result, authority could no longer be legitimised on the basis of values and ends which were believed to be true. Truth lost its universal validity to serve as a basis of social order and authority. The question of legitimacy could no longer be answered with absolute certainty. The essence of, or the reasons behind, legitimacy would no longer constitute the basis of its definition. Consequently, the quest for legitimacy gained a new dimension which was unprecedented in its radicalism (Luhmann 1997: 24). Gradually, rule came to be exercised on the basis of authority as claimed by the doctrine of *auctoritas non veritas facit legem*. This idea arguably found its most articulate expression in Hobbes' construction of the absolutist, power-absorbing Leviathan who alone, Hobbes argued, could guarantee the maintenance of societal order (see 2.4.). What aggravated the erosion of legitimacy as a normative concept of truth was the simultaneous emergence of the modern state during which the medieval corporative order came to be gradually replaced by a hierarchically

organised, territorially defined central authority. Hence, during the early modern period legitimacy was under double strain. It lost its traditional basis. At the same time its frame of reference altered substantially. Authority changed its foundations as well as its nature.[1]

At the beginning of the 20th century, as rule had become increasingly rational and bureaucratic, Max Weber attempted to grip the theoretical concept of legitimacy under the changed conditions of the modern state. He developed an argument which set the standards for any subsequent discussion. Weber starts out his reflection with the assumption that one can distinguish between four different basic types of social action: traditional, affectual, instrumentally rational, and value-rational (*zweckrational* and *wertrational* in Weber's words) (Weber 1978: 24ff.). According to Weber, these types of social action lay the foundations for different types of legitimate validity in a given social order. The 'bases of legitimacy' (*Geltungsgründe*) are grounded on either tradition, emotional or value-rational faith, or legality (*ibid.* 36ff.). In a last step, Weber infers from the four possible bases of legitimacy three 'pure' types of authority: legal, traditional and charismatic authority. The validity of their claims to legitimacy are based respectively on rationality, tradition or charisma (*ibid.* 215ff., more detailed see Weber 1952). Weber defines *legal authority* as based on positive enactment as found in bureaucratic rule. The central assumption is that any rule may be established or abolished as long as this is done on the basis of positive enactment.[2] *Traditional*

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[1] It has to be borne in mind that these changes, as fundamental as they appear to be in theoretical terms, took several centuries to become the concepts as we see them today. The enlightened vision of mankind certainly did not automatically include peasants, not to mention slaves or women. Even though the core idea has been formulated centuries ago, it took until today to establish the radical claim that all individuals are bestowed with rational capacities. Similarly, the modern state did not emerge within one or two generations. Only its foundations were laid in the early modern period, particularly the characteristics of its organisational mode and its ideological justification.

[2] '*Legale Herrschaft* kraft Satzung. Reinster Typus ist die bürokratische Herrschaft. Grundvorstellung ist: daß beliebiges Recht durch formal korrekt gewillkürte Satzung geschaffen und abgeändert werden könne' (Weber 1952: 106, emphasis original).

authority is established on the basis of the belief in the sanctity of the traditional order. The communitarised corporate group functions on the basis of a 'master' who gives orders to his 'subjects' which are implemented by 'servants'.[3] Finally, *charismatic authority* is based on devotion to a leader and the belief in his miraculous endowment (Weber 1952: 106ff.).[4] It has to be borne in mind that Weber's 'pure' types of authority are not be found as such in reality. Rather each political system is based, to varying degrees, on portions of each type. The table below summarises the Weberian argument:

Types of Social Action	Bases of Legitimacy	Pure Types of Authority
Instrumentally rational	Positive enactment (*Satzung*)	Legal authority
Value-rational	Faith	
Affectual		Charismatic authority
Traditional	Tradition	Traditional authority

Table 1.1. Legitimacy according to Weber
Adapted from Winckelmann 1952: 36

Substantial criticism has been levelled at Weber's typology. The first problem is constituted by his premise that a typology of different forms of authority can be inferred from different notions of legitimacy. As this distinction has strongly influenced Western political thinking, post-Weberian research on legitimacy tends to be captive to drawing up new typologies and refining existing ones (see Kielmansegg 1971: 374ff.). Second, Weber ignored the social pre-conditions of authority (Luhmann 1997: 28ff.). These

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[3] '*Traditonelle Herrschaft*, kraft Glaubens an die Heiligkeit von jeher vorhandenen Ordnungen und Herrengewalten. Reinster Typus ist die patriarchalische Herrschaft. Der Herrschaftsverband ist die Vergemeinschaftung, der Typus des Befehlenden der ,Herr', die Gehorchenden die ,Untertanen', der Verwaltungsstab ,Diener'. Gehorcht wird der Person kraft ihrer durch Herkommen geheiligten Eigenwürde: aus Pietät' (Weber 1952: 109, emphasis original).

[4] '*Charismatische Herrschaft*, kraft affektueller Hingabe an die Person des Herrn und ihre Gnadengabe [...]' (Weber 1952: 113, emphasis original).

criticisms are indeed important and should be borne in mind. But there is more to Weber than his failure to understand the social foundations of political orders and to differentiate between ideas of legitimacy and forms of authority. Most importantly, Weber does not conceive of legitimacy as an entirely normative concept but stresses the fact that legitimacy has to be *perceived* as such by those subjected to the rule. Thus, the answer to the question as to whether or not a political system is legitimate ultimately hinges on the subjects' *belief in legitimacy*:

> Action, especially social action which involves a social relationship, may be guided by the belief in the existence of a legitimate order. The probability that action will actually be so governed will be called the 'validity' (*Geltung*) of the order in question. (Weber 1978: 31)

Following Weber, the subjects' belief in legitimacy has to correspond with the rulers' *claim to legitimacy*. The overall justification of authority determines its exercise which might vary to a large extent in scope, extent, and form (see Winckelmann 1952: 41, 214). Any modern order needs to be based on both instrumentally rational as well as value-rational considerations. Accordingly, the state functions as an incarnation of ideas: 'der Staat als Konkretisierungspunkt von Ideen' (v. Kempski, quoted in Winckelmann 1952: 55). Thus, the justification of authority is more than sheer philosophical speculation but a *conditio sine qua non* for the subjects' belief in legitimacy. It defines the relationship between rulers and ruled. Conversely, as long as these values are not broadly accepted and believed in, they cannot serve *per se* as bases of legitimacy (Winckelmann 1952: 48ff.). Finally, ideas of legitimacy can only gain validity in a given social and historical context. As such they have to be defended against different values and ideas over time. The construction of legitimacy constitutes an 'assignment' to the exercise of rule.

Subsequent writings can be placed somewhere on the continuum between the normative ideas of legitimacy and the empirical belief in legitimacy, be it authors convinced of the centrality of discursive process (Habermas), of the idea that protest and deviation can be absorbed through process (Luhmann), or those who understand

legitimacy in more empirical terms (Easton). Suffice it here to underline that the tension between norms and facts always remains. It has become clear over time that the question of legitimacy is too complex to entirely understand by means of one theoretical approach. In general, given that legitimacy ultimately hinges on the subjects' belief in legitimacy, it cannot be ascribed from an external vantage point, by either academics or by Eurocrats. Moreover, legitimacy cannot be measured on scales. There is no 'one houndred per cent legitimate' political system, and no absolute measure of legitimacy but a host of different, sometimes even contradictory, theoretical yardsticks.

Drawing on Weber, we are, however, able to define certain dimensions of legitimacy: a system's legitimacy is based on both ideas of and the belief in legitimacy; ideas of legitimacy need to be defended and actualised over time; and legitimacy must be seen in its context, its particular social and historical setting. In the remaining part of this chapter I will, therefore, sketch out these dimensions of legitimacy for the European Union. In particular, the underlying ideas of legitimacy of European integration (1.2.1.), the actual state of the Union (1.2.2.), and the support for European integration (1.2.3.) will be described.

1.2. Dimensions of Legitimacy of the European Union

1.2.1. Ideas of Legitimacy of the European Union

Legitimacy is always linked to basic ideas that justify a specific type of rule. The current European Union would remain misunderstood without consideration of the war-stricken past of the European nation states, which climaxed in two devastating World Wars during the first half of the 20th century. Hence European integration was originally principled by the idea of building institutions with the help of which the nation states' aggressive sting could be rendered harmless without having to dismantle the nation state as such. This idea also contained the vision of a Europe of its peoples, guided by future

social togetherness and solidarity. It was only the means of integration that were supposed to be functional and economic. This post-war dream is made explicit in the preamble of the ECSC Treaty, signed in 1951, of which the fourth and sixth consideration state:

> Recognizing that Europe can be built only through practical achievements which will first of all *create real solidarity*, and through the establishment of common bases for economic development.
>
> Resolved to substitute for age-old rivalries the merging of their essential interests: to create, by establishing an economic community, *the basis for a broader and deeper community among peoples long divided by bloody conflicts*; and lay the foundations for institutions which will give direction to a destiny henceforward shared. (emphasis added)

Thus peace, prosperity, and solidarity are the original core ideas that legitimise European integration. Thereby peace and prosperity are not seen as ends in themselves but as a means to open up a happier future for European societies. Over the years, another idea of legitimacy joined the basic ones. If nation states wanted to secure their capacity to act they increasingly had to pool their sovereignty. The European institutions in place offered a suitable framework for becoming active together. Hence, channelling problems connected to globalisation through established mechanisms of European integration is a further core idea of EU legitimacy.

In sum, two distinct bases of validity of European rule can be inferred from the ideas of legitimacy. First, European integration derives its legitimacy from building *cohesion*, in other words: to create 'a broader and deeper community' or 'an ever closer union among the peoples of Europe', as stated in the respective preambles of the ECSC Treaty and the TEU. Second, European integration derives its legitimacy from generating a *European surplus* both in terms of efficiency and quality through the Union's capacity to make possible solutions to common problems that cannot be elaborated at national level alone.

1.2.2. The State of the Union

Deepening and widening are the two basic dimensions of the evolution of European integration. Both have gained unforeseeable momentum over time. With regard to the Union's geographical extension, enlargement has invariably featured on its agenda. To date, the Community has had to cope with several enlargement rounds. After the first enlargement in 1973, when Britain, Denmark and Ireland joined the Community, it has successively grown from nine to 15 member states.[5] After the end of the Cold War the Union found itself confronted with a host of applications for membership, mostly from Central and Eastern European Countries. From 1 May 2004, the Union will count 25 member states while accession is still being negotiated with Rumania and Bulgaria that may join the Union in 2007.[6] Hence, in the near future, the Union will most likely consist of 27 member states and may even be enlarged further in the medium or long term.

At the beginning of the 21st century, the founding fathers would hardly be able to recognise the Union as the outcome of the European Communities. The EU is characterised by a much larger cultural, linguistic and social heterogeneity as well as disparity in terms of wealth and population size as it was originally designed for. The same holds true for the European decision-making processes. These were made to accommodate the interests of six member states, or 185 million people. From 2004, they will have to function with 25 member states, bringing together 450 million people. Thus, enlargement poses an enormous burden on the Union to keep building cohesion and to sustain its capacity to act through efficient decision-making. Presumably, the ongoing enlargement rounds will change the face of the Union in such a fundamental way that we can barely imagine how it will look like. It is unclear whether, and how, the Union will function on the basis of even larger political, social and economic

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[5]   Greece in 1981, Portugal and Spain in 1986, Austria, Finland, and Sweden in 1995.

[6]   In 2004 the following states join the EU: Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Slovakia and Slovenia.

heterogeneity, and how it will deal with its new size and higher degree of complexity. To some it seems already evident that 'the challenge of enlargement involves a break with the past' (European Commission 2000d: 5).

The deepening of European integration is no less stunning than the widening. Within fifteen years, from 1986 to 2001, there have been four Treaty revisions[7] that account for a substantial change in the construction of European integration, a considerable extension of the Union's scope of action, and the intensification of European policies. Overall, the European integration process has shifted from an Economic Community to a political Union.

The Maastricht Treaty created a European Union that is imagined as the roof uniting three constituent pillars: the European Community, the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The same Treaty also established a Union citizenship that is granted to those who have the citizenship of the Union's member states. Hitherto citizens had an odd standing in the Economic Community, as they were mainly conceived of as member state nationals who were entitled to enjoy the blessings of the common market. The *Marktbürger* - as Ipsen framed it in the 1960s - was by no means a person in the sense of the *Staatsbürger*. The status of individuals under Community law was not based on the concept of an integral personality. Rather, member state nationals were granted liberties primarily to attain economic goals (Ipsen 1964, Grabitz 1970). Against this background, EU citizenship constitutes a crucial step away from an economic Community that served the national *Marktbürger* to a political Union that is based on citizens.

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[7] The *Single European Act* was signed on 17 and 28 February 1986 and entered into force on 1 July 1987. The *Maastricht Treaty* was signed on 2 February 1992 and entered into force on 1 November 1993. The *Treaty of Amsterdam* was signed on 2 October 1997 and entered into force on 1 May 1999. The *Nice Treaty* was signed on 26 February 2001 and entered into force on 1 February 2003.

At the same time, the representation of European citizens has gained in importance. Since the Single European Act (SEA), the European Parliament's powers have been extended considerably. Most notably, it has become a co-legislator alongside the Council in many policies fields. On the other hand, the Council accepted applying Qualified Majority Voting (QMV) in an increasing number of cases. Overall these changes substantially altered the power balance at the European level (for more details see chapter four).

On the other hand, Union policies increasingly limit classic national prerogatives and intersect with cultural or national identities. As a corollary, there has been a growing politicisation of Union policies. This concerns, *inter alia*, foreign policy, home affairs and monetary policy where the European integration process has started to deeply affect core areas of national policies. But also areas that, at first sight, appear to be purely economic policies turned out to have an important non-economic impact, such as the completion of the single market, competition policy, or world trade. The ramifications of the single market project, in particular, are easily underestimated. Indeed, if one takes into consideration that 'man's economy, as a rule, is submerged in his social relationships' (Polanyi 1957: 46) they amount to a cultural revolution. Markets are deeply embedded in culture and identity. Hence, standardisation and the opening up of domestic markets may in some cases heavily affect identity by touching upon long-standing regional and national traditions. The way cheese is made and beer is brewed is by no means a purely economic question. Nor does this hold true for the way labour and public administration is organised. Competition policy further reinforced the non-economic impact of the single market. In particular, the liberalisation of telecommunication, public transport, or the national postal services challenged the concept of the scope and extent of public services. Issues of world trade have equally grown in importance. Over the years, the Common Commercial Policy has come to include ever more policy fields such as public procurement and technical barriers to trade, and more recently questions of investment, competition, environment, labour

standards, and sustainable development. Trade policy has left the realm of technical questions and now increasingly intersects with domestic regulatory policies. Consequently, in the 1990s external trade policy has seen a sharp increase in its politicisation.

Integration is, however, still proceeding along the lines of functional integration. Meanwhile economic integration has reached a stage from where it is definitely spilling over into more and more social and political arenas. For example, it is evident that convergent economic and financial policies necessitate a European social policy. Yet, in a less tangible way, the bases on which European policies are premised have an important economic slant. Since the SEA, powers for new policy fields have been bestowed upon the Community. Many of these policies are defined within the framework of economic integration: young people and women tend to be primarily seen as human resources, culture as an economic factor or even as public relations programme. The controversy surrounding the Austro-German book price-fixing agreement demonstrates that it is difficult within the framework of economic-functional integration to find a political solution that balances the objective of open competition against that of the protection of cultural goods.

Moreover, in many policy fields a stage has been reached that necessitates a broader public consensus about the general definition and direction of any given policy. For example, the Schengen regime has created the need for debate on the frontiers of Europe. The definition of borders presupposes a discussion on who is 'in' and who will be 'out', an issue that taps deeply into identities. Rich European countries have to find criteria for the inclusion of some of their poorer neighbours and the exclusion of others. The field of external trade necessitates another discussion on the potential roles of the EU in the 21st century. Smith and Woolock (1999: 456ff.) see 'five types of ambiguity' from which a choice has to be made as to whether Europe wants to be a fortress, a world partner, a bridge-builder, a bloc-builder, or a globalising force. Here, as in many other fields, the debate has just begun and the road to solutions is likely to be a bumpy one.

In sum, the Union has been in a constant state of flux over the past two decades. European integration has been proceeding on the route from an Economic Community to a political Union at high speed, while preparing itself for a major enlargement round. Overall, the process of deepening and widening came to put into question the very construction of European integration. The Nice Intergovernmental Conference (IGC), the Charter of Fundamental Rights and the ongoing Convention on a European Constitution serve the overall need to match the reality of a political Union with a predominantly functional approach to European integration and, simultaneously, make European institutions ready for accommodating the new member states and their peoples. Its workings have to be adapted to a political Union that is suited to bringing about common approaches to an increasing number of common problems, while being faced with the task of integrating new member states. To put it differently: the Union has to sustain its capacity to act *and* bring about a deeper community among the peoples of Europe under the present conditions of deepening and widening. Arguably, the process of European integration faces the most important challenge of its history.

1.2.3. The Citizens' Support for European Integration

According to Max Weber, legitimacy ultimately hinges on the subjects' belief in legitimacy. Empirically, legitimacy may be measured by support. As this holds true for the concept of legitimacy as a whole, support is not a dichotomous, but a continuous concept (Blondel et al. 1998: 6). Thus a state, regime, or organisation cannot be said to be legitimate or not. Rather support tells us something about them being more or less legitimate at a given point of time. Furthermore, it is useful to distinguish between general support for a governing body and the specific support that is granted to the exercise of rule. A state may enjoy widespread support while it is given very little support to get engaged in a certain type of activity.

Support for the European Union has been measured twice yearly by the Eurobarometer (EB) opinion polls since 1973. For *general support* three standard indicators are relevant to our context: the *membership indicator*[8] that measures the evaluation of the respondent's country's membership; the *unification indicator*[9] that measures the support for the European integration process; and the *dissolution indicator*[10] that measures the attitudes if the Union was to be scrapped. Overall these indicators can serve as a means to get an indicative picture of the general, 'diffuse' support (see Niedermayer 1995: 54-5). However, one should proceed with caution when drawing conclusions from the EB data, *inter alia* because the indicators measure different aspects of support, the categories of possible answers are not equivalent and, in particular with regard to the membership indicator, values may be biased because a positive answer may be regarded as socially desirable (for details see Blondel et al. 1998: 57-59 and 62, Niedermayer 1995: 54-56).

The membership indicator has been used continuously in the Eurobarometer polls. Usually, the media and general discussions on support for the Union refer to this indicator. Since the beginning of the 1980s a majority of Europeans considered their country's membership 'a good thing'. This value rose to an impressive high level of about 70 per cent after the end of the Cold War (1989/1990). However, since 1991 support for membership began to fall sharply. Until today the value hovers around 50 per cent, at times reaching an all-time low of less than half of the respondents (EB 58 (autumn 2002)). Taking only the membership indicator into account, support for the European Union can nevertheless be regarded as 'substantial but far from overwhelming' (Blondel et al. 1998: 59). The rosy picture that is often inferred also

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[8] Question: 'Generally speaking, do you think that (our country's) membership of the European Union is...?' Possible Answers: 'A good thing', 'A bad thing', 'Neither good nor bad', 'Don't know'.

[9] Question: 'In general, are you for or against efforts being made to unify Western Europe? Are you...?' Possible Answers: 'For – very much', 'For – to some extent', 'Against – to some extent', 'Against – very much', 'Don't know'.

[10] Question: 'If you were told tomorrow that the European Union had been scrapped, would you be...?' Possible Answers: 'Very sorry', 'Indifferent', 'Very relieved', 'Don't know'.

stems from the fact that the percentage of those who regard their country's membership as 'a bad thing' never reached more than 20 per cent (EB 58 (autumn 2002)).

The unification indicator asks more directly for the support for European integration as such. Regrettably, the question was last asked in the spring 1996 poll, so that we have no data for the most recent period. Still, some general features are worth noting. Since the 1980s, between 70 and 80 per cent of respondents were very much, or to some extent, in favour of unification. Similar to the membership indicator, this value reached an all-time high after the end of the Cold War and an all-time low in the mid-1990s (69 per cent in 1995-6) (EB 45 (spring 1996)). At first sight, the unification indicator suggests a very positive impression of Union support because, even in critical times, a stable majority of Europeans seems to favour integration. However, when looking at the details support for integration appears to be less strong. First, the proportion of strongly favourable answers ('very much for') has decreased from about one-third in the mid-1980s to about one-fifth in 1996. Second, opposition to the unification of Europe rose from five per cent in 1970 to 24 per cent in 1996, while the proportion of 'don't knows' declined (EB 45 (spring 1996), Blondel et al. 1998: 59).

From the three indicators, the dissolution indicator tells us most about the intensity of support (Blondel et al. 1998: 61). Since 1995 this question has been asked on an irregular basis but there is sufficient data, the latest of which dates from spring 2002, to get an overall picture about its development. The proportion of respondents that would feel 'very sorry' if the EU was scrapped has invariably been rather small. From the beginning of Eurobarometer polls until the 1990s the percentage of those who would regret dissolution hovered around 40 per cent. With regard to the development from the end of the Cold War until today, the dissolution indicator displays the same general feature than the membership and unification indicators. In the early 1990s the support value rose temporarily to an all-time high of 50 per cent and afterwards fell sharply to an all-time low of 28 per cent in 2001. In spring 2002 it reached 34 per cent. This data shows that, at present, only about one-third of European citizens would regret

the dissolution of the European Union. Looking at the other reply categories to the dissolution question further qualifies the general picture of widespread support. Opposition (i.e. those who would feel 'very relieved') is generally weak, mostly hovering around 10 per cent. Yet the percentage of those who declare themselves to be indifferent or simply do not have an opinion on the matter is very high, amounting to a proportion of between two-fifth and one-half of the respondents (from 1973-2002). For the entire period between 1973 and 2002 (with the exception of 1991), the majority of the European citizenry would have been invariably be either very relieved, indifferent or without any opinion if the Union had been dissolved (EB 39 (spring 1993), EB 57 (spring 2002).

Taking the Eurobarometer indicators under investigation together we get the overall picture that support for the European Union is widespread while openly voiced opposition is fairly limited. However, support appears to be superficial and therefore fragile. There is a large group of people whose support is not substantial because they are either indifferent or do not adopt any stance in respect to European integration. This impression is confirmed by the comprehensive study of Blondel et al. on EU support. Though their findings are mainly based on data from spring 1994 (EB 41), they are still pertinent to the current context since the respective values have not changed substantially since. Blondel et al. conclude:

> In short, the legitimacy of the European Union, understood as support among the mass public for this particular form of governance, is lower and more fragile than is often assumed; indifference, apathy, and ignorance are widespread and real commitment to integration is a minority pursuit. Perhaps the single most striking characteristic of European attitudes in the broad sense is lack of involvement. (Blondel et al. 1998: 240)

These findings do have important consequences for research on specific support for certain European policies. Though EB polls ask a variety of questions that tap the specific support for actions taken at European level, the phrasing of the questions

seriously puts the outcome of these surveys into question. Usually, respondents are shown a range of policy fields and are asked to attribute to them what they deem the appropriate level of government (national or European) should be. However, when asked differently,[11] it turns out that more than 80 per cent either have not thought about the allocation of powers to the European Union or that their opinion on that matter is derived from a general feeling rather than from their opinion on specific policies (Blondel et al. 1998: 65-9). This picture is consistent with the findings of the Blondel et al. study on the basic knowledge about EU affairs, according to which at best one-third of European citizens can be said to have an at least minimal adequate knowledge (*ibid*. 92-9). With regard to specific EU support they reach the following conclusion:

> While in principle the legitimacy of the EU decision-making may be bounded, in practice this sophisticated perception does not percolate down to the mass of people on whose behalf the decisions are being made. In short, the real constraint on this aspect of EU legitimacy is not opposition but ignorance and apathy. (*ibid*. 72)

In sum, the EB data suggests an overall picture of EU support that is widespread but fragile and characterised to a large extent by indifference, ignorance, and lack of involvement.

1.3. Assessing the Quest for EU Legitimacy

Given that legitimacy ultimately depends on belief in legitimacy, the following discussion on the quest for EU legitimacy will be guided by the general patterns of support for European governance. First, it will be argued that EU support is to a large

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[11] Blondel et al. used a set of subsequent questions. First it was asked: 'There has been a lot of discussion recently about the European Union (European Community). Some people say that too many issues are decided by the European Union (European Community), others say that more issues should be decided by the European Union (European Community). Which of the following statements comes closest to your view?'. Possible answers were: 'Too many', 'About right', 'More should be decided at EU level', 'I haven't really thought about it', 'Don't know'. If the respondent did not reply with either have not thought about the matter or not know, it was asked whether the answer given was based on either a general feeling or whether the respondent had any specific issues in mind (Blondel et al. 1998: 68-9).

extent consistent with the original workings of European integration and may be, in addition, partly explained by some of its current characteristics (1.3.1.). In a second and third step, why widespread but fickle support does pose a problem under the present circumstances will be explained and whether the search for democratic legitimacy is suited to providing adequate solutions will be discussed (1.3.2.). Finally, I will propose another theoretical approach to the empirical problem of support, which is the category of representation as a lens of analysis (1.3.3.).

1.3.1. Workings and Characteristics of European Integration

We owe much of our understanding of the mechanisms of European integration to Lindberg and Scheingold. In the late 1960s they explained its basic parameters as follows:

> The birth of the European Community was [...] largely the work of political and technical elites. The scheme was devised and elaborated by technical elites and presented to the public only after compromises had been worked out among political leaders. [...] [T]he supranational system that has materialized continues to evidence this elitist bias. For the most part, the business of the European Community tends to be largely economic and consequently rather obscure. Tariffs, taxes, agriculture, cartels are very complicated subjects and, despite their intrinsic significance, not entirely comprehensible to the politician or interesting to the man on the street. [...] What this means is, of course, a shifting and rather limited clientele for Community institutions and once again a system primarily dependent on bargaining and brokerage among relatively small group of elites. (Lindberg and Scheingold 1970: 22)

Presumably, Lindberg's and Scheingold's description would read differently today as it would have to take into account the developments of the past three decades. Its central statement, however, would probably remain the same: the present European Union is still characterised by an elitist bias while European policies continue to be 'not entirely comprehensible [...] or interesting', 'despite their intrinsic significance' (see quote above). The European Communities were established with the objective of

undermining the nation-states' dangerous potentials by creating peace, prosperity, and a union among the peoples of Europe. To this end, integration was premised on the so-called Monnet method which entrusted the process of integration to European and some parts of national elites. The latter, it was assumed, would profit from integration and therefore pressure 'backward' national forces, thereby helping to overcome potential resistance. Consequently, the 'Brussels game' has been, and continues to be, dominated by Eurocrats and the respective national executive branches. The Monnet method was meant to work primarily on the basis of the fragmentation of national elites and the absence of genuinely European political parties, both of which would have been able to mount considerable opposition to the integration project. In the same vein, integration would occur almost unnoticed by national public spheres. Direct citizen involvement in Community affairs certainly was not central to Monnet's thinking. He stated:

> I thought it wrong to consult the peoples of Europe about the structure of a community of which they had no practical experience. (quoted from Blondel et al. 1998: 3)

This approach might appear as an inherent contradiction within the Monnet method because the ultimate objective of European unification has always been to create a community of peoples, as clearly stated in the preambles of the Treaties (see 1.2.1.). It is difficult to imagine how such an 'ever closer union among the peoples of Europe' could be created without the participation of these very peoples, and more significantly, while keeping them in ignorance. Yet one may argue that the Monnet method accounts, to a large extent, for the success of the integration project. However, it has nurtured a European political culture that conceives of citizens as a mass public that has to be convinced of but is not an active party to the integration project. According to the traditional elitist approach European leaders have a 'pedagogic duty' *vis-à-vis* the citizens. This view still shapes the thinking of many European decision-makers as is illustrated by a relatively recent article by Leo Tindemans in which he explains:

> [...] [w]e cannot blithely assume that the citizens will acquiesce in the cavalier adoption of integrationist strategies by our governments and parliaments. We must spell out what we are doing and why. [...] It is imperative that the European Union should better inform its people about its decisions and activities and about the reasons behind. (Tindemans 1998 : 140)

A further premise of European integration that is pertinent to explaining the patterns of support is the role of member states. The repeatedly lamented remoteness of the Union which in turn may also account for citizen's indifference and lack of involvement is at least partly due to the central position of member states within the construction of European integration. Member states are the 'masters of the Treaties'. And while they are thus the main providers of the Union's legitimacy, they are also its main beneficiaries in terms of legitimacy, inasmuch supranational cooperation enables more efficient policy making than would be possible at national level alone. It is part of the initial construction of the Communities that the member states 'use' them to fill their own 'legitimacy gaps' (see Neunreither 1976: 251).

At times, member state representatives point to the fickle foundations of the Union's legitimacy. In many cases they might do so in order to disguise claims that are motivated by national considerations rather than by the quest for a European common good. Hypocrisy in politics has not necessarily to be condemned. What is important here is that member states representatives can afford to do so, *inter alia*, because there are so few direct links between Europe and its citizens. In addition, Community acts are mostly implemented by the member states. This mechanism considerably increases the Community's capacity to act efficiently. On the other hand, it makes the Community almost invisible in the business of everyday politics for European citizens. Over time European rule has come to affect the peoples of Europe more directly, and in this sense it has become more discernible. Given the indirect implementation of EU law this may have produced a diffuse unease, yet without providing a focal point for voicing criticism or opposition. Overall the remoteness of European institutions serves the interest of

those who have the power to change the system of integration, for member state governments must have a 'natural' interest in remaining the primary frame of reference of the national citizenries.

Finally, the current state of the Union might also partly explain the overall patterns of EU support. Pufendorf once dubbed the Holy Roman Empire *monstro simile* to criticise its over-complex and decayed structures.[12] In a similar vein, a broader public understanding of, and knowledge about, integration is hampered by the difficulties in understanding the *monstro similis* European Union. Generally, the European Union does not fit into the framework of either an international organisation or a state, making it difficult even to scholars to conceptualise the Union.

> That an organization that is not a state can nonetheless possess so many of its salient characteristics offers a challenge to much conventional thinking about politics. Indeed, we believe that we need something like a Copernican revolution in our traditional political concepts if we are to comprehend the true nature of the European Union. (Bellamy and Castiglione 1998: 153)

More specifically, integration has been proceeding in a piecemeal fashion and has been in a constant state of flux for more than a decade. As a result, the Treaties and the structures of the Union are by now so complicated that even experts can hardly grasp the 'entire elephant'.

In sum, a superficial permissive consensus can be seen as consonant with the original idea of European integration. What is more, in order to prevent the mounting of opposition the Monnet method was not meant to built up substantial support. Rather integration was meant to work on a widespread acceptance of the leading ideas of

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[12] Pufendorf, using the pseudonym of Severinus de Monzambano, described the Holy Roman Empire as not fitting in any category of the Aristotelian state forms: 'Nihil ergo aliud restat, quam ut dicamus Germaniam esse irregulare aliquod corpus, & *monstro simile*, siquidem ad regulas scientiae civilis exigatur; quod lapsu temporum per socordem facilitatem Caesarum, ambitionem Principum, turbulentiam Sacerdotum ex regno regulari in tam malè concinnatam formam est provolutum, ut neque regnum, etiam limitatum, amplius sit, licet exteriora simulacra tale quid prae se ferant, neque exacte corpus aliquod aut systema plurium civitatum foedere nexarum, sed potius aliquid inter haec duo fluctuans'. (emphasis added; Monzambano 1667: 157)

preventing war and creating prosperity and solidarity so that a large number of people would say that they were in favour of European unification and that their country's membership was a good thing. However, originally integration was not meant to reach beyond that level where the public masses would begin to ask what European unification and membership entailed in concrete terms. Moreover, the details of European politics were not meant to be comprehensible to, and attract the interest of, a broader public as they were, and partly continue to be, predominantly technical in nature. Gradually, EU policies have become increasingly politicised which in turn may attract more public attention. Yet the understanding of EU policies is rendered difficult by the rather complex procedures of European decision-making that are located in an institutional environment different from the familiar national one.

1.3.2. The Quest for Democratic Legitimacy

Given that the patterns of EU support are largely consistent with, and presumably a result of, the workings of European integration, why should they then matter at all? In their analysis of the EEC, Lindberg and Scheingold also predicted that what they called the permissive consensus would only be weakened

> [...] if the Community were to broaden its scope or increase its institutional capacities markedly [...]. Under such conditions, integration might become relevant to new groups and begin to affect old groups in ways which would test the depth of their commitment to the European idea. (Lindberg and Scheingold 1970: 277)

As a matter of fact, the scope of EU governance was and keeps being extended considerably in geographical terms as well as in terms of its fields of activity. Against this background, insubstantial support may not be suited any longer to provide an organisation that has became a political Union with sufficient legitimacy. In this context, it has often been argued often that the European Union suffered from a democratic deficit. At the same time, the point of view is widely shared that the

insertion and extension of democratic elements would reduce the democratic deficit and thereby bolster the Union's legitimacy.

Since 1993, Eurobarometer opinion polls regularly ask a pair of questions on the level of satisfaction with democracy in one's own country and at the European level, that allow us to see the (alleged) democratic deficit in relation to attitudes toward the state of national democracy.[13] At first sight, the data seems to suggest that the state of EU democracy is perceived as deficient by the mass public. While the overall level of satisfaction with national and European democracy was fairly comparable until spring 1994 (EB 39-41), since autumn 1994 the overall satisfaction with the working of national democracy is clearly higher, the net difference ranging, up until autumn 2002 (EB 42-58), from nine to 19 per cent. However, one has to be very careful when drawing any conclusion from these data because the distribution of answers varies considerably among the member states. Moreover, in some cases the workings of democracy at EU level might be related to the view on the state of national democracy. Given the little common knowledge about the workings of the European Union answers may also be based on a purely imagined, or even desired state of democracy at EU level (Blondel et al. 1998: 76). The only striking feature of this data is the proportion of 'Don't knows'. Overall it is rather low when the question is related to the national level (ranging from two to five per cent), and rather high when related to the EU level (ranging from 12 to 21 per cent in the period from 1993 to 2002). In turn this feature would be consistent with the picture of support described above with regard to a high proportion of people who simply do not have any opinion on central EU issues. In short, the empirical data on the perceived state of EU democracy is open to different interpretations (see also Niedermayer and Sinnott 1995).

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[13] The questions are: 'On the whole, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in the European Union', respectively 'in (your country)? Possible answers are: 'Very satisfied', 'Fairly satisfied', 'Not very satisfied', 'Not at all satisfied', 'Don't know'.

Similarly, a normative view on the state of EU democracy, and more broadly, on the Union's democratic legitimacy, leaves ample space for different conclusions. There exist varying concepts of what constitutes a 'good' or 'full-fledged' democratic order. One might argue that the Union is sufficiently democratic because the Council, being the most important institution in power terms, consists of the representatives of democratically elected governments. Conversely, one might argue that the Union cannot be regarded as democratic as long as there is no parliament that represents the European people as a whole and has powers comparable to national parliaments. Here the nature of the Union comes in as a complicating feature, as the normative analysis of the Union's democratic legitimacy has to be based on an assumption with regard to the present and future nature of the Union. Will it fuse into a European state, is it a (quasi-) federation, or does it simply defy categorisation in the sense that the Union is an entity *sui generis*? Given the different starting points, the outcomes of the respective analyses must differ to a large extent. As a result, it is at times quite difficult to make sense of the wide range of deficits, deficiencies, and defects that are being debated.

Two qualifications should be made with regard to the expected effect of different criticisms and reform proposals on the citizens' belief in the Union's legitimacy. First, it is important to bear in mind that support depends on a general expectation that is directed toward a state, an institution, or a regime. Hence, it is only if a ruling body is expected to be democratic the absence of democratic devices may have an effect on support. In other words:

> [...] the legitimacy of an institution in a given field or area is enhanced by its democratic character if, but only if, there is a widespread belief that decision-making needs to be democratic with respect to that field or area. (Blondel et al. 1998: 11)

Second, assumptions on the causes of legitimacy that are reasonable in theory may be less significant with regard to their effect on the belief in legitimacy. Hence the insertion of new democratic elements in a political order has no automatic, nor necessarily a direct, effect on support. The European Parliament, for instance, has been

arousing expectations that it could not and still cannot meet. In particular, since the first direct elections European policy-makers have continued to assume that granting more powers to the Parliament would make the Union as a whole more legitimate (see also chapter four). Given the lack of counterfactual evidence, we cannot know whether the extension of Parliament's role and powers had an effect on either Parliament's or the Union's legitimacy. It does not, however, appear to be the case that a change in the EU institutional architecture to the advantage of Parliament has given the Union's legitimacy a remarkable boost that could have been measured by support, nor that it stopped the debate on the Union's (democratic) legitimacy.

On the whole, the legitimacy is a rather complex concept and its causes and effects are quite difficult to grasp. The debate on the Union's legitimacy has been further complicated by the very nature of this polity. As much it is at times cumbersome to reflect on the issue of European legitimacy, and as divergent as the results of these reflections may be, they are needed because the quest for the Union's legitimacy points to a fundamental concern: to enable European integration to cope with unprecedented challenges and to generate legitimate common action under rapidly changing circumstances. The principle ideas that legitimise European integration are to bring about a European surplus and to create a community among the peoples. The central question of this study, therefore, is how the Union can fulfil the assignments derived from its principle ideas of legitimacy under the present conditions in order to meet the theoretical pre-condition for that European citizens belief in its legitimacy.

1.3.3. Integration through Representation

Possibly the most widely used concept for analysing the Union's legitimacy is that of democracy. It is indeed an important element in the quest for the Union's legitimacy because democracy features prominently in the current European thinking on

legitimacy. However, democracy as a normative lens of analysis of EU legitimacy has some limitations. First, a choice needs to be made as to which conception of democracy should be reasonably applied to the EU context. This is no easy choice since there exist various different yardsticks as to what can be regarded as democratic. More importantly, any analysis based on the category of democracy necessarily has a significant blind spot for it cannot take into account those ruling bodies and fields of European policies that are neither democratic nor expected to be so. Finally, the contemporary overall conception of democracy has evolved simultaneously with the emergence of the modern state. It is therefore closely connected to, and embedded in, conceptions that cannot be applied to the European Union which lacks some central characteristics of a nation-state, most significantly the notion of a single European citizenry. Actually, most analytical lenses that have been used in the context of the legitimacy debate hardly get over the hurdle that the Union is one of a kind - an unprecedented, incomparable political entity. Studies in the field of European integration that are based on categories such as democracy, sovereignty, comparisons to the nation-state, or nation-building tend to have a blind spot as they cannot fully adapt to the categorical newness of the European Union.

Given these limitations I propose to use the concept of representation as lens of analysis. Representation is a concept of human thinking that is used as a device to legitimise rule. It is, therefore, an open and flexible concept that can be applied to various political and social settings and, thus, is not bound to the concept of the nation-state. Representation can be democratic in character, but in its essence it is neither democratic nor undemocratic. Rather, representation may take a number of different forms. Furthermore, representation enables the formation of a unity from a multitude. Therefore it brings about cohesion and enables a community to act. In this respect, the concept of representation is perhaps best suited to analysing the European Union. For the workings of representation correspond to the principle ideas of the Union's

legitimacy which, accordingly, needs to sustain its capacity to act and to create 'a broader and deeper community among peoples'.