

The Quest for EU Legitimacy: How to Study a Never-Ending Crisis

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European integration has transformed the conditions of political life in Europe. The powers of the European Union (EU), expanded progressively since the foundation of the European Communities in the 1950s, are without precedent or parallel for a political entity that is not a state. How has this power been established? How has it been turned into (relatively) legitimate authority? This essay explores the inevitable and ongoing dynamics of discursive construction and contestation involved in the exercise, establishment, and legitimation of political power.

The first section makes a case for approaching political legitimacy inductively, through interpretive, non-quantitative discourse analysis, and situates this line of inquiry in the literature. The second section provides a taste of the type of long-term discourse-historical narrative proposed, singling out a number of key positions, patterns, and shifts of the past six decades in the discourses of EU institutions and in member-state public spheres (specifically, but not exclusively, in large samples of newspaper articles covering the French and German debates on the Maastricht and constitutional treaties). The essay closes by asking what one might learn from this kind of discursive history of legitimation.¹

Political Legitimation as Discursive Struggle

The questions raised in this essay stem from the premise that the EU's quest for legitimacy is to a large extent a discursive contest—not only over how legitimate the EU is or is not, but also over what such a legitimacy might mean. In legitimating political power, or in questioning its claim to legitimacy, we develop and build on shared notions about the meaning of 'legitimate' power in this instance. Our convictions about legitimacy are the products of an obscure mix of beliefs, narratives, associations, passions, etc. (see Williams, 2005: 12-3). Through our interactions we constantly re-construct and re-contest this mix, determining what is plausible, what it makes sense to say, or what we consider to

¹ The essay draws on material presented in a nascent monograph manuscript that tells the story of the struggle for EU legitimacy from the 1950s to the failure of the constitutional treaty in 2005.

be true, obvious, commonsense. What is it that makes political authority and in particular the EU legitimate? What kind of phenomenon is the EU to begin with, and what is the nature of the challenges to which European integration is supposed to provide answers? Our ideas regarding these questions unavoidably pre-determine the extent to which we assess the EU as legitimate.

Promoting certain understandings over others is in the interest of whoever wants to exercise, challenge, or constrain power (see e.g. Walters and Haahr, 2005). After all, a certain degree of legitimacy in the eyes of those affected by political power is indispensable, if this power is to be exercised efficiently and to find compliance without coercion. In the context of European integration, moreover, a brand new political system was built from scratch. It had to be justified in its very existence as well as in the particular institutional shape it was given, at times against significant resistance. Thus, some legitimacy in the eyes of voters as well as decision-makers has always been vital to making integration possible, and to keeping it alive.

Much of the existing scholarship disregards this contested, socially constructed, and inter-subjective side of political legitimacy. On one hand, political philosophy and certain parts of political science approach legitimacy as an objective ideal. They treat political legitimacy as a normative quality of the authority in question and one against which reality can be measured—for example, as regards so-called “democratic deficits” in the EU’s institutional setup and decision-making processes, or the societal prerequisites of democracy. This type of account tends to be silent about the processes by which certain criteria rather than others come to be generally accepted as conditions of legitimacy. On the other hand, empirical social scientific accounts treat legitimacy as something in the eyes of the beholder, something people ascribe to a regime, leader, law, etc.

This kind of research is concerned with the extent to which people *de facto* accept political authority as legitimate, and the conditions and implications of this. The bulk of such work on social legitimacy looks at it in terms of crudely measured public opinion and political culture. It quantifies, categorizes, and causally

explains popular attitudes, often by attributing them to specific groups of people defined, say, by socio-economic bracket, nationality, or political partisanship. The European Studies literature on public opinion, more specifically, draws principally on the Eurobarometer series, which limits it to the questions asked in these surveys. It, too, has little to say about what “legitimacy” and “European integration” *mean* to respondents, and how such meanings come about and change.

In order to explore the interactive processes of symbolic, narrative, and argumentative construction involved in the legitimation political power—what one might call the discursive politics of legitimation—we have to study EU legitimacy in a different way. We need not so much compare groups of actors and their attitudes, but explore what they have to say—their discourses or ways of representing the world and, in relation to it, the EU and its legitimacy. What did legitimacy mean in various discourses; how did these discourses represent the EU and (the conditions for) its legitimacy; and on what grounds did they make them appear in a certain light? The method most indicated for investigating these questions is not content or frame analysis, which counts and contrasts relative occurrences of coded themes (see e.g. Medrano, 2003; Jachtenfuchs et al., 1998). Better suited for identifying and interpreting discursive patterns and their interplay is the close reading or in-depth interpretative discourse analysis of an eclectic mix of sources. This essay draws on official documents and newspaper articles, but a wide range of other sources including interviews and ethnographies could also be beneficial.

The kind of interpretive, qualitative research proposed above works in the space between purely theoretical and purely empirical scholarship on political legitimacy. It builds on accounts that have tried to integrate the two through the notion that acceptability on the basis of socially shared beliefs about legitimate authority is a central condition of legitimacy. In this line of reasoning, a political entity or arrangement is legitimate not because people believe in its legitimacy, but to the extent that it can be justified in terms of their common beliefs (Beetham, 1991: 11; Beetham and Lord, 1998) or of criteria that are ‘discursively

justifiable' (Habermas, 1973: 139, 73, Habermas, 1976; see also Freedon, 2005: 79, and Scharpf, 2009: 173).

Yet, both Habermas and Beetham derive the substance of such social or discursive justifiable legitimacy criteria *systematically*—that is, from what hypothetical actors would consider relevant standards and under which procedural conditions, taking into consideration philosophical or constitutional traditions. But what did EU legitimacy mean in *actual* discourses, and how did relevant discourses in various contexts evolve and interact? What explicit or implicit understandings of legitimacy were reflected, produced, and re-contested in particular debates? And, how did some come to prevail over others? These questions call for inductive, empirical rather than deductive, abstract work, and what follows is an overview of an exercise in this. It is a discourse-historical *tour de force* through a number of key discursive positions and developments in the discursive politics of EU legitimation. Particular attention is paid to how the official rhetoric of the EU institutions managed to shape discourses in the member-state public spheres—and the other way round.

Many of the discourses central to justifying the European Communities' creation and design still shape our imageries of the legitimacy of integration today.

A Discourse-Historical Narrative of EU Legitimation

Our view of the discursive quest for the legitimacy of European integration and its institutions is partly obstructed by the conventional story in the literature that up until roughly the 1990s the integration project was supported by a popular “permissive consensus,” which subsequently vanished. This hypothesis has led to a long neglect of early competing visions for the course and institutional setup of integration (see e.g. Parsons, 2003). More importantly though, it raises the question of *how* this narrative, that pretty much everyone agreed on integration, could be upheld plausibly.

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the European Communities' creation and design still shape our imageries of the legitimacy of integration today. Typical early legitimation patterns involved the related story lines that European integration was indispensable to securing peace and prosperity across Europe, and that there was a general consensus that it was advancing a European “common good.” A central discursive technique, influenced by functionalist integration theories and a modernist belief in social progress, was to de-politicize the stakes of EU politics: to paper over potentially contentious issues as much as possible, while initially focusing on seemingly uncontroversial, “non-political,” technical tasks (see Hansen and Williams, 1999; Walters and Haahr 2005).

At the same time of course, what form integration should take and to which overarching ends, was politicized early on. This politicization was illustrated dramatically by the empty-chair crisis of the 1960s, as well as in the context of the campaign for direct European elections (introduced in 1979), which put forward a much more radically democratic, federalist-inspired vision of integration originating in a democratic foundational act rather than functional cooperation (e.g. Dehousse, 1960 [1969]; see also Burgess, 2004: 32-3). The financial and economic crises of the 1970s furthermore gave a serious blow to the narrative that *economic* supranational integration of the type that had won the day, was *the* way to either prosperity or, especially given its potentially painful costs, to peace.

When the integration process seemed to come to a standstill in the 1970s and early 1980s, and popular support rates for integration and their countries' membership started dropping, the European institutions pledged to bring integration and its policies “closer to the citizens” (e.g. Commission, 1976). This motif has been a commonplace in Community official and national political rhetoric ever since. A concerted campaign

undertook to re-imagine the European Community as a “People’s Europe” (see e.g. Commission, 1985, Council, 1985, European Parliament, 1984; see also Shore, 2000 and Bee, 2008). It appealed to the people not only as “market citizens” but addressed them also as culturally embedded human beings with political and citizenship rights specific to the European Community. The idea was to make Europe present in people’s everyday lives through tangible benefits, symbols, and cultural policies. EU-official legitimization rhetoric henceforth hinged on “what the citizens wanted.” Nonetheless, the much-referred-to will of the people played an ambiguous role in this rhetoric; it was appealed to both as both an independent source of legitimacy and an object of manipulation. The Eurobarometer was introduced to bring Community action, but also communication strategies and rhetoric, into ‘dialogue’ with citizen needs and desires (Rabier, 2003). Overall, the People’s Europe discourses (like most post-Maastricht legitimization discourses) emphasized democratic responsiveness over democratic accountability or authorization. The people effectively remained objects and spectators, rather than authors, of EU action in these discourses.

A new act in the drama of the quest for EU legitimacy opened with the difficult and protracted ratification of the Maastricht Treaty in the early 1990s. The ratification controversies in the member-state public spheres (as reflected in the media as well as parliaments) revealed and reinforced radical changes regarding what could plausibly be said about the EU and its legitimacy. In most member-states the debates turned centrally around Economic and Monetary Union (EMU) and concerns for economic stability and strength. The French, in particular, feared the subjection of their economic and monetary policy capacities to a European Central Bank, and a newly dominant re-united Germany. The Germans for their part feared for their beloved national currency, which they stylized to a symbol of German wealth, power, and national identity—all threatened now by the European currency. On the whole, EMU and its effects continued to pose a central legitimization challenge throughout the Union and throughout the 1990s. A further key point of discussion that became firmly anchored in the discursive landscape through the Maastricht debates

was whether true democracy was at all possible at a Community-wide scale. A particular discourse confining the practice of citizenship and democracy, and “the political” outright, to the nation-state moved to the mainstream of French debate (see Lacroix, 2008). In Germany, too, increasingly loud voices questioned the possibility of meaningful democracy at a level above that of the nation on the grounds that there existed no European people. This no-*demos* thesis was to spread far and wide into the German and other member-states’ media and academic debates as well as to the legal spheres and continues to structure representations of the EU’s (potential for) democratic legitimacy.

Already at the time, political decision-makers and commentators widely agreed that the Maastricht ratification crisis signified a fundamental legitimacy crisis for the EU. In discursively managing this crisis, especially during and immediately after the ratification difficulties, the EU institutions framed this legitimacy crisis essentially in terms of the EU’s “democratic deficit.” This responded in part to the French and German critiques of EU democracy. In effect, however, official rhetoric focused so much on this issue that it often failed to look any further, sidelining more urgent public concerns with economic and monetary union or with what to do with the Central and Eastern European candidate countries.

In addition, official rhetoric effectively stretched the meaning of “democracy” in several waves. First, it redefined democracy in terms of openness and transparency (e.g. EP, 1995: 1, 4, Council, 1992: 4; see also Lodge, 1994; Walters and Haahr, 2005: 73-5). Second, it hailed subsidiarity as a way of bringing EU decision-making “closer to the citizens.” At times this principle of competence attribution was simply equated with ‘nearness’ or ‘closeness’ to the citizens (e.g. EP, 1995: 1; Council, 1992: 5). Third, in the medium and longer term the paradigm of ‘governance’ claimed to project a more ‘genuine’ and ‘authentic’ mode of democracy than parliamentary representation as practiced in the member-states, where citizens had become disenchanted with and lost faith in the democratic process (e.g. Commission, 2001: 32). This paradigm focused attention on the consultation

and involvement of civil society as opposed to the people or citizens. All this served to highlight ideals like responsiveness, openness, and closeness to the citizens as well as problem-solving efficiency through the consultation of organized interests over democratic control, representation, or accountability.

A final discursive shift to be mentioned here had its heyday later on in the 1990s and early 2000s. Institutional discourses and EU policies now tended to project Union citizenship, as well as the active promotion of a sense of a collective EU identity and constitutional patriotism as solutions to the EU's democratic deficit. In response not least to the no-*demos* critique, the focus shifted to strengthening the affective bond between citizens and the EU, and to creating the symbolic conditions for a European-wide *demos* and thence EU-level democracy. These discourses, policies, and reform attempts culminated not least in the project, and name, of the "EU constitution."

The official emphasis on democracy backfired at the end of the day, as indicated by the member-state public debates on the constitutional treaty. While democracy did play a crucial role here, it did so not in the senses advanced by the masterminds of official rhetoric. Across member-state public spheres, the reading was pervasive that the citizens who resisted to the constitutional treaty were finally throwing a spanner in the works of a process that, for decades, had been proceeding inexorably above their heads. In this image, the Dutch, French, and Irish No-votes were a statement of popular sovereignty. Beyond democracy, defining issues in the constitutional debates were, in the case of France, how liberal, versus social, the draft constitution would make the EU; whether it would destroy the French and other European welfare states; and whether it would leave room for political will to master supposed economic imperatives. In Germany, unemployment and 'wage and social dumping' as well as the relationship between market forces and the welfare state played a crucial part, the 2004 enlargement having provided the previously (virtually) missing link of unemployment with European integration. Across the Union's public spheres, moreover, debates on the constitutional treaty resounded with the big *finalité* question of where the

EU was or should be going, and where it would or should end.

As a whole, the debates on the constitutional and Lisbon treaties illustrated how democracy, citizenship, or a more legitimate EU continued to mean very different things in the member-state contexts than in the official parlance of the EU institutions; official discourses had failed to turn around the French, German, and other public spheres in how they used these terms. Public parlance there held on, in specific, to (incompatible) French national-republican tendencies or the democratic ideals implicit in many German critiques of the EU's democratic deficit. Besides, the constitutional project had been built on old aspirations surrounding, for example, Union-citizenship and EU-governance discourses to make EU citizens feel ownership and authorship over the EU and its actions through responsiveness to their concerns and efficient policy output. By contrast, the constitutional treaty, ratification procedures in many member-states, as well as the official rhetoric and wider public discourses around the project centered on popular participation, authorization, and control (and did so more than preceding legitimization discourses). In this sense, the constitution project's very focus on participation might have been influential in making it fail.

Structural Threads and Lessons

What lessons can be drawn from discursive legitimization histories of the type exemplified by the above examples? In terms of general patterns, structural tensions, or long-term developments underlying the outlined longstanding and ongoing struggle over EU legitimacy, four stand out with particular clarity.

First, over time representations of the EC/EU moved back and forth strategically between basing claims to its legitimacy, on the one hand, in its effective promotion of the welfare and common interest of the Europeans and, on the other, in its reflection of the wishes and preference of the citizens affected (see Scharpf, 1999). The history of EU legitimization was characterized by the constant juggling of the

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mutual dependence of input and output legitimation. Those trying to legitimate integration gradually had to learn that, if efficient performance was to grant the EU legitimacy in the eyes of its citizens, it had to be the right kind of performance: people had to feel reasonably represented by and in control of the guiding goals of integration and how they were defined. The recent difficulties in making grand reforms acceptable to citizens were just another chapter in this epic.

A second key line of conflict characterizing the history analyzed above is the push and pull between the de-politicization strategies and the gradual politicization of virtually all that is at stake in EU politics. The history of the struggle for EU legitimacy is the story of how it became gradually and increasingly undeniable that the stakes of EU politics are controversial, and of how legitimating patterns struggled, more or less successfully, to deal with this fact of political life. This process, too, culminated most recently in the controversies over the constitutional and Lisbon treaties. These episodes underlined that people were acutely aware that every solution in European politics necessarily creates winners and losers (see Føllesdal and Hix, 2006; Tsoukalis, 2005), and that denying the costs and conflicts involved in EU politics did more to de-legitimize the EU than to raise its legitimacy. The rhetoric, common in official discourses especially during the first decades of integration, of harmony, consensus, and the convergence of interests in a common European good had come to seem either removed from reality or outright cynical.

This second line of conflict was closely related to a third structural tension underlying the history of EU legitimation: the balancing act between bringing the people in and keeping them out. Finding the right equilibrium between taking the people on board, gaining their approval by making them feel ownership of the project and its implications, while simultaneously preventing them from obstructing certain integration

steps and processes (see e.g. Monnet, 1978: 93) has been a central challenge in legitimating the European project and its institutions. This structural tension was also reflected in the mentioned two-faced status of the popular will in the discourse of aligning the EU with “what the people wanted.”

A final structural thread of the story of EU legitimation is the long-term patterns in the communication between EU-level elites and national

public spheres, or in the imposition of certain discourses on each other. Failures in this were often due to the fact that official legitimization discourses proved out of tune with what would have raised the EU's legitimacy in the minds of its citizens. There was a constant risk that the 'rulers' in EU politics justified their rule in their own eyes more successfully than in the eyes of their subjects (see Barker, 2001). In trying to shape and appeal to each other, the different discursive levels typically took up specific discourses from one another—but then twisted and redefined them in more opportune ways. Yet, there were limits to how far a voiced concern could be redefined without losing its persuasive appeal (as indicated in the above reading of the redefinition of "democracy"). Regarding the discursive power balance between the EU-wide and the national (as well as the official institutional and the wider public-sphere levels), the recent reform stalemate effectively seems to have tilted the balance in favor of the national publics, where greater openness about the controversial stakes of EU politics is indispensable to any plausible claim to EU legitimacy.

Overall, the history outlined in this essay is

an illustration that political legitimacy is an issue that, inherently, cannot be resolved conclusively. By its very nature, it is re-contested and needs to be re-established continuously. In this light, the project of a retroactive foundational act of popular authorization through a European constitution was reaching for the stars. At a practical level, increasing the EU's legitimacy in the eyes of the citizens affected may require a change of paradigm in political style, rhetoric, and legitimization techniques—a shift towards a pragmatic recognition of the competitive nature of EU politics. EU politics needs to be recognized more explicitly as a forum of political competition, where conflicting and competing interests and visions are negotiated and deliberated. This calls not so much for new or reformed institutions as for a discursive climate, imagery and language through which people can make their concerns and preferences come to bear. Only recurrent and open disagreement, discursive contestation, and controversial debate can make the EU credible as a framework for cooperation on the basis of conflicting preferences, for these things are part and parcel of the never-ending re-constitution and re-contestation of political legitimacy.

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