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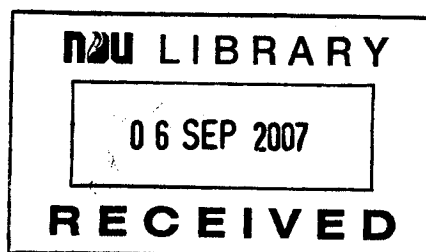
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M.A. Thesis

**DEMOCRACY IN THE EUROPEAN UNION:
PRACTICES AND EVALUATION**

By

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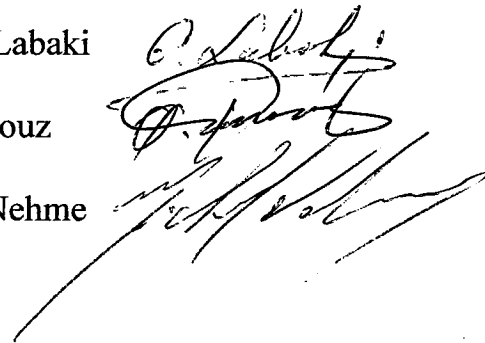
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CHAPTER 1

INTRODUCTION

1. The European Union: History and General Overview

The European Union (EU) is an intergovernmental and supranational union of 27 democratic member states. It was established under that name in 1992 by the Maastricht Treaty. However, many aspects of the Union existed before that date through a series of earlier relationships, dating back to 1951. Back then the union was known as the European Economic Community and was established by the Treaty of Rome in 1957 and implemented on 1st January 1958. This later changed to the European Community, which is now the first pillar of the European Union created by the Maastricht treaty, an amended form of the original Treaty of Rome. The foundation of the EU was due to the desire to rebuild Europe after the tragical events of World War II, and to prevent Europe from falling in a similar war again¹.

In 1950 the union started with six founding member states (France, Italy, Belgium, Western Germany, Netherlands, and Luxembourg). Then after the year 1973, fifteen new members joined the expanding union (UK, Ireland, Denmark, Greece, Spain, Portugal, Finland, Austria, Sweden, Cyprus, the Czech Republic, the Slovak Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, and Slovenia). However the EU has no official capital and its institutions are divided between three cities: Brussels which is considered the de facto capital, Strasbourg and Luxembourg City.

The Union currently has a common single market consisting of a customs union, a single currency managed by the European Central Bank (the Euro that was so far adopted by 12

of the 27 member states), a Common Agricultural Policy, a Common Trade Policy, and a Common Fisheries Policy. A Common Foreign and Security Policy was also established as the second of the three pillars of the European Union. The Schengen Agreement abolished passport control, and customs checks were also abolished at many of the EU's internal borders, creating a single space of mobility for EU citizens to live, travel, work and invest.

The most important EU institutions include the Council of the European Union, the European Commission, the European Court of Justice, the European Central Bank and the European Parliament. The European Union's activities cover all areas of public policy, from health and economic policy to foreign affairs and defense. However, the extent of its powers differs greatly between areas. Depending on the area in question, the EU may therefore resemble a federation (e.g. on monetary affairs, agricultural, trade and environmental policy, economic and social policy), a confederation (e.g. on home affairs) or an international organization (e.g. in foreign affairs)².

The members of the European Union have transferred to it considerable sovereignty, more than that of any other non-sovereign regional organization. As has been mentioned, in certain areas the EU begins to take on the character of a federation or confederation. However, in legal terms, member states remain the masters of the Treaties, which means that the Union does not have the power to transfer additional powers from states onto itself without their agreement through further international treaties. Further, in many areas member states have given up relatively little national sovereignty, particularly in key areas of national interest such as foreign relations and defense. Because of this unique

¹ European Union Official Website: http://europa.eu/abc/panorama/index_en.htm

structure most simply classify the European Union as a sui generis entity.

Issues currently facing the EU cover its membership, structure, procedures and policies.

They include the status and future of the new constitutional treaty; enlargement to the south and east; problems of financial probity and **democratic accountability**; relative economic viability; revision of the rules of the Stability and Growth Pact; and the future budget and the Common Agricultural Policy.³

2. The European Constitution

As stated in Articles I-1 and I-2, the Union is open to all European States that respect the member states' common values, namely: human dignity, freedom, democracy, equality, the rule of law, respect for human right, minority rights and free market

Member states also declare that the following principles prevail in their society:

pluralism, non-discrimination, tolerance, justice, solidarity, and equality of the sexes.

The aims of the EU, according to the TCE, are clear (Article I-3):

- Promotion of peace, its values and the well-being of its people
- Maintenance of freedom, security and justice without internal borders, and an internal market where competition is free and undistorted
- Sustainable development based on balanced economic growth and price stability, a highly competitive social market economy
- Social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child
- Economic, social and territorial cohesion, and solidarity among member states
- Respect for linguistic and cultural diversity

In its relations with the wider world the Union's objectives are:

- To uphold and promote its values and interests
- To contribute to peace, security, the sustainable development of the Earth

²European Union Official Website: http://europa.eu/abc/history/index_en.htm

³Wikipedia Online: http://en.wikipedia.org/wiki/History_of_the_European_Union

- Solidarity and mutual respect among people
- Free and fair trade
- Abolition of poverty and the protection of human rights, in particular the rights of the child
- Strict observance and development of international law, including respect for the principles of the United Nations Charter.

As mentioned in the EU official website, the Treaty establishing a Constitution for Europe (TECE), also known by the European Constitution, is an international treaty intended to create a new constitution for the European Union. It was signed in 2004 by representatives of the member states of the Union but was subject to ratification by all member states, two of which (France and the Netherlands) subsequently rejected it in referenda in 2005. Its main aims were to replace the overlapping set of existing treaties that comprise the Union's current constitution, to codify uniform human rights throughout the EU and to restructure decision-making.⁴

a. France's Referendum

On 29 May 2005 a referendum was held in France to decide whether the country should ratify the proposed Constitution of the European Union. The Constitutional Council of France ruled that the European Constitution could not legally coexist with the current Constitution of France. For that reason, a vote was taken to amend the Constitution of France in order to make the two documents compatible.

This amendment passed in an extraordinary joint session of deputies and senators at the Palace of Versailles on 28 February 2005, with 730 votes in favor and 66 votes against, with 96 abstentions. Both the ruling party and the Socialists supported the constitutional

⁴European Union Official Website: http://europa.eu/abc/panorama/howorganized/index_en.htm

amendment. Communist Party members were the only ones to vote against it.⁵

France's rejection of the Constitution left the treaty with an uncertain future, with other EU member states pledging to continue with their own arrangements for ratification.

3. The European Commission

The European Commission, whose headquarters are located in the Berlaymont building in Brussels, is the executive body of the European Union. Alongside the European Parliament and the Council of the European Union, it is one of the three main institutions governing the Union. Its roles are to draft and implement legislations; to represent the EU on the international level; and to act as guardian of the treaties which provide the legal basis for the EU. In those senses it can be described as the government of the EU.

However, the role of the European Commission has many parallels with the executive body of a national government.

The Commission consists of 27 Commissioners, one from each member state of the EU supported by an administrative body of about 23,000 European civil servants divided into departments called Directorate-General. Unlike the Council of the European Union, the Commission is intended to be a body independent of member states. Commissioners are therefore not permitted to take instructions from the government of the country that appointed them, but are supposed to represent the interests of the citizens of the EU as a whole.⁶

a. Criticism of the EU Commission

Many Europeans are skeptical and argue that the European Commission, its appointment

⁵ Wikipedia Online: http://en.wikipedia.org/wiki/History_of_the_European_union

and powers are behind the democratic deficit in the European Union. The European Commission is led by Commissioners who are proposed by national governments and approved by the European Parliament, rather than being directly elected by citizens. Although the Commission has no legislative power, it is the only body empowered to draft legislative proposals and has some executive responsibilities. According to the Commission's detractor this concentrates an unacceptable level of power in what is an unelected institution.

The alternative viewpoint on the Commission states that the policy areas in which it has power to initiate legislation are ill suited to an institution accountable to electoral pressures. In this respect the Commission has been compared with institutions such as independent Central Banks which deal with technical areas of policy that are of little electoral salience. In addition some defenders of the Commission point out that legislation must be approved by the Council in all areas (the ministers of member states) and the European Parliament in some areas before it can be adopted, thus the amount of legislation which is adopted in any one country without the approval of its government is limited.

4. The Council of the EU

This is the main decision-making body of the EU. It is made up of one government minister from each EU member state (which minister attends depends on what subjects are being discussed). The meetings are held four times a year in the presence of the European Commission president.

⁶ European Union Official Website: http://europa.eu/abc/panorama/howorganized/index_en.htm

The Council has six major responsibilities:

- Coordinate the economic policies of the EU's Member States
- Coordinate cooperation between national courts and police forces in criminal matters
- Approve the EU's budget, jointly with the European Parliament
- Develop the EU's Common Foreign and Security Policy
- Conclude international agreements between the EU and other countries or international organizations
- Pass EU laws (sometimes jointly with the European Parliament and sometimes on its own).⁷

In many policy areas, the Council takes decisions by “qualified majority vote”, a system under which each country has a number of votes roughly proportionate to the size of its population. However, the most sensitive issues like the changes to the EU Treaties, are decided by unanimous vote, giving each country the right of veto.

5. The European Parliament

The European Parliament represents the EU's citizens and its members are directly elected by them every five years. The 732 members who are elected from all 27 EU countries, do not sit in national blocks, but in seven political groups. Members of the European Parliament represent all the different views on the EU whether in favor of the Union or against it. Moreover, the Parliament is the only institution which meets in public and its debates, resolutions and opinions are published.

This Parliament has three main roles:

- Pass EU laws, jointly with the Council
- Exercise democratic supervision over the other EU institution
- Approve or reject the budget proposed by the Council.

6. The European Court of Justice

Located in Luxembourg, this court is made up of judges from each of the EU's 27 Member States and is responsible for ensuring compliance with EU laws. It is the Union's highest judicial authority. Its purpose is to ensure that Member States abide by the laws they agreed to in Brussels and that the EU law is interpreted and applied in the same way in each Member State.

7. The European Court of Auditors

Also based in Luxembourg, this court is made up of representatives from each of the 27 Member States and monitors the way the EU budget is spent. It is responsible for ensuring that EU funds that come from its taxpayers are properly collected and spent legally. Along is a European Ombudsman who deals with complaints from the EU citizens about alleged mistakes committed by the EU institutions.⁸

8. The European Central Bank

Based in Frankfurt, this bank is made up of national bank governors from the countries which have adopted the euro as their currency. The ECB is independent of Member States and the EU's institutions. It is responsible for monetary policy (like setting interest rates) within the euro zone and for managing the euro. Its Governing Council meets twice a month to assess monetary and economic developments, and discuss its other responsibilities.⁹

⁷ Ibid., p. 1.

⁸ Ibid., p. 2.

⁹ Ibid., p. 3.

9. Conclusion

In its current form, the European Union is a powerful organization which has acquired the competency to make collective decisions binding on all residents of the member states.

However, the existence of a democratic deficit within this Union has in fact been acknowledged for a long time, but – as will be argued in the coming chapters- the focus has usually been on the limited power of the Parliament. The standard against which the democratic status of the EU has been measured is the institutional framework of parliamentary democracy. This analytical perspective has led to a very narrow conception of the democratic deficit, and the focus has been almost exclusively on reforms designed to strengthen the power of the Parliament.

Therefore, it would be natural and appropriate that one should examine the degree to which such a powerful decision-making body is democratic. The aim of this thesis is to study democracy in the context of the EU decision-making and its governance beyond the narrow concept of the nation-state.

The existence of institutions for cooperation beyond the nation-state has proved important in solving pressing issues in different policy fields. These institutions present a problem because they are not especially democratic in nature. To be fair, modern representative democracies have also had their share of problems like implementation and maintenance of democratic practices. There can be no denying, however, that the new sites of governance beyond the nation-state are less democratic than the political systems at the national level. But is it possible to achieve what Robert Dahl has called a “third transformation”¹⁰, and to establish democratic practices beyond the nation-state?

¹⁰ Dahl, Robert. 1989. *Democracy and Its Critics*. New Haven: Yale University Press, p. 2.

The key questions that are addressed in this thesis are three: (1) How democratic is the EU's political system? (2) What are the main options for addressing the democratic shortcoming of the Union and how should the democratic deficit be addressed? (3) What are the possible ways for improving democracy within the European Union?

The first two questions are concerned with matters of the present and the third deals with issues of the future.

One should start by conducting a comprehensive study of how democratic the EU's political system is. Therefore, what is needed is a set of indicators that can be applied to the EU's political system. In order to assess the democratic qualities and failings of the EU, one must choose which criteria of democracy to proceed from, as well as how such criteria are to be operationalised. In chapter 2, the main work would be in developing an analytical framework for examining the democratic status of the EU. This analytical framework is then put to use in chapter 3, wherein a comprehensive examination of the EU's democratic status is conducted. Then after the problem has been studied and described, chapter 4 will be devoted to finding possible ways to improve democracy in the EU and answer the question whether it would be beneficial to democratize the EU or not.

CHAPTER 2

THE DEMOCRATIC STATUS OF THE EU

The democratic deficit has in the last decade become one of the main topics of discussion on the European agenda.¹¹ Still, no generally accepted understanding of the term seems to exist. The term is given different meanings in different academic and political analyses, and sometimes an explicit explication of its meaning is even lacking. On a general note, it is right to say that it only makes sense to argue that a deficit is present in relation to some measuring rod. The claim that the EU suffers from a democratic deficit implies that it fails to satisfy some criterion or criteria for judging a political system democratic. The problem, of course, is that here is no agreement concerning what measuring way to apply. The result is a state of confusion about the precise meaning of democratic deficit: how serious a deficit is there, and according to what criteria? Different conceptions or models of democracy are found in democratic theory, and each attributes a somewhat different meaning to the concept¹².

1. The Analytical Framework

To develop an analytical framework for an examination of the democratic status of the European Union, it would be important to answer two important questions: (1) What

² Wikipedia Online: http://en.wikipedia.org/wiki/European_Union

¹² George Sabine argues that there are “two democratic traditions...or at least two strands of thought in the philosophy of democracy”. Sabine, George. 1952. “The Two Democratic Traditions”, *Philosophical Review*, Vol. 61, p.451. Others, like Jon Elster, distinguish between “three views...of the democratic system”. Elster, Jon. 1986. “The Market and the Forum: Three Varieties of Political Theory”, in Elster, Jon & Aanund Hylland (eds.), *Foundations of Social Choice Theory*, p.103-132.

criteria of democracy should one adopt? (2) How should these criteria be put into work in the present investigation? As the answers to these questions will be provided, the analytical tools required in order to examine the democratic status of the Union will then be developed.

a. The criteria for Democracy

From which criteria for democracy should the examination proceed? What measuring rod should be used to assess the democratic status of the EU? There is a vast number of competing definitions, each laying down somewhat different criteria for democracy.

Different scholars emphasize and elaborate on different aspects of the basic idea of “government by the people”. It is not, therefore, a practical approach to gather up all these definitions and compare the strengths and weaknesses. What is needed, instead, is a clear definition that will be a guide towards a proper point of departure.

Given the purpose of the present investigation, a definition based on optimal rather than basic criteria seems more appropriate. The purpose of this study is to provide a comprehensive examination of the EU’s democratic status. One is thus interested in the democratic quality of the system of governance at the European level, not merely in whether it qualifies as democratic in some minimal sense. Proceeding in the basis of optimal criteria does not mean neglecting the examination of whether the EU has acquired the basic characteristics of democratic governance. Basic and optimal criteria should be understood as being complementary to each other.¹³ What is meant is that in addition to embracing the basic notion that citizens should have some minimum influence over the decisions made in their name, certain additional criteria that a fully democratic

process should satisfy, are to be taken into consideration especially in this case.

Therefore, as a point of departure, a more demanding definition of democracy is needed; one allowing us to undertake a more comprehensive examination of the democratic status of the EU.

Robert Dahl's definition of a fully democratic process is suitable for examining the EU's democratic status.¹⁴ According to Dahl, a fully democratic process must satisfy five criteria: (1) equality in voting; (2) effective participation; (3) enlightened understanding; (4) final control over the agenda; and (5) inclusion. This definition of democracy is more adequate, since it aligns closely with the established meaning of democracy as government by the people. It is also relevant, for it distinguishes democracy from other characteristics of good governance. And it also allows for a comprehensive analysis of different aspects of the EU's political system. This definition does not focus exclusively on any particular criterion, such as participation and deliberation. However, it is not suggested that Dahl's definition of a fully democratic process is the only appropriate standard for judging the democratic status of the European Union. What is suggested is that this definition of democracy is adequate and relevant to the aims of this study. It is obvious, however, that Dahl's criteria would be hard for any political process to meet. As Dahl himself points out, it is "an ideal or theoretical system, perhaps at the

¹³ Hadenius, Axel. 1992. *Democracy and Development*. Cambridge: Cambridge University Press, p. 10-15.

¹⁴ Dahl, Robert A. 1979. "Procedural Democracy", in Fishkin, James & Peter Laslett (eds.), *Philosophy, Politics, and Society*, 5th Series. Oxford: Basil Blackwell, pp. 97-133; Dahl, Robert A. 1982. *Dilemmas of Pluralist Democracy*. New Haven: Yale University Press, pp. 5-7.

extreme limit of human possibilities or even beyond”¹⁵. But, as Dahl reminds us, “even if the criteria can never be perfectly satisfied they are useful in appraising real world possibilities”¹⁶. The criteria are thus an analytical tool by which we assess the democratic quality of existing political processes.¹⁷ The fact that the EU is often described as *sui generis* does not mean it can not be analyzed along the same lines as other political systems. All polities are, as Simon Hix has pointed out in his study of the European Union, in large part unique, and so is the EU; however, it “would only be *sui generis* if it were apolitical”¹⁸. The EU, accordingly, can be examined with the same tools and criticized by the same standards that we use to analyze national-level political institutions. Thus Hix’s claim is that, “because the empirical subject (i.e., politics and government) and the normative issues (i.e., democracy) can be general, the EU can and should be compared to other political systems”¹⁹. Thus, the democratic quality of the EU should be assessed by the same standards that are used for other political systems.

Finally, as mentioned above, it would be hard for any political system to fit all the criteria given by Dahl’s definition. This is why, one should not expect the EU to satisfy them perfectly. In this sense, it can surely be expected to find a democratic deficit; the result of this study can already be anticipated in this respect. Using ideal standards for this examination, therefore, has consequences for the manner in which the conclusions regarding the Union’s democratic status will be framed. One should not seek answers in terms of whether or not a democratic deficit exists within the EU, but the results will be

¹⁵ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p.6.

¹⁶ Dahl 1989, *Democracy and Its Crisis*, op. cit., p. 109.

¹⁷ Dahl 1979, *Procedural Democracy*, op. cit., p. 12.

¹⁸ Hix, Simon, 1998. “The study of the European Union II: The ‘New Governance’ Agenda and Its Rival”; *Journal of European Public Policy*, Vol. 5, No. 1, p. 54.

framed, rather, in terms of different dimensions of the democratic deficit, as well as how closely the criteria are met.

b. Operationalizing the Criteria for Democratic Governance

Dahl's definition of a fully democratic process constitutes a proper starting point for examination of the EU's democratic status. However his criteria are too abstract to be useful as an analytical framework for assessing the democratic performance of political processes in real world. The criteria therefore need to be operationalized in order to constitute a proper framework for determining the democratic status of a representative political system like the EU. In this section, there will be a brief outline of how it would be possible to work with the criteria for a fully democratic process.

The first criterion for a fully democratic process is *voting equality*. This requires that, in the process of making binding collective decisions, the "expressed preference of every citizen ought to be taken equally into account in determining the final solution"²⁰. Given the fact that the EU is a representative system of governance, the fulfillment of this criterion will depend on two aspects of representative governments: first, the degree to which the decision-makers can be held accountable for their action; and second the degree to which the principle of equal representation is observed.

The second criterion is *effective participation*, which means that "throughout the process of collective decision-making, each citizen ought to have equal and adequate opportunities for expressing his or her preferences as to the final outcome"²¹. This criterion emphasizes two important requirements; opportunities must be equal and

¹⁹ Ibid., p. 54.

²⁰ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

adequate. However, we need to make a distinction between direct and indirect forms of participation. It does not require that the citizens be given the opportunity to participate directly in the decision-making process. This could be done through the responsiveness of the actors who function as intermediaries between citizens and decision-makers; the effectiveness of participatory channels in transmitting the preferences of citizens and the degree to which access to these channels is equally distributed among citizens.

The third criterion is *deliberation*. In order to form opinions it is required to have reliable and relevant information. Without access to information, people usually have a hard time improving the quality of their judgments which should not be influenced by public views. Accordingly, forums for public discussion are needed and this is why citizens should be given the opportunity to deliberate over means and ends and they should also be given equal access to sources of information and forums for public discussion. So deliberation is the right of a citizen to form opinions.

The fourth criterion concerns the *final control over the agenda*. It states that “the demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that is to be decided by means of the democratic process”²². This means that the representatives of the people are given the power to decide which matters are to be placed on the agenda. In this case the concerns are the degree of control which the demos can exercise, and the extent to which the access is equally distributed among members of the demos.

The fifth and final criterion is that of *inclusion*, according to which “the demos ought to

²¹ Ibid., p. 6.

²² Dahl 1989, *Democracy and Its Crisis*, op. cit., p. 113.

include all adults subject to its laws, except transients”²³. To be included in the demos is to be accorded citizenship.

This chapter has been devoted to finding a proper analytical framework for examining the democratic status of the EU. To begin with, a definition of democracy is needed; Robert Dahl’s definition is usually described as the most adequate and it would be relevant especially in this study. These five criteria were then elaborated and operationalized into indicators that will be used in the analytical framework for the examination of the democratic status of the European Union.

²³ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

CHAPTER 3

THE DEMOCRATIC DEFICIENCIES OF THE EU

A framework for analyzing the democratic status of the EU was developed in chapter two. It is now time to apply this framework to assessing the democratic quality of the Union and provide a comprehensive account of the EU's democratic status. In order to fulfill this task, the scope and depth of the democratic deficit will be examined.

An attempt to do this will be by examining how closely each of the criteria defining a fully democratic process is approximated within the EU. This will be done in the following order: agenda-control, deliberation, participation of the citizens, voting equality and finally inclusion.

1. Agenda-Control

a. Autonomy vs. Sovereignty

The criterion of agenda-control, it bears recalling, states that "the demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that are to be decided by the means of the democratic process". Everyone feels, most likely, the intuitive appeal of the argument that the members of a demos must have the exclusive control over the agenda if their political system is to qualify as democratic. Still, the precise meaning of this assertion is far from obvious. A number of initial distinctions may help to clarify the issues at stake.

Saying that the members of the demos have final control over the agenda is equivalent to saying that they, and only they, decide which matters are to be determined through the collective decision-making process. This does not mean, however, that actions taken

outside the boundaries of the association should not be allowed to affect the process of agenda-setting. The decision to put matters on the agenda will naturally be affected by the actions of a vast number of actors – domestic and foreign. The criterion says nothing about why an issue is placed on the agenda, but citizens have the exclusive right to place any matter on the agenda- not their reasons for doing so. The distinction between autonomy and sovereignty is crucial for grasping the meaning of agenda-control. Sovereignty can be thought of as the final authority within a given political system. The demos are fully sovereign if it enjoys “final and absolute authority” over its terrain.²⁴ Autonomy, on the other hand, implies something more: mastery over one’s fate. A demos is fully autonomous if it has the capacity to “pursue its policy preferences without resort to forms of international collaboration or cooperation”²⁵. Now then, a demos can obviously be fully sovereign without being fully autonomous. This is, in fact, the most likely scenario. The criterion of agenda-control says the demos should be sovereign, in that no other agent should have the right to decide which matters are to be placed on the agenda. The criterion does not require, however, that the association in question be fully autonomous.

b. Delegation vs. Alienation

The above discussion leads to the issue of delegation, which is crucial to understand when agenda-control is being discussed. Once one recognizes that this is impossible, as a practical matter, for the members of a demos to decide directly over all public affairs, it is obligatory to consider whether and to what degree, the members of the demos can hope to exercise control over the agenda under conditions of delegation.

²⁴ Hinsley, F. H. 1986. *Sovereignty*. Cambridge: Cambridge University Press, p. 26.

Dahl argues that the distinction between delegation and alienation is crucial in this context, even if it is difficult in practice to draw a clear line between the one and the other²⁶. The theoretical distinction focuses on whether or not “the demos can effectively retrieve any matter for decision by itself”²⁷. If it can, one is dealing with more delegation. If it can not, then one would be facing the alienation of final control. As long as it remains a matter of delegation, the criterion of agenda-control is met; once the line to alienation is crossed, however the criterion is violated.

In this case, one should search for additional distinctions that can help differentiate between different degrees of indirect control exercised by the demos under conditions of delegation. An initial step would be to recognize that the demos can exercise direct or indirect control over decisions to place a given matter on the agenda. If the only way to place a matter on the agenda is to collect signatures among the members of the demos until a sufficient number is reached, then the demos is indeed exercising direct control over the agenda²⁸. It is certainly possible to allow certain matters to be controlled by the demos directly; nevertheless, indirect control is the only practical alternative in large-scale political systems.

Once it is accepted that the agenda-control exercised by the demos will have to be indirect, one must ask to whom it can delegate its power to decide what belongs on the agenda. The most common form of indirect control over the agenda arises when authority has been delegated to representatives of the people. Representatives are defined, in this

²⁵ Held, David. 1995. *Democracy and the Global Order*. Cambridge: Blackwell Publishers Ltd, p. 100.

²⁶ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., pp. 113-114.

²⁷ Ibid., p.113.

²⁸ This is the actual method used in some modern democracies for initiating referenda. Switzerland is perhaps the best-known example. See Abromeit, Heidrun. 1998. *Democracy in Europe: Legitimizing*

context, as members of the executive and the legislature. The powers delegated to representatives are placed in the hands either of elected officials or of appointed officials.

c. Agenda-control via representatives

It would be preferable to first focus on the degree of indirect agenda-control exercised by citizens of the Union when authority has been delegated to representatives. Within the EU, it is the Commission that has the power to control which matters are to be placed on the agenda. The commission has the formal power to initiate and draft legislation. Before examining the agenda-setting powers of the commission, one might ask whether this body should be regarded as a representative institution in the first place. After all, the commissioners are required by the treaties (article 213 EC [Article 157]) to "... be completely independent in the performance of their duties". Is it reasonable to portray these appointed officials as representatives? It probably is. Representatives are defined above, as members of the legislature or the executive, and the commission is the closest thing to an executive within the Union (although the executive responsibilities are divided between the council and the commission). In addition it should be recognized that the pledge of independence is meant to ensure the commissioners stand above national concerns and work to promote the general interest. The principle of independence, then, is a way to "protect the collective interest European citizens".²⁹

The fact that the right of initiative is placed in the hands of appointed officials has important repercussions for the opportunities of the citizens to exercise indirect control over the agenda. If agenda-setting is entrusted to a directly elected institution, it will be possible for citizens to exercise indirect control through the electoral contest, wherein

Politics in a Non-State Polity. New York: Berghan Books, p.116.

competing elites advocate different agendas for future action. The winners of an election enjoy considerable latitude, to be sure, but the fact that they will have to face the judgment of the electorate at some point furnishes them with an incentive to promote the agendas on which they ran for office. The commissioners, however, are appointed officials nominated by member state governments; as a result, citizens are deprived of the ability to force future agenda-setters to compete for power. The indirectness of the route whereby citizens can hold the commissioners responsible – via national elections for the government of a member state, and from there to the nomination of a commissioner by said government- naturally allows for a very low degree of indirect control. Was this the only route whereby citizens of the Union could exercise indirect control over agenda-setting by representatives, the situation would be troublesome indeed, seen from a democratic perspective. Fortunately, however, certain additional features of the system serve to strengthen the indirect agenda-control exercised by citizens of the Union. First, the EU's only directly elected institution- the parliament- has been given increased influence over the commission. The treaties of Maastricht and Amsterdam introduced reforms giving the EP greater influence over the process of appointing a new commission. The consolidated article 214 EC [article 158] states that the appointment of the president of the commission “shall be approved by the European Parliament”, and that the full commission “shall be subject as a body to a vote of approval by the European Parliament”. A practice has been established whereby the vote of approval on the commission as whole is preceded by hearings wherein the nominated commissioners

²⁹ Hix, Simon, 1999. *The Political System of the European Union*. London: Macmillan Press Ltd, p.35

must answer questions about their intentions for their portfolios.³⁰ These powers, together with the right of the EP to censure the Commission as a whole (Article 201 EC [Article 144]), do furnish citizens with some opportunities to exercise indirect control over which matters the Commission chooses to place on the agenda.

Second, both the Council (Article 208 EC [Article 152]) and the Parliament (Article 192 EC [Article 138b]) can request that the Commission submit proposals on various matters. The Commission is not obliged to accede to these requests, but it finds it hard to ignore detailed initiatives, especially on the part of the Council.³¹ In addition, the European Council - i.e., the Heads of Government plus the President of the Commission - meets every sixth months to lay down “general political guidelines”³²; these too are difficult for the Commission to ignore. However, since these guidelines are general rather than specific, they do afford the Commission considerable flexibility in developing proposals for regulations, directives, and decisions. It then addresses said proposals to the Council. Finally, there is a third source of potential influence open to citizens seeking to exercise indirect control over the agenda. During the proposal stage, the Commission needs various types of input: it must have access to scientific expertise, it must take into account the views of affected parties, and it has to get a feel for national standpoints. The last type of input is imperative if the Commission is to be able to prepare proposals around which consensus can be reached within the Council. In order to acquire these different types of information, the Commission depends on committees.

In the process of developing proposals, the Commission receives input from two different

³⁰ Ibid, p.46.

³¹ Marks, Gary & Liesbet Hooghe, Kermit Blank. 1996. “European Integration from the 1980s: State-Centric v. Multi-Level Governance”, *Journal of Common Market Studies*, Vol. 34, No. 3, pp. 257-258.

types of committees³³: (1) advisory (or consultative³⁴) committees; and (2) expert committees (or expert groups³⁵). Most of the committees are set up by the Commission itself; however, the Council can set up committees as well, and require that the Commission consult them. The composition of the committees varies according to their function. The expert committees are dominated by experts who provide scientific knowledge, as well as by national officials who indicate the views of the various member states in regard to different proposals. The members of these committees are nominated by national governments.³⁶

The advisory committees are composed of representatives of various sectional interests. The members of these committees are appointed by the Commission, on the basis of nominations made by different organisations.³⁷ Some committees are staffed exclusively by one group or another; others contain a mix of different persons. Some committees are well-established and continue for a long period; others are *ad hoc* and meet only once or twice.³⁸

The Commission has almost exclusive power to determine how it receives its input and how to utilise it. The committees nevertheless present member states, and various societal interests, with an excellent opportunity to influence agenda-setting. This is not to say, of

³² *Consolidated Version of the Treaty on European Union*, Article 4 [Article D].

³³ Schaefer; Guenther. 1996. "Committees in the EC Policy Process: A First Step Towards Developing a Conceptual Framework", in Pedler, Robin H. & Guenther Schaefer (eds.), *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*. Maastricht: European Institute of Public Administration, pp. 8-9.

³⁴ Cf. van der Knaap, Peter. 1996. "Government by Committee: Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union", in Pedler & Schaefer 1996, pp. 85-86.

³⁵ *Ibid.*, pp. 85-86.

³⁶ Nugent, Neill. 1994. *The Government and Politics of the European Union*. London: Macmillan Press Ltd, p. 101.

³⁷ *Ibid.*, p. 102.

³⁸ *Ibid.*, p. 101.

course, that representation on these committees is the only option available to interest groups who seek to influence agenda-setting.³⁹ The committee system is merely the most formal way of approaching the Commission. Yet it is extremely important all the same, for two reasons: first, it provides a direct channel of influence for those who are represented on the committees; and second, because it represents an important point of access⁴⁰ to the agenda-setting for those who are not. The committees provide the setting for a relationship of mutual dependence: the Commission needs various types of input in order to develop proposals successfully⁴¹, and the member states and various societal interests require channels through which they can exercise some control over the agenda. The committees provide lobbyists with an excellent means by which to influence agenda-setting. The European Community, therefore, has been described as “the prospective agenda-setter’s paradise”⁴².

While it is difficult to assess the actual degree of influence that can be exerted via committees, it seems fair to argue that citizens have a better opportunity to exercise indirect agenda-control via lobbyists and the committees than they have via the more formal channels of influence: i.e., the Council and the Parliament. The actual degree of agenda-control exercised by citizens of the Union through the latter channels must be deemed, by any standard, to be extremely low. The committees provide an additional channel of influence, thus strengthening the ability of citizens to influence agenda-setting. The main problem with this mechanism is that access to it is very unevenly distributed

³⁹ See Mazey, Sonia & Jeremy Richardson. 1997. “The Commission and the Lobby”, in Edwards, Geoffrey & David Spence (eds.), *The European Commission*. London: Cartermill International Ltd, pp. 178-198.

⁴⁰ Cf. Peters, Guy B. 1994. “Agenda-setting in the European Community”, *Journal of European Public Policy*, Vol. 1, No. 1, p. 21.

⁴¹ *Ibid*, p. 180.

among citizens. A system of this sort systematically favours some interests over others. To simplify: producers are favoured over consumers and social movements (such as the environmental movement). This is a result of the fact that it may take considerable resources to be active at many different points of access (which is desirable if one's influence over agenda-setting is to be maximised). But the lack of balance also stems from the fact that different interests do not carry the same weight economically and politically.⁴³ Their importance as allies (in the eyes of the Commission) therefore varies. The problem, then, is that this channel of influence does not give citizens any rights to exercise indirect control over the agenda - only opportunities. The practical meaning of these opportunities, moreover, depends heavily on the interests and actions of the Commission.

d. Agenda-Control via Non-Representatives

It is time now to consider the delegation of authority to non-representatives within the EU. A feature common to all modern democratic political systems is that they afford non-representative bodies - bureaucracies, courts, regulatory agencies - the power to make binding decisions. Within the Union, there are at least two important non-representative institutions to which the authority to make binding decisions has been delegated: the European Court of Justice (ECJ), and the European Central Bank (ECB).⁴⁴

Now then, the all-important question is whether the authority delegated to these agents can be effectively retrieved; or whether, by contrast, final control over the matters in question has been alienated. As discussed above, the qualifier 'effectively' means that

⁴² Peters, 1994. *Agenda-Setting in the European Community*, op. cit., p. 21.

⁴³ Nugent 1994. *The Government and Politics of the European Union*, op. cit, p. 263.

⁴⁴ See Majone, Giandomenico. 1997b. "The New European Agencies: Regulation by Information", *Journal*

this dispute cannot simply be settled by examining whether or not there is a theoretical possibility of retrieving the prerogative in question.

The formal rules stipulating the requirements for retrieving delegated authority may be more or less demanding. In the extreme case, they may be so demanding as to make retrieval impossible - as when the delegation takes the form of a constitutional article immune to amendment. In such a case, one is faced with an alienation of agenda-control. It should not be concluded, however, that all the remaining cases - wherein retrieval is not ruled out in theory - fall within the category of decisions that can be effectively revoked. Whether or not a decision to delegate authority to a non-representative institution can be effectively revoked depends on the requirements specified by the formal rules that govern this procedure.

Four important variables which determine how awkward a process of retrieval will be: (1) What type of decision is required? Will secondary legislation suffice, or is primary legislation required? As the latter is necessarily a more complicated affair, it will usually take more time and effort to reach a decision if primary legislation is required - i.e., if the only possibility of revoking a decision to delegate authority is through amending the constitution. (2) Which actors are involved in the process? Which actors have the power to make the necessary decisions along the way? Is it the members of the demos who enjoy the right to make the necessary decisions? Or does this right devolve rather on their elected representatives, or on a collection of appointed officials? The more direct the influence exercised by members of the demos over the final decision, the more effectively can a delegation of authority be revoked. The greater the number of actors involved,

of European Public Policy, Vol. 4, No. 2, pp. 262-263.

moreover, the more cumbersome the process will be. (3) What majority requirements apply? The closer we get to unanimity, the harder it is actually to reach a decision - i.e., the more numerous the veto players, the less effectively a grant of authority can be revoked. And (4) What additional elements of inactivity are linked to the process of revoking a grant of authority? The rules might stipulate, for example, that two identical decisions must be taken at some specified interval.

In examining the authority delegated to the ECJ and the ECB, it should first be emphasised that these are not obvious cases of alienation of agenda-control. The powers accorded by these agents are stipulated by the treaties⁴⁵; accordingly, they can be reduced or nullified through treaty reform. Once the variables above considered, however, it will be soon realised that it is far from obvious that the delegated powers can be effectively retrieved.

First, since treaty revision is required, one is in for a long and complicated process if he/she sets out to retrieve the powers accorded the ECJ and the ECB. An Intergovernmental Conference will have to be convened, the proper reforms will have to be negotiated, and resulting revisions will have to be ratified.

Second, there is a number of actors involved in a process of treaty revision. Article 48 EC [Article N] stipulates that “[t]he government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties”. It is then up to the European Council actually to decide to convene an IGC. The member states proceed to negotiate (with the involvement of the Commission and the Parliament), and the result is then ratified by national parliaments and (in cases where the constitution of a member

⁴⁵ Part Five, Section 4, Articles 220-245 EC [164-188] deal with the The Court of Justice and Part Three,

state so requires) by national electorates. Many actors are thus involved. Most importantly, it is not the members of the demos themselves - nor their directly elected representatives - who have the greatest influence during the process. The Commission and the member state governments are by far the most important players in the process.⁴⁶ The right to initiate treaty revision is shared between these actors; however, it is the latter alone which have the power to decide on actual amendments.

Furthermore, amendments to the treaties require unanimity among the member state governments. The presence of so many veto players favours the status quo; which means that, in the absence of unanimity, the powers of the Court and ECB stand.

It may be concluded, then, that while it is certainly possible - in theory - to recall the powers delegated to the Court and to the Bank, the obstacles in the way of such an effort make it difficult to argue that these powers can be *effectively* retrieved.

To sum up: three different indicators have been used in order to reach an assessment of how closely the criterion of agenda-control is approximated within the EU; the degree and distribution of indirect control exercised by citizens over the authority delegated to representatives have been examined; and finally the statement of whether or not agenda-control over matters delegated to non-representatives has been alienated, has been examined. Where the last-mentioned matter is concerned, it has been concluded that control over the powers delegated to the ECJ and the ECB has been quasi-alienated. Retrieving the authority delegated to these agents is possible in theory, but extremely difficult in practice. It has also been noted that the degree of indirect control exercised by

Title VII, Articles 98-115 EC [102A-109d] deal with the European Central Bank.

⁴⁶ See, Dinan, Desmond. 2000. "The Commission and the Intergovernmental Conferences", in Nugent, Neill (ed.), *At the Heart of the Union*. London: Macmillan Ltd, pp. 250-269.

citizens via representatives is low. This stems from the fact that citizens have very limited opportunities to exercise any control over the Commission (the primary agenda-setter within the Union), whereas the only directed elect institution - the Parliament - has but a marginal role to play during the agenda-setting phase. The best chance for citizens of the Union to influence agenda-setting is probably afforded by the many committees linked to the Commission. Access to this channel of influence, however, is distributed very unevenly among the citizens of the EU. The previous examination thus reveals that the criterion of agenda-control is far from satisfied within the Union.

2. Deliberation

a. What is Deliberation

Now it is time to consider deliberation and the process of opinion-formation. The criterion of deliberation states that “each citizen ought to have adequate and equal opportunities for arriving at his or her considered judgement as to the most desirable outcome of a decision-making process”⁴⁷. Of fundamental importance to liberal political thinking is the notion that each individual is the best judge of his or her interest. The criterion of deliberation reflects an acknowledgement that it may not always be easy to determine where one’s interest lies. Individuals should therefore be given the opportunity to form their views under favourable conditions: that is, they should have the opportunity to deliberate.

The criterion of participation, which will be considered in detail below, says that citizens should be given the opportunity to express their preferences as to final outcomes. The issue at stake is the right of citizens to participate in the process of making binding

decisions. In addition, deliberation has to do with the opportunities enjoyed by citizens to participate in another kind of process - that of making up their mind.⁴⁸

In recent years, a body of literature has emerged which criticises mainstream political theory for being too preoccupied with “democracy as a method, and a means of aggregating preferences”.⁴⁹ While acknowledging the importance of aggregating preferences in a just manner, advocates of deliberative democracy wish to tilt the focus towards the conditions under which preferences are formed. What modern democracy needs is not more refined methods of aggregation, but more favourable conditions for deliberation.⁵⁰ Thus it is argued that “[p]ublic debate is the single most important clue to the assessment of democratic quality”⁵¹. This line of criticism has been brought to people’s attention by advocates of the so-called *deliberative model of democracy*.

Since deliberation has become something of a modern catchword, and since different definitions of deliberation are offered, one will have to be rather precise about what is meant when one sets out to examine the extent to which deliberative democracy prevails within the EU. The deliberative model of democracy is put forward as a middle-ground alternative to participatory democracy on the one hand, and the competitive model of democracy on the other.⁵² One is dealing here, however, with a collection of scholarly work which is tied together rather loosely, and in which a consensus is lacking on many

⁴⁷ Dahl 1982. *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

⁴⁸ Teorell, Jan. 1999. “A Deliberative Defence of Intra-Party Democracy”, *Party Politics*, Vol. 5, No. 3, pp. 371-372.

⁴⁹ Eriksen, Erik Oddvar & John Erik Fossum. 2000. “Post-national Integration”, in Eriksen Erik Oddvar & John Erik Fossum (eds.), *Democracy in the European Union-Integration Through Deliberation?* London: Routledge, p. 17.

⁵⁰ Knight, Jack & James Johnson. 1994. “Aggregation and Deliberation: On the Possibility of Democratic Legitimacy”, *Political Theory*, Vol. 22, No. 2, p. 277.

⁵¹ Eriksen & Fossum 2000. “Post-national Integration”, op. cit., p. 17.

⁵² See Elster 1986. “The Market and the Forum: Three Varieties of Political Theories”, op. cit., p. 10.

key issues. It would be important to consider the most important of these issues briefly.

Webster's dictionary mentions that deliberation means "careful consideration" or "mature reflection". Deliberation essentially refers, then to making up one's mind under certain conditions. Once one moves beyond this core meaning, however, he/she will run across differences of opinion among advocates of deliberative democracy.

First, while some identify deliberation as a process through which opinions are formed⁵³, others define it as a method for making decisions⁵⁴. Adherents of the latter position claim that the members of a democratic association can (and should) make decisions by arguing rather than voting. The preferences of participants change in the course of deliberation; in the ideal situation, moreover, a consensus is reached.⁵⁵ These claims for deliberation are too strong. As Knight and Johnson argue, it is an empirical question as to whether preferences change⁵⁶; moreover, there is little evidence supporting the claim that deliberation issues in consensus. Deliberation may be conducive, of course, to the making of decisions and the attainment of consensus; it can also, however, increase differences and sharpen conflicts. A deliberative process will therefore have to be followed, most probably, by some other mechanism - such as a vote - whereby the actual decision can be made. According to a more modest and sensible view, therefore, deliberation is primarily a process through which opinions are formed. It is not about reaching final decisions, but rather about laying a foundation for decision-making.

The next contested issue bears on the ultimate purpose of deliberation. While considered

⁵³ Teorell 1999. "A deliberative Defence of Intra-party Democracy", op. cit., p. 371.

⁵⁴ Elster 1998. *Deliberative Democracy*, op. cit., p. 8.

⁵⁵ Cohen, Joshua. 1989. "Deliberation and Democratic Legitimacy", in Hamlin A. & P. Pettit (eds.), *The Good Polity*. Oxford: Basil Blackwell, p.33.

⁵⁶ Knight & Johnson 1994. "Aggregation and Deliberation: On the Possibility of Democratic Legitimacy",

good for a number of reasons, deliberation has two features which stand out from the others. On the one hand, deliberation can be seen primarily as means to “increase the quality of democratic judgements through widespread citizen participation in multiple public spheres”⁵⁷. Through deliberation, citizens are able to form more coherent and reasonable opinions than otherwise.⁵⁸ On the other hand, it is claimed that deliberation is of vital importance because it legitimises collective decision-making. Strictly speaking, there is no contradiction between these claims regarding the qualities of deliberation. One could argue, for example, that collective decision-making acquires legitimacy to the extent that deliberation improves our judgements and helps us make better decisions. In the present context, however, one should be content to regard deliberation as a process aimed at improving the opportunities enjoyed by citizens to form coherent and reasonable preferences about matters on the public agenda.

The third issue relates to the nature of the deliberative process itself. Is it a private or a public affair? The requirement that deliberation take place in the public sphere is thought to be critical. If, however, one understands deliberation as a process of opinion-formation by individuals, through mature reflection and careful consideration, make up their mind on public affairs, then there is nothing, strictly speaking, which says this could not be done in the privacy of one’s own home. Fearon accordingly argues that “it is possible to deliberate privately, weighing reasons and arguments in a mental dialogue, even if this

op. cit., p. 282.

⁵⁷ Warren, Mark E. 1996. “Deliberative Democracy and Authority”, *American Political Science Review*, Vol. 90, No. 1, p. 46.

⁵⁸ Fishkin, James. 1995. *The Voice of the People: Public Opinion and Democracy*. New Haven: Yale University Press, p. 4.

might not be as consequentially effective as deliberation via discussion”⁵⁹. However, deliberation conducted in the private realm need not be restricted to a mental dialogue: one can as well hold lengthy discussions with family and friends. In addition, some individuals may, for various reasons, find it too demanding to participate in public discussion. Still others may be highly susceptible to the views and arguments of others, and thus incapable of forming independent opinions in public.⁶⁰

The point here is not that deliberation is better conducted in the private than in the public sphere. It is merely arguable that one should not rule out the possibility of deliberating in private. However, public deliberation is preferable, indeed necessary if the quality of democratic judgement is to be enhanced. Yet good ideas and reflective judgements can be formed in the private realm, provided that individuals have access to relevant information and relevant arguments.

If private deliberation becomes the norm, however, some good ideas and well-founded judgements may never reach the public realm. Indeed, a sole reliance on private deliberation makes the conditions for that very activity less favourable, since individuals lack, under such conditions, the necessary input from public debate. One also runs the risk of an increase in preferences formed purely for selfish reasons. Deliberation in the public realm has a certain purifying effect on the arguments brought forward and on the preferences formed.⁶¹ Preferences formed under public conditions are more likely to be direct to the *public* rather than the *private* good. An important aspect of deliberation is reconciling the interest of the individual with that of the community at large. This is why

⁵⁹ Fearon, James D. 1998. “Deliberation as Discussion”, in Elster, Jon (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press, p. 61.

⁶⁰ Cf. Elster 1986. “The Market and the Forum: Three Varieties of Political Theory”, op. cit., pp. 109-110.

Dahl stresses that one should, as a citizen, acquire an understanding “of one’s interests and the expected consequences of policies for interests, not only for oneself but for all other relevant persons as well”.⁶²

So, while one should not make public-ness a necessary condition for deliberation, it does seem to be necessary if deliberative opportunities are to be guaranteed to all.

Finally, there is some tension within the deliberative camp as to whether deliberation should be viewed as an opportunity bestowed on citizens or as an obligation that must be fulfilled. Some argue that participation in the deliberative process should be made obligatory. James S. Fishkin, for example, advocates a system of “deliberative opinion polls”, and argues that serving on such polls should be seen as an obligation.⁶³ First, it should be acknowledged that most proponents of deliberative democracy view participation in the deliberation process as a right, and as an opportunity of which individuals can choose (or choose not) to avail themselves. Manin for example argues for “the right of all to participate in deliberation”⁶⁴; Habermas, for example, stresses “rights to equal opportunities to participate”⁶⁵. Second there are some convincing reasons not to view deliberation as an obligation. Although there are good reasons why everyone should participate in the deliberative process - both for their own sake and that of the community at large - it is a mistake to argue that deliberation should be treated as an obligation. It is not just that this means deliberation takes precedence over basic liberty and opportunity. It also seems self-defeating to force people to participate in a deliberative process. If they

⁶¹ Ibid, p. 112.

⁶² Dahl, Robert. 1994. “A democratic Dilemma: System Effectiveness versus Citizen Participation”, *Political Science Quarterly*, Vol. 109, No. 1, p. 31.

⁶³ Fishkin, James. 1991. *Democracy and Deliberation*. New Haven: Yale University Press, p. 9,

⁶⁴ Manin, Bernard. 1987. “On legitimacy and Political Deliberation”, *Political Theory*, Vol. 15, p. 338-349.

are not inclined to participate in such a process voluntarily, it seems highly unlikely that the good consequences alleged to stem from deliberation will follow.

b. Two Indicators of Deliberation

One is now in a better position to detach the analysis from some of the more excessive claims made by advocates of deliberative democracy, and to determine precisely what our criterion of deliberation demands. Assessing the degree to which the criterion of deliberation is approximated is a matter, accordingly, of determining the degree to which the citizens of a political system have equal and adequate opportunities to engage in private and public activities with the goal of forming well-founded preferences - taking both their own good and that of others into account - regarding matters on the public agenda. Now then, what conditions are favourable to deliberation? What indicators can be used to determine the degree to which the criterion of deliberation is approximated?

First of all, citizens should have access to relevant information. Without reliable and relevant information on the matters to be considered, there is small hope one will be able to improve the quality of his/her judgements. If the deliberative process is founded on erroneous perceptions or an insufficient knowledge of the relevant facts, it is hard to see how the projected good consequences can follow. Equal access on the part of everyone to relevant information is imperative.

Second, **information and knowledge** are not a simple commodity that can be acquired through documents and other existing sources. Facts do not always (or even most of the time) speak for themselves. They have to be interpreted and put into perspective. Different interpretations of the facts must be tested against each other, in order to

⁶⁵ Habermas, Jurgen. 1996. *Between Facts and Norms. Contribution to a Discourse Theory of Law and*

determine which are more reliable. Furthermore, many political issues have no correct answer, since they are a question of conflicting values. In such situations, citizens must search for insights through the clashing of conflicting views. This presupposes, however, the existence of a *public sphere* that provides forums for discussion which are open to everyone.

Access to relevant **information** and the existence of a public sphere, then, are the indicators by which one may determine the degree to which the criterion of deliberation is satisfied. These two indicators may be linked to one another, of course, in the sense that information is sometimes provided through public debates, while the most important forum for public debate in modern societies - the mass media - is also the most important provider of relevant information. Yet the analytical distinction between the two indicators still makes sense. This will become obvious in the following section, wherein the quality of deliberation at the European level is examined.

c. Deliberation at the European Level

As the opportunities for access to relevant information are examined, some obvious deficiencies are discovered. The political process within the Union suffers from a lack of openness and transparency that makes it difficult for the citizens of the Union to acquire reliable and accurate information on community affairs. Most importantly, the difficulty of obtaining documents from EU institutions undermines the possibility of a free exchange of views and information, which is a pre-condition for the establishment of a deliberative process. If citizens are denied the opportunity to acquaint themselves, either directly or indirectly (i.e., via reporting in the media), of different opinions and arguments

Democracy. Cambridge: Polity Press, p. 123.

brought forward by actors involved in the policy-making process, they will be in an inferior position to form well-founded preferences on public affairs. The lack of openness is thus a major obstacle on the road to deliberation.

The issue of openness (or “transparency”, as it is usually known within the Union) began to surface as an important aspect of community affairs in the early 1990s. At the Maastricht conference in December 1991, a declaration was issued and attached to the Treaty on European Union. The declaration stated that “the conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions”⁶⁶.

In 1992, the President of the Commission, Jacques Delors, announced that the Commission would embark on a “crusade for democracy”, and would take steps towards “making Community action more transparent”⁶⁷. The Council also committed itself publicly to increasing transparency. At the Edinburgh European Council meeting in December 1992, as well as at subsequent meetings in Birmingham and Copenhagen, Council declarations were issued confirming the intent to work towards increased openness and transparency.

The concrete result of the professed commitment to openness was the adoption by the Council of a Code of Conduct regulating public access to Commission and Council documents⁶⁸, and governing decisions on this matter by each of these institutions⁶⁹.

⁶⁶ *Treaty on European Union*, Declaration No. 17.

⁶⁷ Jacques Delors, Strasbourg, 10 February 1993, quoted in Lodge, Juliet. 1994. “Transparency and Democratic Legitimacy”, *Journal of Common Market Studies*, Vol. 32, No. 3, p. 343. See also European Commission. 1992. *Increased Transparency in the Work of the Commission*. Brussels, SEC(92), 2274.

⁶⁸ Code of Conduct concerning public access to Council and Commission documents 93/730/EC, OJ L340/41.

⁶⁹ Council decision of 20 December 1993 on public access to Council documents 93/731/EC, OJ L340/43 and Commission decision of 8 February 1994 on public access to Commission documents, 94/90/ECSC,

Representative of the Union's institutions characterised this new-found commitment to transparency as something of a revolution, and as proof of their intention to bring community matters closer to citizens. As so often, however, declarations and formal rules are one thing; the practice of political affairs is quite another. This became obvious when the Code of Conduct were put to the test by a British newspaper, *The Guardian*.

Under the heading of "General Principle", the Code of Conduct states that the public "will have the widest possible access to documents held by the Commission and the Council"⁷⁰. However, when *The Guardian* applied for access to Council documents regarding three decisions, it became evident that the newly professed openness was interpreted in very narrow terms. In its response to *The Guardian's* application, the Council made full use of the exceptions listed in the Code of Conduct. The Council refused to disclose the documents in order to "protect the institution's interest in the confidentiality of its proceedings"⁷¹. This article gives the Council considerable freedom in determining whether or not to grant access to a document.

Later, the Council also released more exceptions in the Code of Conduct: namely, "the protection of the public interest"⁷². Each of these cases illustrates not only the difficulty citizens face in obtaining documents directly, but also the fact that they cannot rely on the media to supply the relevant information. In the end, *The Guardian* won a half-victory, inasmuch as ECJ found that the Council had neglected to treat each application on its own merits, and so had acted in breach of its own Code of Conduct. As long as the

EC, Euratom, OJ L46/58.

⁷⁰ Code of Conduct concerning public access to Commission and Council documents 93/730/EC, OJ L340/41.

⁷¹ See the title "Exceptions" in the Code of Conduct.

⁷² See the title "Exceptions" in the Code of Conduct.

Council follows the procedures laid down in the Code of Conduct, however, the Court will not object to decisions denying access to documents.

The Council's restrictive interpretation of the Code of Conduct was clearly expressed in a "Statement of Defence" issued to the Court. In November 1995, in words never meant to reach the public eye, the Council defended its actions on the grounds:

*that the existence of Decision 93/731/EC cannot give rise - either in Sweden or in any other Member State - to any legitimate expectation in any particular result in relation to a request for access to Council documents, let alone in a positive answer, but only the expectation that fair consideration will be given to such a request. In the view of the Council, neither the said Decision nor the Code of Conduct or the political statements on which it is based form the basis for legitimate expectations on the part of members of the public that they are entitled to receive any Council document which could be requested under the said Decision.*⁷³

The view taken by the Council on the content of the Code of Conduct and the Council decision on public access to documents makes it obvious that the only thing an applicant can expect is a "fair consideration" of his/her request. The Council made clear that it intends to make full use of the exceptions stated in the Code of Conduct. According to this list of exceptions, requests may be refused in order to safeguard:

- the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations);
- the protection of the individual and of privacy;
- the protection of commercial and industrial secrecy;
- the protection of the Community's financial interests;
- the protection of information passed on to the institutions in confidence; or
- the institution's interest in the confidentiality of its proceedings.

As a review of this list makes clear, the Council enjoys - especially with the last-mentioned exception - a very considerable room for manoeuvre when it comes to refusing

⁷³ European Council, "Statement of Defence of the Council of the European Union in Case T-174/95",

access to documents.

The EU institutions have thus been rather reluctant - the Council especially - to make any real effort to increase transparency. Every measure taken towards greater openness has been carefully designed so as to provide the Council with the final say on how to interpret the new rules. An additional example to this effect was the decision on new rules for the publication of voting results. This decision stated that voting records should always be made public in instances where the Council had acted as legislator, “unless the Council decides otherwise”⁷⁴.

However one should not deny that on the positive side, the EU established the “European Ombudsman”. The Ombudsman has the power to investigate whether the institutions of the Community are guilty of maladministration⁷⁵; it usually acts on complaints received from citizens of the Union, but it can also start inquiries on its own initiative. However, the importance of the European Ombudsman for promoting openness is limited, for two reasons: First, the Ombudsman has no power to annul decisions, or to order the institutions of the Union to reconsider a matter in connection with maladministration. It can only issue critical remarks and recommendations. Second, its powers of investigation - which are defined by the Statutes of the Ombudsman⁷⁶ - are somewhat limited. Where documents important to an investigation are concerned, the Statutes state that access can be denied “on duly substantiated grounds of secrecy”. The right to hear witnesses is likewise restricted, as officials are “bound by their duty of professional secrecy”.

Brussels, 29 November 1995.

⁷⁴ Council decision of 6 December 1993 adopting the Council’s Rules of Procedure, 93/662/EC, OJ L304/1, Article 7.

⁷⁵ See The European Ombudsman. 1998. *Annual Report 1997*. OJ C380/1-162, p. 23.

⁷⁶ European Parliament decision of 9 March 1994 on the regulations and general conditions governing the

The European Ombudsman has criticised these restrictions as unacceptable, since they undermine the basic notion of the Ombudsman institution, i.e., that there should be an advocate of the public with the power to make inquiries based on all relevant facts and documents.⁷⁷ In December 1999, therefore, the Ombudsman presented the President of the European Parliament with a proposal to revise the Statutes, with an eye to increasing the powers of investigation attached to the office of Ombudsman.⁷⁸ If this proposal for a revision of the Statutes is accepted, the opportunities enjoyed by citizens of the Union to gain access to relevant information will no doubt increase. Before coming into effect, however, this proposal must be referred to the Commission for an opinion, and it will also have to be approved by the Council.

While important steps towards increased openness have been taken during the 1990s, some obstacles have yet to be addressed. One thing undermining the potential of the media to function as a provider of relevant information is the fact that there is nothing like a **Freedom of Information Act** applicable within the Union. Officials of the Union are not at liberty to reveal secret information to the media. Indeed, the EU's officials are explicitly required not to disclose information⁷⁹; and, according to staff regulations, no exception is made for the media. Any information leaked may involve repercussions.⁸⁰

Another circumstance making it difficult to gain access to documents is the absence of rules forcing the institutions of the Union to keep public registers of all relevant documents. In the absence of such registers it is, needless to say, very difficult to

performance of the Ombudsman's duties, 94/262, OJ 1994 L113/15, Article 3.

⁷⁷ The European Ombudsman. 1999. *Annual Report 1998*. OJ L300/1-166, p. 12.

⁷⁸ The European Ombudsman. 2000, p. 23.

⁷⁹ Article 287 EC [Article 214].

⁸⁰ A telling example is the case of Commission official Paul van Buitenen, who in 1998 leaked information

formulate and application for access to documents which is “sufficiently precise”⁸¹ as to warrant proper attention.

It can be concluded, then, that some progress in increasing the openness of the EU system has been made during the last decade. A new set of rules governing access to documents is taking form; however, certain obstacles to the acquisition of relevant information have yet to be even addressed. It is obvious that the EU institutions - the Council especially - have chosen not to utilise the full potential of the current rules for promoting openness, and instead have made the most of the exceptions stated in the Code of Conduct. That the current state of affairs is far from satisfactory is also illustrated by the fact that many of the inquiries initiated by the Ombudsman are related to a lack of information, or a refusal to give it. We have witnessed more talk than action in the field of openness, and it is still very difficult for the citizens of the Union to obtain the information they need in order to form well-founded opinions on public affairs.

What about the second indicator of deliberation? Is there a public sphere at the European level that can enhance citizens’ opportunities to form well-founded opinions? First, it should be made clear that speaking of a public sphere may seem slightly misleading. What it is referred to is not a single unity, but rather a number of arenas for public discussion.⁸² According to Habermas, the public sphere is a “network that branches out into a multitude of overlapping international, national, regional, local and subcultural

about a report on fraud and mismanagement to the Parliament. Because of these actions, he was suspended and later sacked from the Commission.

⁸¹ The Code of Conduct requires that: “An application for access to a document will have to be made in writing, in a sufficiently precise manner; it will have to contain information that will enable the document or documents to be identified”.

⁸² Eriksen, Erik Oddvar. 2000. “Deliberative Supranationalism in the EU”, in Erik Oddvar & John Erik Fossum (eds.) *Democracy In the European Union - Integration Through Deliberation?* London: Routledge, p. 54.

arenas”⁸³. The question is: to what degree has this network of overlapping arenas been stretched to the European level?

The single most important arena for public discussion in modern societies is no doubt the mass media. The media are important as a transmitter of public discussions taking place in other arenas (since they make these available to a wider audience); in addition, however, they are important as an initiator of discussions and public debates that take place in the media directly. Today, it is possible to detect some signs of an emerging European mass media.

First, a European news channel, *Euronews*, was established in 1993 in order to provide a European perspective on world news. *Euronews* currently broadcasts in six languages (English, German, French, Italian, Spanish, and Portuguese). It currently reaches 95 million viewers in Europe, and according to a recent survey by EMS (European Media and Marketing Survey), it has an audience of approximately 2 million viewers a day.⁸⁴ Due to its multilingual broadcasting services, *Euronews* reaches out to most of the EU’s citizens; it has the potential, therefore, to become an important arena for public discussion at the European level. However, it still reaches a very small audience as compared with national news broadcasters, and it is far less important than the latter as a transmitter and initiator of public discussion.⁸⁵

Second, there are also a number of newspapers and weekly journals which have a fairly wide spread throughout Europe. The *Financial Times* and *The Economist* are two such

⁸³ Habermas 1996. *Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy*, op. cit., pp. 373-374.

⁸⁴ See www.euronews.net, August 2006.

⁸⁵ Schlesinger, Philip & Deirdre Kevin. 2000. “Can the EU Become a Sphere of Publics?”, in Eriksen, Erik Oddvar & John Erik Fossum (eds.) *Democracy In the European Union - Integration Through*

examples. However, the press remains very much a national medium⁸⁶. As compared to papers that address national audiences, for example, the *Financial Times* has a fairly modest reach. In addition, the papers which are currently being read throughout Europe address European elite audiences, rather than citizens in general. At present these papers are not, strictly speaking, an arena for public discussion; they are a forum, rather, for an elite conversation that is taking place at the European level.⁸⁷ This arena does not satisfy the ideals of a public sphere of “generalized access to the public domain”, and “universal participation in debate about key public matters”⁸⁸.

For the time being, then, European mass media are largely absent. The most important media structures - the newspapers and television channels - are still firmly placed within the national borders of the member states. As a consequence, the coverage of news and the debate on public affairs taking place in these arenas are nationally biased; they are viewed through the lens of national, rather than European, interests. Journalists focus mainly on the domestic consequences of policy decisions. These discussions do not enhance the opportunities of citizens to form opinions which take the interest of all relevant persons into account; rather, they encourage preference-formation on the basis of purely national concerns.

Yet there are, aside from the media, other arenas for public discussion that may contribute to a viable public sphere. It can especially be focused on political parties and various interest groups.

Political parties, it has been argued, are important to the public sphere, due to their ability

Deliberation? London: Routledge, pp. 226-227.

⁸⁶ Ibid., p. 222.

⁸⁷ Ibid., pp. 222-225.

to function as forums for deliberation.⁸⁹ Parties are voluntary associations open to membership by all citizens who wish to participate in the deliberative activities taking place within the party. Parties are also important as a deliberative arena, because they are forced to take on the whole spectrum of public affairs. Since parties “exist to influence the overall formation of policy in the public sphere”⁹⁰, they provide their members with opportunities to take part in discussions of many different issues on the public agenda.

Discussions within parties typically take place at a variety of levels between different actors: individual members, party activists, and leaders. While political parties are by now established within the EU (in the form of EP party groups and party federations), there differ from national parties on one crucial point: there are no individual members who pay fees and participate in the selection of leaders and the formation of policy positions. As Hix and Lord point out: “The party structures in the domestic arena are the only true ‘party membership organisations’ in the EU system.”⁹¹ This fact reduces the importance of parties at the European level as deliberative arenas. Much like the mass media at the European level, the EP party groups and the party federations are primarily forums wherein elite conversation takes place.

The ideal opportunity for individual citizens to confront party elites within the Union, and to force them to engage in public discussion, would appear to be during EP election campaigns. In the course of these campaigns, the elites must present their standpoints on important issues and lay out their arguments for a certain course of action. Both detailed

⁸⁸ Ibid., p. 207.

⁸⁹ Teorell 1999. “A deliberative Defence of Intra-party Democracy”, op. cit., p. 37.

⁹⁰ Hix, Simon & Christopher Lord. 1997. *Political Parties in the European Union*. London: Macmillan Press Ltd., p. 10.

⁹¹ Ibid., p. 58.

policy packages and broad visions of future development are presented to the electorate. This would seem to be the perfect time for the citizens of the Union to confront politicians, and to participate in public discussions on European affairs. The problem, however, is that EP elections are not fought out primarily on European issues; they have, therefore, been unable to function as a catalyst for public debate on the EU and its future. EP elections are “second order national contests”⁹² fought out primarily on national issues and on the performance of national governments. Empirical data reveal that voters use EP elections as a means of influencing policies at the national rather than the European level. Also, the fact that many voters believe that EP elections lack importance has more to do with the perception that these elections have a marginal impact on national, rather than European, politics.⁹³ The absence of a uniform electoral procedure adds to the problem, helping to ensure that we have fifteen separate election campaigns fought out mainly on the performance of governments, rather than one election campaign fought out on European issues. Thus far, then, party politics within the EU has made but a small contribution to the establishment of a European public sphere.

What about organised interests of various types? Do not one hear repeatedly that Brussels is crowded with representatives of organised interests? Might not this be a sign of a civil society that is taking form within the Union, and that may contribute to public discussion and the establishment of a European public sphere?

To be sure, there are a huge number of interest groups seeking to influence EU policy-

⁹² Reif, Karlheinz & Hermann Schmitt. 1979. “Nine Second-Order National Elections: A Conceptual Framework for the Analysis of European Election Results”, *European Journal of Political Research*, Vol. 8, No. 1, pp. 3-45.

⁹³ Franklin, Mark N. & Cees van der Eijk, Erik Oppenhuis. 1996. “The Institutional Context: Turnout”, in van der Eijk, Cees & Mark N. Franklin (eds.), *Choosing Europe? The European Electorate and National*

making in Brussels. *The European Public Affairs Directory* lists some 2000 interest groups with offices in Brussels. In order to influence decision-making, these interest groups initiate talks on their favourite issues with elected and appointed officials within the Union. However, three factors restrict the importance of these ongoing discussions for constituting a public sphere.

First, a majority of the interest groups active in Brussels represent business interests. This means that certain issues are systematically favoured in the policy debates introduced by interest groups within the Union. Public interest groups, such as environmental or consumer groups have only recently begun to gain in influence and to make their voice heard at the European level.

Second, interest groups take, by definition, a rather narrow view of public affairs. They focus on their favourite issues, and it is rare that have any incentive to initiate broad discussions on public matters, or to weigh different concerns and interests against each other. Compared to political parties, then, they are less suitable as arenas for public discussion. This is not to say that interest groups do not contribute valuable input to the public debate. They form a legitimate part of the network of overlapping arenas that together make up the public sphere. Nevertheless, it is important that the narrow outlook of these groups, and the specific interests articulated by them, be placed within a broader perspective that takes differing views and conflicting goals into account. It is important, that is, that the discussions taking place within organised interests, and between these and representatives, are linked to arenas for public discussion which are open to a wider audience.

The last remark leads to the third factor. Considered as arenas for public discussion, interest organisations within the EU tend - irrespective of their motives and the scope of their outlook - to be rather closed to a majority of citizens most of the time. Unless they are becoming more transparent, the organised interests will function as private deliberative spaces for a few chosen actors, rather than public arenas open to all.

If a person makes an effort, he/she can indeed detect certain signs of an emerging public sphere at the European level. Today, however, arenas for public discussion are largely absent within the EU. This will hardly be surprising, if one takes the view that “[t]he public sphere is not prior to or independent of decision-making agencies but is created in opposition to them”⁹⁴. Since competition and choice are largely absent within the EU - due to the fact that national elections still predominate as the determining factor of political power within the Union - it should come as no surprise that a public sphere has yet to emerge at the European level.

It can be concluded, then, that the difficulty of obtaining relevant information, together with the absence of a European public sphere, makes the quest for deliberation a hard-fought battle within the EU. The current situation does not provide citizens of the Union with opportunities that are either adequate or equal to form well-founded opinions on public matters nor to be **trained** in areas that will allow them to understand more what is happening around them in the EU.

⁹⁴ Eriksen 2000, “Deliberative Supranationalism in the EU”, op. cit., p. 55.

3. Participation of the Citizens

a. Direct and Indirect Forms of Participation

The next concern is with the opportunities for citizens of the EU to participate in the policy-making process. The criterion of participation is, more specifically, concerned with the opportunities for citizens to influence the phase of policy development leading up to the stage of final decision-making. At the outset, the third criterion for a fully democratic process requires that “throughout the process of collective decision-making, each citizen ought to have equal and adequate opportunities for expressing his or her preferences as to the final outcome”⁹⁵. The basic meaning of this criterion is perhaps more easily grasped than the previous criteria of agenda-control and deliberation. Enjoying the opportunity to express one’s preferences as to the final outcome seems a straightforward enough matter. This means that citizens should have an opportunity to make their voice heard, so that their preferences can be taken into account. The restriction on this demand - that such opportunities be equal and adequate - seems intuitively appealing from a democratic standpoint. That citizens be treated as equals is a basic requirement of democratic governance, and saying that opportunities should be adequate is merely to recognise that equality is not enough. A political system that provides each and every citizen with equally non-existent opportunities for participation is not doing a good job of satisfying the criterion. But the qualifier ‘adequate’ also means we are not required to maximise opportunities for participation at all costs in order to satisfy the criterion.

It is important to understand that the criterion here does not require any specific form of participation. The prospects for satisfying the criterion of participation will necessarily

⁹⁵ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

diminish as the size of the political units increase - if, that is, it will be restricted to direct forms of participation. The prospects for widespread participation in modern politics would seem to be highly limited, since "one of the obvious features of the modern world is the increase in the scale of social political units"⁹⁶. This observation seems highly pertinent as regards the pattern of development in post-war Europe. The project of European integration has, no doubt, contributed to an increase in size: as governmental functions are transferred to Brussels, political boundaries are re-drawn, and the relevant polity is no longer the nation-state but the European Union. It would seem that, almost by definition, the opportunities for participation in this political context are very limited.

However, the problem of size may appear less important once one recognizes that there are indirect forms of participation as well. Once the notion of representative democracy is accepted, and once indirect forms of participation as legitimate are recognized, the problem of scale will seem easier. As a result, the idea of a democratic EU appears less unlikely. To be sure, the Union is far too large a political system to rely on direct participation for satisfying our criterion and qualifying as democratic. On the other hand, the same can be said of all existing nation-states. As Dahl points out, the reasonable upper limit for the population of a small-scale democracy cannot be stretched beyond a hundred thousand.

The increase in size brought about by European integration further diminishes the opportunities for citizens to participate in politics directly. Where indirect participation is concerned, however, the effects are less obvious. There is no reason to believe that indirect forms of participation are, by definition, impossible to establish within a political

⁹⁶ Gellner, Ernest. 1978. "Scale and Nation", in Fredrick Barth, ed., *Scale and Social Organisation*. Oslo:

system the size of the EU.

How closely the EU approximates the criterion of participation will be determined by the opportunities for citizens to express their preferences through direct and/or indirect forms of participation. Direct forms of participation will be, for practical reasons, of limited importance within the European context, but they should not be ruled out by definition. The opportunity to make one's voice heard directly may improve as a result of technological innovations. Discussing political affairs on the Internet, e-mailing one's MEP, etc. - these are forms of direct participation which are open to the citizens of the Union. However, the opportunities to engage in direct forms of participation seem negligible when we recall that we are searching for adequate opportunities not just to express our preferences, but also to have them taken into account. There are currently very few opportunities for direct participation within the EU that might serve to guarantee that citizens' preferences are actually taken into account. How closely the criterion of participation is approximated within the Union will primarily hinge, then, on which indirect forms of participation are open to the citizens of the Union. Ideally, the existence of participatory channels will ensure that citizens' preferences are taken into account and brought to bear on the development of policies. In particular, political parties and interest organisations will provide the requisite linkage between the preferences of citizens and the agents responsible for policies.

If the analysis is restricted to indirect forms of participation, what will be found there are three features of the political system at the European level that determine the degree to which citizens of the EU have equal and adequate opportunities for expressing their

preferences: (1) the *responsiveness* to citizens' preferences exhibited by agents acting as participatory channels; (2) the *effectiveness* displayed by these actors as intermediaries; and (3) the *distribution of access* to intermediary structures which are responsive and effective.

If the opportunities for citizens to express their preferences throughout the policy-making process depend by and large on indirect forms of participation, then the responsiveness of the organisations which function as intermediary structures is of crucial importance. It is by no means self-evident that organisations are sensitive to the preferences of their members. Ever since Michels coined the term 'iron law of oligarchy', it has been a matter of dispute whether parties can be run democratically; or whether, by contrast, organisation by definition means oligarchy. As Michels puts it: "[He] who says organization, says oligarchy".⁹⁷ Political parties, which are the most important channel for citizens wishing to influence policy-making, are often accused of being unresponsive and out of touch with the opinions and needs of their constituencies. Political parties and other organisations that function as intermediary structures between citizens and decision-makers do not necessarily have to be democratically organised at all levels in order for the criterion of participation to be approximated. They do need, however, to be in possession of at least one trait of democratically run organisations: they must be responsive.

Responsiveness, however, is not sufficient. The linkage between citizens and participatory agencies is crucial; equally important, however, is the ability of parties and interest organisations to influence decision-makers effectively. Consider an organisation which is perfectly responsive to its constituents, but which is deprived of every means of

⁹⁷ Michels, Roberts. 1962 (1915). *Political Parties: A Sociological Study of the Oligarchical Tendencies of*

transmitting their opinions to decision-makers. A political system within which the participatory agencies were of this kind would not even begin to approximate the criterion of participation. One should distinguish in this context, however, between participating effectively (i.e., making one's voice heard) and actually influencing the content of policies. The criterion of participation states that citizens should have adequate opportunities for expressing their preferences; it does not require that they be able actually to influence decision-making. When it is spoken of the effectiveness of actors as intermediaries between citizens and decision-makers, it would be referred to their capacity to make the voices of citizens heard, not the degree to which they actually manage to influence policy-making. The former is of course a prerequisite of the latter - actors certainly participate "in the hope of exercising influence"⁹⁸ - but having the ear of decision-makers is not sufficient for the exercise of real influence over policy. The concern here is with ascertaining the effectiveness of participation in terms of the expression of preferences, not in terms of the exercise of real influence over policy.

Finally, the criterion of participation requires that citizens have not just adequate but also equal opportunities to express their preferences throughout the policy-making process. Hence, the distribution of access to responsive and effective intermediary structures is an important variable. If, for example, there are two political systems with an equal number of responsive and effective participatory channels, then the one in which access to these intermediaries is more equally distributed among citizens meets the criterion more nearly.

As one turns now to the opportunities for indirect participation within the EU, one should

Modern Democracy. New York: The Free Press, p. 365.

⁹⁸ Wallace, Helen & Alasdair R. Young. 1997. "The Kaleidoscope of European Policy - Making: Shifting Patterns of Participation and Influence", in Wallace & Young, p. 244.

begin by examining the responsiveness and effectiveness of the intermediaries which provide linkage between citizens and decision-makers. It will be useful, in the course of this examination, to distinguish between two main types of organisation with intermediary functions: *political parties* and *interest organisations*.

b. Participation of the Political Parties within the EU

While real parties as we know them from domestic politics - i.e., voluntary membership organisations which are strongly organised internally, as well as capable of enforcing their positions across the whole political system - do not exist at the European level, there are some signs of an emerging party system within the EU.⁹⁹ The EP party groups and the party federations are the cornerstones of this emerging party system, and they have the potential to provide linkage between citizens and decision-makers at the European level. The introduction of Article 191 TEU [Article 138] was important, inasmuch as it was the first recognition in the treaties of parties as important actors in European integration. The party article states that: "Political parties at the European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union."¹⁰⁰ By emphasising the function of parties in expressing the will of EU citizens, the party article seems to take the responsiveness of the party system within the EU for granted. But to what degree are the EP party groups and the party federations responsive to the preferences of citizens?

Where responsiveness is concerned, the fact that the EP party groups and the party federations are not membership associations does, of course, make them less suited as channels for participation than are domestic parties. (The latter, to be sure, may be

⁹⁹ Hix 1999, *The Political System of the European Union*, op. cit., pp. 168-172.

lacking in responsiveness and internal democratic organisation; nevertheless, they cannot afford to ignore the opinions of their members as these are expressed in various forums within the party organisation.) The responsiveness of the EP party groups and the party federations is also undermined by the fact that there are no real electoral contests fought out on European issues within the EU; as a result, the party groups and the party federations need not fear the judgement of the voters in the same way that domestic parties do. Since EP elections, as indicated above, are second-order contests fought out primarily on domestic issues, the parties at the European level are unlikely to be punished for their performance on EU issues.

The effectiveness of the EP party groups and the party federations can also be called into question. It would be relevant to first consider the party federations, which are associations of national political parties from the same ideological camp. The first party federation, the Confederation of Socialist Parties in the EC (CSP)¹⁰¹ was founded in 1974; it was followed in 1976 by the Federation of Liberal and Democratic Parties in the EC (ELD),¹⁰² and the European People's Party: Federation of Christian Democratic Parties in the EC (EPP)¹⁰³. Despite their long history in the process of European integration, the party federations have only a limited influence over the formation of policies within the Union. Initially, their only means of influencing decision-making was through the EP party groups; however, since the formation of the Party Leaders' Meetings in the late 1980s, they have acquired some independent means of influence. Thus they

¹⁰⁰ Article 191 TEU.

¹⁰¹ The CSP was reorganised in 1995 and is currently known as Party of European Socialists (PES).

¹⁰² In 1993, the ELD was transformed into the European Liberal, Democratic and Reform Party (ELDR).

¹⁰³ The EPP laid down new statutes in 1993, and its name was shortened to European People's Party: Christian Democrats.

have strengthened their connections with the EU institutions, and established a grip from which to have some impact on EU policy-making.

The party federations have now established links not only with the EP party groups, but also with the Commission, the Council, and the European Council. The best opportunities for the party federations to exert some influence over policy-making is through the above-mentioned Party Leaders' Meetings, wherein national party leaders from all member states come together to discuss matters currently on the EU agenda. These meetings produce statements and declarations which cannot simply be ignored they actually constrain the work of the Council of Ministers ¹⁰⁴ and influence decision-making on the European Council. Still, the ability of the party federations to influence the formation of policies must be judged very limited. In a study (which may be the most comprehensive work of its kind) of parties within the Union, Hix and Lord summarise the current state of affairs as follows: "There has also been an increase in the influence of the party federations on the behaviour of the actors in the EU institutions, but the overall level of party control remains low".¹⁰⁵

The EP party groups have without doubt made the most important contribution to the emerging party system at the European level. As the formal legislative powers of the Parliament have increased - most notably with the introduction of the co-decision procedure - the party groups have become increasingly important players in the EU policy-making process. The party groups are composed of national party delegations; thus they vary substantially in size and geographical coverage. The two largest party groups - the Party of European Socialists (PES) and the European People's Party (EPP) - have

¹⁰⁴ Hix & Lord 1997, *Political Parties in the European Union*, op. cit., p. 182.

some two-hundred MEPs each, covering all member states. On the other hand, some of the smallest groups - such as the European Radical Alliance (ERA) and the Europe of Nations (EN) - have only about twenty members each, from just a few of the member states.

Despite the above-mentioned differences, all party groups have at least one feature in common: like the party federations, they are not very responsive to the preferences of EU citizens. Like the party federations, moreover, the party groups are not really membership organisations (although they do have grassroots members in a formal sense, since the national parties are sub-units of the European parties). But this is a very indirect form of membership indeed, and it scarcely forces the party groups to consider the preferences of their distant members. As Hix and Lord point out: “few members of the domestic parties are even aware that they are also indirect members of European-wide parties”.¹⁰⁶ Moreover, despite the fact that MEPs are directly elected (which makes them formally accountable to the electorate), the absence of an electoral contest fought out on European issues gives them limited incentives to be responsive to voters’ preferences. As long as “European elections are not contested on the political agenda of the EU, let alone the performance of the EP groups”¹⁰⁷, the latter will not function as reliable intermediaries through which citizens of the Union can hope to have their preferences expressed.

What about the effectiveness of party groups in influencing the formation of EU policies? Since the formal legislative powers of the Parliament have been extended with the introduction of the co-operation and co-decision procedures, the party groups are not - as

¹⁰⁵ Ibid., p. 183.

¹⁰⁶ Ibid., p. 207.

¹⁰⁷ Ibid., p. 211.

the key units of EP decision-making - in a better position than ever to make a real impact on EU policy-making. Under the co-decision procedure, for example, the Parliament has the power not only to amend but also to reject new legislation proposed by the Commission.

Through a number of mechanisms, the party groups have a strong hold over decisions made by the Parliament. First, the so-called Conference of Presidents, which comprises the chairs of each party group, has the power to decide how issues are to be distributed among the specialist EP committees where the actual drafting of proposals takes place. The Conference of Presidents also decides in what order reports from the committees are to be presented to the plenary sessions in Strasbourg.¹⁰⁸ Second, although the actual drafting of reports is entrusted to individual MEPs (rapporteurs), it is only reports that have the support of the most influential party groups that stand a real chance of finding support during the plenary session. So while the rapporteur has considerable flexibility in drafting proposals, he or she will have to seek support among the party groups and to negotiate the content with the co-ordinators of various party groups.¹⁰⁹ Third, during group week - i.e., the third week of the monthly work cycle of the Parliament - the party groups meet and decide their tactics, which to a large extent determine the fate of the issues placed on the agenda for the plenary sessions during the fourth week. During group week, compromises and package deals are struck within and between groups; at the end of the week, meetings are held which all of the MEPs within each group attend, and in which it is decided how the group will vote on different issues.

From the above, it can be concluded that “the party groups are crucial at every other

¹⁰⁸ Ibid., pp. 131-133.

stage”¹¹⁰ of the decision-making process within the EP. The effectiveness of party groups as intermediary structures for indirect participation is nonetheless limited: partly by the formal rules governing EP competencies, partly by the internal organisational structure of the party groups. On the formal side, it must first be acknowledged that the introduction of the co-decision procedure at Maastricht, and its extension at Amsterdam, have certainly increased the opportunities for the EP (and thereby the party groups) to influence the formation of EU policies. Under co-decision the EP can, during the first reading, deliver amendments to a proposal for legislation from the Commission. The Council is then called upon to agree on a Common Position, which may or may not take the proposed amendments into consideration. During the second reading, the EP can accept, amend, or reject the Common Position; moreover, if the Parliament decides to amend it, the Council must accept all of the amendments or otherwise call a Conciliation Committee made up of 15 members from each institution. This committee adopts a Joint Text, which then goes to a third reading.¹¹¹ As can be seen from this short summary of the legislative process under co-decision, the EP and the party groups do in fact have a number of opportunities to influence the content of policy-making. However, the opportunities for the EP to shape policy outcomes are first and most obviously restricted by the fact that the Treaties still specify a number of issues areas which are not decided by co-decision, and where the Parliament and the party groups have considerably less influence. Second, the powers of the EP are restricted by the fact that a decision to amend or reject a Common Position delivered by the Council under co-decision must be taken by

¹⁰⁹ Ibid., p. 124.

¹¹⁰ Ibid., p. 121.

¹¹¹ Article 251 EC [Article 189b].

an absolute majority of all MEPs (i.e., not only those attending the vote).¹¹² At this stage, the formal requirements interact with the weak organisation of the party groups to undermine EP influence over policy-making: as a consequence of low levels of attendance, the formal requirement of an absolute majority becomes a severe impediment to the amendment or rejection of Common Positions. The party groups are not internally as cohesive as the domestic parties in the member states, and the whipping system within the groups is relatively ineffective. (The latter circumstance can be explained, in part, by the fact that a majority of votes are not recorded: this gives MEPs considerable opportunities to defy the party line without getting caught.)

Third, in order to avoid the strengthened legislative powers of the Parliament, the Council has increasingly resorted to framework legislation, i.e., directives which merely specify general goals and principles, and which leave the actual work of fleshing out the details through implementation regulations to the comitology committees. The use of framework legislation and comitology committees has occasioned much dispute between the Parliament, the Council, and the Commission. The Parliament has been extremely critical of the fact that it has little or no influence over the making of rules for implementation that takes place in the Comitology. This institutional conflict has yet to be resolved.

All of the above-mentioned circumstances serve to undermine the effectiveness of the EP and the party groups as channels for indirect participation. The emerging party system within the EU lacks, by and large, the attributes necessary if parties are to function as intermediaries through which citizens can express their preferences. The EP party groups and the party federations are neither particularly responsive to the preferences of citizens

¹¹² Article 251 EC [Article 189b].

nor especially effective in influencing the development of EU policies (although the introduction of co-decision has given the party groups an increased voice in the policy-making process). It appears, then, that the hope of citizens who wish to have their preferences expressed throughout the policy-making process rests with the various interest organisations active at the European level.

c. Indirect Participation through Interest Organizations

There is certainly no shortage of interest organisations within the EU. Indeed, the number of interest organisations that lobby EU decision-makers has increased dramatically in recent years. It is clear that the interest organisations active on the European level are, in general, more responsive than the parties active on said level. This is simply because they are much closer to their members; in addition, they need only take responsibility for issues that matter to their members (rather than to all citizens). Approximately one-third of these organisations are direct membership associations, while the remaining two-thirds are federations made up of a group of associations.¹¹³ The EP party groups and the party federations have only distant members who are scarcely aware of the fact of their membership, and who are not in a position to give mandates on European issues. The interest organisations, on the other hand, have members that are closer to the leadership and more visible; they are therefore forced to act in furtherance of the best interests of their members. Empirical data also confirm that interest organisations in Brussels very much consider themselves to be representatives of their members.¹¹⁴ Interest organisations must indeed respond to the preferences of their members, or the latter will

¹¹³ Aspinwall, Mark & Justin Greenwood. 1998. "Conceptualising Collective Action in the EU", in Greenwood, Justin & Mark Aspinwall (eds.), *Collective Action in the European Union*. London: Routledge, p. 4.

seek out other channels to make their voice heard. This does not mean, of course, that interest organisations are all responsive to the same degree. On the contrary, they are likely to differ substantially on this account, due to important differences between them.

First, interest organisations in Brussels differ enormously in size and in the number of members they represent. A small organisation is closer to its members (and thus more likely to be responsive to their preferences) than, say, a giant umbrella organisations like the European Trade Union Conference (ETUC), which has some 45 million members in 22 countries all across Europe.¹¹⁵ Second, the cohesion of interests among members will affect the ability of an organisation to respond to the preferences of all and not just some of its members. Sector-specific organisations like the Committee of Agricultural Organisations (COPA) are likely to be more responsive than cross-sectoral organisations, such as UNICE (Union of Industrial and Employers' Confederations of Europe). The interest organisations operating within the Union are by no means a homogeneous body of associations, and their size and cohesion affects the degree to which they are responsive to the views and opinions of their members. Since all of them are membership organisations, however, they all have clear incentives to further the expressed interests of their members.

The differences between organisations will also affect their capacity to channel citizens' preferences effectively. To some extent, it would appear that those organisations which are most likely to be highly responsive to their members - i.e., small sector-specific associations - are also less likely to score high on effectiveness. This is the case, first of

¹¹⁴ *Ibid.*, pp. 7-9.

¹¹⁵ Greenwood, Justin & Mark Aspinwall (eds.). 1998. *Collective Action in the European Union*. London: Routledge, p. 164.

all, because lobbying decision-makers and influencing the development of EU policies is a demanding enterprise - one requiring resources which small organisations usually do not possess (or which they possess in a substantially lesser degree than their larger counterparts). An organisation like UNICE, for instance, has a staff of some 30 people working at its Brussels office; and more importantly, some 1000 officials from its national member organisations are represented on various committees and in working groups within the EU institutions. Needless to say, such resources - in terms of money and personnel - are unheard - of where small organisations are concerned.

The fact that large Euro-wide federations and cross-sectoral organisations are often more effective in influencing policy-making is also a result of the fact that the EU institutions give privileged access to certain associations. The Commission, the Council, and the Parliament are certainly not innocent victims falling prey to ruthless lobbyists keen on promoting their private hobby-horses. As shown above, rather, the EU institutions depend on interest organisations; often, in fact, they initiate contacts with existing organisations, or even help to set up lobbyists in policy fields that lack them.¹¹⁶ The whole game of lobbying is thus very much a two-way street; it works to the advantage of both parties. When it comes to giving priority to some lobbyists over others, however, the EU institutions tend to seek co-operation with organisations that possess many valuable assets. Different organisations possess varying amounts of such 'bargaining chips', and those which are better equipped have an advantage when it comes to gaining personal access to decision-makers or being represented on various committees and in working groups. It is the EU-wide, cross-sectoral organisations which, in general, have more of

¹¹⁶ Young, Alasdair R. 1997. "Consumption Without Representation? Consumer in the Single Market", in

these ‘bargaining chips’; otherwise put, they have more in the way of information, expertise, and an ability to help the Commission implement its policies. (The last mentioned ‘chip’ reflects their ability to secure compliance from domestic actors associated with them.) It is therefore these organisations to which the Commission and other EU institutions are most keen to grant access.¹¹⁷ The connection is not entirely straightforward, however, since large, cross-sectoral organisations like UNICE may also have a difficult time satisfying the interests of all their members effectively: this is a problem which UNICE shares with all large, cross-sectoral umbrella organisations that represent a vast number of members - members with sometimes very different interests. Members who feel their organisation does not do a good job of furthering their interests will seek out alternative channels to influence policy-making. Such tendencies may in the long run undermine the power base of organisations like UNICE. Empirical case studies also confirm that the failure to “maintain internal consensus amongst conflicting interests” is an important reason why some interest organisations at the European level are relatively weak.¹¹⁸

The many interest organisations engaged in lobbying at the European level make up a rather heterogeneous population. Their responsiveness and effectiveness tend to vary considerably, depending on such factors as size, resources, internal cohesion, and the possession of ‘bargaining chips’. Large, cross-sectoral interest organisations like the UNICE have no trouble setting up meetings with Commission officials, or gaining access

Wallace & Young (eds.), pp. 224-229.

¹¹⁷ Wessels, Wolfgang. 1997. “The growth and Differentiation of Multi Level Networks: A Corporatist Mega-Bureaucracy or an Open City?” in Wallace, Helen & Alasdair Young (eds.), *Participation and Policy making in the European Union*. Oxford: Clarendon Press, p. 34.

¹¹⁸ McLaughlin, Andrew & Grant Jordan. 1993. “The Rationality of Lobbying in Europe: Why are Euro-

to various committees and working groups. They are, accordingly, well-positioned to have an impact on policy-making. Their size, on the other hand - together with the conflicting interests among their members - makes them less responsive than are small, sector-specific organisations. The latter, however, possess fewer 'bargaining chips' as a rule, and they have less in the way of the resources that make for effectiveness when it comes to influencing EU policies. There seems to be a trade-off, then, between responsiveness and effectiveness. This trade-off hampers the ability of interest organisations to provide EU citizens with adequate opportunities for indirect participation.

It should also be recognised that access to interest organisations is far from evenly distributed among the citizens of the Union. Business interests and employers are very well-represented in Brussels; individual companies are the most common interest organisation present at the European level. Roughly two-thirds of all interest organisations in Brussels are business groups. Societal interests like trade unions, consumer groups, and environmental groups are not nearly as frequently represented at the European level, even if their numbers have increased in recent years. In particular, 'civic interest' organisations like consumer groups and environmental associations have been making their presence felt in Brussels to an increasing degree; by contrast, trade unions and organised labour in general are still weak within the EU. The distribution of access to participatory channels is thus systematically skewed in favour of employers, business, and capital, at the expense of workers and 'civic interests'.

It is now time to summarise the examination, and to reach a final judgement regarding

Groups so Numerous and so Weak? Some Evidence from the Car Industry", in Mazey, Sonia & Jeremy

how closely the criterion of participation is approximated within the EU. Although it seems impossible to determine precisely what qualifies as adequate opportunities for citizens to express their preferences, one may nevertheless conclude that the intermediary structures present at the European level are seriously flawed, in terms of both responsiveness and effectiveness. Add to this the observation that access to interest organisations is unevenly distributed among citizens, and it becomes obvious that the citizens of the Union have neither adequate nor equal opportunities to make their voices heard throughout the process of EU policy-making.

4. Voting-Equality

a. Referendum, Representation, and Accountability

The very essence of politics is, as Giovanni Sartori says, the making of collectivised decisions.¹¹⁹ The defining criterion of such decisions is that they “apply to, and are enforced on, a collective regardless of whether they are taken by the one, the few, or the many”¹²⁰. Now then, the fourth criterion for a fully democratic process states that, in the making of binding collectivised decisions, the “expressed preference of every citizen ought to be taken equally into account in determining the final solution”¹²¹.

Once again, it becomes evident why Dahl himself regards the criteria for a fully democratic process as an ideal at the limit of human possibility or even beyond. For these criteria to be fully satisfied, it would seem that nothing less than direct decision-making

Richardson (eds.), *Lobbying in the European Community*. Oxford: Oxford University Press, p. 157.

¹¹⁹ Sartori, Giovanni. 1987. *The Theory of Democracy Revisited*. New Jersey: Chatham Publishers Inc., pp. 214-215.

¹²⁰ Ibid., p. 214.

¹²¹ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

by the citizenry will suffice. Only a political system where every collectivised decision is decided by the people directly can be said truly to give equal weight to the expressed preference of each citizen when determining the final solution. As soon as representation of any kind is introduced, one always runs the risk that the interests of some citizens will be misinterpreted, overlooked, or lost during the process. The only systems which truly guarantee equality in voting would seem to be those that do away with intermediaries: e.g., a full-fledged assembly democracy, where citizens gather at the forum to make decisions directly; or a referendum democracy, in which citizens also decide directly¹²² (but without face-to-face interaction in the public sphere). Both such alternatives would seem, however, to be highly implausible in modern society.

Assembly democracy, as envisaged by Rousseau and others, would appear to be a vision of the past, due to obvious limitations of size. As mentioned above, there is a rather strict upper limit in terms of population size when it comes to the realisation of assembly democracy. The precise limit is of course hard to define, but one can certainly agree that modern societies have moved well beyond it.

What, then, of the possibility of a referendum democracy, which could be realised from the privacy of one's own home? Thanks to technological advances, this alternative would seem - at first sight - to be more feasible. Have the new communications technologies now made it possible to revive the participatory ideal running from the era of the Greek city-states through the works of Rousseau and Mill?¹²³ It does seem theoretically possible

¹²² See Sartori, 1987, *The Theory of Democracy Revisited*, op. cit., p. 112 for a discussion on the distinction between assembly and referendum democracy.

¹²³ The works of Rousseau and Mill are often cited by modern proponents of the participatory model of democracy. See, for example, Pateman, Carole. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press, p. 20.

to replace representative democracy with referendum democracy at the national or even European level: to implement “teledemocracy”¹²⁴, as James Fishkin calls it. Where the criterion of voting-equality is concerned, this is good news, for direct decision-making by the citizens is preferable to representative government from the standpoint of this criterion.

But while referendum democracy may be, thanks to technological developments, a feasible alternative in modern society, there are nevertheless some strong arguments to be made against such a political system. First, if citizens were allowed to make final decisions on policy issues from the privacy of their own home - simply by pressing a button - this would in all likelihood have negative consequences for the quality of decision-making. As argued above, deliberation can certainly take place in private, but also such deliberation is heavily dependent on discussions that take place in a public sphere. In the absence of such discussions, citizens would suffer from misinformation and become vulnerable to demagoguery and hasty judgements. This would certainly threaten the quality of democratic decision-making, as well as raise concerns about the tyranny of the majority.¹²⁵

Furthermore, since the actual number of policy decisions that has to be made in a modern political system is huge, being a citizen in a referendum democracy would be something of a full-time job. Citizens in such a political system would be faced with an overwhelming workload, and before long they would probably become rather fed-up with politics, and happily delegate the decision-making to representatives.

Should one agree with Mill, then, that the “ideal type of a perfect government must be

¹²⁴ On “teledemocracy”, see Fishkin 1991, *Democracy and Deliberation*, op. cit., pp. 21-25.

representative”¹²⁶? It should be recognised that the societal context of the modern world is not well-suited for direct democracy at the macro-level. Referendums can surely function as an important complementary feature within representative political systems - as they currently do in many representative democracies.¹²⁷ But political systems will - and for the above-state reasons perhaps also *should* - remain predominantly representative in nature. The degree to which representative political systems provide citizens with opportunities to participate at the final stage of policy-making through referendums can thus be seen as one indicator of how well the criterion of voting-equality is approximated. But, first and foremost, what is needed is analytical tools that help determine which features of representative political systems determine the degree to which equality in voting is satisfied. The degree to which the criterion of voting-equality is satisfied is determined by two features of representative political systems: (1) the extent to which citizens are equally represented at the stage of final decision-making; and (2) the degree to which citizens can effectively hold decision-makers accountable.

James Mill once referred to representation as the “grand discovery of modern times”, wherein “the solution of all difficulties, both speculative and practical, will perhaps be found”.¹²⁸ He was doubtless correct in stressing the importance of representation to the organisation of modern politics; still, some difficulties surely persist even within representative political systems. Most fundamentally: how are we to achieve equal representation of citizens? Even more fundamentally: what do we mean by ‘equal

¹²⁵ Ibid., pp. 21-22

¹²⁶ Mill, John Stuart. 1958 (1861). *Considerations on Representative Government*. Indianapolis: Bobbs-Merrill, p. 55.

¹²⁷ See, Butler, David & Austin Ranney (eds.). 1994. *Referendums Around the World*. Washington: American Enterprise Institute, p. 40-55.

representation’? The representation part simply means that representatives are persons empowered to act in the interest of the represented. Representatives “must not be found persistently at odds with the wishes of the represented without good reasons in terms of their interest, without a good explanation of why their wishes are not in accord with their interest”¹²⁹. It is important to recognise that representation does not guarantee that the preferences of any particular group of citizens will be satisfied. Rather, “[a]ll that is promised is that the composition of the legislature will reflect the distribution of political preferences as the voters themselves identify them”¹³⁰. The promise of representation is thus, in the words of Beitz, a guarantee of electoral but not political success.

Equality of representation requires adherence to the ‘one-person-one-vote’ principle. If votes are so weighted that some individuals are accorded more influence than others during the process of electing representatives, or if the votes of some representatives are so weighted as to secure them greater influence than that enjoyed by their peers during the process of decision-making, then the one-person-one-vote principle has been breached. Under such circumstances, citizens are not being treated as equals, in the sense that they are not being guaranteed equal opportunities for electoral success. In such a case, the interests of some citizens are being better represented at the final stage of decision-making. The more unequally citizens are represented, the less satisfied is the criterion of voting-equality.

It is time now to turn to the matter of accountability. As argued above, representation means representatives which are required to act in the best interest of the represented, like

¹²⁸ Quoted in Sabine, George. 1964. *A History of Political Theory*. London: George G. Harrap, p. 695.

¹²⁹ Pitkin, Hanna. 1967. *The Concept of Representation*. Berkely: University of California Press, Ltd, pp. 209-210.

the citizens. Yet representatives must also, if they are to fulfil their duties in an effective manner, be accorded independent powers to act. If open mandates are allowed, however, there will be a need for institutional arrangements which force representatives to be responsive to the wishes of the represented. In order to guarantee that representatives stay just that, and that they actually work to promote citizens' interests during the final stage of decision-making, citizens must be able to hold representatives accountable for their actions. Accountability is thus a necessary condition if representative democracy is to work, and if the criterion of equality in voting is to be approximated. Should the representatives fail to uphold their end of the bargain, there should be institutionalised opportunities for the citizens to throw them out. In this respect, representative democracy is about the controlled transmission of power.¹³¹ Thus, representative political systems which lack mechanisms for holding decision-makers effectively accountable are seriously flawed from a democratic standpoint.

First, and most obviously, it matters whether the decision-maker in question is an elected politician or an appointed official. As seen previously, not all decisions are made by directly elected politicians, and they may in fact be good reasons to delegate decision-making, or the control over the agenda, to appointed officials. Doing so will have, however, negative effects as far as accountability is concerned.

Second, it matters how long the chains of delegation are. As a general rule, the more numerous the intermediaries between citizens and decision-makers, the weaker are the mechanisms of accountability. The length of the chains of representation certainly matters. If these are stretched indefinitely, this will certainly have negative consequences

¹³⁰ Beitz, Charles R. 1989. *Political Equality*, New Jersey: Princeton University Press, p. 135.

for citizens' ability to hold decision-makers accountable. Finally, general characteristics of the political system at large - such as the openness of the system or the organisation of the party system - will also affect the prospects for holding decision-makers accountable.

In conclusion, it can be stated that the degree to which the criterion of voting-equality within the EU is satisfied will be determined by three factors: (1) the extent of the opportunities enjoyed by citizens to make decisions directly through referendums; (2) the degree to which citizens are equally represented; and (3) the extent to which citizens can hold decision-makers accountable for their actions at the final stage.

Today, the EU provides no opportunities for the citizens to make final decisions directly through referendums. Some scholars have proposed the introduction of Europe-wide referendums as a way of reducing the democratic deficit; for the time being, however, referendums have no part to play in securing voting-equality within the EU. Citizens must exclusively rely on mechanisms of representation and accountability in order to secure a say at the final state of decision-making.

b. Voting Equality in the EU

As far as the issue of equal representation within the EU is concerned, one should not be interested in all of the representative bodies within the Union. Since the criterion of equality in voting is concerned with decision-making at the final stage, it is not important to investigate how representation works in bodies like the Economic and Social Committee, or the Committee of Regions. These are no doubt representative institutions, but it is only the Council of Ministers and the European Parliament that have the power to

¹³¹ Cf. Sartori 1987, *The Theory of Democracy Revisited*, op. cit., pp. 232-234.

make final decisions. When examining these institutions, one is immediately struck by the fact that the one-person-one-vote principle is far from being realised in the organisation of these representative bodies.

Now, it is time to consider the issue of accountability. At present, the system for enabling citizens to hold decision-makers effectively accountable for their actions in Brussels is seriously flawed. This deficiency stems from the fact that many decisions in Brussels are made by appointed rather than elected officials. Some of these officials are also at the far end of long chains of delegated authority. But the deficiency also arises from certain general characteristics of the political system within the EU. But how these factors combine to undermine the opportunities for EU citizens to hold decision-makers accountable for their actions?

For one thing, the members of the Council - who are the most important decision-makers at the final stage of policy-making - are not elected directly by the citizens of the EU. They are representatives of the national governments, and only indirectly of the citizens of the member states (although they can of course be removed from office as a result of national elections). The problem is that these elections are not fought out on European issues, which means that they are not effective mechanisms for holding the decision-makers of the Council accountable for their actions. National elections are - as indeed they should be - fought out on domestic issues. A serious problem arises here, however, if voters support a party's domestic agenda but not its actions at the European level. Since domestic politics takes priority, the indirect route to holding Council decisions-makers accountable (through national elections) is a very weak mechanism.

Furthermore, even if the voters of a member state chose to cast their ballots exclusively

on European issues, and if they accordingly utilised their national election in order to acquire a new set of representatives in Brussels (by voting the current government out of office), this would have no significant effect on the formation of public policy. A significant effect would only result, namely, if a similar change took place in other member states as well. But since national elections are not held simultaneously in all the member states, there is no way for the citizens of Europe to hold their national-government representatives in the Council collectively accountable. Where decision-making in the Council is concerned, accordingly, no mechanism is available to help the citizens of the Union “translate a majority produced by the European electorate at large into an effective and predictable change in government or policy”¹³².

On the positive side, the Parliament - the only directly elected institution of the Union - has gradually acquired an increased say in the making of final policy decisions. The fact that the EP is directly elected by the EU citizenry shortens the chains of delegations. The opportunity of citizens to hold decision-makers accountable has thus improved. However, two important features restrict this potential. First, as already been stressed, there is the fact that EP elections are second-order national contests fought out on domestic rather than European issues. As a consequence, an “MEP’s chance of reelection is not dependent upon his or her performance in the EP, but is determined by the popularity of his or her national party”¹³³. The absence of a real electoral contest fought out on European issues hampers the opportunities of citizens to hold MEPs accountable for their actions during the final stage of decision-making.

¹³² Schmitter, Philippe C. 2000. *How to Democratize the European Union...and Why Bother?*, New York: Rowman & Littlefield Publishers Inc, p. 7.

¹³³ Hix 1999, *The Political System of the European Union*, op. cit., p. 75.

Second, as also mentioned above, the extension of co-decision has been accompanied by an increased use of framework legislation which bypasses the influence of the Parliament, and which instead grants the members of comitology committees the power to develop the actual content of framework directives. When framework legislation is passed, the legislative acts have to be further specified through implementation regulations issued by comitology committees. Guenter Schaefer refers to this phase of the policy cycle within the EU as “policy implementation rule-making”¹³⁴: a sort of middle ground between the policy decision phase and the policy application phase.

The use of framework legislation and policy-implementation rule-making issued by the comitology puts voting-equality in a new light, since it forces people to ask when a final decision really becomes final. Directives are of course final products of policy-making. But since framework directives cannot be implemented until they have been further specified through implementation regulations, it is obvious that the members of the comitology committees have a very real say during the final stage of decision-making. This is certainly bad news where accountability is concerned, because these committees consist of appointed national officials who are less accountable to the EU citizenry than are members of the Council of Ministers, and still less accountable than directly elected MEPs. Formally speaking, of course, the national officials of these committees are accountable to national governments, which in turn are indirectly accountable to the electorate. But this is quite inadequate from the standpoint of accountability. First, this chain of delegation is too long to allow citizens any real opportunity to hold decision-makers accountable. Second, it is known through empirical research that, in practice,

¹³⁴ Ibid., p. 6.

national governments find it difficult to control the actions of these officials.

In addition, there are two general characteristics of the EU system which undermine the ability of citizens to hold decision-makers within the Union accountable. A basic prerequisite for accountability is that citizens be able to determine how representatives have in fact acted. As mentioned above, however, the EU is still - notwithstanding some recent improvements - seriously lacking in openness. The committee system in particular is still notoriously closed to the public; as a result, it is impossible to determine exactly who did what. The Council for its part has become more open, and the new rules on the publication of voting results - according to which voting records must always be made public in instances where the Council has acted as legislator - has certainly improved the situation. However, there is still room for considerable improvement where the transparency of Council decision-making is concerned.

Another characteristic of the EU system that undermines accountability is the veto or consensus culture, which “effectively requires[s] unanimity across most EC decisions”¹³⁵. The veto culture can make itself felt in different ways: (1) in negotiations that proceed until the lowest common denominator is reached or (2) in carefully prepared proposals that can be accepted even by member states which would likely be outvoted were a formal vote called. Irrespective of how this veto culture makes itself felt, the consequences for accountability are negative. Competing opinions and alternative agendas are less likely to evolve in the face of a strong consensus culture.

At the final stage of policy-making within the EU, then, there are three sets of relevant

¹³⁵ Golub, Jonathan. 1999. “In the Shadow of the Vote? Decision Making in the European Community”, *International Organization*, Vol. 53, No. 4, p. 746; cf. Hayes-Renshaw, Fiona & Helen Wallace. 1997. *The Council of Ministers*. London: Macmillan Press Ltd., p. 18.

actors to be examined: the representatives of national governments in the Council; the directly elected MEPs; and appointed national officials on the comitology committees. Unfortunately, the citizens of the Union can hold none of these actors effectively accountable for their actions. Add to this the unequal system of representation, and it can only be drawn the conclusion that the criterion of equality in voting is poorly met within the EU.

5. Inclusion

Finally, it would be time to briefly examine the fifth criterion, that of inclusion. According to this criterion, “the demos ought to include all adults subject to its laws, except transients”¹³⁶. Being a member of a demos is the same as being accorded full citizenship. A person who holds Swedish citizenship, for example, is a member of the demos thereby, and thus enjoys the political rights constitutive of citizenship. It is the public that constitutes the demos of a political system. It was therefore an important step when, at the Maastricht conference, the status of citizenship of the Union was established. Article 17 EC [Article 8] states that: “Citizenship of the Union is hereby established. Every person holding the nationality of a member state shall be a citizen of the Union”. Articles 18-22 EC [Articles 8A-8E] then go on to specify the content of EU citizenship: it includes for example, the right to “move and reside freely within the territory of the member states”¹³⁷; “the right to vote and to stand as candidate at municipal elections in the member state in which he resides, under the same conditions as nationals of that

¹³⁶ Dahl 1982, *Dilemmas of Pluralist Democracy*, op. cit., p. 6.

¹³⁷ Article 18 EC [Article 8 A].

State”¹³⁸; and the right to “petition the European Parliament”¹³⁹. As compared with the rights flowing from national citizenship, the content of EU citizenship may not seem very impressive; however, the fact that citizenship at the EU level has been acknowledged is important as a first step towards the achievement of more important rights for EU citizens.

The major problem with the construct of EU citizenship under Article 17 EC [Article 8] is the fact that each member state is free to define the specific conditions for citizenship; this opens the door to an unequal treatment of individuals subject to EU law.¹⁴⁰ Since each member state is free to apply its own principles to the awarding of national citizenship, it is in fact the sub-polity which has the power to determine the conditions for EU citizenship. Each member state, then, has the power to exclude adults subject to EU law. The meaning of inclusion depends on which member state you happen to reside in. The consequence of this state of affairs is a possible breach of the criterion of inclusion. Since EU law is binding for all persons living within the borders of the member states, all adults except transients should - according to the criterion of inclusion - be granted citizenship of the Union. It should be of no importance which member state they happen to reside in. As matters now stand, it may be coincidence that determines whether a refugee who seeks asylum within the EU will be able to obtain citizenship of the Union in time. If that someone happens to seek asylum in a member state which applies the principle of *ius sanguinis*, then he or she will forever be denied national as well as EU

¹³⁸ Article 19 (1) EC [Article 8 B]. The right to vote and the right to stand as a candidate in the member state where you reside apply to EP elections as well; see Article 19 (2) EC [Article 8 B].

¹³⁹ Article 20 EC [Article 8 C].

¹⁴⁰ Weiler, J. H. H., & Ulrich R. Haltern, Franz C. Mayer. 1995. “European Democracy and Its Critique: Five Uneasy Pieces”, *West European Politics*, Vol. 18, No. 3, pp. 4-39.

citizenship. German citizenship laws, for example, were previously premised on German heritage; to become a German citizen, you had to be a German national. Hence, if you were born in Germany to foreign parents, you were denied German citizenship - and you were also excluded from the opportunity of becoming a citizen of the EU. As of January 2000, some major changes in Germany's naturalisation laws took effect. Children born in Germany to foreign parents, now acquire citizenship at birth if at least one parent has lived legally in Germany for eight years. Adult foreigners who have resided legally in Germany for eight years also have a claim to citizenship, provided they meet certain conditions.

These new laws will diminish the problem of individuals subject to EU law and yet being excluded from EU citizenship. However, as long as the assignment of EU citizenship is dependent on the rules governing national citizenship (and thus is left to each member state to decide), the criterion of inclusion will not be fully met.

6. Conclusion

The examination of the EU's democratic status is now complete. So what conclusions can one draw from the analysis regarding the democratic quality of the Union? First, it would be normal to conclude that none of the criteria for a fully democratic process are met perfectly within the EU (although this is hardly surprising, given the choice of measuring rod). But it was not the possible existence of a democratic deficit that was set out to examine, but rather its scope and depth. It is thus more to the point to ask: how deep-seated are the deficiencies that have been identified?

No neat formula is available, of course, to help summarise the results of this examination,

and any attempt to provide a clear-cut answer will necessarily fail to do justice to the complexity of the issues at hand. In few words, it is possible to say that only two of the indicators - “conditions for citizenship” and “effectiveness of intermediaries” - point to acceptable results.

Furthermore, the effectiveness of those who act as intermediaries between citizens and decision-makers should also be considered acceptable. Due to the introduction of co-decision, the EP party groups have become real players in the policy-making process; in addition, there are a number of privileged interest organisations with the potential to influence the process of collective decision-making at the European level. The problem, as far as the criterion of participation is concerned, is that the responsiveness of these intermediaries is less than satisfactory; moreover, access to participatory channels is not distributed equally among citizens of the EU.

The situation is even worse in regard to other dimensions of democracy within the EU. It is possible to spot some improvements, most notably when it comes to access to information and the prospects for holding decision-makers accountable. However, the situation is still unsatisfactory - or even very unsatisfactory - when it comes to agenda-control, deliberation, and voting-equality. These criteria for a fully democratic process are far from satisfied.

The depth of the democratic deficit makes it natural to ask the question of: what can and what should be done to address the democratic shortcomings of the Union? In the next chapter of this study, the question of the EU’s constitutional future will be touched upon, and there will be an examination of various positions in the debate over how the democratic deficit ought to be addressed.

CHAPTER 4

IMPROVING THE DEMOCRATIC STATUS OF THE EU

The debate over the constitutional future of the EU has produced a huge number of proposals for reform. Some authors call for fundamental change; others are content with few alterations. The proposals stem from a variety of sources: the governments of the member states, the institutions of the Union, academic circles, private think tanks...

There are three major different positions on how to democratize the Union that can be examined. Each of these can be traced in turn to the three main models of democracy featured in modern democratic theory: competition, participation, and the deliberation.

According to the first position, as outlined in the draft treaty on European Union (EUT), it is mandatory to work for the establishment of competitive democracy at the European level. Advocates of the second position, like Heidrun Abromeit, take the participatory model of democracy as their point of departure and propose reforms in order to *bring the people back in*. Those taking the final position hold forth *deliberative supranationalism* as the key for democratizing the Union. In a number of studies, there was an agenda for reform based on the conviction that the EU's committee system can function as the main arena for democratic practices at the European level.

Can these proposals for institutional reform help democratize the Union? And do they argue convincingly that so doing would be desirable?

1. Criticism of the Proposed Reform

The first option advocates the introduction of competitive democracy at the European level. This position was outlined in the draft treaty on European Union (EUT), also known as the Spinelli accord. According to this reform strategy one should work to: increase the power of the Parliament in the legislative process, strengthen the Commission's role as an executive, and increase the accountability of the Commission to the EP. The ultimate goal is to establish real electoral contests fought out on European issues, which would guarantee competition over inputs *ex ante* and accountability for actions *ex post*.

The second option proposes reforms designed to *bring the people back in*. In a recent study, Heidrun Abromeit argues that the basis for a democratization of the EU should be direct participation by the European citizenry. According to Abromeit, the EU is currently facing a legitimacy gap. The solution to this problem is to democratize the EU in a way that complements existing institutions and procedures with a system of veto rights. Only by introducing institutions for direct participation can citizens be equipped with adequate opportunities to influence decision-making.

The third and final position calling for democratization proceeds from the deliberative model of democracy. The advocates of deliberative supranationalism argue that the EU's committee system can function as the main arena for democratic practices at the European level. Christian Joerges and Jürgen Neyer are among those who have developed the argument in favor of establishing deliberative practices at the European level. The committee system is regarded as an institutional setting with a strong potential to satisfy deliberative ideals: arguing rather than bargaining or voting should be the basis for

decision-making.

Each of these positions contains interesting proposals for reform, but they are also problematic in different respects.

The proposals suggested by the EUT seem inadequate for introducing competition and accountability into the EU political system. If these goals are to be reached, it will appear that nothing less than a full parliamentarisation of the Union will suffice. Furthermore, given the fact that the justification for competitive democracy lies in its ability to satisfy the desires of the citizens, the competitive model should recognize the importance of preference-formation and citizen participation in the decision-making process.

According to Heidrun Abromeit, direct citizen participation is to be justified as a means for increasing opportunities for the members of a polity to influence decision-making. There is no evidence, however, to support the claim that direct participation is a better means for influencing decision-making than indirect forms of participation. It may actually be more effective to choose to delegate the choice of the appropriate means for furthering one's interests. Also, advocating reforms for direct citizen participation seems ill-advised for someone who sets out to increase public support for the EU and bridge the legitimacy gap. The capacity of the Union for effective problem solving is an important factor for securing public support. One should thus be very careful about proposing reform initiatives that seriously threaten this capacity.

The reforms advocated by deliberative supranationalism are designed to improve the deliberative quality of comitology decision-making. But these measures will merely create institutional settings for elite deliberation, which are closed to the citizens of the Union. Unless problems concerning responsiveness and accountability are solved, these

decision-making practices will have a hard time qualifying as truly democratic. It may indeed be possible to rectify these shortcomings, but it can not be done if we adopt as narrow a perspective on institutional reform as deliberative supranationalists do.

Positions on how to address the democratic deficit of the EU were examined in the previous section. As seen, all of these options are open to serious criticism. However, the EU is still plagued with democratic shortcomings that simply cannot be ignored. Now the question of how the democratic deficit should be addressed will be discussed.

2. How should the Democratic Deficiencies be Addressed

a. The Current Problems

Before turning to an assessment of the main positions taken in the debate over the democratic deficiencies, it would be beneficial to briefly recapitulate the current problems facing the EU. First, it is obvious that the Union is full of democratic shortcomings. The existence of a democratic deficit within the EU has in fact been acknowledged for a long time, but - as argued previously - the focus has usually been on the limited power of the Parliament. The yardstick against which the democratic status of the Union has been measured is the institutional framework of parliamentary democracy. This analytical perspective has led to a very narrow conception of the democratic deficit, and the focus has been almost exclusively on reforms designed to strengthen the power of the Parliament.

Any discussion of the democratic status of the Union must surely address the question of the Parliament's power; however, a comprehensive analysis of the democratic shortcomings of the EU ought as well to examine other aspects of its political system. In

this analysis of the democratic deficit, it would be best to proceed from the definition of a fully democratic process put forward by Robert Dahl. With this definition as a starting point, an analytical framework for measuring the democratic status of the Union, was developed.

Upon applying this analytical framework, it can be deduced - as seen in chapter 3 - that the Union fails to meet the standards for a fully democratic process on almost every count. Given the previous choice of measuring rod, it is no surprise that the EU fails to meet the criteria. Since the criteria in question are ideal standards that depict a perfect democracy, it would not be expected from any actual political system to meet them perfectly. The important point, then, is not that a democratic deficit exists within the EU. What is of interest is how closely the different criteria are met. It is the scope and depth of the democratic deficit not its absolute existence - that has been the focus here.

As seen in chapter 3, the EU does indeed face a number of serious democratic deficiencies. Of the five basic criteria for a fully democratic process - agenda-control, deliberation, participation, voting-equality, and inclusion - it is only the last-mentioned that is met to an acceptable degree within the EU. Where the other four dimensions of democratic governance are concerned, the situation is far from satisfactory. Although some improvements have taken place - especially when it comes to access to information, the effectiveness of indirect participation, and the opportunities for holding decision-makers accountable - the democratic shortcomings are still important. Simply put, the citizens of the Union have but limited opportunities to exercise agenda-control. (It is the Commission, namely, that is the primary agenda-setter within the Union.) The Parliament has only a limited role to play during the agenda-setting stage of the policy-making

process, and the best opportunity for citizens to influence agenda-setting is probably that provided by the many committees linked to the Commission. However, access to this channel is not open to all citizens, but only to a selected number of interest organizations. Although it is possible to detect some signs of change, a public sphere in which deliberation can take place has not yet emerged at the European level. On the positive side, it is true that the EU has taken some important steps towards increased transparency; however, the Council is still divided on this issue, and the member states have not yet managed to agree on the exact content of the right of access to documents produced by the European Parliament, the Council, and the Commission.

The opportunities for citizens to participate throughout the policy-making process have certainly improved in recent years. The party federations, as well as the party groups in the EP, have become real players in the policy-making process. In addition, many interest organizations are able to influence policymaking from within various committees. On the downside, there are still problems to be solved in connection with the responsiveness of intermediaries, as well as in connection with the equal distribution of access to these channels for indirect participation.

Where voting-equality is concerned, it should be recognized that the introduction of co-decision has strengthened the position of the Parliament, and thus improved the prospects for holding decision-makers accountable. In the absence, however, of a real European electoral contest fought out on European issues, there will only be limited opportunities to hold MEPs accountable for their actions. In recent years, moreover, an increase use of framework legislation has been witnessed; as a result, the actual influence of the Parliament during the legislative stage of the policy-making process has been

undermined. Comitology committees and appointed national officials have thus become the real decision-makers, and that is certainly bad news from the standpoint of accountability. The unequal system of representation also contributes to a continued violation of the criterion of voting-equality. The systematic overrepresentation of citizens from small member states was only marginally adjusted at the Nice conference.

In recent years, many possible solutions have been offered in order to improve the status of the EU. While many favor the status quo, some scientists call for democratization. The first position considered favored the status quo, on the grounds that it is desirable. According to Giandomenico Majone, the democratic deficit should be preserved. The EU should be organized as a supranational regulatory state wherein independent institutions staffed by experts make decisions. Majone rejects any attempt to strengthen the majoritarian features of the Union as inappropriate on account of the deep cleavages in the EU. EU decision-making should rather have its normative underpinnings in a non-majoritarian model of democracy, in which the rule of the majority is heavily constrained. This argument is not very convincing, however, because the extreme version of non-majoritarian democracy to which Majone subscribes has a hard time qualifying as democratic at all.

The second position advocates measures to promote a *mutual reinforcement* of problem-solving capacities at the national and European levels. Like Majone, Scharpf is opposed to reforms that would strengthen the majoritarian features of the EU. In the absence of certain societal preconditions, Scharpf argues, it is simply not possible to democratize the EU. In order to legitimize the exercise of governing power within the Union, Scharpf relies on institutional arrangements conducive to the effective solving of problems.

A major weakness of his argument is that it fails to specify the connection between various prerequisites and particular aspects of democratic governance. When discussing the issue of a collective identity, he misses the crucial point: namely, that the kind of identity needed at the European level will depend on what reforms for democratization one has in mind. Hence, he fails to substantiate his claim that it is not possible to democratize the ED. At best, he is able to show that reforms intended to transform the Union into something resembling a federal state will have trouble finding the necessary prerequisites at the European level.

The final position in favor of the status quo is developed in the Maastricht decision delivered by the German Constitutional Court. The Court argues that the necessary conditions for democratization - most importantly, a sense of collective identity among the citizens of the Union - are not, and will not be for the foreseeable future, present at the European level. The best that can be done is to compensate for the democratic deficit by securing a viable democracy at the national level.

The no-demos thesis fails to recognize the reciprocal relationship between societal prerequisites and political institutions. A collective identity is not merely a precondition that precedes the creation of political institutions and places limitations on reform; it is also changes as a result of the institutionalization of the political sphere.

The fourth position calls for reforms designed to establish competitive democracy at the European level. It proceeds on the basis of the European Union Treaty (the Spinelli accord), which many still believe offers the proper solution to the democratic deficit. What is suggested is democratization through parliamentarisation. The goal is to introduce competition and choice: to give voters the opportunity of choosing between

representatives with alternative agendas, and to improve the prospects for holding decision-makers accountable. This is to be achieved by increasing the legislative competencies of the Parliament, and transforming the Commission into a real executive accountable to the EP.

Nevertheless, the reforms advocated by the EUT seem inadequate for establishing competitive democracy at the European level. In addition, a sound normative criticism of the competitive model of democracy can be made on purely instrumental grounds. The justification for competitive democracy rests on the ability of the political system to satisfy the wants of the citizens. Even an instrumental conception of democracy, however, should recognize the importance of preference-formation and citizen participation as means for improving the capacity of the political process to satisfy wants.

The fifth position favors reforms to enhance the opportunities for direct citizen participation. The idea is to bring the people back in. Heidrun Abromeit identifies a legitimacy gap within the Union, stemming from the insufficient opportunities for direct citizen participation. Abromeit advocates a system of veto rights, in order to democratize the EU and bridge the legitimacy gap.

Abromeit's proposal for democratization is interesting and innovative, yet flawed on two counts: First, her proposal is likely to have a negative impact on the Union's problem-solving capacity, and hence on public support for the EU. When setting out to bridge the legitimacy gap and to secure public support for EU decision-making, Abromeit ought to be more sensitive to trade-offs which jeopardize the problem-solving capacity of the EU political system.

Second, it is difficult to find any convincing justification for why the EU should enhance

direct citizen participation. It has been argued that direct citizen participation is desirable because it furthers self-development. There is, however, little evidence to support this claim. Abromeit, on her part, justifies direct participation as a way of promoting citizens' interests. But whether citizens best promote their interests by direct or indirect forms of participation is very much an open question.

According to the sixth and final position - that of deliberative supranationalism - we should work to strengthen those features of the political system at the European level that can be interpreted "as supranational versions of deliberationist ideals"¹⁴¹. The focus is thus on the daily negotiations that take place within the committee system of the EU, and especially the comitology. It is this institutional setting that should be made the basis for our efforts to democratize the Union.

As long as the problems of responsiveness and accountability remain unresolved, however, it can be argued that the reforms proposed by deliberative supranationalism will be questionable from a democratic standpoint. Even if the deliberative quality of comitology decision-making is improved, the problem of how to link these deliberations to discussions within the public realm will remain unresolved. There is a real danger, then, that the reforms implied by deliberative supranationalism will do little more than strengthen an already existing system for elite deliberation. A public sphere will still very much be missing at the European level, as will institutionalized linkages between the public and decision-makers. A public sphere will indeed have to be created; for this to happen, however, wider reforms than those offered by deliberative supranationalism will have to be instituted. A public sphere at the European level is only likely to emerge as a

¹⁴¹ Joerges, Christian & Jurgen Neyer. 1997a. "From Intergovernmental Bargaining to Deliberative Political

result of reforms that establish real opportunities for citizens to influence decision-making. In the absence of competition, choice, and real electoral contests fought out on European issues, one should not expect a public sphere to emerge at the European level. As a reform perspective, then, deliberative supranationalism is insufficient for creating the prerequisites necessary for the implementation and maintenance of democratic deliberation.

b. Democratic Pragmatism

The only adequate solution, it seems, is to take steps to democratize the Union, while being sensitive to possible trade-offs and recognising the constraints imposed by the weak status of certain societal prerequisites. The commitment to democratization is not absolute. However, the Union should not be democratized at all costs. The presence of trade-offs and the absence of certain preconditions place limits on the ambition to rectify the democratic deficit. This is why one should refer to the position as *democratic pragmatism*. The commitment to democratizing the EU must not make people blind to other important concerns. One should thus proceed pragmatically, and seek to democratise the institutions through reforms which have the potential really to work at the European level, and which do not jeopardise the problem-solving capacity of the EU's political system.

Democratic pragmatism acknowledges the importance of taking contextual constraints seriously, and of striking a proper balance between competing normative principles. One may thus have to settle for rather modest reforms to improve the democratic quality of the Union. Even modest reforms, however, will be important for strengthening the normative

Process: The Constitutionalization of Comitology”, *European Law Journal*, Vol. 3, No. 3, , p. 609.

justifiability of political authority within the Union, and for increasing public support for the EU.

The position labelled as ‘democratic pragmatism’ is not unique, or previously unknown in the current debate. Arguments of a similar character have in fact been put forward. In a recent book, for example¹⁴², Philippe C. Schmitter argues that it may be “neither feasible nor desirable to try to democratise the Euro-polity completely and immediately”¹⁴³. He argues, rather, that we should “improve the quality of Euro-democracy through some modest reforms”¹⁴⁴. Schmitter is right when he says that one may well have to settle for modest reforms rather than aiming to democratise the EU completely. The absence of certain prerequisites and the presence of trade-offs place limits on the quest for a more democratic Union. It should be proceeded, therefore, with incremental reforms which are sensitive to the contextual constraints within which the European Union functions. A reform strategy is needed, one that improves the democratic quality of the political process without jeopardizing its problem-solving capacity.

So, the basic argument for democratic pragmatism can be summarised as follows:

- (1) The EU suffers from a democratic deficit that needs to be addressed.
- (2) Settling for the status quo is inadequate, because it means that: (a) the normative justifiability of the substantial political powers entrusted to the institutions of the Union will remain weak; and (b) it will be difficult to secure public support.
- (3) The EU should be democratised, in order to strengthen the normative justifiability of the EU’s political system, and to increase public support for it.

¹⁴² See Weiler, J. H. H. 1999. “To Be a European Citizen: Eros and Civilization”, in Weiler, J. H. H. *The Constitution of Europe*. Cambridge: Cambridge University Press, pp. 349-356.

¹⁴³ Schmitter 2000, *How to Democratize the European Union...and Why Bother?*, op. cit., p. 115.

(4) However, we should not democratize the EU at all costs. We should proceed pragmatically with modest reforms that: (a) are sensitive to the priority problem and the presence of trade-offs; and (b) take contextual constraints (i.e., the absence of societal prerequisites) into account.

c. Proposals for Reform

Certain ways of democratising the EU have only negligible effects on efficiency, while others may have a strong negative impact on the capacity to make decisions. In order to avoid trade-offs, one should focus on reforms designed to strengthen agenda-control, improve voting-equality, and make the demos more inclusive. The highest price in terms of delays in the decision-making process can be expected from reforms designed to strengthen the opportunities for deliberation and participation. On the other hand, it appears that measures which improve the latter dimensions of the democratic process have a strong positive impact on effectiveness. One must therefore ask whether it is more important to safeguard the current capacity for making decisions, or whether instead it is more important to improve the capacity for implementing decisions. The debate on how to reform the institutions of the EU has mainly focused on the former aspect. However, the introduction of co-decision has slowed the decision-making process down. Furthermore, the enlargement project also increases the need for reforms that safeguard decision-making efficiency.

The argument here would be in favour of democratic pragmatism with the providence of some proposals for reform. These reforms, should they be implemented, will certainly not solve the problems of democracy in the EU. They would, however, make the Union a

¹⁴⁴ Ibid., p. 115.

more democratic political system. The reforms are designed to secure public support and to strengthen the normative justifiability of political authority at the European level, while being sensitive to the existence of trade-offs and contextual constraints.

The following proposals for democratisation are consistent with the basic posture of democratic pragmatism, and they are designed to: (a) increase transparency; (b) strengthen agenda-control; and (c) enhance responsiveness and accountability. The reforms proposed are not just useful for the positive impact they are likely to have on the democratic status of the EU's political system. The importance of these reforms is also reflected in their secondary effects; they could strengthen some of the prerequisites for democratization that currently are only faintly visible at the European level. The reforms could therefore help pave the way for a further democratization of the Union.

I. Increase Transparency

Significant improvements have not doubt taken place in the field of openness and access to information since 1992, when Jacques Delors announced that the Commission intended to embark on a “crusade for democracy”. However, the Union still suffers from a lack of transparency that undermines the opportunity for citizens to acquire reliable and accurate information on community affairs. The latest developments regarding freedom of information and access to documents are not very encouraging. In fact, it appears that all improvements in the field of openness have been stopped in their tracks; we may even be witnessing a turning-back of the clock. In the “Solana-decision” of 14 August 2000¹⁴⁵,

¹⁴⁵ Council decision of 14 August 2000 amending Decision 93/731/EC on public access to Council documents and Council Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents, 2000/527/EC, OJ L212/9.

the Council amended the 1993 decision on public access to documents¹⁴⁶ in a manner that excludes whole categories of documents from public access. The legitimate concern to protect sensitive information, hardly justify exempting entire categories of documents from public access.

It is obvious, then, that there is room for major improvements in the field of transparency. The first reform proposal is therefore that the right of public access to documents be strengthened. This would require that the principle of openness be taken seriously, and that the institutions of the Union be obliged to grant access to all documents, unless there are specific, well-defined, and valid reasons for denying access. What is needed first of all, then, is a new code of access that gives effect to Article 255 EC [Article 191a], and which only features precise and narrowly defined restrictions on access. Such a new code of access should not, therefore, include restrictions that would allow for exempting broad categories of documents, such as “space to think” documents (i.e., various types of preparatory documentation). Second, the failure of the EU institutions to maintain lists of documents must be rectified. The European Ombudsman, in fact, has issued a draft recommendation that the Council “maintain a list or register of all the documents put before the Council and make this list or register available to citizens”¹⁴⁷.

A second reform that would increase transparency would be to strengthen Article 207 EC [Article 151], which states the “the results of votes and explanations of votes as well as statements in the minutes shall be made public” whenever “the Council acts in its legislative capacity”, and demand that these requirements for openness apply whenever

¹⁴⁶ Council Decision of 20 December 1993 on Public Access to Council Documents”, 93/731/EC, OJ L340/43.

¹⁴⁷ European Ombudsman. 2001. “Draft Recommendation to the Council of the European Union in

the Council acts (regardless of whether it does so in its legislative or executive capacity).

Third, transparency would be increased if the powers of the European Ombudsman were strengthened. First, the Ombudsman must be granted powers greater than the mere issuance of critical remarks and recommendations; he/she should be given the right to order the institutions of the Union to reconsider a matter in connection with maladministration. Second, the Ombudsman's powers of investigation should be increased.

Increasing transparency within the Union through the above measures would not just serve to strengthen citizens' access to relevant information. These reforms might also have the secondary effect of contributing to the creation of something approximating a European public sphere. Improved opportunities to access information would facilitate in-depth coverage in the media, and fuel discussions in civil society. Working towards open government would not only be of great importance for deliberation, for the opportunity of citizens to reach a considered judgement as to the most desirable outcome of a decision-making process. Transparency is also an important prerequisite for accountability. If citizens do not know how and why decisions are made, they will be in no position to hold decision-makers accountable for their actions. Increased transparency would therefore facilitate the pursuit not just of deliberation, but of agenda-control, participation, and voting-equality as well.

But what about the oft-repeated claim that increased transparency would deal a serious blow to decision-making efficiency? Would not openness in the proceedings of EU institutions undermine the potential for bringing negotiations to a successful conclusion?

Complaint 917/2000/GG".

Must not the negotiating parties be allowed to keep their bargaining hands secret? First, it should be acknowledged that there certainly will be sensitive information that should be kept secret in the future Union. This is normal standing procedure in all democratic political systems. What it is advocated in terms of a new code of access is not full publicity for all documents. There should, however, be a presumption in favour of open access to documents - even in sensitive fields like foreign policy - which will force restrictions to be supported by valid reasons which are applicable in each individual case of denied access. Second, increased transparency does not imply that those responsible for preparatory work within the administration should not be allowed a “space to think”, or that the bargaining hands of negotiating parties must be made public at the outset of negotiations. What is required, as the European Ombudsman has pointed out, is that a preparatory document be made public when it is “either formally adopted in some way”, or “transmitted outside the boundaries of the organisational space in which it has been drafted”¹⁴⁸. Furthermore, the quest for open government should not be interpreted in such a manner as to force negotiating parties to reveal every aspect of their bargaining positions beforehand. What is required is that all documents, on which negotiating parties have based their arguments, as well as the specific reasons stated for their decisions, be made public at the same time as the decision or proposal itself. This would surely minimise the problem of “the legitimate rights of actors to protect the secrecy of their bargaining hands”¹⁴⁹.

¹⁴⁸ The European Ombudsman. 2000. “Access to Documents of the EU Institutions: The Key to a More Democratic and Efficient Union”, speech delivered to the Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs of the European Parliament, Brussels, 18 September 2000.

II. Strengthen Agenda-Control

As argued above, there are two main alternatives for strengthening citizens' control over agenda-setting. The first would be to give the Parliament a direct say in this process; this would probably, however, demand a considerable price in terms of delays. It seems preferable, therefore, to strengthen agenda-control through measures designed to make the Commission more accountable to the Parliament. Two concrete proposals to this effect would be: (1) to have the President of the Commission elected by the Parliament; and (2) to give the Parliament the right to criticize individual commissioners. Taken together, these reforms would help to strengthen agenda-control without jeopardising the problem-solving capacity of the EU. Let us consider each of these reforms briefly, starting with the latter.

The hearings in which nominated commissioners are asked about their intentions for their portfolio, prior to the full Commission being subject to a vote of approval by the EP (Article 214 EC [Article 158]), furnish an effective mechanism for agenda-control only if the Parliament is given the right to dismiss individual commissioners. Currently, the Parliament may only dismiss the entire Commission (Article 201 EC [Article 144]). This is not a very credible weapon, since most MEPs are reluctant to take responsibility for creating a full-blown institutional crisis.¹⁴⁹ If the Parliament were accorded the right to dismiss individual commissioners, the latter would certainly experience a stronger incentive to stay true to their intentions as state during hearings, and to be sensitive to initiatives stemming from the EP.

The second reform is intended to strengthen agenda-control by allowing the Parliament

¹⁴⁹ Lord, Christopher. 1998. *Democracy in the European Union*. Sheffield: Sheffield Academic Press, p. 87.

not just to approve the European Council's nominee for Commission president, but also to elect a new president from among a number of candidates. The selection of candidates could be entrusted to a committee composed of MEPs representing all party groups and member states. Such a reform would force the candidates to present campaign programmes; thus, citizens would be given an indirect opportunity to choose between rival agendas. Whoever is elected president could then be held to account in view of the programme on which he or she ran for office.

A more radical measure for strengthening agenda-control would be to give the citizens of the Union the opportunity to elect the Commission president directly. It seems ill-advised, however, to introduce yet another election at the European level, considering the low levels of voter turnout in EP elections. It would seem preferable, then, to opt for the indirect route for strengthening agenda-control and providing citizens with the opportunity to choose between rival agendas.

III. Enhance Responsiveness and Accountability

If it is to approximate the criteria of participation and voting-equality, the EU's political system must meet reasonable standards for responsiveness and accountability. Intermediaries at the European level must be sensitive to citizens' preferences if they are to function properly as channels for participation. Likewise, the achievement of voting-equality requires that citizens be able in some sense to throw out those exercising political power in the EU.

The standard solution proposed for the current problems of responsiveness and accountability is to push the EU in the direction of a full parliamentary democracy. The

¹⁵⁰Ibid., pp. 60-61.

legislative powers of the Parliament would be increased at the expense of the Council. The Commission would be made more responsible to the EP. This is not the best way to proceed, however, for the prerequisites for a full-fledged parliamentary democracy at the European level are currently absent, given that the Union should continue to enjoy extensive legislative competencies. There is, at the moment, no European identity strong enough to support such a political system.

Furthermore, granting increased legislative powers to the Parliament may still prove insufficient for enhancing the responsiveness and accountability of the EU's political system. This is because EP elections are, as discussed in chapter 3, second-order national contests fought out on domestic rather than European issues. Hence, MEPs are re-elected (or not) according to the popularity of their national party, rather than according to their performance in the EP. The absence of a real electoral contest makes it difficult for citizens to hold MEPs accountable for their actions. Moreover, since the party groups and the party federations need not fear the judgement of the voters, they have little incentive to be sensitive to the opinions of their constituents. Responsiveness and accountability will remain weak in the absence of an electoral contest fought out on European issues. Until this basic flaw is remedied, it will make little sense to opt for reforms that push the EU in the direction of a full parliamentary democracy. Merely increasing the power of the Parliament will not rectify this problem.

Rather than opting for such radical reforms, it would seem more promising to try to enhance responsiveness and accountability by altering the present rules for EP elections. What is needed, first of all, is a uniform electoral procedure. More importantly, however, the selection of candidates should be entrusted to the European-level party organisations

rather than to the national parties.¹⁵¹ As Hix and Lord argue, this could be achieved by a treaty amendment of Article 191 TEU [Article 138], thus “giving European parties special rights and responsibilities in the European elections”¹⁵². These measures could help transform EP elections into contests fought out on European rather than national issues. The programmes of the party federations could function as rival agendas between which the electorate could choose. MEPs would have an incentive to take public opinion on European issues into account. Likewise, voters would be better able to hold MEPs accountable for their performance.

Such alterations in the rules of EP elections would accordingly have a direct and positive effect on participation (by increasing the responsiveness of intermediaries) and on voting-equality (by improving accountability). As argued above, the creation of new identities can be facilitated by the holding of electoral contests in which rival opinions are debated in public. A real electoral contest fought out on European issues may therefore have the secondary effect of promoting the emergence of some sort of common European identity. Altering the rules for EP elections could thus be instrumental in creating the conditions necessary for more wide-ranging reforms designed to democratise the Union.

To sum up: it has been argued that the EU should be democratised in order to increase transparency, strengthen agenda-control, and enhance responsiveness and accountability. To this effect, six proposals for reform have been submitted. They involve: (1) securing the right of public access to documents; (2) forcing the Council always to act in the open; (3) increasing the powers of the European Ombudsman; (4) according the Parliament the

¹⁵¹ Hix 1998, *The Study of the European Union*, op. cit., pp. 52-53; Hix 1999, *The Political System of the European Union*, op. cit., pp. 186-187.

¹⁵² Hix & Lord 1997, *Political Parties in the European Union*, op. cit., p. 216.

right to elect the Commission president; (5) giving the Parliament the right to censure individual commissioners and (6) altering the rules for EP elections.

Taken together, these reforms would make the EU's political system more democratic than it is today. The normative justifiability of political authority within the Union would thus be strengthened.

Moreover, these reforms would not jeopardise the problem-solving capacity of the Union in any fundamental way. The proposals are thus sensitive to the existence of trade-offs; none of the reforms advocated would seriously hold back decision-making efficiency. Therefore, these efforts to democratise the Union would likely have a positive effect on public support for the EU. The citizens of the Union would surely be inclined to support a political system that operates on the presumption of openness rather than secrecy; that provides reasonable opportunities to exercise indirect control over the agenda, and meets reasonable standards for responsive and accountable government. But their support would doubtless be all the stronger if such improvements could be introduced without jeopardising the Union's capacity to solve problems. The reforms for establishing open government at the European level would be especially important in this respect.

Finally, none of these reforms presume societal preconditions which are currently absent at the European level. Rather than being dependent on such prerequisites, the reforms could in fact help some of them - e.g., a common European identity - to emerge, by introducing democratic practices that allow the citizens of the Union to participate in the political process.

3. The Future of the EU: A Possible Federation?

The European Union is an entity established by public law which shows greater similarity to a federal state than to an international organization. The member states of the European Union have many common policies within the EU and on behalf of the EU that are sometimes suggestive of a single state. It has a common civil service (the European Commission), a single High Representative for the Common Foreign and Security Policy, a common European Security and Defense Policy, a supreme court (European Court of Justice — but only in matters of European Union law), a common space agency (the European Space Agency), a peacekeeping force (Eurofor), and a single organization for physical research (the European Council for Nuclear Research or CERN). The euro has been officially adopted by thirteen EU countries while seven a number of European territories outside the EU have adopted the euro unofficially.

The EU, however, does not have a single government, a single foreign policy set by that government, a single taxation system, or a European Army.

Also the draft treaty on the EU (EUT) that was adopted by the EP on 14 February 1984¹⁵³, was proposed by Spinelli to reform the European Community. However in this treaty it was hard to avoid confronting the issue of federalism, inasmuch as the type of reforms advocated in the EUT are often considered prototypical of a “federal solution”. Fritz Scharpf, for example, claims that the EUT “would have transformed the European Community into a federal state”¹⁵⁴.

The most important proposal in the Spinelli draft treaty had to do with the legislative

¹⁵³ See Burgess, Michael. 1989. *Federalism and the European Union*. London: Routledge, pp. 162-169.

¹⁵⁴ Scharpf, Fritz. “Negative and Positive Integration in the Political Economy of European Welfare States”, in Marks, Gary & Firtz W. Scharpf, Philippe C. Schmitter, Wolfgang Streeck (eds.), *Governance in the*

power of the Parliament. A new legislative structure was suggested, in which the EP and the Council would function as co-legislators of roughly equal strength. Article 38 of the EUT, which lays down the legislative procedure, states that “all draft laws shall be submitted to the Parliament”, after which - assuming the EP has approved them - they shall “be forwarded to the Council”¹⁵⁵. The Council can then approve a proposal by absolute majority or reject it unanimously. If the proposal is a draft organic law - i.e., a law concerning the “organization and operation of the institutions”¹⁵⁶ - the Council may approve or reject the draft by a qualified majority¹⁵⁷. Drafts which fail to meet the majority requirements are referred to a conciliation procedure.¹⁵⁸ The Parliament, moreover, would be put on an equal footing with the Council - or given a slight edge, in fact, since a proposal would have to be approved by the Parliament before reaching the Council.

The second important feature of the EUT concerned the Commission. If the problem-solving capacity of the Community were ever to be substantially increased, Spinelli argued, the Commission would have to function as a real European government.

However, few of the reforms proposed in the EUT concerned the powers and functions of the Commission directly.

While proposing few changes in the formal powers accorded the Commission, the EUT would strengthen the position of that body: such would be the result if a strong direct link were created between a directly elected Parliament and the Commission. Article 29

European Union. London Sage Publications, p.26.

¹⁵⁵ Article 38, EUT, European Parliament 1-1200/83/A, p. 21.

¹⁵⁶ Article 34, EUT, *ibid.*, p. 21.

¹⁵⁷ Article 38, EUT, *ibid.*, p. 22.

¹⁵⁸ Article 38, paragraph 4, EUT, *ibid.*, p. 22.

explicitly establishes the “responsibility of the Commission to the Parliament”¹⁵⁹; according to article 25, the Commission shall “submit its program to the Parliament”, and only “take office after its investiture by the Parliament”¹⁶⁰. These reforms would strengthen the Commission’s democratic credentials, thereby furnishing it with a stronger mandate for action. The main thrust of the EUT is thus a shift in the institutional balance in favor of the supranational institutions, at the expense of intergovernmental bodies. How far, then, would these reforms take the European Community towards becoming a federal state, and how would they help reduce the democratic deficit? The reforms advocated in the EUT would indeed push the Community in a federal direction. The EUT surely contains a number of features that can be characterized as federalizing steps: (1) an increase in the power of the Parliament and of the Commission, at the expense of the Council; (2) the establishment of a monetary union; and (3) the introduction of a procedure whereby the Union can increase the upper limit for revenue, without the consent of all member states.

The debate over the EU becoming a federal state or the United States of Europe remains uncertain. However until now the institutional reforms contained in the EUT can indeed be thought of as steps in a federalizing process; but these steps do not necessarily lead to the establishment of a federal state. It is important to emphasize that efforts to democratize the EU by increasing the legislative power of the Parliament do not imply the establishment of a United States of Europe. There are those who argue that democratization requires statehood, and that the only way to come to terms with the

¹⁵⁹ Ibid., p. 17.

¹⁶⁰ Ibid., p. 16.

democratic deficit is to turn the EU into a federal state.¹⁶¹ And others believe that anyone who wishes to democratize the EU by increasing the legislative powers of the EP is also in favor of turning the Union into a federal state.

But what one can be sure of now is that the EUT surely contains a number of features that can be characterized as federalizing steps: (1) an increase in the power of the Parliament and of the Commission, at the expense of the Council; (2) the establishment of a monetary union; and (3) the introduction of a procedure whereby the Union can increase the upper limit for revenue, without the consent of all member states.

4. Conclusion: Towards a New Transformation?

The history of democratic governance is sometimes described in terms of a number of transformations that have radically changed the organisation of political life.¹⁶² The first transformation took place in ancient Greece, and led to the establishment of the democratic city-state. Government by the few was replaced by government by the many. The second transformation involved the replacement of direct forms of democracy with representative forms. The democratic process could therefore be applied at the level of the nation-state, rather than being reserved for political systems the size of city-state. The question now is whether we are witnessing a third transformation, which will establish democratic governance beyond the nation-state.

Some scholars, among them Robert Dahl, have argued that democratic governance may indeed have a future beyond the nation-state. To date the EU is, regardless of its

¹⁶¹ Mancini, Federico G. 1998. Europe: The Case for Statehood”, *European Law Journal*, Vol. 4, No. 1, pp. 29-42.

¹⁶² Dahl 1989, “Deliberation and Democratic Legitimacy”, op. cit., pp. 13-37.

democratic shortcoming, the most promising example of democratic governance at the international level. Dahl has previously argued that “[a] sort of transnational polyarchy might gradually come into existence”¹⁶³ at the European level. More recently, however, Dahl seems to have taken a more pessimistic view of the possibilities for a third transformation; he appears to have become more sceptical of the prospects for establishing the conditions necessary for democratic governance beyond the nation-state. Among these prerequisites he emphasises the existence of a “political culture”, and of “some common identity”¹⁶⁴. In a recent contribution, accordingly, Dahl argues that it is “highly unlikely that these crucial requirements for the democratisation of international organizations will be met”¹⁶⁵.

Dahl seems to have reached the same conclusion as Scharpf and the German Constitutional Court: a third transformation is not in the cards. This is because it is simply not possible, due to the absence of certain prerequisites, to democratise organisations like the European Union. In this view, the future of democratic governance lies at the national, regional, and local levels. The future of democracy will depend on the ability to maintain democratic processes at the national level and below; one should give up any hope of democratising the new sites of governance at the international level. Democratic governance beyond the nation-state will remain a distant dream.

The best one can hope for, consequently, is to compensate for the democratic shortcomings of governing processes beyond the nation-state with maintained (or perhaps even strengthened) democratic processes at the national, regional, and local levels of

¹⁶³ Ibid., p. 320.

¹⁶⁴ Dahl 1998, *Democracy and its Crisis*, op. cit., pp. 116-117.

¹⁶⁵ Ibid., p. 117.

government. The virtues associated with democracy may not, therefore, be lost forever. As Dahl puts it: “while freedom and control might be lost on one front, they could be gained on others.”¹⁶⁶

Now then, what do the results of the present examination show about the prospects for a third transformation? Which position regarding the possibility of democratic governance beyond the nation-state is favoured by the results of this study? Are the Europeans witnessing the early stages of a third transformation? Or, to the contrary, will it only be possible to realise democratic governance at the level of the nation-state and below? In this study, the EU has been taken as a case study of governance beyond the nation-state. What light, then, do the results of this study shed on the future prospects for democratic governance at the international level?

In light of the scope and depth of the democratic deficiencies of the European Union, it is tempting to conclude that the present investigation supports the pessimistic view of the possibility of establishing democratic governance beyond the nation-state. In the current debate on democracy’s future, after all, it is often argued that the EU provides the most promising prospect for democratic governance beyond the nation-state. However, given the substantial democratic shortcomings of the Union, may one not conclude that democracy’s future lies at the nation-state level and below?

Such a conclusion may nevertheless be premature, for at least two reasons. First, although the EU suffers from a substantial democratic deficit, it is still possible to identify, at the European level, some of the traits constituting a democratic process. It has been observed that, if the EU itself were to apply for membership in the EU, “it would not qualify

¹⁶⁶ Ibid., p. 321.

because of the inadequate democratic content of its constitution”¹⁶⁷. This observation is certainly warranted; even so, signs of democratic governance are visible within the EU, if only faintly. To be sure, the criteria for a fully democratic process are far from being perfectly satisfied within the EU. On the other hand, they are not perfectly satisfied at the nation-state level either. The best one can hope for, at any level of political organisation, is to come as close as possible to the criteria for a fully democratic process. The EU would seem to constitute evidence that, in fact, it is possible to begin approximating these criteria beyond the nation-state.

In addition, things seem to be moving in the right direction. Progress is certainly slow. Yet over the last decade or so, the EU has indeed become more democratic in a number of respects: Opportunities to hold decision-makers accountable have been strengthened, and opportunities to access information have improved. The introduction of the co-decision procedures has increased the Parliament’s power; in addition, the party groups have become real players in the policy-making process, thus enabling them to act as effective channels or indirect participation.

In the end, the prospects for democratic governance beyond the nation-state will depend on the willingness of the political and administrative elites of the nation-state to surrender control over decisions made in organisations like the EU. Are they prepared to democratise the new sites of governance beyond the nation-state, and to face the institutionalised pressure of public demands? As long as citizens seemed content with the existing order, the political and administrative elites of the member states have had little reason actually to take measures to democratise the EU. Recently, however, increased

¹⁶⁷ Quoted in Zürn, Michael. 2000. “Democratic Governance beyond the Nation-State”, in Greven & Pauly

popular demands for democratic governance beyond the nation-state have been witnessed: demands of this kind have also been raised in connection with the IMF, the World Bank, and the World Trade Organisation. As a result, the issue can no longer be ignored.

It is too early to tell, of course, whether or not we are facing a third transformation of democratic governance. The results of this investigation do suggest, however, that democracy's future is not limited to the nation-state level and below. The case of the European Union shows it is not impossible to establish democratic governance beyond the nation-state.

(eds.), p. 91. The remark is originally Claus Offe's.

BIBLIOGRAPHY

Literature

- Abromeit, Heidrun. 1998. *Democracy in Europe. Legitimising Politics in a Non-State Polity*. New York: Berghahn Books.
- Aspinwall, Mark & Justin Greenwood. 1998. "Conceptualising collective action in the EU", in Greenwood, Justin & Mark Aspinwall (eds.), *Collective Action in the European Union*. London: Routledge, pp. 1-30
- Beitz, Charles R. 1989. *Political Equality*. New Jersey: Princeton University Press.
- Burgess, Michael. 1989. *Federalism and the European Union*. London: Routledge.
- Butler, David & Austin Ranney (eds.). 1994. *Referendums Around the World*. Washington: American Enterprise Institute.
- Cohen, Joshua. 1989. "Deliberation and Democratic Legitimacy", in Hamlin A. & P. Pettit (eds.), *The Good Polity*. Oxford: Basil Blackwell.
- Dahl, Robert A. 1979. "Procedural Democracy", in Fishkin James & Peter Laslett (eds.), *Philosophy Politics and Society*, 5th Series. Oxford: Basil Blackwell, pp. 97-133.
- Dahl, Robert A. 1982. *Dilemmas of Pluralist Democracy*. New Haven: Yale University Press.
- Dahl, Robert A. 1989. *Democracy and Its Crisis*. New Haven: Yale University Press.
- Dahl, Robert A. 1994. "A Democratic Dilemma: System Effectiveness versus Citizen Participation", *Political Science Quarterly*, Vol. 109, No. 1, pp. 23-34.
- Dinan, Desmond. 2000. "The Commission and the Intergovernmental Conferences", in Nugent, Neill (ed.), *At the Heart of the Union*. London: Macmillan Ltd, pp. 250-269.
- Elster, Jon. 1986. "The Market and the Forum: Three Varieties of Political Theory", in Elster, J. & A. Hylland (eds.), *Foundations of Social Choice Theory*. Cambridge: Cambridge University Press, pp. 103-132.
- Elster, Jon. 1998. "Introduction", in Elster, Jon (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press, pp. 1-18.

- Elster, Jon (ed.). 1998. *Deliberative Democracy*. Cambridge: Cambridge University Press.
- Eriksen, Erik Oddvar. 2000. "Deliberative Supranationalism in the EU", in Eriksen, Erik Oddvar & John Erik Fossum (eds.), *Democracy In the European Union - Integration Through Deliberation?* London: Routledge, pp. 42-64.
- Eriksen, Erik Oddvar & John Erik Fossum. 2000. "Post-national Integration", in Eriksen, Erik Oddvar & John Erik Fossum (eds.), *Democracy In the European Union - Integration Through Deliberation?* London: Routledge, pp. 1-29
- Fishkin, James S. 1991. *Democracy and Deliberation*. New Haven: Yale University Press.
- Fishkin, James. 1995. *The Voice of the People: Public Opinion and Democracy*. New Haven: Yale University Press.
- Franklin, Mark N. & Cees van der Eijk, Erik Oppenhuis. 1996. "The Institutional Context: Turnout", in van der Eijk, Cees & Mark N. Franklin (eds.), *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Ann Arbor: Michigan University Press, pp. 306-331.
- Gellner, Ernest. 1978. "Scale and Nation", in Fredrick Barth, (ed.), *Scale and Social Organisation*. Oslo: Universitetsforlaget.
- Golub, Jonathan. 1999. "In the Shadow of the Vote? Decision Making in the European Community", *International Organization*, Vol. 53, No. 4, pp. 733-764.
- Greenwood, Justin & Mark Aspinwall (eds.). 1998. *Collective Action in the European Union*. London: Routledge.
- Habermas, Jürgen. 1996. *Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy*. Cambridge: Polity Press.
- Hadenius, Axel. 1992. *Democracy and Development*. Cambridge: Cambridge University Press.
- Held, David. 1995. *Democracy and the Global Order*. Cambridge: Blackwell Publishers Ltd.
- Hinsley, F. H. 1986. *Sovereignty*. Cambridge: Cambridge University Press.
- Hix, Simon & Christopher Lord. 1997. *Political Parties in the European Union*. London: Macmillan Press Ltd.

- Hix, Simon. 1998. "The Study of the European Union II: the 'New Governance' Agenda and Its Rival", *Journal of European Public Policy*, Vol. 5, No. 1, pp. 38-65.
- Hix, Simon. 1999. *The Political System of the European Union*. London: Macmillan Press Ltd.
- Joerges, Christian & Jürgen Neyer. 1997a. "From Intergovernmental Bargaining to Deliberative Political Process: The Constitutionalization of Comitology", *European Law Journal*, Vol. 3, No. 3, pp. 273-299.
- van der Knaap, Peter. 1996. "Government by Committee: Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union", in Pedler, Robin H. & Guenther Schaefer (eds.), *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*. Maastricht: European Institute of Public Administration.
- Knight, Jack & James Johnson. 1994. "Aggregation and Deliberation: On the Possibility of Democratic Legitimacy", *Political Theory*, Vol. 22, No. 2, pp. 277-296.
- Lord, Christopher. 1998. *Democracy in the European Union*. Sheffield: Sheffield Academic Press.
- Majone, Giandomenico. 1997b. "The New European Agencies: Regulation by Information", *Journal of European Public Policy*, Vol. 4, No. 2, pp. 262-275.
- Mancini, G. Federico. 1998. "Europe: The Case for Statehood", *European Law Journal*, Vol. 4, No. 1, pp. 29-42.
- Manin, Bernard. 1987. "On Legitimacy and Political Deliberation", *Political Theory*, Vol. 15, pp. 338-368.
- Marks, Gary & Liesbet Hooghe, Kermit Blank. 1996. "European Integration from the 1980s: State-Centric v. Multi-level Governance", *Journal of Common Market Studies*, Vol. 34, No. 3, pp. 341-378.
- Mazey, Sonia & Jeremy Richardson. 1997. "The Commission and the Lobby", in Edwards, Geoffrey & David Spence (eds.), *The European Commission*. London: Cartermill International Ltd, pp. 178-198.
- McLaughlin, Andrew & Grant Jordan. 1993. "The Rationality of Lobbying in Europe: Why are Euro-Groups so Numerous and so Weak? Some Evidence from the Car Industry", in Mazey, Sonia & Jeremy Richardson (eds.), *Lobbying in the European Community*. Oxford: Oxford University Press, pp. 122-161.

- Michels, Robert. 1962 (1915). *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. New York: The Free Press.
- Mill, John Stuart. 1958 (1861). *Considerations on Representative Government*. Indianapolis: Bobbs-Merril.
- Nugent, Neill. 1994. *The Government and Politics of the European Union*. London: Macmillan.
- Pateman, Carole. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Peters, Guy B. 1994. "Agenda-setting in the European Community", *Journal of European Public Policy*, Vol. 1, No. 1, pp. 9-26.
- Pinder, John. 1986. "European Community and Nation-State: a Case for a Neo-Federalism?", *International Affairs*, Vol. 62, No. 1, pp. 41-54.
- Pitkin, Hanna. 1967. *The Concepts of Representation*. Berkely: University of California Press.
- Reif, Karlheinz & Hermann Schmitt. 1979. "Nine Second-Order National Elections: A Conceptual Framework for the Analysis of European Election Results", *European Journal of Political Research*, Vol. 8, No. 1, pp. 3-45.
- Sabine, George. 1952. "The Two Democratic Traditions", *Philosophical Review*, Vol. 61, pp. 451-474.
- Sabine, George. 1964. *A History of Political Theory*. London: George G. Harrap.
- Sartori, Giovanni. 1987. *The Theory of Democracy Revisited*. New Jersey: Chatham Publishers Inc.
- Scharpf, Fritz. 1996b. "Negative and Positive Integration in the Political Economy of European Welfare States", in Marks, Gary & Fritz W. Scharpf, Philippe C. Schmitter, Wolfgang Streeck (eds.), *Governance in the European Union*. London Sage Publications, pp. 15-40.
- Scharpf, Fritz. W. 1999. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.
- Schlesinger, Philip & Deirdre Kevin. 2000. "Can the EU Become a Sphere of Public?", in Eriksen, Erik Oddvar & John Erik Fossum (eds.), *Democracy in the European Union - Integration Through Deliberation?* London: Routledge, pp. 206-299.

Schmitter Philippe C. 2000. *How to Democratize the European Union...and Why Bother?* New York: Rowman & Littlefield Publishers Inc.

Teorell, Jan. 1999. "A deliberative Defence of Intra-party Democracy", *Party Politics*, Vol. 5, No. 3, pp. 367-386.

Wallace, Helen & Alasdair R. Young. 1997. "The Kaleidoscope of European Policy Making: Shifting Patterns of Participation and Influence", in Wallace, Helen & Alasdair R. Young (eds.), *Participation and Policy Making in the European Union*. Oxford: Clarendon Press, pp. 235-250.

Warren, Mark E. 1996. "Deliberative Democracy and Authority", *American Political Science Review*, Vol. 90, No. 1, pp. 44-60.

Weiler, J. H. H. & Ulrich R. Haltern, Franz C. Mayer. 1995. "European Democracy and Its Critique: Five Uneasy Pieces", *West European Politics*, Vol. 18, No. 3, pp. 4-40.

Weiler, J. H. H. 1999. *The Constitution of Europe*. Cambridge: Cambridge University Press.

Wessels, Wolfgang. 1997. "The Growth and Differentiation of Multi Level Networks: A Corporatist Mega-Bureaucracy or an Open City?", in Wallace, Helen & Alasdair R. Young (eds.), *Participation and Policy Making in the European Union*. Oxford: Clarendon Press, pp. 17-41.

Young, Alasdair R. 1997. "Consumption Without Representation", in Wallace, Helen & Alasdair R. Young (eds.), *Participation and Policy Making in the European Union*. Oxford: Clarendon Press, pp. 206-234.

Zürm, Michael 2000. "Democratic Governance Beyond the Nation State", in Greven, Michael Th. & Louis W. Pauly (eds.), *Democracy Beyond the State?* New York: Rowman & Littlefield Publishers, Inc. pp. 91-114.

Official Documents

Code of Conduct concerning public access to Council and Commission documents
[<http://intelligence.jrc.cec.eu.int/governance/citgu28.htm>]

Council decision of 20 December 1993 on public access to Council documents,
93/731/EC, OJ L340/43.

Council decision of 14 August 2000 amending Decision 93/731/EC on public access to Council documents and Council Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents, 2000/527/EC, OJ L212/9.

The European Ombudsman. 2000. "Access to documents of the EU institutions: the key to a more democratic and efficient Union", speech delivered to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of the European Parliament, Brussels, 18 September 2000.

The European Ombudsman. 2001. "Draft recommendation to the Council of the European Union in complaint 917/2000/GG".

Treaty on European Union

Websites

EU Official Website
[www.europa.eu]

EU Official Website, *History of the EU*
[http://europa.eu/abc/history/index_en.htm]

EU Official Website, *How the EU Was Organised*
[http://europa.eu/abc/panorama/howorganized/index_en.htm]

Euronews Official Website
[www.euronews.net]

Wikipedia Online, *History of the EU*
[http://en.wikipedia.org/wiki/History_of_the_European_Union]

Wikipedia Online, *Treaties of the EU*
[http://en.wikipedia.org/wiki/Treaties_of_the_European_Union]