Democracy and Accountability in the Enlarged European Union

Legitimation traps, problems and solutions, and the role of the Convention on the Future of Europe[1].

Christopher Lord

Polis, University of Leeds, United Kingdom, C.J.Lord@leeds.ac.uk

1. Introduction

The legitimacy of the European Union now features amongst priorities for research. It is rare, however, for authors to address the overall problem, rather than particular parts of it. Some recent analysis attempts to surpass this limit by demonstrating that the Union rests on a plurality of legitimating principles (Scharpf, 2000). But this only begs the question of how such principles are related one to another. Are they complementary or competitive? Do some dominate over others? Or is there a kind of 'reciprocal contamination' of alternative ideas of how the Union might be legitimated?

In posing these questions, I seek to draw lessons for the EU from a wider distinction in the study of legitimacy. On the one hand are frameworks of analysis that posit a more or less 'one-to-one relationship' between various beliefs about legitimacy and the empirical characteristics of political systems, on the grounds that there are limits to how far the latter can build different views of what is required for the rightful exercise of political power into the one set of institutions. Thus theocracy, aristocracy, technocracy and democracy are respectively linked to beliefs that the right to rule comes from God, from birth, from the possession of exceptional human qualities or from the people (Beetham, 1991).

A very different possibility is that there are at least some ideas about legitimacy that recognise their own place within a plurality of contending beliefs about what is needed for the rightful exercise of political power. These , in turn, support political systems that are not configured for the articulation of any one view of legitimacy but for the mediation of relationships between several . John Rawls, for example, has famously argued that modern pluralist institutions have to find some means of dealing with 'contradictory but equally reasonable ideas' about what is 'right' and what is 'good' in politics and society (Rawls, 1993). In what follows we will call this a 'Rawlsian' dilemma.

The foregoing distinction is crucial. To see why it is important to introduce the notion of a legitimation trap. These arise where political systems are subject to different requirements for the rightful exercise of political power which they have no hope of meeting simultaneously. The standard account of such traps is that within any one *agreed* account of legitimacy there may be different strands or dimensions that conflict with one another. Thus a political system might find it difficult to satisfy both input (processual) and output (performance) requirements, even where its policy addressees are agreed what is needed for it to be legitimate. A well discussed example is that participants in a consensus democracy or an international organisation based on indirect legitimation by its Member States may be as one in agreeing that a kind of *liberum veto* is needed for rightful exercise of political power. Yet

---

[1] An earlier version of this paper was prepared jointly with Paul Magnette of the Université Libre de Bruxelles.

they may have difficulty in using that decision-rule to meet a minimum threshold of efficiency that satisfies any functional needs they have for combining into a political system to solve their collective action problems.

In contrast, a very different kind of legitimation trap arises where a political system lack the means of handling *disagreements* about what is needed for the rightful exercise of political power: where in, other words, they have inadequate mechanisms for solving the Rawlsian dilemma of what do about contradictory but equally reasonable beliefs about what is needed for the political system to be legitimate. The argument of this paper is that it is this second notion of legitimation trap that is most pertinent to the EU and that they key question to ask is whether the Convention provides the Union with a new means of dealing with Rawlsian dilemmas. The paper proceeds as follows. The first section identifies the range of disagreement on how the EU ought to be legitimated. The second sets out means the Union has typically employed in the past to manage disagreements about its legitimacy. The third asks what the convention adds to those mechanisms.

2. What are the vectors of legitimation in the EU ?

In recent years, the academic literature has attempted to explore internal connections between EU legitimacy, other political values and questions of institutional feasibility (Beetham & Lord, 1998; Ferry, 2000; Héritier, 1999; Höreth, 1999; Lord & Beetham, 2001; Magnette, 2000a; Weiler, 1997). That literature broadly presupposes that the range of possibilities for a legitimate EU is defined by four 'vectors': indirect, parliamentary, technocratic and procedural legitimacy (cf. Jachtenfuchs et al, 1998). These notions of EU legitimacy are best described as vectors in two senses. First, they are commonly articulated as suppositions about general directions in which the legitimation of the Union ought to be headed, rather than as fully developed theories. Second, like vectors, they sometimes reinforce, and at other times, pull against one another.

Before explaining the vectors it is, however, necessary to clarify the challenge of legitimation they are required to meet. To the extent public opinion judges the Union without distinguishing its institutions and processes, there is always likely to be a challenge of legitimating the Union as a whole. On the other hand, legitimacy is always something of a 'problem waiting to happen', and not just a matter of current perception. Stress, crisis or just political socialisation and learning could always encourage more discriminating public evaluations that would pick up just how varied are the pillars and institutions of the Union in their impacts on ordinary lives. Perhaps sensing this, representatives of different Union institutions already differ in how they redeem their claims to the rightful exercise of political power. The challenge of legitimation further varies with the scope and intensity of Union interventions. The removal of obstacles to spontaneous interactions across national boundaries ('negative integration') often, though not invariably, seems to require less public justification than policies that make the Union's agency explicit (positive integration).

Indirect legitimacy.

According to one important perspective, supported by the German Constitutional Court in its famous decision on the Maastricht treaty, the legitimacy of the Union and its institutions can at best be indirect or derivative (H.Wallace, 1993). It depends on the legitimacy of the Union's component states, on its respect for their sovereignty, and on its ability to serve their purposes. This is a conclusion that is often drawn from those historical studies that claim all Treaty authorisations of Union power have been dominated by state actors and state

2

preferences (Milward, 1992; Moravcsik, 1998). A similar view of Union power as something that is authorised through the rational calculations of those who have legitimate authority in Member States is associated with principal-agent models (Pollack, 1997a), according to which any autonomy of Union institutions is not evidence of their independent legitimacy, but of where it suits states to confer limited discretion on a supranational agent, according to a contract that is contingent, calculated and controlled.

Parliamentary legitimacy:

A very different view to the last is that <u>Union policies and institutions are best</u> legitimated by a combination of elected parliamentary bodies and Member States (Pescatore, 1974). According to this perspective, dual legitimation by a Council of Governments and a directly elected Parliament may be the only way of achieving popular sovereignty in a political system that has both a people - a citizenry more or less affected in the same way by the one system of rule for which all are commonly responsible - and a series of peoples: a citizenry divided along lines of cultural identity. As J.-M. Ferry puts it, the Union has a 'double normative reference point: the rights of individuals and the rights of peoples' (Ferry, 2000, p.10).

Indeed, a polity that is territorially segmented, yet focussed on the management of problems that cut across those sub-units, will require representative structures that can aggregate and deliberate preferences both nationally and trans-nationally, hence, once again, the need for both a Council of Ministers and a directly elected Parliament. The need for dual legitimation might also be justified by the classic argument for mixed government. If it is unlikely that rational citizens will consent for long to systems of rule that expose them to risks of arbitrary domination (Locke [1690], 1977, p.163), a legitimate Union cannot afford to concentrate power, whether in a club of governments or in a parliamentary majority, but must, instead, institutionalise checks and balances between the carriers of those two legitimacy claims. Dual legitimation thus has obvious appeal to federalists, with their *penchant* for political systems that balance the representative claims of the whole and the parts, and for those who seek to constitutionalise the Union. (Hallstein, 1972).

Technocratic Legitimacy.

According to this perspective, Union institutions are best legitimated through their ability to offer 'pareto-improving' solutions (Majone, 1993). It matters less that they were once authorised by Member State principals or that they are exposed to the control of parliamentary representatives than that they are technically able to improve the welfare of the overwhelming majority of citizens in terms of their own felt preferences. This position implies the following: first, a normative belief that the superior ability of a system to meet citizen needs is grounds for political obligation to it; second, epistemological confidence in a rationality or science of government (positivism); and, third the identification of specific public needs that can only be met by independent European institutions. The latter might plausibly include use of the Union to constrain states from imposing negative externalities on one another (Gatsios and Seabright, 1989), to provide international public goods, and even to supply those domestic public goods that are plagued by perverse political incentives in Member States. An example of the last is that a European Central Bank that faces no one dominant electoral cycle may be more credible even than an independent national central banks where central bankers are either suspected of having political preferences or find that it becomes more difficult to vary interest rates as elections approach (Lohmann, 1998).

Procedural Legitimacy.

A further view is that legitimacy may be positively related to the observance of certain procedures – such as transparency, balance of interests, proportionality, legal certainty and consultation of stakeholders – that cannot altogether be reduced to any of the foregoing vectors (De Schutter, 2000). Procedural legitimacy has thus been seen as plugging a gap in technocratic perspectives that imply improved problem-solving can be sufficient without normative agreement on how groups and individuals should be treated in efficiency-improving decision-making processes. Going beyond mere attentiveness to due process, a further source of procedural legitimacy is respect for given rights and a capacity to generate new ones. To the extent there is social approval for the enforcement of those rights even against states themselves, they present one means by which the legitimacy of the Union might evolve in a direction that is increasingly autonomous of indirect forms of legitimation, even if authorisation by Member States was, indeed, the original source of its powers. Procedural legitimacy might finally be distinguished from parliamentary approaches. Adrienne Héritier (1999) has shown how the first might plausibly address a failure of the second to ask what forms of 'substitute legitimation' might be available as long as conditions for democratisation are only weakly developed at Union level.

Input-output legitimacy

By way of summary, it is useful to show how the foregoing vectors cut across another distinction, that between legitimacy delivered at the input and output stages of policy-making (Scharpf 1998). In the case of indirect legitimacy, authorisation by Member States and the delivery of state preferences are the sources of input and output legitimacy respectively. In that of parliamentary legitimacy, elections provide input legitimacy and the delivery of voter preferences secure output legitimacy. In the case of technocratic legitimacy expertise and delivery of efficiency are the key inputs and outputs. In that of procedural legitimacy, due process and respect for rights are possible sources of input legitimacy, whilst enlargement of rights is a plausible form of output legitimacy. These differences are summarised in table 1.

Table 1. Input and output legitimacy under the four vectors

	Input	**Output**
	EU policies are legitimate to the extent they are based upon the following:	EU policies are legitimate to the extent they deliver the following:
Indirect	Authorisation by states	State preference
Parliamentary	Elections	Voters preference
Technocratic	Expertise	Efficiency
Procedural	Due process and observance of given rights	Expanded rights

3. Combining the vectors of EU legitimacy

None of the foregoing vectors of legitimacy exist in pure form in the present EU. Rather, they must be understood as "ideal types" used to analyse the normative basis of a Union that has, in practice, developed institutional means for either combining the vectors or managing conflicts between them. Before identifying those institutional means, it is important to understand some general relationships between the vectors.

First, each vector has elements of both compatibility and exclusivity in its relations with the others. For example, the possibility of complementariness with other approaches is inherent to procedural and technocratic legitimacy: the first may be incomplete on its own to the extent it requires a legitimate source of agreement on procedures; the second similarly presupposes that supranational technocracies receive a mandate from an authority external to themselves. Yet, both are also partially exclusive with each other and, indeed, with indirect or parliamentary forms of legitimacy. Technocratic legitimacy may, for example, be attenuated where institutional arrangements designed to achieve indirect or parliamentary legitimacy inhibit the use of expert knowledge to achieve pareto-improving solutions. The most frequently discussed instance of this is where the democratic process and, in particular electoral cycles needed to renew parliamentary representation at regular intervals, create 'time-inconsistency' problems in the delivery of technical efficiency.

Second the boundaries of conflict and complementariness between the vectors are unlikely to be static. One reason for this is that none of the vectors is simply combinable or mutually exclusive with the others. Rather, it is only those things in relation to the normative standpoint adopted. Another consideration is that what is feasible in relationships between the vectors may change with institutional technologies and with how actors learn from the challenge of legitimating Union institutions and policies. A significant source of innovation is that the Union is under continuous pressure to replicate certain standards of legitimacy required of a liberal democratic state– such as public control and respect for human rights delivery (Lord and Beetham, 2001) – although it is neither a state nor a nation. This forces it to find original means of achieving what are familiar attributes of legitimate rule under liberal democracy. Consider two examples. Although it has no text that has been authorised as a constitution, the Union has features of contemporary constitutionalism: individual rights developed by its Court in response to the use citizens make of its law are entrenched, since they are difficult to remove by Treaty change (Stone Sweet, 2000, p.193). Likewise, the Union may not have moved very far towards representative government delivered through publicly mandated political programmes or electorally dismissable leaderships. Yet, it is, arguably, precocious in new forms of governance which may have their own representative qualities. It often bargains solutions in networks that are inclusive of a wide diversity of actors, deliberates them in settings where scientific and normative opinions assumptions have to be defended, and uses decision-rules that make it hard even for over-sized majorities to capture the benefits of co-operation for themselves, rather than distribute them more evenly (Héritier, 1999; Hix, 1998; Joerges & Neyer, 1997; Kohler-Koch, 1996).

Third, supporters of the different approaches to the legitimation of Union policies and institutions are unlikely to divide along clear cleavage lines. Consider two very different accounts of how the EU might be indirectly legitimated by its relationship to its Member States. From a Kantian perspective, the Union gains legitimacy by constraining states in ways that states may themselves recognise as improving the normative quality of their power: for example, by limiting their ability to exercise arbitrary domination over other states or their own citizens (Weiler, 1997; Magnette 2000a). A very different account of indirect legitimation is to be found in principal-agent theory. When used normatively this implies that any delegation of powers legitimates the Union in and of itself, and regardless of whether it

empowers or constrains Member States. When used empirically, it predicts that delegations will only, in fact, occur where they empower Member State 'principals', and especially those that are already the most powerful states in the Union (Moravcsik, 1998).

With these general points in mind, it is now possible to develop a typology of mechanisms for bringing out the complementarities between the vectors. The next section will then move on to the more difficult question of how unresolved conflicts between the vectors might be managed. Five kinds of combination are empirically observable in the contemporary Union. We now examine each in turn.

Partitioning of legitimating approaches.

Particular vectors of legitimacy often seem to be more closely associated with some policy domains than others. Indirect legitimacy is strongest in the Common Foreign and Security Policy (CFSP) and in co-operation in Justice and Home Affairs (JHA). Technocratic legitimacy is clearest in those aspects of Monetary Union that are handled by the ECB. Procedural legitimacy – especially those parts of it that concern the proper treatment of individual interests – is important to the working of Competition Policy. In this perspective, the Union could be conceptualised as a series of separate fields, each corresponding to a particular legitimating approach. Some analysts have, indeed, developed academic understanding of particular vectors of EU legitimacy through in-depth study of how the Union operates in a specific policy area (Majone 1996).

There are, however, shortcomings to the notion of a 'partitioning' of vectors of EU legitimacy by policy sector. First, even single issue areas often turn out to be dependent on a variety of legitimating approaches. Second, the mix of legitimacy approaches to be found in any single policy domain may change over time. Whereas, for instance, the involvement of supranational actors was seen by some as delegitimating in the early days of foreign policy co-operation, the 'blurring' of the supranational-intergovernmental divide for which the CFSP is now notorious takes place along the boundaries of two pairs of legitimating approaches: the divide between technocratic and indirect legitimacy is blurred by the Commission's right of initiative on CFSP questions; and that between technocratic and parliamentary legitimacy is blurred by the EP's right to scrutinise CFSP and even to exercise a measure of control where pillar one resources are needed to achieve pillar two objectives. Thirdly, such a partitioned system may still lack overall legitimacy. This is precisely one of the EU's weaknesses today : a set of partial constituencies of support for the application of particular legitimacy approaches to specific sectors does not amount to a form of global legitimacy for the Union as a whole.

Relay of legitimating approaches.

Rather than apply different legitimating approaches to different issue areas, this solution applies them to different stages of the decision-making process. Thus, under the 'Community method' a body with claims to technocratic legitimacy (the Commission) restricts the agenda to proposals that it believes can be made to work, a body with claims to international legitimacy (the Council of Ministers) bargains the needs of Member States, a body with claims to parliamentary legitimacy (the European Parliament) co-decides, and procedural legitimacy can be defended by complaints to the Ombudsman or cases brought in the ECJ.

To the extent each of the foregoing stages corresponds to what each vector of legitimacy is good at, the relay stands a chance of being assembled to the mutual satisfaction of those with contrasting ideas of what is needed for the rightful exercise of Union power. However, the

relay may also create as many problems as it solves, since it raises the obvious question of the relative weight to be given to each vector of legitimacy. A simple solution might be to allow each to function as a veto point, so no decision can be taken without satisfying all approaches simultaneously. Yet, the legitimacy of this is itself likely to be contested. To defenders of parliamentary legitimacy, multiple veto points allow minorities to rule over majorities. To those of technocratic legitimacy, they risk gridlock and substitute pork-barrel politics for the hope that independent experts can be used to search for optimal solutions. To those of indirect legitimacy, they have no validity unless they are traceable to a principal-agent relationship sanctioned by states themselves. It follows that the price of embedding multiple principles of legitimation in Union institutions is that none can prevail in its ideal form. A relay can only be formed between qualified and conditional versions of each principle, with the result that the mix is more likely to be open to continuous renegotiation than it is ever to be conclusively settled to the satisfaction of all.

Hierarchy of legitimating approaches.

The implication of some analyses is that the EU arranges different vectors of legitimacy into a hierarchy. Thus John Peterson's distinction between super-systemic (an IGC), systemic (the Community method) and sub-systemic decisions (policy networks, preparatory committees and so on) (Peterson, 1995) might cash out as the following relationship between various vectors of EU legitimacy. Indirect legitimacy plays the most important role in authorising the main outlines of the EU's institutional system through the Treaty formation process. Much in keeping with the last section, technocratic, parliamentary and legal legitimacy are then added at different stages of everyday decision-making, but always within a framework of what has been authorised by the Member States and on the understanding that the contributions of those other sources of legitimacy can be challenged and changed in subsequent rounds of Treaty negotiation.

Given that the EU needs to find some way of dealing with a plurality of fundamentally contested notions of what is needed to make it legitimate, a hierarchy of approaches seems still less likely than a relay of legitimation hurdles to secure the acceptance of all those whose active co-operation the Union needs. The relay is at least capable of treating all legitimation tests equally. In view of this difficulty it is unsurprising that, from another point of view, IGCs are not so much evidence that indirect legitimation by Member States is the most important of our vectors. Rather, they are one more means of bringing the vectors into balance. First, far from being undivided exponents of indirect legitimation, national leaders often seem to internalise the range of competing legitimating approaches into the preferences they negotiate between themselves. The TEU negotiations on political union, for example, followed a cleavage between German preferences for parliamentary legitimation and French for international legitimation, whilst those on Monetary Union pitched German and Dutch preferences for technocratic legitimation of the Central Bank against French and Italian preferences for its political control. Second, Treaty negotiators anticipate the legitimation requirements of non-state actors whose co-operation is needed if governments are to achieve their purposes. Third Treaty changes often codify practices that have been developed outside the assumptions of indirect legitimacy (Christiansen and Jorgensen, 1999). For example, the TEU (1991) adopted the draft statute for the ECB almost verbatim from a technocratic committee of Central Bankers (Dyson and Featherstone, 1999, p.3), and Amsterdam ratified extensions to the parliamentary investiture of new Commissions that had already been unilaterally developed by the EP itself (Hix and Lord, 1996).

Mutual contamination of legitimating approaches.

Another way in which the EU moves beyond simple co-existence between the vectors of legitimation is through a form of 'mutual contamination'. The history of the European Parliament has been characterised as a search for reconciliation between international and parliamentary legitimating principles through new forms of deliberation (Costa, 2001). In the case of Monetary Union, the claims by some to have identified a contradiction between technocratic and parliamentary principles of legitimation (Buiter, 1999; Busch, 1994; Elgie, 1998; Gormley & de Haan, 1996), may yet be answered by the EP's attempts to establish a 'monetary dialogue' that invites the ECB to justify technocratically-taken decisions within a framework of parliamentary scrutiny and cross-examination (Magnette, 2000b).

Mutual contamination is less structured than other means of combining diverse approaches to the legitimation of Union power: it does not depend on applying different approaches to different policy sectors, or on their arrangement into a hierarchy or a sequence, or on their being logically close substitutes for one another. Rather, it presupposes that the constructions their supporters put on each approach will be altered through mutual exposure.

4. The difference between Strategic and Deliberative Means of resolving Legitimation, and the role of the Convention therein.

There are, however, limits to how far conflicts can be solved by combining the vectors of Union legitimacy. Outstanding tensions are visible in almost all domains of Union action. Critics of pillarisation question what they see as the over-dependence of Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) on mechanisms of indirect legitimacy largely to the exclusion of either judicial or parliamentary accountability at European level. In environmental and public health questions, the technocratic legitimacy of expert knowledge clashes with the claims of parliamentarians or organised interests to represent public and societal values. In the design of monetary union, successive French Governments have questioned the legitimacy of failing to balance the technocratic qualities of an independent central bank with an 'economic government' based on the co-ordination of non-monetary policies by elected politicians.

The problem of outstanding legitimation disputes takes us back to the 'Rawlsian dilemma' (see p.2) we identified at the beginning of the article: how might the Union respond to conflicting notions of what is needed to make it various of its institutions and policies legitimate, bearing in mind those positions may be 'equally reasonable' ?

One possibility would be for actors to trade legitimation claims they are unable to resolve. This would involve them accepting some outcomes that are hard to justify in terms of their own notions of the rightful exercise of political power in exchange for others doing the same. Path dependence could then be expected to lock in trades made in previous periods. Keeping to deals will yield increasing returns. Departing from them will incur exit costs (Pierson, 2000). An elaborate legitimation settlement could thus accumulate and stabilise at Union level through a relatively small number of moves. There is some empirical evidence that this is, indeed, how actors behave in the European arena. The exchange of 'political union for monetary union' that lay behind the TEU can be interpreted as a legitimation trade. Germany got a technocratically legitimated monetary union and further parliamentarisation of pillar one. France kept the second and third pillars within the bounds of international legitimation. Rather than a mere trade of interests, this was, arguably, an exchange of deeply held, yet conflicting, ideas of what was needed for the rightful exercise of different kinds of political power in the European arena.

An obvious difficulty with bargaining solutions, however, is that they are unlikely to be accepted as a fair means of resolving legitimation conflicts by those who believe that 'who gets what' from bargaining depends on power and resources. Indeed, bargaining presupposes the very thing that needs to be legitimated, namely a given structuring of power relationships through the institutions of the EU. Nor can it, of itself, supply justifications for any decisions on how our various vectors of EU legitimation should be traded off against one another in any context demanding choice between them.

It follows that decisions to proceed with common forms of rule in the face of 'contradictory but equally reasonable' beliefs about legitimacy must be independent of the power distributions to be legitimated and impartial between the competing legitimation values at issue. They must also be the result of procedures that are capable of either producing convergence in underlying beliefs about the rightful exercise of power, or, failing that, of satisfying even those who lose out that their legitimation preferences have only been set aside for 'good' or 'fair' reasons (Mill, 1972 [1859], pp.239-40).

For Habermas, these conditions can only be satisfied where actors move from bargaining to deliberation; from 'strategic' to 'communicative action': from the maximisation and exchange of individual preferences to a mode of behaviour whose standard of success is, in contrast, the discovery of 'validity claims' that actors can *together* find acceptable' (1997, p.119). Amongst deliberative norms are a willingness to be *persuaded,* to give a hearing to all other points of view regardless of the number or power of their supporters, to understand why they are of value to those who hold them, and to state one's own arguments in a form that exposes their assumptions to challenge. Another deliberative norm is a willingness to be *persuasive* by reasoning 'publicly' rather than 'self-referentially'. This prevents actors from presenting their favoured positions as personal preferences, and requires them, instead, to justify them as proposals from which the overwhelming majority of the political association can benefit.

So how far does the Convention on the future of Europe represent a shift from strategic to deliberative solutions to legitimation problems and traps? At this stage it is probably only possible to answer the question somewhat tentatively and impressionistically.

If we compare the Convention with previous methods of preparing an intergovernmental conference – reflection groups of representatives of heads of government – it certainly provides a more public place where alternative options for the better legitimation of the Union have to be explained and justified. Moreover the involvement of actors with diverse and and partially competing representative claims – national governments, national parliamentarians and MEPs – imports to the constitutional debate a feature that Adrienne Héritier once noted of specialised policy networks in the EU, namely cross-examination of claims by mutually suspicious actors.

It may also be the case that the Convention has acted as a more creative 'search engine' than the reflection groups that preceded it for areas of common ground. Here it is useful to suspend for a moment the assumption of much of contemporary political science that preferences are fixed and fully formed prior to bargaining and acknowledge instead that a good many actors decide at least a part of what they want through the discipline of having to articulate themselves in a public, open and interactive process of opinion formation, rather than as a prelude to it. Take two examples of where common understanding of problems and available solutions seems genuinely to have moved on as a result of the deliberations in the Convention. Those examples concern the role of national parliaments and the clarification of competence. The need for defenders of these two options to meet practical and normative objections to a catalogue of competence or to a tri-cameral Union with a chamber of national parliaments has

stimulated new thinking in which the debate has moved on to proposals that a certain number of national parliaments should be able to issue subsidiarity challenges.

On the other hand, a further example suggests that a good deal of manoeuvring behind the Convention remains strategic after all. Indeed, it was probably always going to be difficult to avoid such an outcome. A difficulty with launching the Convention as the first of a two-stage game in which it would be followed by a standard IGC was always going to be one of how to keep the two stages of the game separate from one another: of, how in other words, to discourage actors from playing a 'deliberative' Convention according to the rules of a 'strategic' IGC when everyone knew from the outset the first would necessarily be followed by the second. In this regard the main proposal that seems likely to emerge from the Convention – the 'two Presidencies solution' in which there will be an indirectly elected Commission President and a Presidency of the Council of Ministers chosen by the heads of Government in the European Council – might seems to be more of a veto-trade (you don't veto my President and I won't veto yours) between strategically motivated actors than a reasoned solution. It was after all a deal that seems to have been reached in bilateral negotiations between large Member States, rather than on the floor of the Convention.

A counter, however, to this sceptical conclusion is that deliberative solutions are 'cunning' in the sense that their force does not depend on sincerity. As James Elster puts it, the "civilising force of hypocrisy" (Elster, 1998) means that once actors have accepted the rules of the game, and as long as they hope to establish the legitimacy of their own point of view, they are forced to behave *as if* motivated by deliberative norms. It would, in other words, be naïve to expect the Convention to displace strategic bargaining between players. The real test is how far it compels actors to present normative justifications for their strategic preferences. Whether – and how – defenders of the two Presidencies proposal rise to this challenge in the remaining weeks of the Convention, rather than merely rely on their bargaining strengths to push the proposal in the subsequent IGC, may well be the key test of how far the process has improved the capacity of the Union to deal with 'contradictory but equally reasonable' views of how it should legitimated. A feature of the two Presidencies proposal is, after all, that it fuses indirect and electoral routes to the legitimation of Union institutions, but in a manner which raises the obvious question 'why paste solutions together in this way?': what political values are served and what improvements to institutional performance might be expected?

References

Beetham, D. (1991) The Legitimation of Power, Basingstoke: Macmillan.

Beetham, D. & Lord, C. (1998) Legitimacy in the European Union. London, Addison, Wesley, Longman.

Bellamy, R. (2000) 'Dealing with Difference: Four Models of Pluralist Politics', Parliamentary Affairs, vol.53, no.1, pp.198-217.

Bellamy, R and Castiglione, D. (2000) 'The uses of democracy: reflections on the European democratic deficit' in E.Eriksen and J.Fossum, Democracy in the European Union. Integrational Through Deliberation. London, Routledge.

Buiter, W. (1999) 'Alice in Euroland', Journal of Common Market Studies, vol.37, no.2 , pp. 181-209.

Busch, A. (1994) 'Central Bank Independence and the Westminster Model', West European Politics, vol.17, no.1 , pp.53-72.

Christiansen, T. and Jorgensen, K.-E. (1999) 'The Amsterdam Process : A Structurationist Perspective on EU Treaty Reform', European On-line Papers, Vol.3, No.1.

Costa, O. (2001) Le Parlement européen, assemblée délibérante. Bruxelles, Editions de l'Université de Bruxelles.

Craig, P. (1999) 'The Nature of the Community : Integration, Democracy and Legitimacy', in P. Craig et G. De Burca (eds.), The Evolution of EU Law. Oxford, Oxford University Press, pp. 1-50.

Dehousse, R. (1995) 'Constitutional Reforms in the European Community : Are There Alternatives to the Majoritarian Avenue?', West European Politics, vol.18, no.3 , pp. 118-136.

De Schutter, O. (2000) 'La procéduralisation dans le droit européen – Propositions institutionnelles', in O. De Schutter, N. Lebessis and J. Paterson (eds.), La gouvernance dans l'Union européenne, Luxembourg, Office des publications officielles, pp. 207-231.

Dunn, J. (2000) The Cunning of Unreason. Making Sense of Politics. London, Harper Collins.

Dyson, K & Featherstone, K. (1999) The Road to Maastricht: Negotiating Economic and Monetary Union. Oxford, Oxford University Press.

Elgie, R. (1998) 'Democratic Accountability and Central Bank Independence : Historical and Contemporary, National and European Perspectives', West European Politics, vol.21, no.3, pp.53-76.

Elster, J. (1990) Ulysses and the Sirens, Studies in rationality and irrationality. Cambridge/ Paris, Cambridge University Press/Maison des sciences de l'homme.

Elster, J. (ed.) (1998), Deliberative democracy, Cambridge, Cambridge University Press.

Eriksen, E. (1999) The Question of Deliberative Supranationalism in the European Union, ARENA Working Papers, 99/4.

Eriksen, E. & Fossum, J.-E. (2000) Democracy in the European Union. Integration through Deliberation? London, Routledge.

European Commission. (1997) Evolution in Governance. What Lessons for the Commision? A First Assessment. Working Paper compiled by Notis Lebessis and John Paterson. Brussels, European Commission.

European Commission. (2001) European Governance : a White paper, COM(2001) 428.

Ferry, J.-M. (2000) La question de l'État Européen. Paris, Gallimard.

Gatsios, K. and Seabright, P. (1989) 'Regulation in the European Community', Oxford Review of Economic Policy, vol.5, no.2, pp.37-60.

Gormley, L. & de Haan, J. (1996) 'The Democratic Deficit of the European Central Bank'. European Law Journal, vol.21, no.1, pp. 95-112.

Habermas, J. (1992) 'Citizenship and national identity : some reflections on the future of Europe', Praxis International, vol.12, no.1, pp.1-19.

Habermas, J . (1997) Between Facts and Norms . Cambridge, Polity.

Hallstein, W. (1972) Europe in the Making. London, Allen & Unwin.

Héritier, A. (1999) 'Elements of democratic legitimation in Europe: an alternative perspective', Journal of European Public Policy, vol.6, no.2, pp.269-82.

Hix, S. (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, S. & Lord, C. (1996) 'The Making of a President: The European Parliament and the Confrimation of Jacques Santer as President of the Commission', Government and Opposition, vol.XXIII, pp.62-76.

Höreth, M. (1999) 'No way out for the beast? The unsolved legitimacy problem of European Governance', Journal of European Public Policy, vol.6, no.2, pp.249-68.

Jachtenfuchs, M., Diez,T., and Jung, S. (1998) 'Which Europe? Conflicting Models of a Legitimate European Political Order', European Journal of International Relations, vol.4, no.4, pp.409-445.

Joerges, C and Neyer, J. (1997) 'Transforming strategic interaction into deliberative problem-solving: European comitology in the foodstuffs sector', Journal of European Public Policy, vol.4, no.4, pp.609-25.

Katz, R. (2001) 'Models of Democracy: Elite Attitudes and the Democratic Deficit in the European Union', European Union Politics, vol.2, no.1, pp.53-81.

Kohler-Koch, B. (1996) 'Catching up with Change: the Transformation of Governance in the European Union', Journal of European Public Policy, vol.3, no.3, pp.359-380.

Locke, J. (1977 [1690]) Two Treatises of Government, London, Dent.

Lohmann, S. (1998) 'Federalism and Central Bank Independence: The Politics of German Monetary Policy 1957-92', World Politics, vol.50, no.3, pp.401-46.

Lord, C. (1998) Democracy in the European Union. Sheffield, Sheffield Academic Press.

Lord, C. and Beetham, D. (2001) 'Legitimizing the EU: Is there a "Post-parliamentary Basis" for its Legitimation', Journal of Common Market Studies, vol.39, no.3, pp.443-62.

Madison, J., Hamilton, A., & Jay, J. (1987 [1787]) The Federalist Papers. Harmondsworth, Penguin.

Magnette, P. (2000a) L'Europe, l'Etat et la démocratie. Bruxelles, Complexe.

Magnette, P. (2000b) 'Towards « Accountable Independence » ? Parliamentary Controls of the European Central Bank and the Rise of a New Democratic Model', European Law Journal, vol.6, no.4 , pp.326-340.

Majone, G. (1993) 'The European Community: An "Independent Fourth Branch of Government". EUI Working Paper 94/17. Florence, EUI.

Majone, G. (1996) (ed.) Regulating Europe. London, Routledge.

Manin, B. (1998) Principles of Representative Government. Cambridge, Cambridge University Press.

Mill, J.S. (1972 [1859]) Utilitarianism, On Liberty and Considerations on Representative Government, London, Dent.

Milward, A. S. (1992) The European Rescue of the Nation-State. London, Routledge.

Moravcsik, A. (1998) The Choice for Europe. Social Purpose and State Power from Messina to Maastricht. London, UCL Press.

Moravcsik, A and Nicolaïdis, K. (1998) 'Keynote Article: Federal Ideals and Constitutional Realities in the Treaty of Amsterdam', Journal of Common Market Studies: Annual Review, vol.36, pp.13-38.

Pescatore, P. (1974) 'Les exigences de la démocratie et la légitimité de la Communauté européenne', Cahiers de droit européen, vol.10, no.5, pp. 499-514.

Peterson, J. (1995) 'Decision-Making in the European Union: Towards a Framework for Analysis', Journal of European Public Policy, vol.2, no.1, pp.69-93.

Petite, P. (1997) Republicanism, A Theory of Freedom and Government. Oxford, Oxford University Press.

Pierson, P. (2000) 'Increasing Returns, Path Dependence and the Study of Politics', American Political Science Review, vol.94, no.2, pp.251-67.

Pollack, M. (1997a) 'Delegation, agency and agenda setting in the European Community', International Organisation, vol.51, no.1, pp.99-134.

Rawls, J. (1993) Political Liberalism. New York, Columbia University Press.

Rawls, J & Habermas, J. (1995) "Discussion on Political Justice", Journal of Philosophy, Vol. 92, n° 3.

Risse, T. (2000) 'Let's Argue: Communicative Action in World Politics', International Organisation, vol.54, no.1, pp.1-39.

Scharpf, F. (1997) 'Economic Integration, Democracy and the Welfare State', Journal of European Public Policy, vol.4, no.1, pp.18-36.

Scharpf, F. (1999) Governing in Europe, Effective and Democratic. Oxford, Oxford University Press.

Scharpf, F. (2000) 'Notes Toward a Theory of Multilevel Governing in Europe', Max-Planck-Institut für Gesellschaftforschung Discussion Paper, 5/2000.

Schmitter, P. (1995) 'Alternatives for the Future European Polity. Is Federalism the Only Answer' in M.Télo (ed.) Démocratie et Construction Européenne. Brussels, Éditions de de l'Université Libre de Bruxelles.

Shaw, J. (1999) 'Postnational constitutionalism in the European Union', Journal of European Public Policy vol.6, no.4, pp.579-97.

Stone Sweet, A. (2000) <u>Governing with Judges: Constitutional Politics in Europe</u>. Oxford, Oxford University Press.

Wallace, H. (1993) 'Deepening and Widening : Problems of legitimacy for the EC', in Garcia, S. (ed.), <u>European Identity and the Search for Legitimacy</u>. London, Pinter, pp. 95-105.

Weiler, J. (1997). 'Legitimacy and Democracy of Union Governance' in Edwards, G. and Pijpers, A. (eds<u>) The Politics of European Union Treaty Reform</u>. London, Pinter.

Weiler, J. (1999) <u>The Constitution of Europe</u>. Cambridge, Cambridge University Press.