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Theorizing the Democratic Legitimacy of European Governance: a Labyrinth with No Exit?

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ABSTRACT In recent years, the question of the legitimacy of European governance and the repercussions it has on democratic procedures in EU member states has led to an extraordinarily intricate and controversial debate. Indeed, it seems as if one is trapped in a labyrinth with no exit. This article makes an effort to disentangle the intertwined strands of theory and to present an analytical differentiation that sheds light on this complex maze. Taking the available categorizations into consideration, this article develops a meta-theoretical framework that differentiates between particular concepts, objects, variables and standards of democratic legitimacy in the European multi-level system. The result is a heuristic that enables a more precise analysis and evaluation of democracy and legitimacy criticisms with which the European Union is increasingly confronted.

KEY WORDS: European integration, European governance, democratic legitimacy, meta-theory, political philosophy

Introduction

In an oft-quoted article, Richard Bellamy and Dario Castiglione (2003) spoke of a ‘normative turn’ in European studies. They used this phrase to indicate the observation that the ongoing process of European integration is increasingly confronted with criticism and appraisals exceeding the explanation or ‘understanding’ of European institutions, politics and policy areas, not only in political and public debates, but also in legal, sociology and political science treatises. Normative theory has opened up European research as a new field of activity and began to apply classical terms, concepts and arguments of

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practical philosophy for justifying (national) political systems to the European multi-level system instead of limiting itself to the empirical test of hypotheses, like the early pioneers of integration research (see the survey articles by Friese and Wagner 2002; Føllesdal 2006a). These critical discourses on Europe deal mainly with the questions of whether and to what extent political or legal decisions that are made between or among EU institutions are subject to democracy and/or legitimacy deficits, by which features these deficits can be recognized or from what causes they stem and, if applicable, what political measures or social developments could reduce or eliminate them (see Moravcsik 2002; Føllesdal and Hix 2006; Kohler-Koch and Rittberger 2007).

Quite rightly, Bellamy and Castiglione dated the origin of the critical legitimacy and democracy debates back to the Maastricht Treaty (1992), which led to the considerable consequential and, after years of stagnation, rather surprising strengthening and further development of European integration. Even though the failed referenda and public protests against the 'European Constitution' in France and the Netherlands in May and June of 2005 attracted more media attention, a three-dimensional dynamic began at the latest with the Maastricht Treaty, whose interconnections must be seen as the initiation for the normative legitimacy and/or democracy debate: first, this marked the beginning of a general lowering of approval rates towards the European Union in many member states, so that the previously assumed 'permissive consensus' of citizens for the continuation of the European integration project began to sway more and more. Secondly, two national constitutional courts, the German Constitutional Court and the Danish Supreme Court, were appealed to a juridical review to examine whether the loss of national sovereignty resulting from the EC treaty is consistent with constitutional law in the respective country. And, thirdly, in some policy areas the way was paved for majority decisions in the European Council and Parliament, so that at least in theory a situation was created in which one group of states could overrule another (Weiler 1992).

Since then, an extraordinarily intricate and controversial debate on the legitimacy of European governance has developed, of which it is difficult to get an overview. This article does not attempt to make another normative contribution to the diagnoses, symptoms and therapies of democracy and/or legitimacy deficits of the European Union (or to argue against the existence of deficits) or to launch into a critical discussion of existing normative positions. Instead, it concentrates on disentangling the intertwined strands of theory and presenting an analytically comprehensive differentiation that, hopefully, can contribute at least somewhat to the illumination of the maze. Taking the available categorizations into consideration, a meta-theoretical framework differentiating between certain concepts, objects, variables and standards of evaluation will be developed that could interact with the political legitimacy of European governance in normative and empirical interrelationships. The result is a comprehensive heuristic intended to lead to a differentiated and theoretically more informed analysis and assessment of democracy and/or legitimacy criticisms with which the EU is increasingly confronted.

State of Research on the Meta-theory of the EU Legitimacy Debate

After initially, in particular normative assessments of the *first order* on the political legitimacy of European governance were published and discussed, there are now a few meta-theoretical studies of the *second order*, in which the academic debate is analytically processed and systematically differentiated (see Chrysochoou 2000; Holzhaecker 2007). While the disagreements about legitimacy of the EU had a certain creative potential and sensitized us to multi-dimensional problem solutions at first, the meta-theoretical discourse deals with sharpening concepts as well as revealing logical or inconsistent correlations and premises that often remained, consciously or unconsciously, in the background of first-order evaluations. Such a perspective could contribute to a further development of the EU legitimacy debate in as far as non-uniform and ambiguous understandings of terms are one of the main reasons why entirely contrary perceptions of the political legitimacy of European governance have led to situations in which some discourse participants have at first talked ‘at cross-purposes’ without ever getting to the core of their conflict. Although this meta-theoretical debate is still in its initial stages, it has quickly become apparent that the often quoted and now generally accepted dichotomy between input and output legitimacy by Fritz Scharpf is at least no longer sufficient to cover all conceivable forms and theoretical links between critiques of legitimacy and/or democracy that could apply to the European multi-level system. With this equally practical and simplifying differentiation, it is not possible to cover all potential sources and deficits of political legitimacy without contradictions. It often remains unclear whether and how certain objects of legitimacy are interrelated with which of the two types of legitimacy, and to what extent the inter-institutional decision-making process (independent of the participation by citizens) is normatively relevant (Scharpf 1999; Moravcsik and Sangiovanni 2003).

Most of the existing meta-theoretical studies on the EU legitimacy debate distinguish more or less explicitly between certain *categories*, without making it always clear whether and to what extent these differentiations are conceptually sufficient to cover all possible dimensions of EU legitimacy required for a comprehensive heuristic. Erik O. Eriksen and John Erik Fossum (2004) suggested three strategies as potential solutions for EU legitimacy problems that are derived from theoretical finality visions of European integration. Each has, according to the authors, specific strengths and weaknesses. The first type understands the EU as a functional ‘problem-solving entity’, the second constructs it as a ‘value-based community’, and the third describes it as a ‘right-based union’. These three types are differentiated especially along the ‘conceptions of rationality’ (instrumental, contextual, communicative) that they are based on, and regarding their ‘legitimacy mode’ (efficiency, collective self-understanding, justice and norms of fairness). By contrast, Christopher Lord and Paul Magnette (2004) differentiated between four different ‘vectors of legitimation’, which should not be understood as fully developed theories, but rather as guidelines for a potential legitimacy of European governance: ‘indirect legitimacy’ means

democratic legitimation transferred from the national level into EU institutions. ‘Parliamentary legitimacy’ considers the influence and control functions of national parliamentary bodies as well as the directly elected European Parliament in the EU decision-making process. ‘Technocratic legitimacy’ is assessed by the capacity of EU institutions to solve complex and technically difficult problems for citizens efficiently and effectively. And ‘procedural legitimacy’ results from the decision-making process — that is from the question of how actors or institutions coordinate and make collective decisions. In addition, an input and an output variant are distinguished for each vector. Richard Bellamy and Dario Castiglione (2003) differentiated between an ‘internal’ and an ‘external’ dimension of legitimacy. The internal dimension reflects norm-based relationships between the people within political organizations, as well as the institutions governing their lives. The external dimension pertains to the justification of these institutions and their congruence with certain formal and substantive norms. Both dimensions can be referred to the legitimacy of the ‘polity’ and to the ‘regime’, whereby the polity dimension is again differentiated into political ‘subjects’ and ‘spheres’ and the regime dimension into ‘style’ and ‘scopes’ of politics. Finally, Andreas Føllesdal (2006b), who presented the most complex categorization thus far, differentiated between four basic ‘conceptions’ (legality, compliance, problem-solving, justifiability), four institutional ‘mechanisms’ (participation, democratic rule, actual consent, output), and six ‘objects’ (political decisions, authorities, public institutions, regime, regime principles, and political community) of democratic legitimation. Some of the respective sub-categories are differentiated even further, for example the concept of justifiability into legal, social and normative legitimacy.

These four meta-theoretical approaches obviously differ considerably from one another, although most of the categories appear in slightly different form and structure in all typologies and all authors pursue the same scientific interest, namely the development of a consistent and comprehensive heuristic of analysing and assessing the political legitimacy of the EU. These differences can be attributed first to conceptual fuzziness, as most of the categories represent metaphysical principles whose interpretation and delimitation require considerable efforts to find precise definitions. These variations in interpretations lead to varying arrangements of terms, some of which are on the same level, but some of which can also be interpreted as partial and sub-categories and thus fall under other main categories. For example, while the four legitimacy vectors of Lord and Magette are at the same level, Bellamy and Castiglione define certain main, intermediate and sub-categories. Both conceptual structures must be argued carefully, as it can be debated either why certain categories are at a certain level and do not have any sub-categories, or because it must be justified why certain categories are not on the same level and sub-categories have to be introduced. Secondly, it often remains unclear whether certain main and sub-categories form necessary conditions for the respective category or are even sufficient conditions. Necessary conditions identify certain categories as urgently needed theoretically, which may not be lacking in a complete

meta-theoretical conceptual system, and sufficient conditions assert the analytical completeness of certain main and sub-categories. While Føllesdal, for example, unambiguously formulated that he has tried to present a sufficient categorization, Eriksen and Fossum left it unclear in their article whether their three strategies of assessing legitimation are sufficient for a comprehensive heuristic. And, thirdly, it remains often unclear whether the authors already postulate certain categories as normative conditions for a legitimate political system (and to what extent they are deficient), or whether certain categories that *could* have normative-theoretical relations with the political legitimacy of European governance are first systematically differentiated. Both the analytical and the evaluative perspectives embody meaningful starting points for a fruitful discourse on legitimacy; however, clear disclosure and positioning would be helpful in avoiding misunderstandings. Analytical categories, which belong in a meta-theoretical conceptual system for the sake of completeness, need not also be identified as normatively necessary or even deficient. An evaluation of the individual categories, which often presupposes empirical knowledge, requires much more complex argumentation and need not necessarily be provided to justify the categories *analytically*. While Eriksen and Fossum disclosed from the beginning that they wish to discuss their three legitimation strategies mainly in a normative sense, and Føllesdal, at least in the first part of his text, attempted to avoid the use of strong judgmental terms, in the complex categorization of Bellamy and Castiglione, analytical and normative elements are mixed together in an intertwined tangle of concepts difficult to unravel.

In the following sections I develop a synthesis that tries to avoid the analytical deficits and shortcomings of these meta-theoretical approaches. I argue that we need four main categories, each with three sub-categories, to place the potential legitimacy problem of European governance in a theoretical framework in order to process it. First, we need a precisely defined *legitimacy concept* that delimits under which conditions political power is acceptable or worthy of being recognized. Secondly, we need a *legitimacy object*, that is, a certain political institution or a certain legal norm whose political legitimacy is to be assessed. Thirdly, a *legitimacy variable* must be determined on which political legitimacy depends, for example the decision-making process or certain policy outputs. And, fourthly, a *legitimacy standard* must be formulated, against which legitimacy can be measured and judged, for example a normative ideal situation or a certain nation-state. In addition, I will argue that it is sufficient to differentiate each of these categories in three sub-categories to cover the recently debated forms and theoretical links of legitimacy and/or democracy critiques that have been applied to the multi-level system of the EU.

Concepts of Legitimacy

Under what conditions a political system can be legitimized or constraints violently implemented by a state are at times justifiable is, presumably, the

oldest, but still the central issue of political philosophy. Referring to political legitimacy, the key question is: what are the reasons for justifying political rules in terms of generally binding decisions (cf. Barker 1990; Beetham 1991)? After the EU developed to a supranational order that *governs*, i.e. makes and implements legally binding decisions of a depth and scope that were previously reserved solely for sovereign states, the question arises as to which classical legitimacy concepts retain their normative validity beyond national governance (Barker 2003). Legitimacy concepts formulate perceptions of whether and under what conditions certain legitimacy objects, such as political institutions or individual political decisions, can be assumed to be acceptable or worthy of recognition and can be justified intersubjectively and independently of the own self (Rawls 1985; see also Morgan 2005). With respect to the EU, three concepts of political legitimacy have been differentiated, by which certain legitimacy objects can be subjected to a critical evaluation, namely *legality*, *acceptance/compliance* and *normative justification*.

- *Legality*: The concept of legality is limited to the purely juristic issue of whether and to what extent positively stated legal regulations have been violated; it derives the legitimacy of political systems from this assessment. Whether and to what extent this legal conformity exists could be dependent on the judgements of national or supranational instances, such as the European Court of Justice (ECoJ), or on own juristic argumentation. Apparently, the long controversial idea of legal positivism, on which a philosophical discourse is still being conducted (albeit more readily comprehensible), is hidden behind this concept (Dyzenhaus 1996). Nevertheless, this legitimacy concept should be considered in the meta-theoretical debate on the political legitimacy of the EU, for even if the legality of a political system is not accepted as a sufficient condition for its legitimacy, the legality aspect could still possibly be one of several criteria for assessment. In connection with the EU, two dimensions of legality can be differentiated, namely the compatibility of the primary legal basis of the EG/EU treaty with national constitutional law and, secondly, formal compliance with law in the legislative and executive decision-making process within and among EU institutions (Craig 1997; Lenaerts and Desomer 2002).
- *Acceptance/compliance*: The concept of acceptance/compliance is often called ‘belief in legitimacy’ (*Legitimitätsglaube*) in the tradition of Max Weber (Cotterrell 1983). According to this concept, the legitimacy of a political system or of individual decisions is dependent on the *de facto* support by the citizens, which can be measured empirically. Acceptance is usually collected by attitude and opinion surveys, while compliance can be recognized in adherence to legal norms. If acceptance and/or compliance sink below a certain (hard to define) level in the population within a political space, it must be considered a legitimacy crisis, irrespective of the extent to which protests or acts of civil disobedience are normatively justified. If only this second concept is considered, political systems could definitely be viewed as legitimate, even if certain legal regulations have

not been passed by legal means, as long as the citizens accept and follow them. In the context of the EU, it could be argued that European governance would then suffer from a legitimacy deficit, if fewer and fewer citizens approved of their country's membership in the EU, if they did not accept EU directives implemented into national legal systems, if the participation in European elections decreased continuously, or if public resistance to EU policies or to the 'European Constitution' increased (Hurrelmann 2007).

- *Normative justification*: The concept of normative justification is, without a doubt, the most often used and, at the same time, the most controversial (with regard to concretization) understanding of political legitimacy in the context of the EU legitimacy debate. This third subcategory does not cover an unambiguous evaluation object separate from the subject, such as positive legal norms or citizens' acceptance or compliance. Rather, this concept is characterized by a subjective norm that must itself first be established and justified as a criterion for evaluation (Gaus 1996; Simmons 1999). Thus, legality can, but must not, be a part of normative justification. Classic examples are normative justifications of certain understandings of democracy or substantive goods, such as individual freedom or social justice, which political systems must guarantee and ensure in order to be considered legitimate. Political systems in which laws are passed according to certain procedural norms, which are accepted or complied with by the majority of the population, could still be illegitimate according to this concept if certain normative or substantive rights or goods are not respected or not provided by them (Wheeler 2001). With respect to the EU, this concept could be used to argue that European governance suffers from a political legitimacy deficit because the citizens' opportunities to participate in European decision-making processes are not sufficient or that the consequences of political decisions would increase social injustice, etc.

These three concepts consider the most intensively discussed understandings of how political legitimacy can be defined and analysed thoroughly. The concept of *legality* in positive law derives the legitimacy of certain legal norms and procedures from their regularity and thus uses a different mode of justification than the other two concepts. The concept of *acceptance/compliance*, which is often understood as empirical legitimacy, asks for social indicators to evaluate political systems of governing (or individual decisions) that lie beyond the observing subject itself, in particular opinion surveys, protest movements, or public debates. The concept of *normative justification*, on the other hand, assumes a subjective norm that can be justified with convincing reasons independent of social events, for example the usual demand for transparent decision-making processes. These three concepts could doubtlessly be linked: The procedural legality of legal norms could have an influence on acceptance or compliance of the citizenry, or normative criticism of legitimacy could be supported by increasing social protest movements that can be determined only empirically.¹

Objects of Legitimacy

Legitimacy objects indicate certain empirical entities that can be subjected to a normative evaluation, depending on which concept of legitimacy is chosen. While the three concepts initially define a certain understanding of political legitimacy, the objects can be analysed regarding their legitimacy along these concepts. Usually, in the legitimacy debate, the EU is seen as an empirical unit, without differentiating sufficiently between various institutions and single decisions in specific policy areas. Of course, the political system of the EU may have some legitimacy deficits that cannot be reduced to subordinate units. However, it is also conceivable that we find certain deficits solely when analysing certain institutions or policy decisions, while the overall system does not provide any basis for a criticism of political legitimacy. Therefore, with regard to the EU, three object levels of political legitimacy were differentiated that can be subjected to a critical evaluation, namely the *political system of the EU* (or its constitution) as a whole, individual *EU institutions*, and specific *EU policy decisions*.

- *Political system (constitution) of the EU*: Classically, legitimacy evaluations were often applied to political systems as a whole, for example to the opportunities for citizens to participate actively in political decisions, the more or less democratic constitution of a nation-state, or to the coordination of various institutions or levels within a federal state (see Easton 1981). In the case of this first object, criticism is not directed against individual institutions within the system or against special policy decisions, but rather against the construct of the political system in its entirety. Depending on the legitimacy concept, it can be discussed whether and why presidential systems of government are less legitimate than parliamentary democracies, to what extent direct democratic forms of participation lead to more political legitimacy than representative decision-making processes, or to what extent the acceptance of the political system by the citizens is dependent on the type of democracy (Weale 1999; Cunningham 2002). The debate on the political legitimacy of European governance concentrated greatly on this first object of legitimacy from the onset, in particular regarding the question of the necessity of a 'European Constitution' and with regard to institutional reforms (Grimm 1995; Weiler 1995), but also in the context of the problematic of (too) long 'legitimacy chains' in the complex multi-level system of the EU (Höreth 1999; George 2005; Benz 2006).
- *EU institutions*: A second object that can be subjected to an evaluation of legitimacy comprises the individual political institutions within a (national or supranational) political system. Depending on which concept of political legitimacy is taken, in theory, a situation is conceivable in which the political system is legitimized overall, but where some political institutions have special legitimacy deficits, perhaps because compliance with them is refused, if they do not adhere to applicable law, or do not enable democratic participation (if forms of increased participation are justified normatively). On the other hand, it is just as conceivable that the political

system as a whole has deficits in political legitimacy, but that at least individual institutions are satisfactorily legitimized because they meet certain criteria, for example by providing effective problem-solutions, or act and make decisions with a high degree of transparency. In the context of the debate on the political legitimacy of individual EU institutions, the question has been raised whether and to what extent decisions of the ECoJ are accepted by the citizens (Gibson and Caldeira 1995), to what extent the policy of the European Central Bank is, or should be more, democratically legitimized (Elgie 2002), and to what extent the EU Constitutional Convention was legitimized to a greater degree than previous treaty revisions by the Council of the European Union (Risse and Kleine 2007).

- *EU policy decisions*: Finally, certain policy decisions can be subjected to legitimacy evaluations as empirical units (Hanberger 2003). This third differentiation is necessary, because it cannot be concluded from the legitimacy of political systems as a whole or of individual political institutions that single policy decisions are also sufficiently legitimized according to concept and variables of legitimacy (see below). For example, procedural rules could be violated or decisions made in certain policy fields and by various institutions that infringe substantive norms such as freedom or equality rights. In addition, the situation is theoretically conceivable that for certain policy decisions other institutional procedures apply that could lead to different evaluations of legitimacy (McKay 2000). In the context of specific EU policy fields, one question raised was whether and to what extent decisions in the EU's trade policy could be considered sufficiently legitimized (Meunier 2003), to what extent decisions of the Common Foreign and Security Policy (CFSP) are subjected to democratic controls (Wagner 2006) and, recently, to what extent and with which models of legitimation tax policy decisions in the Euro zone ('Euroland') can be justified (Collignon 2007).

These three objects cover the most intensively discussed entities that were subjected to a critical evaluation in the framework of the EU debate on legitimacy. The most obvious and common object of evaluation is the *political system of the EU* as a whole, usually the interplay of EU institutions and the opportunities for citizens to participate in EU politics in general. Nonetheless, legitimacy evaluations can also be concentrated on or limited to two other levels that must be differentiated analytically from the political system as a whole, namely at individual *EU institutions* and *EU policy decisions*. Normative or empirical correlations between the three objects are possible. Thus, potential legitimacy deficits of specific decisions in certain policy areas (depending on concept and variables of legitimacy) can be attributed to certain decision-making processes in individual EU institutions or to the entire political system of the EU. On the other hand, decisions in certain policy areas can be seen to have legitimacy problems even if the overall system or individual EU institutions are sufficiently democratically legitimized, for example because they do not comply with certain substantive norms despite implementing a legitimate decision-making process. Furthermore, it can be

assumed that legitimacy problems of different political objects generate different consequences (and threats) for a political system's ability to endure.

Variables of Legitimacy

Legitimacy variables are changeable factors on which, depending on the respective legitimacy concept, the evaluation of democratic legitimacy can be made dependent. Depending on the extent to which an object of legitimacy, for example a political institution, complies with a certain variable, it can be evaluated as being more or less legitimized. While the three concepts of legitimacy vary with respect to the justification mode and the three objects of legitimacy must be understood as objects that can be subjected to a legitimacy evaluation, the legitimacy variables provide quasi-independent parameters. They do not themselves formulate any ideas whose argumentation mode could be used to justify the (democratic) legitimacy of political institutions or individual decisions, but are instead pathways along which legitimacy sources or deficits can be sought — therefore, all three concepts and objects theoretically can be combined with independent variables. With respect to the EU, three variables of political legitimacy can be distinguished on which the legitimacy of certain objects could be made dependent, namely *participation (input)*, *process (throughput)* and *results (output)*.

- *Participation (input)*: Participation is the oldest and most intensively discussed variable on which the democratic legitimacy of political systems can be made dependent. It looks for direct and indirect opportunities for citizens to influence policies or for their possibilities of actively participating in the political decision-making process (see Lijphart 1994; Dahl 2000). This variable thus concerns the civil and socio-cultural principles of democratic politics and covers the first phase of the political process up to the formulation of policies by elected representatives. On the one hand, the extent to which the citizens are allowed to participate in free, fair and secret elections, to what extent they have internalized a collective identity, or to what extent they take part in decision making by direct democratic means could be used in the evaluation, depending on which model of political legitimacy was previously normatively justified. For example, many scholars have argued that a reliable collective identity is a *precondition* for legitimate democratic procedures, above all, for majority decisions. On the other hand, the chances of being elected oneself in order to then take an active part in the decision-making process can be assessed. Many of these issues have already been broadly discussed in the EU context, for example the role of referenda (Abromeit 1998; Zürn 2000), the necessity of a European public sphere and identity in terms of a *Volksgemeinschaft* (Eriksen 2005; Peters 2005), or the inclusion of civil society and social movements in EU politics (Smismans 2003; Della Porta 2005).
- *Process (throughput)*: The second variable on which the legitimacy of political systems can be made dependent is the institutional decision-making process. After the citizens have exhausted their direct or indirect

opportunities for participation and have usually delegated their preferences, representatives or lobbyists enter the political scene, who negotiate and decide in the complex arrangement of institutional procedures (Baird 2001). With respect to the EU, in this second phase political legitimacy is dependent on the procedural mechanisms of decision-making in the European multi-level system, within individual EU institutions and vertically between various EU institutions as well as horizontally among the national levels and the European level (Benz 2006). Depending on which concept of political legitimacy is selected, certain legislative processes within or among various levels in the political system of the EU could be more or less (democratically) legitimized. In the context of the EU legitimacy debate it has been discussed, for example, to what extent national parliaments should be more integrated into legislative processes (Neunreither 1994), to what extent transparency in the decision-making processes and access to information play a role (Héritier 2003), and to what extent argumentative deliberations in commissions and committees could increase the democratic legitimacy of European governance (Eriksen and Fossum 2002; Neyer 2003).

- *Results (output)*: The last variable makes the democratic legitimacy of a political system dependent on the quality of its results; that is on the decisions made and their consequences resulting from the political process. For this variable, the decisive factor is not the extent to which citizens are involved in policies (*input*) or how the institutional decision-making process functions (*throughput*), but rather the quality of the final results and balances (*output*). Which features should be used to evaluate the quality of political results is a purely normative issue that need not necessarily have a correlation with the other two variables of legitimacy. Performance criteria are state guarantees of the rule of law and security, the creation of permanent peace and economic growth, the compatibility of policies with welfare or social justice, as well as especially the efficiency or effectiveness of regulations and problem solving (Scharpf 1997; Majone 1999). It has been argued in the context of the legitimacy debate that EU policy-making can and must be best legitimized by its results, because the socio-cultural and institutional preconditions for sustainable input legitimacy had not yet been sufficiently established at the European level (Scharpf 2003). Others have expressed fundamental doubts as to whether European governance can be legitimized ‘post-parliamentary’ by the results of its policy-making, because the ‘general will’ (*volonté générale*) of the people can be defined only by the process of democratic participation (Lord and Beetham 2001).

These variables cover three of the most intensively discussed factors on which the political legitimacy of European governance could be made dependent. The *participation variable* deals with the opportunities of citizens to participate in the political process and the socio-cultural premises of democratic policy-making. The *process variable* starts when citizens have delegated their interests and deals with the institutional decision-making process, depending on the object of legitimacy either within a political system or in individual

EU institutions, and ends when political results are available. Then the *result variable* sets in, with which the outputs ensuing from the political process and their consequences can be evaluated, insofar as they can be justified as criteria for legitimacy. Here again, the three variables can be interconnected. For example, it is conceivable that the quality of political results (however they may be defined) is dependent on citizen participation. Simultaneously, however, a situation could arise in which no legitimate democratic results ensue from changed participation opportunities, depending on the legitimacy concept, as these results depend mainly on the process variable. Normative demands for improving the political legitimacy of the EU can then be derived from the empirical confirmation or refutation of these assumptions.

Standards of Legitimacy

Not only in the comparative research of democracies, but in the evaluation of the political legitimacy of European governance as well, a decisive role is played by the classic issue of what features distinguish legitimate political systems from other forms of governing, or when a political system can be said to be democratic. According to Giandomenico Majone, the whole debate about the deficit in European democracy is solely about the evaluation standards with which the EU is confronted: the higher the standard of democracy is set, the greater the legitimacy deficit of the EU appears. And precisely because the question of which understanding of democracy is appropriate for European policy is so controversial in the debate on the legitimacy of the EU, the basis used for assessing the normative evaluation should always be precisely defined and justified (Majone 1998; Lord 2007). With respect to the EU, three standards by which the political legitimacy of certain objects along the three variables could be evaluated have been distinguished — *counterfactual ideal-types*, *nation-states* and *other international organizations*.

- *Counterfactual ideal-types*: From its very inception, political philosophy developed counterfactual conceptions of ideal forms of legitimate governance, without any of these ideas ever finding expression in the real world of states. Most important is first the establishment of a normative model that must prove itself in theoretical discourses, and less in the empirical analysis of practical opportunities or barriers for realization, as for example in the intensely discussed question of the normative value of ‘deliberative’ democracy and the public sphere (Bohman 1996; Fishkin 1997). Especially in the early stages of the debate on the political legitimacy of European governance, normative evaluations were often formulated that were based on counterfactual ideal-types and thus usually presented diagnoses of deficits with no basis for comparison. This first legitimacy standard often masks the critical position that the political system of the EU, as a whole, or individual decisions do not have sufficient political legitimacy, even if their political legitimacy is in no way inferior compared to nation-states or other national organizations. Depending on the legitimacy

concept applied and the variables considered, the basis for comparison could be so lacking that even a positive comparison for the EU would not give it sufficient political legitimacy, so that only a counterfactual ideal-type would provide a meaningful standard for evaluation (Dobson 2006).

- *Nation-states*: Various models of actually existing democratic nation-states provide a second potential standard for the evaluation of various objects of legitimacy in the EU. It is well known that the great majority of classic theories of political legitimacy had the sovereign and territorially defined nation-state in mind when searching for normatively sustainable and thus legitimate forms of government. With the creation and rise to power of supranational systems of governance, initially the EU, the issue increasingly arose of whether and to what extent national democracies can or should be interpreted as normative benchmarks or even as ideals for the construction of international organizations, in particular with respect to a complete parliamentarization beyond the nation-state (Coultrap 1999; Lord 2001). This problem has still not been solved, for although the EU assumes some functions of the state in some policy areas, it is not a nation-state for several reasons. Regardless of this normative dispute about appropriate standards of evaluation, various attempts have been made to apply diverse nation-state criteria for democracy to certain areas of policy-making, such as merger control, which are almost entirely communitarized in the EU, in order to compare them with practices in non-EU countries, and also to measure the political legitimacy of the governing system of the EU as a whole against various models of national democracy (Zweifel 2003; Moravcsik 2004).
- *Other international organizations*: Finally, other international organizations, such as the United Nations, the World Trade Organization or the North Atlantic Treaty Organization, could serve as a comparison against which the political legitimacy of the EU could be evaluated. It is not only the EU that now assumes many governance functions, which at times have a significant and lasting effect at the national level. In other international organizations or other international events (such as the G8 summits), decisions are made that are passed by the national executive bodies outside of the local democratic process, and that thus often give rise to public protest (Zürn 2004; Buchanan and Keohane 2006). The question of whether and to what extent international organizations or international relations between states in general struggle with the problem of legitimacy and how they might be democratized affects all international negotiating arrangements in the broadest sense, in which national government representatives make more or less binding decisions without referring to national democratic control (Dahl 1999; Hurd 1999; Steffek 2003). At the same time it must be taken into consideration that there is probably no other international organization that is institutionalized to such a supranational degree and which has such extensive decision-making and legislative competencies as the European Union. Nevertheless, other international organizations provide a possible legitimacy standard that has already been implemented in diverse empirical comparative studies (see, e.g. Zweifel 2006).

We have three possible standards for evaluating the political legitimacy of European governance that could bear up to normative defence. *Counterfactual ideal-types* develop certain standards independent of actual existing political orders that systems of government would have to comply with to be considered (democratically) legitimate. *Nation-states* present an empirical criterion with which political multi-level systems, such as the EU, could theoretically be compared, while *other international organizations* provide a third legitimacy standard. If a very sophisticated understanding of democracy is normatively justified and the participation variable is used as a legitimacy concept, a negative finding would be no surprise if, for example, a stable national democracy with direct democratic elements, such as Switzerland, is used as a standard for evaluation. By contrast, a positive result could be anticipated if acceptance or compliance was used as a concept that included the participation or output variable and this was compared with international events, such as the controversial G8 summit, that often elicit strong public protests. Consequently, whether we should compare the EU with nation-states or international organizations is not a question of legitimacy concepts and variables, but rather a question of what the EU *is* and how we see it *compared* to well-known political structures.

Conclusion and Prospect

The ‘normative turn’ in European studies introduced an intense debate on the basis for legitimacy of supranational governance within the EU, which has now reached a significant and often underestimated degree of internal complexity. Taking the available categorizations into consideration, this article has made an effort to disentangle the intertwined strands of theory and to present an analytically comprehensive heuristic. The result is an analytical instrument that differentiates between three concepts, objects, variables and evaluation standards of political legitimacy in the European multi-level system. In doing so, my aim was not to analyse the normative values of the individual categories and weigh them against each other, nor was it to evaluate the degree of (democratic) legitimacy of European governance along these differentiations. Instead, the significance and innovative contribution of this article to the field is based on the assumption that this meta-theoretical heuristic is first treated exhaustively and, secondly, is uncontroversial in the sense that it sufficiently and consistently covers all democracy and/or legitimacy evaluations that have been applied to the EU as an organization. Accordingly, one of the next steps of reasoning is to discuss the interrelationships between the four main categories and to examine possible linkages and combinations. For instance, normative justifications (as a concept of legitimacy) might be applied more reasonably to questions of participation issues than to policy results, and the standard of legitimacy they develop may more likely be one of the counterfactual ideal-types than another international organization, but to argue this in detail requires a longer and more in-depth analysis.²

Table 1 summarizes the four categories and their three sub-categories on the evaluation of the political legitimacy of European governance. Following

Table 1. Categories to evaluate the political legitimacy of European governance

I. Concepts of legitimacy	II. Objects of legitimacy	III. Variables of legitimacy	IV. Standards of legitimacy
I.1 Legality	II.1 Political system of the EU	III.1 Participation (input)	IV.1 Counterfactual ideal-type
I.2 Acceptance/compliance	II.2 EU institutions	III.2 Process (throughput)	IV.2 Nation-states
I.3 Normative justification	II.3 EU policy decisions	III.3 Results (output)	IV.3 International organization

a short reconstruction of the partially disparate and inconsistent level of research on the meta-theory of the EU legitimacy debate, initially three potential legitimacy concepts with which political power could be justified as acceptable or worthy of recognition are defined and delimited, namely *legality*, *acceptance/compliance*, or *normative justification*. Secondly, three objects are distinguished whose legitimacy can be evaluated, namely, the *political system* (or *constitution*) of the EU as a whole, individual *EU institutions*, or special *EU policy decisions*. Thirdly, three legitimacy variables on which political legitimacy can be made dependent were determined, namely *participation* (*input*), *process* (*throughput*), or *results* (*output*). And, fourthly, three possible legitimacy standards, with which the political legitimacy of the EU can be compared and thus evaluated, were formulated, namely a *counterfactual ideal-type*, a *nation-state*, or *another international organization*. Each section included an explanation of why these four main categories appeared necessary, what features distinguish the various sub-categories from each other, and why they are potential factors of influence on normative evaluations of EU legitimacy.

This categorization provides no more, but also no less than a conceptual instrument for analysing the political legitimacy of European governance. The answer to the question of whether and to what extent these categories will be normatively sustainable and intersubjectively conclusive requires substantial efforts of justification and depends greatly on the combination of the individual categories. An initial analytical step would be to select at least one sub-category of each of the main categories and to justify it normatively. For example, one could attempt to argue that the political legitimacy of European governance is deficient, if the opportunities for interest groups (concept: normative justification) to participate in preparing decisions of the Council of Minister in committees (variable: process) in the field of energy policy (object: policy decisions) are fewer than in France (standard: nation-state). Each of the four sub-categories must be justified on its own as well as in coordination with the other three factors. In this case it would be necessary first to explain normatively why the participation of interest groups in preparing decisions by the Council of Ministers is an important or even necessary criterion for political legitimacy, for example by demonstrating empirically that the participation of interest groups usually leads to more

efficient results. Next it would be necessary to state why this rule also applies or applies especially for decisions in the field of energy policy, and why France and no other country presents a suitable evaluation standard.

Consequently, the utility of this heuristic still has to stand the test in practice, namely by taking the different categories into consideration in the normative justification, which are not within the scope of this article but which could prove to be useful in future academic and political debates. Practice would show that institutional reforms influence the democratic legitimacy of European governance in various ways, depending on which categories are chosen and defended in normative statements. Thus, this heuristic would gain a certain political relevance by directing attention to the potential influential factors, such as different understandings of legitimacy concepts or variables, which are often ignored in the politically undisputed endeavour to improve the democratic legitimacy of the EU, even though they should be differentiated in the evaluation. For example, more decisions by majority in the Council of Ministers could certainly lead to more effective results (*output*), since national interests would lose influence. At the same time, the progressing reversal of the principle of unanimity could, however, additionally weaken the input legitimacy if the citizens had to accept EU decisions even when their national representatives were overruled and they had not internalized a collective European identity that could 'buffer' such losses in sovereignty. Therefore, the consequences of institutional reforms for the political legitimacy of European governance should not be evaluated one-dimensionally, but should be kept in mind in light of the repercussions on other potential influential factors that were discussed in this article.

All of these explanations presuppose extensive expertise before a normative position that could be verified empirically using the case of the EU could even be formulated. In addition, the four main categories (and their three respective sub-categories) not only have complex normative and empirical interrelationships with each other, they also exert a reciprocal influence on each other. Depending on which concepts, objects, variables and standards are chosen and applied, this decision has an immediate effect on the normative evaluation of the political legitimacy of European governance. Each of the possible combinations must lead to a different result. Thus, the ground is prepared for a political philosophy of the European Union that should give rise to a conceptually more sophisticated and more systematic analysis of a criticism of democracy and/or legitimacy. In spite of various efforts, the normative debate on the EU is still in its beginnings, since most of these relationships and their mutual influences still have been illuminated only insufficiently due to a lack of empirical knowledge and often imprecisely defined categories. The exit from the labyrinth has, indeed, not yet been discovered, but hopefully this article has provided at least a few torches to light the way.

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This article lays down the theoretical foundations for an ongoing research project in which the author seeks to deconstruct three major discourses on

the democratic legitimacy of the European Union: the role of non-governmental actors, the role of majority decisions, and the role of policy outputs in EU politics for legitimizing European governance. An earlier version of this paper was presented at the Fourth ECPR Conference on EU Politics in Riga, Latvia (25–27 September 2008). The author would like to thank all participants of the panel ‘Theorizing Legitimacy’, in particular Jürgen Neyer and Piret Ehin, as well as the two anonymous reviewers for helpful comments and suggestions.

Notes

1. For a clarification of the relationship between normative legitimacy concepts and public support by citizens, see Ehin (2008).
2. I would like to thank the peer reviewers for their very helpful suggestions on how to proceed and pinpoint the heuristic value of this meta-theoretical framework for further empirical research, even though I was unable to implement all recommendations already in this article.

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