LEGITIMACY AND MULTILEVEL GOVERNANCE IN THE EUROPEAN UNION:

CHALLENGES FOR INTEGRATION IN THE 21ST CENTURY

By

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ABSTRACT

Placed within the context of the dynamic relationship that exists between state-level actors, supranational institutions, and individual citizens in Europe, this analysis endeavours to examine some of the main issues surrounding European integration theory, the institutionalisation of the European Union, and the so-called 'democratic deficit'. While recognising that much of the debate surrounding multilevel governance in Europe has traditionally focused upon the effects convergence has and will continue to have on predominantly state-level variables, it is my contention that centralised political institutions in European are bound to endure perpetual mismanagement and a lack of majority individual support should the integration process continue down the path of political integration and 'polity'-building without first resolving inherent legitimacy problems. Furthermore, without entrenching the necessary foundations of legitimate governance within the integration process, political allegiance to the European Union will never be able to achieve the same level of tacit support amongst individuals as primary allegiance to the nation-state.

The analysis thus focuses on how European integration and 'supranationalism' has affected the relationship that exists between individual citizens and decision-makers at the 'European' level, vis-à-vis democracy, accountability, transparency and accessibility. An assumption is first made that

'legitimacy' in governance flows from the existence of strong democratic linkages between individual citizens and their decision-makers (vis-à-vis *output*, *input* and *social legitimacy*). Building heavily upon the work of Held, Schmitter and Dahl, the thesis compares the institutional structure of the EU to a model of 'legitimate' democratic governance. It also raised questions concerning the transferability, to the supranational level, of state-centred theories of democracy and representation, and challenges several approaches to understanding the place of 'identity' and Putnam's 'social capital' and 'trust' in polity-building. To accomplish this task, a normative and functional evaluation is conducted on the 'nature' of the European Union and its institutions (intergovernmentalism vs. supranationalism). Milward's definition of 'allegiance' is also particularly helpful in describing the multi-layered characteristic of individual identification towards different levels of national and supranational governance, especially in a European context.

Following the theoretical portion of the analysis, a closer examination is made of the institutions of the European Union and their respective levels of transparency and accountability. As a case study, the Report of the Committee of Independent Experts to the European Parliament (March 1999) is used to show how ineffective some of the institutions, namely the European Commission, have been at resolving perceived accountability problems. The thesis suggests how core institutions may be reformed, as well as alternatives to the current structure of the Union's activities. The analysis then concludes by focusing on how legitimate structures of governance have been jeopardised in Europe, and

how the integration process has, and continues to, place the advantages accrued

through economic harmonisation and policy convergence ahead of the need for

political stability and the entrenchment of strong, democratic institutions at the

supranational level.

ACKNOWLEDGEMENTS

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INTRODUCTION

Over the last several years the theme of regionalisation and its effects on

the state have dominated much of contemporary discourse in the field of

international relations.[1] Especially within the context of the European Union and

its accompanying drive towards integration, a growing amount of analysis has

attempted to focus on the ever-changing relationship that exists between state-

level actors, supranational institutions, and individual citizens in Europe.[2]

Due to its unique and special history, regionalisation (in the form of social,

political, and economic integration amongst EU member-states) has had a

profound impact on the development of European political culture. However, as

the European Union continues to evolve under the auspices of a multilevel

system of governance, many concerns have been raised regarding both (1) the

continued ability of domestic state structures to provide for the social and political

welfare of their citizens, and (2) the capacity of individuals to be accommodated,

gain access, and have an impact on decision-makers and policy drafted at the

supranational level.

While recognising that much of the debate surrounding multilevel

governance in Europe has focused upon the effects convergence has and will

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[1] Richard Higgot, "The International Political Economy of Regionalism: The Asia-Pacific and Europe Compared," in William D. Coleman and Geoffrey R.D. Underhill, eds. Regionalism and Global Economic Integration: Europe, Asia and the Americas, (London: Routledge, 1998).
[2] Susan Strange, The Retreat of the State: The Diffusion of Power in the World Economy, (New York: Cambridge University Press, 1996).

continue to have on predominantly state-level variables, this analysis will attempt to focus on how European integration has effected the relationship that exists between individual citizens and their governors (vis-à-vis democracy, accountability, transparency and accessibility). Although the paper will specifically address various concerns regarding the construction of supranational and regional levels of governance in the EU, it will also fundamentally examine both the democratic legitimacy and efficacy of EU institutions in providing for and representing the needs and desires of individual citizens in Europe. In conclusion, the analysis will argue that the integration process has produced a fundamental and overarching lack of legitimacy, both culturally and institutionally, which will continue to undermine the linkages between individual citizens and decision-makers in the European Union as it continues to evolve in the 21st century.

The first section ('*Democracy and Governance in the European Union*') will focus on the assumption that democratic structures governance are most legitimate when strong linkages exist between individual citizens and their decision-makers. Thus, while outlining a basic model of democracy (building upon the work of Held, Schmitter, and Dahl), the chapter will suggest that multilevel governance in Europe has not produced an adequate level of '*legitimate*' democratic rule at the supranational level. It will endeavour to analyse and contrast the overall integration process (focusing primarily on the political integration provisions found in the Treaty of Rome, the Maastricht Treaty, and the Treaty of Amsterdam) with the so-called '*democratic deficit*' debate in the EU.

One of the main theoretical underpinnings of this chapter will be to discuss the notion of '*legitimate rule*'. Particular attention will be paid to the various mechanisms of multilevel structures of governance and authority as found within the EU, such as the 'subsidiarity principle' and the 'co-decision procedure'. In this context, legitimate democratic rule will be analysed both normatively and functionally. It will focus on the notion of '*output legitimacy*' (decision-making), '*input legitimacy*' (individualism), and '*social legitimacy*' (civil society/identity). Here the approaches of neoliberalism, social constructivism and neofunctionalism will become important. The chapter will also examine the integration process in the context of individual citizens themselves, with particular reference being made to the existence (or lack thereof) of a 'European' civil society and a 'European' *ethos*. An effort will be made to compare the traditional linkages that exist between citizens and their governors under the state-centred 'Westphalian' system, with the linkages that currently exist between European individuals and decision-makers based in Brussels.

Building upon the theoretical underpinnings outlined in the first chapter, the second section ('*A Historical Analysis of Democracy in the EU: Integration or Fragmentation?*') will endeavour to analyse the evolution of integration in the European Union, with particular attention paid to examining how democracy and legitimate rule have been affected by this process. In this context, the notion of a 'lack of legitimacy' in the EU will be further strengthened by suggesting that, since the current structure and functioning of the EU more closely resembles inter-state relations rather than a broader and more holistic

form of 'supranationalism', the interests of individual citizens are best served by their national rather than supranational decision-makers.

Spanning the period beginning with the European Coal and Steel Community and the Treaty of Rome in the early 1950's, to the Single European Act of the 1980's, and finally the Maastricht and the Amsterdam Treaties in the 1990's, the European Union has certainly evolved into a unique example of regionalism and supranationalism on the international stage.[3] However, as individuals are progressively falling under the authority of non-elected decision-makers in Brussels, the chapter will question whether these changes have actually strengthened or weakened democratic and legitimate rule in Europe.

This chapter will show that the initial stages of integration and convergence in Europe were originally aimed at (1) restructuring Western European economies after the Second World War, (2) containing and protecting Western Europe against the potential spread and threat of communism by creating a 'federation' of Western European states and strengthening linkages to the United States and other 'like-minded' countries, and (3) creating a mechanism to facilitate the improvement of relations between Germany and France. However, as the impetus behind the EU has increasingly been based on the principles of economic liberalisation and strong centralised authority, especially over the last two decades, it would appear that the concomitant and necessary strengthening and deepening of linkages between citizens and centralised decision-making institutions have been increasingly lacking.

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[3] Higgot, 1998.

While a focus will be made at centres of authority and power 'above' the traditional levels of the state (vis-à-vis supranationalism, functionalism and subsidiarity), particular attention will also be paid to the growing intensity of subnational sources of authority. Here, the argument will be made that, while traditional state structures are progressively restructuring their authoritative relationship with individual citizens, those citizens are increasingly looking towards their local community or region, instead of a supranational 'Europe', as their primary source of legitimate governance (vis-à-vis the notion of fragmentation). In this context Putnam's analysis of '*social capital*' and '*trust*', and a corollary concept of '*allegiance*', will be incorporated into the analysis to provide a backdrop for examining the optimal theoretical connection between individuals and their governors, at both the national and supranational levels.

Using the arguments and theories put forward in the first two chapters, the third chapter ('*The European Commission: Effective Governance vs. Cronyism*') will provide a case study of the accountability problems within the core institutions of the EU, namely the European Commission. Using the theories of democracy and legitimacy as previously analysed, the events of early March 1999 will be argued to be a perfect example of the lack of legitimacy and strong democratic rule within the European Union.

On March 15, 1999, the Committee of Independent Experts, reporting to the European Parliament, found the Commission guilty of large-scale fraud, mismanagement and nepotism, thus undermining its credibility. As such, the 20 Commissioners resigned *en masse*, while many European leaders, including British Prime Minister Tony Blair and German Chancellor Gerhard Schröeder,

called for a restructuring of the way both the European Commission and Parliament function, based on increasing the perceived levels of accountability and transparency in the centralised institutions.

However, it will be argued that the lack of accountability in the EU is not just a result of the actions of a few individuals within the decision-making hierarchy, but is more a result of the structure of the EU itself. A number of alternatives will thus be put forward, suggesting how the EU may better overcome its legitimacy problems. Obviously, this section, while making use of the theories and approaches highlighted in previous sections, will also make specific use of the '*democratic deficit*' approach.

In the final chapter ('***Conclusion: Legitimacy and Multilevel Governance in the European Union***'), various approaches will be consolidated to provide a comprehensive analysis of legitimacy and multilevel governance in the EU. The conclusion will attempt to show a causal relationship between (1) the evolution of European Union and the integration process, and (2) a significant weakening of legitimacy and accountability amongst both supranational decision-makers and centralised institutions. It will seek to interpret some of the actual and potential effects that the emerging political and economic order in Europe has had on citizens and will continue to have as the integration process broadens into the 21st century. Alternative structures of legitimate governance will also be reflected upon in the context of optimising individual representation and institutional accountability and transparency in the EU, by reforming the core institutions of the EU (the Council of Ministers, European Commission and European Parliament), improving overall accountability structures (vis-à-vis

representational democracy), and implementing more effective safeguards from abuses of power and mechanisms to improve transparency within the daily workings of key decision-makers in Brussels.

While the analysis will rely heavily on secondary sources and a reading of the available literature on the European Union, it was recognised at an early stage of the project that other forms of analysis would potentially need to be examined. It was concluded that the use of empirical research in this endeavour would certainly ensure a more precise and informed examination of the debates surrounding the relevant themes of the dissertation, especially in relation to individual perceptions of the effectiveness and importance of the EU and its institutions. However, given available resources and logistical constraints, it is unfortunate that such methodology could not be fully incorporated into the analysis.

This does not mean that all empirical research was completely excluded from the analysis. Certainly, available 'Eurobarometer' and 'Eurostat' data was examined in so far as indicating attitudinal perceptions of the 'closeness' of EU institutions to ordinary citizens.[4] Especially in the case of feelings regarding the European Commission and European Parliament (including available data on electoral participation and results stemming from European parliamentary elections, 1979-1999), Eurobarometer results provided interesting data on the changing perceptions of individuals towards these institutions.

It was also realised that problems could potentially arise from the excessive use of empirical data in this context, particularly in relation to the

Eurobarometer studies. As Webb stated, "there are some worrying features about Eurobarometer. There are too many details on faulty skin-deep evidence of feeling. And it changes so much. It is recording changes in attitudes which are minimal and temporary, on matters on which people have not formed a clear opinion."[5] In addition, since polling similar data from across the 15 member-states on comparative attitudes towards national levels of authority (a comparison fundamental to the interest and design of an empirical analysis) is simply not available, and would likely be an exhaustive and insurmountable endeavour, the use of Eurobarometer and other empirical data became increasingly problematic.

It should here be reiterated that the focus of this research *was not* to investigate entirely individual perceptions on the EU as they relate to discussions on legitimacy. More precisely, the thesis examines *how integration and the growth of supranational institutions in Europe has effected the underlying legitimacy of multilevel structures of governance (vis-à-vis the linkages that exist between individual citizens and their decision-makers).* As a general hypothesis, it is suggested that the role of individuals (and the linkages between individuals and their governors) has been relatively limited and minimised in the integration process, other than to produce an overtly academic debate surrounding a likely 'democratic deficit'.[6] Of course, statements and variables surrounding European

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[4] Andreas Sobisch and Ian Davies, eds., Developing European Citizens, (Manchester: The Politics Association, 1997)

[5] Norman Webb, "The Role of Eurobarometer," Ann Robinson and Caroline Bray, eds., The Public Image of the European Parliament, (London: Policy Studies Institute, 1986) 20.

[6] See the parsimonious recognition of 'European citizenship' as found within the relevant articles of the Maastricht Treaty (specifically in the preamble and in Art. 8) and Amsterdam Treaty (specifically Art. 17).

integration are incredibly interrelated, and are often difficult to separate in

relevant epistemologies. What is more important here is examining the overall

structure of the institutions, and how decision-makers, individual citizens and

relevant stakeholders at the 'European' level will continue to be accommodated

and their interests addressed as fundamental to the future success and

development of the Community.

CHAPTER ONE

THEORIES OF DEMOCRACY, LEGITIMACY AND GOVERNANCE IN THE EUROPEAN UNION

The division of war-torn Europe by the ideology and powers of the United

States and the Soviet Union largely explains much of the discord that shrouded

the continent in the decades following 1945. Indeed, for much of the post-WWII

period, Western European countries struggled to (1) contain aggression amongst

traditionally adversarial nation-states; (2) facilitate the growth, development and

productivity of domestic and regional markets; and (3) heighten broader

European competitiveness vis-à-vis the American and other external economies.[7]

However, Western Europe during this period also succeeded in launching a

revolutionary revitalisation of economic performance in the region, the speed and

scale of which was unprecedented in European history, and unmatched in any

part of the world (except, perhaps, for Japan). It clearly owed much to the start

provided by Marshall Aid, to the continuing strong relationship with the United

States, and to the growing climate of liberal democracy, which greatly favoured

private enterprise. However, probably one of the most important attributing

factors to the success of European recovery during this period was the idea of

facilitating the convergence and harmonisation of national economies under a

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[7] Larry Neal and Daniel Barbezat, <u>The Economics of the European Union and the Economies of Europe</u>, (Oxford: Oxford University Press, 2000), 12.

unitary approach to policy-making, the culmination of which has resulted in the current level of institutionalisation in the European Union.

Commencing with the ambitious endeavours of the likes of Monnet, Schuman and Pleven, visionary integrationists embarked on the construction of a European federation and 'common market' that would accentuate the economic achievements that Western European states had previously achieved independently of one another. While some key statesmen such as Schuman and Churchill had advocated for a more broad-based restructuring of state powers to produce a kind of 'United States of Europe' to revive the ruptured economies of the Western European powers after the Second World War, the Community's initial activities were more fundamentally seen as a way of securing peace by bringing victors and vanquished together within an institutional structure which would allow them to cooperate as equals.[8] As the scope of European integration broadened over the latter part of the century, integrationists recognised the need for the development of common, supranational institutions to coordinate and fuel the evolution of supranational policies and decision-making. However, while these institutions have become more and more important in both domestic and regional spheres, many concerns have been raised regarding the inherent legitimacy of the not only the supranational institutions based in Brussels, but also regarding the nature of the integration process itself.

Until the second half of the 1980s, the issue of legitimate rule could be largely avoided, mainly because European integration was limited to a few policy

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[8] These sentiments were first reflected in the discussions surrounding the 'European Union of Federalists', the first meeting of which was comprised of around 50 activist groups and political leaders meeting in Montreux, France, in August 1947.

sectors and decision-making at the 'European' level was primarily based on the consensus of the member-state governments (vis-à-vis strict 'intergovernmentalism'). The European Community relied on 'indirect legitimacy', based on its image as a stronghold of democracy against the communist threat and "on the democratic traditions and practices of its members", which were supposed to be in complete control of the integration process.[9] Functional and consensual co-operation at the European level was widely believed to leave the democratic institutions at the member-state level intact.

However, the signing of the Treaty on the European Union in 1991, or 'Maastricht Treaty', triggered an intense public debate surrounding the necessity and impetus behind European integration.[10] While supporters touted the benefits that could be incurred by member-states adopting market liberalisation and policy convergence strategies, opposition amongst civil societies was typically leveled on two fronts. Firstly, the philosophy of economic liberalisation was often perceived as a suspicious endeavour, primarily serving the interests of industry and political elites.[11] Secondly, critics of political integration foresaw the growth of supranational institutions in Brussels as diluting the accountability and transparency of some of the core foundations of democratic governance in Europe.[12]

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[9] Helen Wallace, "Deepening and Widening: Problems of Legitimacy for the EC," Soledad Garcia, ed., European Identity and the Search for Legitimacy, (London: Pinter Press, 1993) 96.
[10] This opposition was most visibly evident in countries such as Denmark, where the Maastricht Treaty was at first rejected by the national electorate in a referendum in 1992.
[11] Michael Maclay, The European Union, (Stroud: Glocestershire: Sutton, 1998), 79.
[12] Macklay (2000), 79-82.

Assuming that legitimacy in governance is achieved through the adoption

of strong linkages between individual citizens and their decision-makers (vis-à-vis

democracy, transparency and accountability), subsequent attempts to further

integrate the member-states of the EU has proven to be a difficult task, often met

with a great deal of doubt and scepticism amongst national constituencies.

Indeed, governance, whether at a local, national or international level, has

always been susceptible to crises of legitimacy - from large-scale corruption, to

inefficient bureaucracies, to the implementation of bad or biased policies. At the

domestic level, the issue of '*legitimate rule*' has often been resolved in favour of a

strong liberal democratic structure of governance, supported by an entrenched

division of powers and accountable institutions. As Wheeldon noted,

> "When, in an orderly society, governmental power is divided, it stands to reason
> that the citizen is less likely to be at the mercy of arbitrary rule than when that
> power is concentrated in one institution. It is in recognition of this principle that,
> in democracies, it has long been regarded as essential that the judiciary should
> be independent of executive government and the legislature, and it is why the
> United States Constitution and the constitutions of the individual states go far as
> to separate rigidly the executive from the legislature."[13]

The institutional division of powers in federal systems, according to which some

legislative and executive functions are the responsibility of the national

government and legislature, and others belong to the provinces or states of the

federation, inherently both constrains the ability of office holders to circumvent

the interests of citizens and helps to ensure the accountability of the institutions

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[13] John Wheeldon, "Federalism: One of Democracy's Best Friends," Proceedings of the Eight Conference of the Samuel Griffith Society, 7-9 March 1997, (Canberra, Australia: The Samuel Griffith Society, 1997) 2.

of governance. In the case of the European Union, however, it is almost

universally agreed that the supranational institutions do not meet this standard.[14]

Indeed, the legitimacy deficit is commonly agreed to originate from the

slow and uneven erosion of state competences in decision-making and

representation to distant and complex centralised policy-making institutions at the

EU level, thereby weakening the democratic process. As Van Parijs noted, "the

complex amalgam consisting of the European Commission, the European

Council, the Council of Ministers, the European Parliament, the European Court

of Justice, and European [Central Bank] and their respective administrations is

quite a bit less than maximally accountable to the relevant demos."[15] In other

words, the transfer of political decision-making from member-states to the

supranational level has not produced supranational institutions or mechanisms

significantly democratic enough to compensate for the diminished power of

democratic institutions and processes embedded within the state.

I.   Models of Legitimate Democracy

While it is recognised that traditional mechanisms of representational

democracy are somewhat lacking in the European Union today (vis-à-vis

constraints on the European Parliament, its inability to introduce legislation, and

its lack of power comparable to the European Commission and Council of

Ministers), there are several historical and theoretical models of legitimacy that

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[14] Shirley Williams, "Sovereignty and Accountability in the European Community," Robert O. Keohane and Stanley Hoffmann, eds., The New European Community: Decision-Making and Institutional Change, (Boulder, CO: Westview Press, 1992) 171.

merit further examination in attempting to analyse the best form of supranational rule in Europe.

Firstly, there is no consensus about the normative criteria of legitimate democratic governance. As Hyland wrote, "there is a deeply problematic paradox at the heart of this nearly universal acceptance (at least in theory) of the unquestionable value and unique legitimacy of democracy. Everyone purports to be in favour of democracy, but there is little agreement over what democracy is."[16] Neither does much of the literature agree on the empirical prerequisites of a functioning democratic system. As he continues, "while the very terms 'democracy' and 'democratic' carry with them the honorific connotations of legitimacy, there are widely divergent and sometimes radically incompatible accounts both of the nature of democracy and of the reasons why democracy is such a desirable form of government."[17] When it comes to democracy at the supranational level, these normative and empirical criteria lead to widely different prescriptions for the structuring of a 'European' system of governance.

Secondly, the standard theory of democracy presupposes a unitary nation-state and is silent about the specific questions of legitimacy raised in multilevel, supranational forms of governance. Legitimate democracies are inherently 'bounded' to a specific territory controlling and satisfying the needs, wishes and desires of their citizens. They demand structure, formalised institutions, and optimally a coherent and justifiable rule of law. Conversely, in

[15] Philippe Van Parijs, "Should the EU Become More Democratic?" Andreas Føllesdal and Peter Koslowski, eds., Democracy and the European Union, (Oslo: Springer, 1998) 288.
[16] James L. Hyland, Democratic Theory: The Philosophical Foundations, (Manchester: Manchester University Press, 1995) 36.
[17] Hyland, 36.

the anarchical system of the international sphere, there are no 'global' citizens

per se, only 'nationals'. Traditional international relations theory does not tell us

anything about the legitimate distribution of authority between the levels of

analysis, nor is able to assume that all levels are necessarily democratically

ordered.[18] If democracy means '*government by the people*', it is far from obvious

in a supranational political system who exactly constitute '*the people*'. Although

in the context of the EU this problem may be simply bridged by assigning

citizenship to member-state nationals, citizenship also implies a common *identity*,

problematic in the case of the EU (especially taking into account the scheduled

enlargement).[19]

In discussions surrounding the legitimacy of 'European' decision-making

structures, three fundamental ideas often arise: that of *output legitimacy*, *input*

legitimacy, and *social legitimacy*.[20] Indeed, what is argued here is that the

legitimacy of the European Union is best assured by the presence of high levels

of both 'output', 'input', and 'social' legitimacy, depending upon the requisite

political community being discussed and its relative acceptance amongst

individual citizens. In other words, since legitimacy is based on the existence

and proliferation of strong linkages between citizens and decision-makers within

government, supranational institutions must be structured in order to ensure

optimal levels of legitimacy at both the individual, social, and state (or

supranational) levels.

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[18] Fritz Scharpf, <u>Interdependence and Democratic Legitimacy</u>, Max Plank Institute for the Study of Societies, Cologne. MPIfG Working Paper 98/2 (September 1998) 6.
[19] As part of the 'Agenda 2000' process, the EU entered into accession negotiations with several Central and Eastern European states.
[20] Scharpf 1998, 3-10

a) Output Legitimacy

The principle of '*output legitimacy*' draws attention to the effectiveness and

efficiency of the supranational political system in Europe. '*Effectiveness*' means

the capacity of the political system to achieve the goals and to solve the

problems of the citizens, whereas '*efficiency*' refers to it being able to do so at a

Democratic Legitimacy

Output Legitimacy	Input Legitimacy	Social Legitimacy
• Emphasis on government *for* the people, not *by* the people. • Important role for centralised, functional organisations (ie. policy stakeholders and interest groups) and majoritarian decision-making at the supranational level.	• Stresses political equality, individual participation and executive accountability. • Division of powers and the entrenchment of check-and-balances to offset the control and power of the executive. • Government *by* the people most effectively ensures government *for* the people.	• Strong civil society. • High degree of social homogeneity vis-à-vis accommodating and strengthening the common social and political identity to which policy is targeted. • Strong collective identity.

reasonable cost. Obviously, the legitimacy of a political system depends on its

capacity to achieve the citizens' goals and solve their problems both effectively

and efficiently. The higher this capacity, the more legitimate the system. It

emphasises democracy as 'government *for* the people' instead of 'government *by*

the people'. How the democratic process is organised is secondary to what it

achieves for the citizens. In this sense, a system of governance derives its legitimacy from its capacity to design and implement policies that are perceived to satisfy the interests of the broader community. As Dahl and Tufte stated, 'system capacity' can be defined as the capacity of a polity "to respond fully to the collective preferences of its citizens".[21] According to the principle of output legitimacy, the political system at the 'European' level should be structured with a view to maximising this system capacity.

Competences should be allocated to the level of policy-making which is most effectively and efficiently capable of achieving the citizens' goals and to solve their problems. For proponents of European integration based on the idea of 'functionalism', legitimate 'European' rule requires that the European 'system capacity' is higher than the capacity of the individual states.[22] This includes an important role for centralised, functional organisations (ie. policy stakeholders and interest groups) and majoritarian decision-making based in Brussels. While it is agreed that this principle requires a competitive allocation of competences between levels, much like the notion of 'competitive' or 'asymmetrical' federalism, the desirable degree of asymmetry (relative centralisation or decentralisation) is often disputed among supporters of 'output legitimacy'. For instance, in federal systems various interests will pursue the allocation of powers to different levels of government dependent upon the policy or issue areas being discussed. What is more important is the existence of competition between the various levels and allocation of policy-making capabilities to the level of government which can most

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[21] Robert A. Dahl and Edward R. Tufte, Size and Democracy, (Stanford: Stanford University Press, 1973) 20.
[22] Walker (1994), x.

adequately meet the perceived needs and desires of the entire community (in other words, in achieving *optimal output legitimacy*).

b) Input Legitimacy

Secondly, a political system achieves '*input legitimacy*' if the citizens possess political equality and if they effectively participate in, and exercise control of, the political decision-making process. Accordingly, to achieve *optimal input legitimacy*, governance at the 'European' level ought to maximise equal, direct, and effective citizen influence on EU policy-making in ensuring a high level of government accountability. This includes a strengthening of the European Parliament, majoritarian decision-making mechanisms and elements of direct democratic controls (ie. referendums). Unlike output legitimacy, the theory of input legitimacy contends that the optimal authority within the political system should be allocated to the level at which political equality, participation, and accountability are best secured.[23]

'Input legitimacy' subsumes everything that bases the legitimacy of a democratic system on the features of its political process. Dahl lists five criteria which must be fulfilled in order to obtain input legitimacy: (1) effective participation of the citizens; (2) voting equality at the decisive stage; (3) an enlightened understanding of the matters to be decided; (4) citizen control of the agenda-setting process; (5) and inclusion of all adults subject to the binding

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[23] Obviously the allocation will vary depending on what issues are at stake and who has the most resources available to best draft and implement particular policy areas.

collective decisions of the political institutions.[24] Furthermore, input legitimacy

demands the following criteria of the political system:

- *The equal civil and political rights of all individual citizens;*

- *Governors directly empowered and held accountable by the citizens; and*

- *The division of powers and the entrenchment of checks-and-balances to offset and control the power of the executive.*

In contrast with output legitimacy, the principle of input legitimacy claims that a

democratic system of rule achieves its legitimacy by the way decisions are made

(and not necessarily by the results those decisions produce). Nevertheless, it is

the contention here that only 'government *by* the people' will be able to ensure a

strong system of 'government *for* the people'.[25]

c) Social Legitimacy

Finally, according to the theory of '*social legitimacy*', the legitimacy of a

political order depends on the existence of a collective and common identity

among a majority of citizens. From this perspective, policy-making at the

'European' level should be directed towards accommodating and strengthening

that common social identity to which policy and decisions are targeted (ie. an

inclusive set of social policies). Important criteria in this regard are heightened

levels of social homogeneity, a collective identity amongst individual citizens, and

strong institutions of civil society.

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[24] Robert Dahl, <u>Democracy and Its Critics</u>, (New Haven: Yale University Press, 1989) 109.
[25] Dahl, 111.

In this sense, 'social homogeneity' refers to the objective social structure, 'collective identity' to the intersubjective social structure, and 'civil society' to the

Social Legitimacy	→	**A strong civil society (especially where a well-organised civil society is seen to be essential for the proper operation of an individualistic, majoritarian democracy).**
	→	**A high degree of social homogeneity.**
	→	**A strong collective identity (in societies with fragmented identities, the subjects of democracy are the collectives towards which the identity of the citizens is primarily oriented - for example, the English and French identities in Canadian political culture).**

actors and processes required for individualistic democracy to work. Social legitimacy is emphasized by the 'communitarian' theory of legitimate political structure. As a descriptive social theory, it gives the 'community' analytical priority over the 'individual'.

It should be noted that in the case of the European Union, much controversy exists among social constructivists regarding the potential to redefine traditional notions of collective identity. As previously stated, advocates of supranationalism have attempted to consolidate the relatively successful, albeit often slow, progress towards economic integration with the more abstract and often difficult aspirations towards eventual political integration. The difficulty attached to European integration has often been cited as a difficulty related to remoulding interstate relations, of going beyond traditional approaches to statecraft, of promoting closer relations between the peoples of Europe and not

just their governments. As d'Oliveira stated,

> "The establishment of a European Union is intimately connected with the establishment of Union citizenship, as is borne out by one of the recitals of the preamble [of the Maastricht Treaty] explicitly demonstrating the resolution of the member-states to establish a citizenship common to nationals of their countries and to strengthen the protection of the rights and interests of those nationals."[26]

However, given Europe's jaded history in accomplishing this task, sociopolitical integration been a highly contentious idea. In the absence of an obvious common 'European' identity, the theory of 'social legitimacy' assumes the continuance of consensual inter-state decision-making and the protection of national autonomy by an exclusive and minimal allocation of competences to the European Union, thereby ensuring stronger linkages between constituent communities, their respective national identities, and domestic institutions of governance. Given the recent reprimand of Austria by the European Union and its other 14 members based on the democratic inclusion of a rather unpalatable political party into the current coalition government, as well as widespread hesitation on the part of many political leaders and communities over the idea of eastern and Turkish expansion of the Union, it would seem that a sense of integrated 'social legitimacy' around the 'European' level has yet to be truly and more fully accepted.

While the above theories say much of the constituent parts of democratic legitimacy in governance, it is by no means suggested that any one should take precedence over another. Input, output and social legitimacy all give insight into how structures of governance should be ordered to best ensure *optimal* levels (based on the relative internal values and norms of each respective political

community). In fact, even a cursory prescription of how they should be ordered is a difficult task, since it is true, and will be further shown, that the European Union is not a singular political community, but rather a collection of distinct communities that have chosen to transfer certain state powers to a supranational authority for the purposes of strengthening prosperity, efficiency in government decision-making, and overall presence on the world stage.

II.   Social Capital, Trust and Allegiance

While the aforementioned theories of legitimacy point towards a better understanding of the relationship between political communities and respective structures of democratic governance, they speak little of the relationship between legitimacy derived from individual participation in political systems. As such, and in an effort to identify some of the basic foundations of effective and responsive democratic institutions in contemporary Western society, Putnam, using the terms 'social capital' and 'trust', endeavours to examine how political institutions are affected by structural participation of social actors in civil society, and why various degrees of confidence are produced amongst particular constituencies in relation to government institutions and their policy outputs.[27] Essential to his analysis, Putnam sets forth to analyse how these feelings of confidence in government structures flow from the community (through individual or citizen membership in horizontal community organisations) in determining both the

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[26] Hans Ulrich Jessurun d'Oliveira, "Union Citizenship: Pie in the Sky?" Allan Rosas and Esko Antola, eds., A Citizens' Europe: In Search of a New Order, (London: SAGE Publications, 1995) 64.

[27] See Robert Putnam, Making Democracy Work, (Princeton, NJ: Princeton University Press, 1993)

functional structure of government institutions and, in turn, assessing the overall effectiveness of these institutions in addressing the demands of society.

By analysing empirical data accumulated in Italy over a twenty-year period, Putnam discovered a strong correlation between (1) the degree of effective regional government structures and institutions, (2) the respective levels of constituent confidence in regards to those structures and policy initiatives, and (3) the presence of strong (or weak) civic communities and communal associations. Putnam concluded that it is the presence of these complex networks of community and civic engagement, determined by what he defines as 'social capital', that provides for the creation and sustenance of a strong and healthy civil society. Only when the components of 'social capital' have been ingrained into the communal fabric will an environment conducive to the growth of effective, responsive, and truly representational government structures be produced.

Allegiance can be simply defined as the willingness of a national public to approve of and to actively support the decisions made by a government.[28] However, a relationship properly described by the concept of 'allegiance' is not simply characterised by the loyalty, trust and obedience of the ruled, but most critically by an *exchange* between a ruler and the ruled, consisting of a pay-off between security (and prosperity) and support. The 'goods' of security (vis-à-vis prosperity) and support are varied and manifold. Security offered by a government can be territorial, physical, economic, and social and may range from the protection against war and occupation to compensation for the

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[28] Milward, 115-116.

hardships of social and economic life in a market economy. Support offered by a public can be political, economic, and/or social and may range from various forms of social and political participation.

The concept of allegiance thus facilitates a better understanding of the notion of political order, legitimacy and identity from the perspective of the individual. Allegiance is a relational concept, in that the implied rights and duties are correlative. It is a relationship whereby a subject has the right to be protected as well as the duty to obey and support, and where the ruler has both the right to decide and the duty to provide security. Similar to Putnam's findings, when protection and security are not guaranteed by the state, then ultimately obedience and active support decline, and when support and obedience are not delivered, then the capacity to rule - and therefore the capacity to deliver public 'goods' (ie. output legitimacy) - decreases.

Allegiance is related to legitimacy in four important respects. Firstly, allegiance describes the relationship between the actual rulers and the ruled. Secondly, allegiance has an 'active' connotation as it presupposes the subject's broad and active support for the ruler and not merely passive acquiescence or tacit consent (as commonly seen when discussing the overall legitimacy of domestic structures of governance). Thirdly, the concept of allegiance presupposes a beneficial exchange between the ruled and the actual ruler, where the ruler typically provides for the welfare of individual citizens. While legitimacy is primarily concerned with the accountability and transparency of decision-making processes and political institutions, allegiance more closely looks at the relationship between rulers and ruled from the public's point of view.

Thus, in understanding the efficacy of EU institutions in safeguarding the interests of individual citizens, the concepts of legitimacy and allegiance are closely linked.

Building upon the notions of legitimacy and allegiance, political institutions are of fundamental importance in serving as conduits through which individuals may be both constitutionally and functionally represented within the decision-making process.   Assuming that (1) institutions shape politics, (2) institutions are shaped by history, and, most importantly, that (3) the practical performance of institutions has been shaped by the social context within which they operate, Putnam states that institutional performance is inherently guided by the demands of civil society, its interaction with politicians and policy-makers, and by the actions that governments take in regards to certain policy choices.[29]   In his analysis Putnam also recognises the fact that institutional performance is perpetually constrained by a number of different variables, including the design of state institutions (formal legal structures, such as constitutions and division of bureaucratic responsibilities), various socioeconomic factors (such as adequate social development to provide for a healthy standard of living), and sociocultural factors (implicitly the connection between the norms and belief structures found in society and its political practices).   Although Putnam would concede that different levels in the effectiveness of certain variables might provide for different institutional outputs in different political environments, he concludes that the positive and fluid relationship between these variables is what is important, since it defines the fundamental precepts of good and legitimate government.

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[29] Putnam, 8.

Indeed, Putnam recognises that people generally base their affinity for certain government institutions and policy decision on the same overarching criteria, namely the 'objective' performance of government to address the concerns of its constituents (ie. input legitimacy). As Putnam states,

> "Institutional performance...is the only consistent predictor of who is satisfied with regional government and who is dissatisfied...in the regions that are relatively successful by our 'objective' measures, people from all walks of life are relatively satisfied, while in the low-performance regions most people are dissatisfied. These governments apparently differ less in terms of which particular interests they serve than in terms of how well they serve the common interest."[30]

Using this hypothesis, we might conclude that different regions have differing levels of success with regional government structures based not on socioeconomic variables, but more correctly on the degree to which the belief structures and normative values of society are reflected by local political institutions in the pursuit of certain policy outcomes and objectives.

Putnam purports that the basis for strong democracies is the 'invisible glue' that exists between the institutions of the state and those of civil society. As Putnam contends, "a conception of one's role and obligations as a citizen, coupled with a commitment to political equality, is the cultural cement of the civic community."[31] The concept of 'social capital' and 'trust' are important variables to be considered, since they at least provide a better insight into how social actors may aspire to pursue political change and policy outputs on a collective and collaborative basis, thus infusing a more overall sense of legitimacy into the political system.

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[30] Putnam, 78.

III. Multilevel Governance and the Distribution of Powers in the EU

While better understanding the various models of legitimacy in democratic forms of government and how individuals 'buy-in' to the process of governance (social capital, trust and allegiance) is essential in better understanding legitimacy in the case of the European Union, the ultimate democratic and institutional structure of multilevel governance at the supranational level on Europe will also invariably say much about its overall legitimacy. In this context, three distinct levels of governance are typically found in the 'European' system: that of *supranationalism*, *statism* and *subnationalism/regionalism*. However, it should be pointed out that the 'degree of centralisation' in each of these models is far from ideal and must be accepted as a continuous variable. As many commentators have noted, real-world standpoints will usually fall in between these values.[32]

a) Supranationalism

In basic terms, '*supranationalism*' maximises the centralisation of both regional and state-level competences. In is most fundamental form, it demands a unitary 'European' government with no autonomy for national and sub-national units.[33] According to the functionalist and neofunctionalist approaches, the increasing density of social, political and economic exchange within the EU has lead to the growth and development of common interests among member-states, and a concomitant 'pooling of sovereignty' within the centralised institutions. As

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[31] Putnam, 183.
[32] Alec Stone Sweet and Wayne Sandholtz, "European Integration and Supranational Governance," Journal of European Public Policy, vol. 4 no. 3, (September 1997) 300.

Sweet and Sandholtz noted, "[neofunctionalists] held that increasing density of

social exchange among individuals over prolonged periods of time would lead to

the development of new communities (shared identity) and, ultimately, to the

creation of a super-state with centralised institutions."[34] By overcoming

collective action problems through economic and political integration and

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┌──────────────────────────────────────────────────────────────┐
│                     Supranationalism                         │
│                                                              │
│   •  Centralisation of regional and state-level policy-making.│
│                                                              │
│   •  Neofunctionalism and 'pooling of sovereignty'.           │
│                                                              │
│   •  Traditionally fixed to the completion of the internal market.│
└──────────────────────────────────────────────────────────────┘

┌──────────────────────────────────────────────────────────────┐
│                         Statism                              │
│                                                              │
│   •  Sovereignty of the nation-state.                         │
│                                                              │
│   •  Thus, states remain at the centre of authority in the European Union.│
│                                                              │
│   •  'Democracy deficit' and legitimacy is best addressed by reinforcing│
│      state controls on EU policy-making processes.            │
└──────────────────────────────────────────────────────────────┘

┌──────────────────────────────────────────────────────────────┐
│                      Subnationalism                          │
│                                                              │
│   •  Minimise centralisation at the supranational and state levels.│
│                                                              │
│   •  Favour smaller, regional or local political communities, particularly│
│      reinforcing 'social legitimacy'.                         │
│                                                              │
│   •  'Europe of Regions'.                                     │
└──────────────────────────────────────────────────────────────┘
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harmonisation, and through the creation of supranational policy and decision-

making institutions, the overall welfare of the region itself is enhanced by

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[33] Sweet and Sandholtz, 300-301.
[34] Sweet and Sandholtz, 300-301.

providing a more efficient and competitive supranational marketplace and society. In addition, the neofunctionalist approach highlights the 'spillover' effects of integration and institution-building in the EU, whereby the desire for convergence spreads throughout both regional and state-centred policy-making areas.

The theory of neofunctionalism argues that certain prerequisites are needed before integration can proceed, including a switch in public attitudes away from nationalism and towards cooperation, a desire by elites to promote integration for pragmatic rather than altruistic reasons, and the delegation of real power to new supranational authorities. Once these changes take place, integration produces a number of 'functional' spillover effects, a phenomenon in which "imbalances created by the functional interdependence or inherent linkages of tasks [between member-states] can press political actors to redefine their common tasks."[35] In other words, joint action in one area will create new needs, tensions, and problems that will increase the pressure to take joint actions in other areas.

As Wessels noted, "the integration process...is not a threat to the nation-state, but reflects a strategy of strengthening [the European Union's] role and functioning and enabling it to face the challenges of an interdependent world."[36] On this basis, European integration is considered to be an inherently positive development for the people and sovereign states of Europe. Smaller states may

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[35] Joseph Nye, "Comparing Common Markets: A Revised Neofunctionalist Model," Leon Lindberg and Stuart Scheingold, eds., Regional Integration: Theory and Research, (Cambridge, MA: Harvard University Press, 1971) 200.
[36] Wolfgang Wessels, "The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity?" Svein S. Andersen and Kjell A. Eliassen,

often gain political leverage through obtaining and utilising EU membership, enabling a variety of domestic concerns to be heard on both the regional and international stages - a benefit that might not have occurred otherwise. From this perspective, constructing a system of supranational governance is seen as a type of adjustment mechanism, necessary insofar as maintaining high levels of both national and regional prosperity. Since the mid-1980s, policy-makers at both the EU and national levels seem to have a clear predisposition towards favouring a supranational approach to governance. Most of it can be attributed to competitive allocation of competences with regard to the completion of the internal market. As such, in the context of a discussion on models of legitimacy, supranationalism would thus closely align itself with the theory of output legitimacy, since the legitimacy of a supranational system of governance would be principally based on the returns and output such a system would generate for the system itself.

b) Statism

'*Statism*' defends the sovereignty of the nation-state. This standpoint demands that member-states remain the 'masters of their own destinies', and that they reserve at least the core political functions for themselves.[37] Two important points are often stressed by those who support the idea of the EU as a 'federation of states': (1) that the EU remains primarily a society of states, and (2) the constitution of the Union, its powers and resources are unanimously defined

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eds., The European Union: How Democratic Is It? (London: SAGE Publications, 1996) 68.
[37] Corresponding with the Gaullist or Thatcherite vision of a '*Europe des Patries*'.

by the member-states themselves.[38] Even when a decision is taken by majority voting, this is less an expression of the democratic principle of majority rule than a pragmatic mechanism to prevent individual member-states from obstructing overall consensus.

While states may support the defence of collective interests, the promotion of efficiency through harmonisation, and the transference of powers to supranational institutions, they firmly remain at the centre of authority in the EU. This approach has been most ardently advocated by the Conservative Party in the UK, as well as amongst prominent 'Eurosceptics' in other parts of the region.

In the context of legitimacy, since democratic forms of governance are often based on the idea of government '*by*' the people, the idea of input legitimacy would most closely attach itself to approaches of statism.

c) Subnationalism

Finally, the concept of '*subnationalism*' inherently attempts to minimise centralisation at the supranational level, endeavouring to strike a balance between the powers of member-state, supranational and subnational levels in optimising policy outcomes. For instance, Scotland pursues closer ties to Brussels not necessarily to further the broader goals of European integration, but moreso to gain leverage in furthering the devolution of powers from Westminster. At its extreme, the subnational position views Europe as an association of quasi-

sovereign regional entities ('*Europe of Regions*'). As Ash observes,

> "The cliché of 'integration in the west, disintegration in the east' does not bear closer examination. It is surprising, for example, to see the progressive disintegration of Belgium cities as evidence of the decline of the nation-state and the rise of regionalism, for the tensions that are pulling Belgium apart would be entirely familiar to a nineteen-century nationalist. Each ethno-linguistic group is demanding a growing measure of self-government. My own country, Britain, has for decades been an unusual modern variation on the theme of nation-state: a state comprised of four nations/regions - or, to be precise, three and a part. But now the constituent nations, especially Scotland, are pulling away toward a large measure of self-government."[39]

At a minimum, 'subnationalists' demand greater autonomy for the subnational

level and a greater say of regional/local governments within European politics.

As such, this approach endeavours to optimise social legitimacy, whereby

policies are designed and implemented by decision-makers most closely

attached to particular constituent identities.

The tension created by supranational, 'national' and 'subnational'

structures of governance within the European Union has challenged theorists to

rethink their preconceptions of *how*, *why*, and *for whom* the integration process

has evolved.

Often it is suggested that authority in the 'European' political system

should be distributed more strongly in favour of the supranational level, since

many political issues can be dealt with more effectively and efficiently at the

'European' level than at the level of the state.[40] In this sense, centralised

regulation improves equal opportunities and the equal treatment of all citizens,

strengthening the identification of the '*Europeanness*' of citizens with the

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[38] Gilles Andréani, Europe's Uncertain Identity, (London: Centre for European Reform, 1999) 18.
[39] Ash, 57.
[40] Kees Van Kersbergen and Bertjan Verbeek, "The Politics of Subsidiarity in the European Union," Journal of Common Market Studies, vol. 32 no. 2, (June 1994) 218.

European Union. However, without a strengthening of legitimate mechanisms of democracy at the supranational level (ie. output, input and social legitimacy), it appears clear that states (and in some cases subnational regions) remain more suitably positioned to respond to and safeguard the interests of individual citizens in Europe.

IV.   Conclusion: Democracy, Legitimacy and Supranational Governance in the EU

The debate over the legitimacy in the European Union is generally based on whether or not the integration process has engendered the development of effective democratic rule and institutions at the supranational level. Many observers consider effectiveness and efficiency to be enhanced by an indirect, majoritarian democracy with the participation of functional organisations (such as the European Commission, European Parliament and European Central Bank). However, there exists much controversy over the applicability of democratic principles in the particular social context of the European Union, since the supranational level is considered to be lacking the necessary prerequisites that make legitimate democracy work.

In a highly culturally heterogeneous region such as Europe, adopting democratic rule built on consensual, legitimate governance/representation agreed to by all participants can be highly problematic, especially due to an overarching lack of 'social legitimacy'. As Diamond and Plattner contend, "ethnicity is the most difficult type of cleavage for a democracy to manage", more difficult than class cleavages, because it "taps cultural and symbolic issues -

basic notions of identity and the self, of individual and group worth".[41] If

democracy is to remain stable in deeply divided societies, it must develop

mechanisms for the protection of, and power-sharing between, various ethnic

and social communities. Two basic prerequisites for this to succeed are (1) the

common exercise of political authority by consensus between the democratically-

elected community leaders, and (2) the separate, autonomous exercise of

political functions by those communities. In this sense it follows that legitimate

democratic structures presuppose more than just civil and political rights - it

requires the absence of persistent social cleavages as well as the 'social glue'

amongst individual citizens based on shared values and understandings. In the

case of the European Union, since there is no prevalent 'European' identity or

mechanisms to effectively restrain autonomous action on the part of member-

states, the criteria of 'social legitimacy' becomes difficult to fulfill.[42]

The legitimacy dilemma is also seen to result from the fact that the

principles of output legitimacy and social legitimacy cannot be honoured

simultaneously in the European multilevel system of governance. As far as this

dilemma concerns legitimate rule within the European Union, the lack of the

requisite communitarian underpinnings for the growth of a pan-European liberal

democracy prevents "the only logical solution from a strict democratic point of

view...to strengthen the EU Parliament at the expense of the member-states."[43]

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[41] Larry Diamond and Marc Plattner, Nationalism, Ethnic Conflict and Democracy, (Baltimore: John Hopkins University Press, 1994) xviii.
[42] Especially related to 'hard-core' political issues, such as security. Although a common foreign and security policy has been proposed, the recent divergent actions of the member-states in responding to the Kosovo crisis highlights this point.
[43] Svein S. Andersen and Kjell A. Eliassen, eds., "Introduction: Dilemmas, Contradictions and the Future of European Democracy," The European Union: How Democratic Is It?, (London: Sage Publications Inc., 1996) 10.

However, two observations can here be made. Firstly, in some cases the state may be seen as encompassing the optimal level of governance in ensuring output legitimacy (ie. in certain policy sectors such as health and education). Strengthening overall policy-making capacity at the supranational level would inherently undermine this legitimacy. Secondly, strengthening the European Parliament would constrain the activities of the Commission, and dilute the EU's ability to make decisions in a timely and efficient fashion.[44]

As of now, there appears to be little consensus about the most legitimate allocation of policy-making competences between the state, supranational and subnational levels. Some of the dilemma may be decided by *ad hoc*, issue-specific analysis and decision-making. However, most of the dilemma extends to general claims about the comparative efficacy and efficiency of centralised versus decentralised (member-state) regulation. Centralised regulation may be more efficient at the global level compared to the 'European' level; decentralised regulation may be more efficient at the subnational level than at the national level. In fact, the possibility exists that both domestic and supranational institutions within the European Union are '*mutually reinforcing*', providing shared benefits to both sets of institutional actors as a result of political and economic integration. State-level actors may often take credit for accomplishments made at the 'European' level, whereas supranational actors may claim responsibility for structural adjustment mechanisms and other regional policies that directly benefit particular member-states.

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[44] See Chapter Three for more on the residual effects of strengthening the powers of the European Parliament at the expense of the Commission.

What is important here, however, is not necessarily safeguarding *efficiency* in policy-making, but the preservation of *effectiveness* in representing the interests of individual citizens and mass publics. In this case, a combination of optimal output, input, and social legitimacy, as well as individualistic mechanisms of democracy, are essential. The following sections will further analyse how legitimacy may be achieved in the EU, as well as highlighting some of its follies. In doing so, it will seek to show how the institutionalisation of the EU has failed to produce sound dynamics of legitimate and responsible governance.

CHAPTER TWO

A HISTORICAL ANALYSIS OF LEGITIMACY AND DEMOCRACY IN THE EU:
INTEGRATION OR FRAGMENTATION?

States remain the key actors politically within the European Union,

operating primarily on a framework of inter-state relations. However, the growing

power of the centralised institutions and decision-makers at the supranational

level cannot be ignored. Indeed, as Sir Donald Maitland, former Secretary-

General of the European Commission, commented, more and more policy areas

which directly affect individuals in their day-today lives are being drafted at the

EU level.[45] The force of supranationalism and convergence amongst the

member-states, in both political and economic terms, has indeed created a

unique political environment in Europe.

This chapter will assert that, while the integration process has had the

effect of producing heightened levels of economic '*integration*' and convergence,

it has also engendered strong dynamics of political '*fragmentation*'. This, in turn,

has created weak levels of legitimate institution-building at the supranational

level, marked by (1) low levels of individual '*allegiance*' to EU symbols and

institutions, and by (2) limited access to supranational decision-making

processes based in Brussels. To examine these issues, a historical analysis of

the integration process will first be made to determine how the EU has evolved

institutionally. Secondly, using the theoretical underpinnings brought forth in the

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[45] Interview with Sir Donald Maitland, Bath, UK, 2 June 1999.

first chapter, the linkages between individuals and their decision-makers will again be examined to determine whether the overall evolution and institutionalisation of the EU has produced an inherent '*integration*' or '*fragmentation*' of political communities in Europe.

Debates have long raged about whether the EU is an organisation controlled by governments working with each other as partners, or whether it has developed its own authority and autonomy. At the heart of this debate has been the question of how much power and sovereignty can or should be relinquished by national governments to bodies such as the European Commission and the European Parliament. Some observers question the assumption that intergovernmentalism and supranantionalism are two extremes on a continuum, that they are products of a zero-sum game, that supranationalism inherently involves a loss of sovereignty, and that the EU and its member-states act strictly autonomously of each other.[46] It is argued, for example, that governments cooperate out of need, and that this is not a matter of surrendering sovereignty, but of pooling as much of it as is necessary for the join performance of a particular task (vis-à-vis functionalism). In this case, the EU has been described as "an experiment in pooling sovereignty, not in transferring it from states to supranational institutions."[47]

Others have argued that it is wrong to assume that "each gain in capability at the European level necessarily implies a loss of capabilities at the national level," and believe that the relationship between the EU and its member-states is

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[46] See especially Robert Keohane and Stanley Hoffmann, eds., The New European Community: Decisionmaking and Institutional Change, (Boulder, CO: Westview Press, 1991).

more symbiotic than competitive.[48] Hass argues that supranationalism does not

mean the exercise of authority over national governments by EU institutions, but

rather that it is a process or a style of decision-making in which "the participants

refrain from unconditionally vetoing proposals and instead seek to attain

agreement by means of compromises upgrading common interests."[49]

This section will further analyse the structure of the EU, both by focusing

upon the historical progression of the integration process itself, and by looking

more closely at how the role of national publics and social policy has been

utilised in satisfying the necessary foundations of input, output and social

legitimacy in the EU.

I.   A Historical Analysis of the European Union

Until the 1980s, there were two essential views on Europe as an emerging

'polity'. The dominant view shared by most of the member-states viewed the

project of European integration as enhancing the sovereignty of the nation-state,

not undermining it (vis-à-vis statism). This was primarily attached to the

restructuring and rebuilding circumstances surrounding the end of the Second

World War. Western European states saw integration as a way to deal with (1)

the re-emergence of Germany into the European economic and political

spectrum; (2) the development of a peaceful and constructive relationship

between Germany and France; and (3) the need to contain the USSR and the

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[47] Keohane and Hoffmann, 277.
[48] Lindberg and Scheingold, 277.
[49] Ernst Hass, "Technocracy, Pluralism and the New Europe," Stephen Graubard, ed., A New Europe? (Boston: Houghton Mifflin, 1964) 66.

potential spread of communism.[50] In addition, European integration evolved in response, together with the creation of NATO, to the political environment created by the Cold War. Slowly, as the memory of the war faded and as the structures of the Cold War became normalised, economic imperatives, fuelled by the post-War boom, became increasingly predominant. The key idea underlying this realist approach was 'co-operation'. In this context, supranational politics was seen to be oxymoronic, since it inherently cannot be anything other than a product of the relations between states.

A second view of European integration was the federal vision of 'unification'. Central to this belief was the idea that Europe exists as a single cultural, historical and political entity.[51] As such, only through the creation of a federal 'Europe' would social and political harmony prevail over nationalistic discord. One way of looking at the practice of European federalism was to picture the EU as a network in which individual member-states were increasingly defined not only by themselves, but also in relation to their EU partners.[52] In this sense it was argued that the EU increasingly became 'cooptive', meaning that its participants had more to gain by working within the system than by going it alone.

A third perspective on European integration has emerged since the 1980s. This is something between the federalist vision of a unified European 'polity' and the realist model of 'co-operation'. This model, heavily influenced by political economy and 'globalisation' theories, sees European integration as something more than just co-operation between sovereign states. Based on an amalgam of

[50] John McCormick, Understanding the European Union, (MacMillan, 1999) 224.
[51] See Denis De Rougement, The Idea of Europe, (New York: Macmillan, 1966).

the neoliberal and neofunctionalist approaches, nation-states surrender a degree of their sovereignty to the supranational level in order to survive under the competitive conditions of globalisation. This perspective sees the evolution of European integration as driven more by events in the global economy than purely based on the internal logic of spillover (vis-à-vis functionalism).[53]

II.   Crises of Legitimacy: The European Union in the 1990's

In the past, political integration was primarily constructed on the basis of calculated self-interest on the part of the member-states, often as a corollary to the more pragmatic benefits achieved through successive steps towards economic integration. At least until the late 1970s, the focus was on integration in the interests of economic development. Barriers to trade were pulled down, national monetary and fiscal policies were harmonised and the free movement of people, goods, money and services was promoted, all in the hope of bringing new levels of prosperity to the region as a whole. Subsequently, as the EU member-states have built closer economic ties, increasingly they have also sought closer integration in the field of political cooperation, policy convergence, supranational institution-building and centralised decision-making.

With this evolution, there has been a growth in the debate concerning the democratic process in Europe, and how supranational institutions within the European structure of multilevel governance may accommodate the need for certain levels of accountability, transparency and *legitimacy* amongst centralised decision-makers. As Featherstone observed, since the mid-1980s "there has

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[52] Keohane and Hoffmann, 13-14.

been a widespread backlash by political leaders and mass publics against how the European Community is run and concern as to how it might develop in the future. A major focus of attention - in some instances, the primary focus - has been on the perceived distance between Brussels and the ordinary citizen...the shortcomings of the Community lie in the feelings of remoteness and lack of influence and involvement on the part of many of its citizens."[54] While it appears that attempts have been made by both proponents and sceptics alike to improve the 'legitimacy' problem of the supranational institutions, by (1) increasing the role and importance of the European Parliament (as partially set forth in the Treaty of Amsterdam), (2) nurturing the concept of European 'citizenship' (entrenched by Article 1 of the Maastricht Treaty), and (3) mobilising interests at the EU level, it remains clearly evident that, for the most part, the impetus behind political integration is tightly related to the past achievements and future aspirations in the field of economic integration.

There have been many reports, including the Tindemans Report of 1975 and the Adonnino Report of 1985, which have advocated a more grassroots approach towards supranational institution-building, stemming from a belief that political integration and the inclusion of civil society in the supranational decision-making process is an intrinsic part of the European project.[55] Moreover, multilevel governance in Europe has often been motivated by the contentious belief that economic integration can never be truly successful without

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[53] Larry Neal and Daniel Barbezat, The Economics of the European Union and the Economies of Europe, (Oxford: Oxford University Press, 2000), 12.
[54] Kevin Featherstone, "Jean Monnet and the 'Democratic Deficit' in the European Union," Journal of Common Market Studies, vol. 32 no. 2, (June 1994) 149-150.
[55] Werner Weidenfeld and Wolfgang Wessels, Europe from A to Z: A Guide to European Integration, (Luxembourg: Institut für Europäische Politik, 1997) 184.

encompassing a certain measure of political integration.[56] This includes the

development of shared rights and 'European' citizenship, the creation of a sense

of belonging and shared symbols, and the expansion and support of

transnational networks of both civil society and policy communities - in other

words, the building of a European 'ethos'. Indeed, few would argue that

economic integration could optimally succeed without some degree of political,

institutional and cultural convergence, even though economic integration has

traditionally outpaced the development of political and social integration.

Since the introduction of the Single European Act in 1985 and the

Maastricht Treaty in 1991, heightened levels of integration have profoundly

restructured the political and economic nature of the Union. Several new policy

sectors have subsequently become 'Europeanised', in which authority over policy

areas seen to be in the 'common interest' have been transferred to the realm of

'community' decision-making apparatus (ie. a common agricultural policy,

monetary policy, etc). The European Union has not simply evolved into an

internal common market built on the precepts of 'trade liberalisation' and the

efficient remoulding of inter-state relations, but now also possesses policy

design, implementation and redistribution powers (ie. structural adjustment

policies). In many issue-areas, political regulation eludes the control of the

individual member-states and is subject to policy-making in multilevel policy

networks composed of specialised national and European interest groups and

centralised bureaucracies. Even areas like foreign policy and border controls,

traditionally at the core of state sovereignty, have been put on the 'European'

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[56] Weidenfeld and Wessels, 111.

agenda and will soon come under supranational authority.[57] Indeed, the

development of common 'European' policies and laws has not only gone beyond

the technical regulation of coordination problems amongst the member-states in

a small number of sectoral areas, but it can also possess direct effect and

supremacy over domestic laws in states which did not directly consent to them.

This process of redistributing powers from the state to the supranational

level is often based on the 'subsidiarity principle'. In very broad terms,

subsidiarity dictates that the European Union (namely the European

Commission) may take action in policy areas which do not fall within 'specific

Community competence' if proposed policy initiatives or issue areas cannot be

sufficiently addressed or achieved by member-states themselves. Once this

occurs, the Commission may take action in the place of member-states if its

capacity and capabilities can better address those specific areas in which the

competences of member-states are lacking (ie. a common agricultural policy).

As Van Kersbergen and Verbeek commented, "subsidiarity [in the mid-1970s and

early 1980s] was mainly presented as an efficiency criterion in a predominantly

federal setting: certain policy goals could no longer be effected nationally and

thus called for 'Community competences'."[58]

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[57] Ref. the Schengen Convention, 1996, and the Amsterdam Treaty, as signed in October 1997 and ratified earlier this year. A common currency, another foundation of state sovereignty, has come under supranational authority through the introduction of the European Monetary Union and the 'euro' common currency in early 1999. The impetus for a common foreign and security policy (CFSP) has also been increased with the introduction of the European Security and Defence Initiative (ESDI) and the appointment of Javier Solana as commissioner-designate for CFSP.
[58] Kees Van Kersbergen and Bertjan Verbeek, "The Politics of Subsidiarity in the European Union," Journal of Common Market Studies, vol. 32 no. 2, (June 1994) 218.

Even though subsidiarity was originally seen as a mechanism to widen the authority and policy-making capabilities of primarily the European Commission, events stemming from the adoption of the Single European Act produced concern amongst both national and regional leaders with regards to the growing power of supranational decision-makers. This perceived growth in the authority of centralised regional institutions led national actors to increasingly use the principle of subsidiarity to protect their own national interests. As Van Kersbergen and Verbeek continue, "the context of political integration increasingly became one in which member-states turned to subsidiarity exclusively as a way to contain the perceived widening grip of Brussels on European policy-making."[59] As opposed to the feared erosion of the state or the wholesale devolution of state powers, subsidiarity was perceived as a mechanism by which member-states could restructure their governing capabilities. By influencing the decision-making process through national representatives in the Council of Ministers, member-states could partially control policy designed and implemented at the supranational level, while also allowing domestic policy-makers the ability to concentrate on areas that fall exclusively within the jurisdiction of the member-states.

While national governments may have the ability to constrain the supranational decision-making process through the Council (and, of course, in domestic political fora), the growing amount of 'European' competences in policy-making can no longer be based solely on the presence of 'indirect legitimacy' between the member-states. The more subsidiarity is used, the more the

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[59] Van Kersbergen and Verbeek, 219.

'Community' is in need of its own sources of direct popular support. Indeed, this

has become one of the most salient political issues in the long-time 'permissive

consensus' of European societies toward functional supranational convergence.

As Schmitter noted,

> "If, eventually, the member-states decide to transform this novel polity into a
> democracy, they will have to experiment with new forms of citizenship,
> representation and decision-making in order to be successful. Merely copying
> the institutions of existing national democracies, even federal ones, will not
> suffice - and could even have counter-productive effects, such as the loss of
> what they already attained (ie. a high level of economic interdependence and a
> reliable degree of security) and declining legitimacy with mass publics."[60]

As previously stated, the integration process has produced feelings of

widespread mistrust, confusion and scepticism towards supranational institutions,

best shown by the record low turnouts in the European parliamentary elections

held in June 1999. Not only has much debate been recently voiced over the

perceived 'lack of legitimacy' and 'democratic deficit' within the processes of both

political, social and economic integration in Europe, but also within the internal

process of institutionalisation in the European Union.

III.   The European Union and the Nation-State

Indeed, the evolution of European integration suggests that Western

European states have greatly benefited from greater levels of convergence and

policy harmonisation. However, if it is agreed that the construction of

supranational institutions and a multilevel form of governance in Europe has

profoundly affected the role and power of states in the region, how have these

dynamics particularly affected the relationship that exists between individual

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[60] Philippe C. Schmitter, Is It Really Possible to Democratize the Euro-Polity? (Oslo:
ARENA Working Paper No. 10, 1996) 2.

citizens and their decision-makers (vis-à-vis input, output and social legitimacy, social capital and allegiance)?

Using Milward's terminology, often the relationship between (1) individual citizens and (2) the European Union and its member-states can be characterised in terms of a 'double allegiance'.[61] The modern nation-state is conceived as a complex political organisation of mutual political obligations between the rulers and the ruled. Nation-states traditionally followed a strategy of integration since this was "one way of formalising, regulating and perhaps limiting the consequences of interdependence, without forfeiting the allegiance [amongst state-level constituencies] on which its continued existence depends."[62] National allegiance was secured through the maintenance of strong democratic institutions and welfare policies, while a secondary allegiance to the supranational level (the European Union) tacitly developed among national citizens (including the promotion of shared 'European' symbols such as the EU flag, passport, driver's license, license plates, etc.). In this respect, secondary allegiance was not seen to significantly weaken individuals' primary allegiance.

At the same time that states sought to implement welfare policies to ensure high levels of political allegiance amongst their citizens, 'European' convergence was viewed as necessary to facilitate their objectives. As Milward stated,

> "Given the tendency of the post-war West European state to justify itself ideologically as the guarantor of the social and economic advance of its citizens; given the ensuing tendency to take a somewhat exalted view of the power of foreign trade and particularly of exports; given the velocity with which foreign trade in Western Europe did grow; given the way in which this growth did

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[61] A.S. Milward, The European Rescue of the Nation-State, (London: Routledge, 1992) 3.

[62] Milward, 19.

contribute to the growth of efficiency, incomes and choice; a 'European' solution was necessary. *Domestic policy was not in the end sustainable unless this neo-mercantilism could be guaranteed by its Europeanisation* [emphasis added]."[63]

The creation of the common market was virtually the only possible solution to the problem of securing the nation-state and national allegiance in the context of economic interdependence amongst the member-states and a growing global economy (not to mention the growing predominance of the American economy). Economic interdependence and the diminished capacity of European states to provide both security and prosperity within their own sphere of influence created the necessity for supranational co-operation. In this sense, integration helped to safeguard national or primary allegiance while stimulating the development of a secondary, or 'European', level of allegiance.

IV.   Dynamics of Supranational Institution Building in Europe

Pragmatically, the European Union is an entity created by a set of treaties signed by fifteen member-states in Europe[64]. While the process of European integration began with the establishment of the European Coal and Steel Community in 1951, the four principle treaties are the 1957 Treaty establishing the European Economic Community ('Treaty of Rome'), the Single European Act of 1985, the 1992 Treaty on the European Union ('Maastricht Treaty'), and the 1997 Treaty of Amsterdam. The treaties create a number of common regional and supranational institutions, including the Council of Ministers, the European

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[63] Milward, 134.
[64] Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and United Kingdom. Other countries that are currently in negotiation to accede to the EU include Poland, the Czech Republic, Hungary, Estonia, Slovenia, and Cyprus. Eastern and Central European countries that have free trade agreements with the EU and have applied for full membership also include Slovenia, Romania, Bulgaria, Malta, Latvia, and Lithuania.

Commission, the European Parliament, the European Court of Justice and the

European Monetary Union (EMU) - including the 'euro' currency and the

establishment of the European Central Bank (ECB). Although integration has

indeed evolved significantly over the last decade, it seems clear that even early

integrationists had always envisioned both economic *and* political integration as

part of the larger process of supranationalism and multilevel governance in

Europe.[65]

In 1957, the Treaty of Rome created a customs union in Europe by

eliminating customs barriers between member-states and establishing a common

customs tariff for third-country imports. To facilitate this harmonisation, the

Treaty of Rome transferred a number of legislative powers from the member-

states to common regional institutions in many specific fields, such as external

trade, environment policy, fisheries, consumer protection, and competition policy.

These specific policy areas are often referred to as being within 'Community

competence', the result of which is a large body of community law (the '*acquis*

communitaire') binding on member-states.[66]

The Treaty of Rome gave a low priority to the development of a common

social policy, preoccupied as it was with the goal of economic integration. Where

social policy was mentioned, however, generally served one purpose: the

removal of potential distortions of competition or mobility. In fact, policy

development (especially harmonisation) was understood as more or less

automatically following successful economic integration. As Ross noted, the

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[65] See the early works of integrationists and functionalists such as Karl Deutsche and Ernest Haas.

European Community was barred from most welfare state areas, while the Commission was, in principle, strictly limited in its social policy capacity.[67] National governments continued to dominate the decision-making process in this domain.

The absence of social policy in the Treaty of Rome is explained by the crucial role of social policy as an instrument of statecraft in the national welfare states. National elites were only prepared to surrender social policy to the supranational level if, and only if, a European social policy could be argued to be functional to economic goals that could not be achieved at the national level, or if the risks of inadvertent spillovers were likely to be minimal. European social policy was therefore constrained by the Treaty of Rome and by the diplomatic setting that defined social policy as belonging to national sovereignty. Furthermore, as Ross notes, "virtually all organised social forces - political elites and parties, employers, unions, and others - saw the nation as their essential location [for political action]. "[68] Wherever necessary, EU social policy existed principally to facilitate the broader goals of economic integration, not to intrude on what was perceived to be an essential area for member-state jurisdiction.

Whenever new social policy measures were adopted at the European level in the 1970s, the initiatives rested on (1) a sense of incapacity among national elites to deal with unexpected worsening social and economic conditions (ie. unemployment) and (2) a sense of incapacity among national elites to deal

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[66] Non-compliance can lead to infringement proceedings before the European Court of Justice.
[67] G. Ross, Jacques Delors and European Integration, (Oxford: Oxford University Press, 1995).
[68] Ross, 360

with unexpected new social and political demands. However, common European social policies were largely absent during this period mainly due to an overall lack of direction amongst the member-states and by the unwillingness of national governments to surrender control over a crucial instrument of statecraft.

The doubling of membership of the EEC (Britain, Denmark and Ireland in 1973; Greece in 1981; Spain and Portugal in 1986) had several profound political and economic consequences on the Community: it increased the influence of the EEC (which was now the biggest economic bloc in the world), complicated the Community's decision-making processes, reduced the overall influence of France and Germany, and - by bringing in the poorer Mediterranean states - altered the internal economic balance of the EEC.[69] Rather than enlarging any further, key decision-makers at the supranational level sought to deepen the relationship amongst the now 12 member-states. The Community moved to strengthen mechanisms towards political integration, and started to build large supranational institutions to handle the increased size of its organisation.

The Single European Act (SEA) of 1985 reasserted the objective of a 'barrier-free' Europe and adapted the original Treaties to accommodate the new realities of the European and global marketplaces, including the recognition of new and emerging technologies, sectors and policy areas. The continuation of the internal market project built upon a distinctive approach to barrier-free movement of goods, services, capital and labour by stressing the importance of 'a level playing field' for all economic agents under a single regime of competition rules and transnational linkages. The SEA also made cohesion a central part of

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[69] Weidenfeld and Wessels, 14.

economic integration, the assumption being that although the single market

would create new jobs, free trade in goods and services in the region would not

be enough to address the economic disparities amongst various regions in the

Community.

The SEA was also one of the first instances in the historical evolution of

the EU where the introduction of a common social policy was institutionalised.

The promotion of a more activist Commission began to understand social policy

as a crucial instrument of European statecraft and willfully started to permeate

policy proposals with the potential for future social policy growth. According to

Ross, the staff of the Delors Commission used the 'Russian Doll' strategy, of

which the deeper logic "involved building on the EC market-building mandates to

move into state-building areas," as a mechanism to lure national governments

into supranational social policy-making and to persuade hesitant member-states

to get over the threshold of social policy as a means of national statecraft rather

than as a means of transnational expression.[70] In addition, the Delors

Commission achieved another step towards supranational integration by

furthering the commitment to economic and social cohesion through an

intensification of regional redistribution. The aim was to counteract the risk of

negative harmonisation caused by socioeconomic disparities between member-

states.

A boost for social policy came in 1989 with the Charter of Fundamental

Social Rights for Workers (commonly referred to as the 'Social Charter'), which

promoted the free movement of workers, pay equity, better living and working

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[70] Ross, 39

conditions, freedom of association, and protection of children and adolescents. The preamble of the Social Charter includes an explicit reference to the principle of subsidiarity, echoing not only the member-states' concerns, but also an awareness that subsidiarity had become necessary to defend member-state interests.[71] In his preface, Delors defined the Social Charter as the keystone of the social dimension in the construction of Europe. As he stated, "it incorporates a foundation of social rights which are guaranteed and implemented, in some cases at the level of the member-states or at Community level depending on the field of competence."[72] Subsidiarity thus appears in one of the main considerations of the preamble, "whereas responsibility for the initiatives to be taken with regard to the implementation of social rights lies with the member-states or their constituent parts and, within the limits of its powers, with the European Community."[73] The inclusion of subsidiarity in the Social Charter seems to show that member-states were consciously attempting to protect the national character of the welfare state in order to retain social policy as an exclusive domain of statecraft.

While the 1991 Treaty on European Union, or Maastricht Treaty, went yet further by making provisions for a single currency (the 'euro') and providing the framework for a central European institution to monitor and implement a common monetary policy (the EMU), it also introduced the Cohesion Fund, which continues to help compensate the poorest EU member-states for the costs of tightening environmental controls, and provides assistance for transportation and

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[71] Martin Rhodes. A New Social Contract? Globalisation and West European Welfare States, (Florence: EUI Working Paper #43, 1996s) 96.
[72] Preamble to the EC Charter on the Fundamental Rights of Workers, 1989.

infrastructure projects. However, the most fundamental change brought forth by the Maastricht Treaty was in broadening the scope of political integration in the EU, including provisions for intergovernmental co-operation in the areas of common foreign and security policy (CFSP), justice and home affairs (border controls, mobility, policing, etc.), and the adoption of a preliminary framework towards the EMU.

The Amsterdam Treaty, as ratified by member-state governments in May 1999, will further integration in a number of areas (in particular, increased co-operation and convergence in areas such as social and environmental regulation, justice and home affairs, foreign policy, and questions relating to EU citizenship). While the Amsterdam Treaty was viewed as successful in furthering the scope of monetary union, solidifying prerequisites for a common foreign and security policy, and providing the basis for EU enlargement, it fell short of meeting its primary objective of overhauling the supranational institutions to ensure greater accountability. As discussed during the 1996 Intergovernmental Conference leading up to the Treaty, the agreements and regulations underlying the EU have become increasingly complex and difficult to understand. As a solution, ideas surrounding the adoption of a clear and concise EU constitution have been suggested, as well as additional mechanisms to improve a general understanding of the EU and its institutions and a strengthening of the channels through which public opinion and expression (vis-à-vis input legitimacy) may be enhanced at the supranational level. However, large divisions amongst the member-states remain on how such restructuring should take place.

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[73] *Ibid.*

V.   Conclusion: The Resistance of Nation-States to Change

There was a time that national and European bureaucrats and political

elites did not have to worry about public attitudes towards the project of

integration. Either national publics had no opinion, or they supported integration

in a diffusely positive manner. National publics appeared to consider integration

as an elite project which facilitated their own government's attempt to pursue

policies in the national interest. As long as their governments succeeded in

securing these interests, integration could be evaluated as a good thing (or at

least as little to worry about). There was a 'permissive consensus' which at times

both tolerated and warily supported European integration.

Relying on current initiatives in Brussels to launch campaigns that would

'bring Europe closer to the people', listening carefully to the fashionable yet

essentially defensive words of 'transparency', 'openness', and even 'subsidiarity',

some anxiety about the Union's public image is now taking root.[74] Indeed, there

appears to be much substantive ground for the elites' concern.[75] Public support

for European integration has consistently been in decline since 1991 (most

convincingly seen in the recent low voter participation levels for the 1999

European parliamentary elections).[76]

The root cause of deteriorating support in the supranational institutions

and the lack of legitimacy in general may, in fact, be associated with worsening

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[74] An ambitious 'Citizens First' campaign, costing 24 million ECU, was launched in November 1996 and informs European citizens about their rights in the single market.
[75] See Van Kersbergen and Verbeek 1994; Schmitter 1996.
[76] Tim Hames, "Landslide for apathy as voters shun the polls," The London Times, 12 June 1999, 23.

expectations of national publics about the national economy and social security. Simply put, poor economic and social conditions tend to reduce support for European integration (and thus minimize respective levels of output legitimacy).[77] Indeed, European integration as supported by the national political communities is often evaluated as a negative thing when further integration (ie. monetary union) does not so much seem to generate an 'ever closer union' but rather more austere national policies of retrenchment that reinforces social insecurity. In these cases, the decline of primary or national allegiance explains the decline of secondary or European allegiance.

That monetary union will generate considerable advantages for the member-states in the long run and would therefore reinforce supranational national allegiance and output legitimacy is an argument that has not been able to convince voters who see their social security threatened in the short run. As Eichenberg and Dalton stated, "we know citizens blame national politicians when economic times are bad, but it remained to be shown that they also blame the politicians and bureaucrats in Brussels [due to sheer ambivalence]."[78] If a government wants further European integration and if further integration means harmful national economic and social policies, then European integration is evaluated negatively. It shows that support for European integration is much more fragile than the prolonged 'permissive consensus' and double allegiance suggested.

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[77] R. C. Eichenberg and R. J. Dalton, "Europeans and the European Community: The Dynamics of Public Support for European Integration," International Organization, (vol. 47 no. 4, 1993) 512.

CHAPTER THREE

EUROPEAN UNION INSTITUTIONS AND DECISION-MAKING:
EFFECTIVE GOVERNANCE VS. CRONYISM

As the last chapter showed, in many cases the evolution of European

integration can be characterised in two general ways. From a strictly economic

perspective, European integration has achieved a great deal of success since its

inception in the 1950s. With the introduction of the Single European Act, the

Maastricht Treaty and the European Monetary Union (EMU), the EU has steadily,

albeit slowly, traveled down the path of convergence, harmonisation and overall

economic prosperity (in a general sense). Indeed, it is agreed that the integration

process has produced net economic gains for the region which would probably

not have been achieved without the current levels of convergence and

supranational institutionalisation. However, the process of European political

integration has proven to be quite problematic. While this has been especially

relevant in the EU's inability to achieve consensus on common approaches in the

area of social policy, it has also affected the ability of some of the EU's central

institutions to work effectively, efficiently, and in the best interests of European

individuals.

With the emergence of the European Union as a type of 'regulatory state',

many concerns have been raised regarding accountability, transparency, and the

decision-making process within the heart of the EU. In 1999, a Committee of

Independent Experts, reporting to the European Parliament, found the Santer led

European Commission guilty of large-scale fraud, mismanagement and

nepotism, thus undermining its credibility.[79] As such, the 20 Commissions

resigned *en masse*, while many European leaders, including British Prime

Minister Tony Blair and German Chancellor Gerhard Schröeder, called for a

restructuring of the way both the European Commission and Parliament function.

Recognising that corruption and scandal is probably as old as politics itself, and

often occurs within 'legitimate' systems of democratic governance, it will be

shown that 'cronyism' in the European Commission is more a result of systemic

failings attributed to the weak construction of supranational institutions in

Brussels and lack of legitimate governance within the EU 'polity', rather than

simply a result of character deficiencies amongst some elites and decision-

makers. In other words, building upon the theories and hypotheses of the

preceding chapters, it is my contention that centralised political institutions in

European are bound to endure perpetual mismanagement if the integration

process continues down the path of political integration and 'polity'-building

without first resolving their legitimacy problems. Furthermore, without

entrenching the necessary foundations of legitimate governance within the

integration process, secondary allegiance (to the Union) will never be able to

achieve the same level of tacit support amongst individuals as primary allegiance

(to the nation-state).

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[79] First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the
European Commission, Committee of Independent Experts to the European Parliament,
15 March 1999.

I.   The Report of the Committee of Independent Experts

Ironically, at the time when the Committee of Independent Experts released their report in March 1999, the European Union was undergoing one of the most volatile stages in its nearly 40 year history. Combined with addressing ethnic conflict and a potential war in the Balkans, negotiating the Agenda 2000 framework concerning eventual Eastern enlargement and a strengthened budgetary discipline, and preparing for a new round of European parliamentary elections in June, the Union was also addressing a crises of economic stagnation, high unemployment, and a weakening *euro*. In many ways, the Report could not have come at a worst time for Brussels. Although the Commission had known for over a year that proceedings in the Parliament to review its accountability problems were advancing, no one could have anticipated the eventual fallout from its release.

During its inquiries into allegations of cronyism and mismanagement in the Santer Commission, the Committee of Independent Experts found that one of the key impediments to strengthening the 'supranational' identity of the Union was the pervasiveness of national biases and affiliations within the Commission. The Committee noted that networks of decision-makers are often appointed on the bases of national identification rather than strict meritocracy, inevitably leading to "national fiefdoms" in certain directorates.[80] Furthermore, since the Commission manages all facets of the policy-making process (including policy design, implementation and adjudication), an air of supremacy has grown in the

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[80] See Tim Jones, Gareth Harding and Simon Taylor, "Commission needs a 'cultural revolution'," European Voice, vol. 5 no. 30 (29 July-4 August, 1999) 5.

Brussels. In this context, incentives for further accountability or better management practices have not been given the chance to arise.

In their Report, the Committee proposed the establishment of several 'watchdog' mechanisms, by (1) defining both individual and collective responsibilities amongst Commissioners and (2) creating a permanent Committee on Standards in Public Life to ensure ethical behaviour. This could be compounded by a strengthened role for the EU Ombudsman, the EU's anti-fraud office ('Unité de Coordination de la Lutte Antifraude'), and an extensive review process for the appointment of Commissioners and their *cabinets* in the Parliament. Furthermore, they recommended a number of changes based on strengthening accountability, specifically concerning:

- *Political Responsibility - The Committee recommended that Commissioners should be fully accountable to the Commission as a body and consequently to the Parliament for his/her actions and for those of his/her directorate.*

- *Standards in Public Life - The Committee called for the creation of a Committee of Standards in Public Life (CSPL), which would be established jointly by the member-states, Commission and Parliament. This panel would draft a general code of conduct for all EU staff, as well as the provision of mechanisms to monitor such a code.*

- *Whistle-blowing - The Committee stated that the Commission should follow rules recently established by the OECD, which oblige public officials to expose actual or suspected wrongdoing.[81]*

- *Openness - The Committee stated that there is a 'cultural problem' of a lack of openness in the Commission. There is a "tradition of secretiveness" which leads to a "lack of openness" in matters where there is no justification for confidentiality...Confidentiality must be the exception, not the rule.[82]*

- *Comitology - The Report condemns the extent to which powerful committees of national officials have influenced EU decision-making. It says that these committees, originally designed to strengthen accountability, have become a forum for pushing national interests and dividing up the spoils of EU funding.*

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[81] See Appendix Three.
[82] See the Report on Mismanagement, Art. 7.6.3.

- **Treaty Changes** - *The Committee argued that Commissioners' political responsibilities must clearly set forth in the Treaties, pointing out that the only treaty clause which allows an outside body to apply sanctions against individual Commissioners relates to "serious misconduct" or a failure to behave "with integrity and discretion", warning that "this does not correspond to the notion of political accountability."* [83]

Indeed, while the failings of the Santer Commission proved many observers' concerns regarding the lack of full disclosure and accountability within the supranational decision-making process, integrationists continue to hope that it will prove to be a watershed in reforming the core EU institutions, engendering an environment of administrative responsibility and openness (vis-à-vis output legitimacy). On one hand, it emphasised that the European Commission represented a closed, non-transparent and, ultimately, non-accountable institution in the EU system. On the other hand, it supported the argument for an increased accountability of the Commission to the European Parliament and, ultimately, to the European public. Leaving aside the seismic political ramifications, both within the EU itself and member countries, the report highlights numerous examples of accountability problems. [84]

The audit report essentially concluded the existence of:

1. *A lack of internal control on financial transactions;*

2. *A poor control environment which allowed staff to commit serious irregularities; and*

3. *A high level of corruption amongst key Commission officials.*

Among the many very basic controls which were not present - and their non-existence caused the chaos and heavily contributed to the period of instability that the Union is currently enduring - was the mentality within the institutions

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[83] See the Report on Mismanagement, Art. 7.4.6.
[84] See Appendix One.

which tolerated, if not actively encouraged, fraud and nepotism. Of great concern was the initial response of the Commissioners - no one in authority appeared to be willing to accept that there was a serious problem, nor proposed to do anything to resolve the perceived mismanagement. However, it would be incorrect to attribute blame to the entire Commission.

Indeed, it became clear that the fundamental legitimacy problem in the EU involved the Community's entire internal institutional arrangement. The weakness of a true representative body (ie. the European Parliament) to legislate and implement necessary institutional controls over the activity of bureaucrats was considered a central issue of individual mismanagement in the Commission. Second, the bureaucratic system of the Commission itself greatly contributed to the resignation of this institution in March 1999. It was undoubtedly isolated from the public as a whole and operated in a self-created culture of silence, secrecy and internal solidarity against external scrutiny, particularly the scrutiny of the European Parliament. In this context, the resignation of the Commission was in part a reaction to public demand for a more transparent, publicly-accessible and openly-effective European Commission.

Based on an understanding of input, output and social legitimacy, the Commission was in some sense destined to fail in the eyes of the European public and more specifically the MEPs. As the Report stated, the failings of the Commission:

> "...underlined the unique constitutional situation of the Commission and its need for democratic legitimacy and accountability...believed that its remote situation from European citizens demanded a heightened

commitment to transparency, and accountability to the democratic parliament in every aspect of its day-to-day administration"[85]

As an attempt to build the new Commission into a world-class administration, President Prodi, together with his new team of Commissioners, set out to implement radical internal changes in the Commission to make this institution more open to public scrutiny. Indeed, more individual accountability of Commissioners is seen as a centrepiece of the Commission's recent reformation.[86] However, it is likely that a broader, more holistic reformation of the central institutions in Brussels will be required to ensure more accountability, transparency, and legitimacy in the overall supranational system.

II.   The Executive: Accountability in the European Union

The scope of the activities delegated to the Commission over the last few decades has been relatively broad. Traditionally, many of the Treaties simply compelled the Commission to ensure the proper functioning of the common market and the application of Treaty provisions, more along the lines of regional liberalisation and policy harmonisation. However, since the introduction of the SEA and Maastricht Treaty, the Commission has also been given a certain level of executive powers in various policy areas, including competition policy, the administration of structural funds, and environmental policy. Furthermore, a rather broad range of decision-making instruments exists at the disposal of the Commission, including the power to initiate legislation and infringements proceedings (in the European Court of Justice), to take decisions, to formulate

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[85] See the Report on Mismanagement, Preamble.
[86] The Wall Street Journal, June 4, 1999.

recommendations and to deliver opinions under the general procedural

requirements set up by the Maastricht Treaty.[87]

In the EU, decision-making power is vested in the Commission, Council of

Ministers and European Parliament, acting together in a formula that depends

upon the policy area that is being discussed.[88] As in most modern governments,

however, the Union relies upon its bureaucracy to produce the more detailed and

technical rules that make the system function efficiently. One of the principal

classes of Community rules are so-called 'implementing rules'. They can be

found in many different policy areas, and generally fill in technical gaps, adapt

legislation to changing circumstances, or bring it up-to-date with the newest

science.[89]

Implementing rules may be issued following one of three basic

procedures. Some earlier Community legislation gives the Commission sole

decision-making power. Thus, the early directives setting up the common market

in agricultural goods delegated extensive powers to the Commission, which had

developed an elaborate framework of rules that farmers were forced to comply

with in order to qualify for Community subsidies. At the other extreme, the

Council tends to retain decision-making power for itself when an issue is

particularly sensitive, directly deciding the matter on a proposal from the

Commission. The third and by far most common way in which implementing

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[87] Weidenfeld and Wessels, 111.

[88] Binding Community acts are divided into regulations (directly applicable in the member-states), directives (which must be implemented by member-states), and decisions (which are addressed to individuals). See Maastricht Treaty, Article 189.

[89] See Guenther F. Schaefer, "Committees in the EC Policy Process: A First Step Towards Developing a Conceptual Framework," Robin H. Pedler and Guenther F. Schaefer, eds. Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process, (1996)

rules are adopted, under the 'comitology' process, is by the Commission acting under the indirect control of the Council. Here, the Council monitors the Commission's executive activities through advisory, management or regulatory committees of national experts, depending on the sector in question and the nature of the issues being examined. While advisory and management committees can often only make recommendations to the Commission, regulatory committees actively constrain the actions of Brussels to pursue certain policies and objectives. As Weidenfeld and Wessels note,

> "Regulatory committees...can suspend Commission measures and refer them back to the Council...To the Commission's annoyance the Council tends to prefer the regulatory committee procedure which, under the Decision of 18 July 1987 (Decision on committee procedures) is free to choose [which resolution approach] to take whenever it likes. The term 'comitology' is often used to refer to this restrictive approach by the Council to the Commission's executive powers."[90]

Thus, under the process of comitology, both expert input into policy-making and accountability (in reviewing the decisions made by the Commission) can often be achieved.

Although comitology helps to manage the Commission's decision-making process, and indeed brings much needed input of national officials and epistemic communities into the supranational policy-making fray (vis-à-vis output legitimacy), it does little to achieve full accountability within the Commission's atmosphere. Indeed, expertise and a de-politicisation of the issues (although not guaranteed) are often among the advantages gained by giving bureaucracies decision-making power. As Majone stated, "when the Community system was established, it was believed that placing the powers to execute the competition laws in the hands of the Commission would minimise political interference with

enforcement by the member-states."[91] However, the past shows that the

comitology process is shrouded in secrecy, preventing the European Parliament

(that institution which should best ensure accountability and transparency within

the decision-making process) from keeping an eye on Community officials.

Furthermore, as Christiansen noted,

> "What detracts from the bureaucratic element in the Commission's activity - what
> makes the Commission 'less bureaucratic' that other bureaux - is the nature of
> continuous bargaining in the Union. The major fields of Commission activity -
> proposing legislation and supervising the implementation of decisions - are highly
> politicised tasks. In the EU system, policies are not only subject to the extensive
> deliberations in the legislative phase, but are also bound to be renegotiated when
> it comes to their implementation in different national contexts. In this system the
> Commission is a 'politicised bureaucracy', faced with a dilemma between its duty
> to develop and apply common rules and continuous political pressure for
> deviation."[92]

While the mechanisms of comitology are generally defended on the grounds that

it permits states to broker deals that ultimately improve the general welfare of

European citizens, it ironically also supports the contention that the direct input of

national publics (vis-à-vis input legitimacy) would unnecessarily impede and

further confuse the decision-making process.

The general public does not have notice of rules before adoption and,

aside from the brief preamble to a published regulation, has no way of knowing

the full scope and reasoning behind the Commission's objectives, the policy

alternatives originally debated, and the considerations from which policy choices

are ultimately made.[93] A rulemaking record does exists (the Commission

proposal and the minutes of committee meetings), but is not subject to

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[90] Weidenfeld and Wessels, 224.
[91] Majone, 235.
[92] Thomas Christiansen, "Tensions of European Governance: Politicised Bureaucracy
and Multiple Accountability in the European Commission," Journal of European Public
Policy, vol. 4 no. 1, March 1997, 77.

mandatory public disclosure. Although a series of recent agreements have sought to put the European Parliament in a better position than the general public by requiring the Commission to communicate proposals, draft comitology committee agendas, and committee voting results, they have proven unsatisfactory. The Parliament often claims that, contrary to the terms of the agreements, the Commission has failed to communicate important proposals or has done so too late, preventing Parliament from exerting any influence.

Even if the Parliament were to have adequate information, the current structure and hierarchy of the central institutions prevents it from proactively influencing the EU's decision-making process. Formally, the European Parliament's institutional role in policy implementation is minimal. Under the *Modus Vivendi*, signed by Parliament, the Council, and the Commission in 1994, Parliament's views on proposals intended to implement co-decision legislation must only be "[taken] into account to the greatest extent possible" by the Commission.[94] Should Parliament give a negative opinion on an implementing measure being decided by the Council, an attempt must be made "in the appropriate framework" to find "a solution."[95] Informally, Parliament may pressure the Commission to modify implementing rules by putting oral questions to the Commission and voting resolutions in plenary sessions or by resorting to its budgetary powers (ie. the right to put the Commission's funding in reserve subject to the satisfaction of certain conditions). However, while the budgetary power is a strong incentive for the Commission to work towards greater

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[93] To take effect new EU legislation and regulations must be published with the Official Journal.
[94] See the *Modus Vivendi*, 1996 O.J. (C 102) 1.

accountability to the Parliament, in practice it is only exerted in situations where the Parliament and Commission are truly at loggerheads.

While the European Parliament has thus proven to be weak in addressing the 'democratic deficit' within the decision-making process, the Council of Ministers has not proven to be much better situated to hold the Commission accountable. Even though member-states are represented through their experts on comitology committees, national executives have no direct control over the work of bureaucrats in Brussels. Domestically, bureaucrats are often constrained and limited in their actions by their elected ministers, who in turn are accountable to the national public through the respective legislature or national parliament. However, at the supranational level, there is no direct requirement placed upon the Commission to consult national officials in designing and implementing supranational policy (outside of the core institutional functions of the Council of Ministers). Indeed, Commission bureaucrats often operate in an environment free of direct political supervision.

The Council of Ministers, where member-state governments are officially represented in the EU hierarchy, legislates at the 'European' level without being directly empowered to do so by mass publics (and therefore without being subjected to sufficient democratic control, transparency and accountability). [96] Although it is often argued that 'democracy' is upheld in the Council due to the fact that member-state representatives are, in most cases, democratically-elected, such arguments are often deceptive, since such Ministers (1) are directly

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[95] *Modus Vivendi*, 1996 O.J. (C 102) 1.
[96] Officially called the Council of the European Union, as set forth by Articles 145-148, 150-154 of the Treaty on the European Union.

appointed by national executives, not the people; (2) are not fully accountable to a legislative body such as the European Parliament; and (3) are not equal in their power or representation (due to the impartiality of the qualified-majority voting principle). This last point is often stressed by the smaller members of the EU, since the qualified majority voting procedure (in which votes are allocated in Council in rough proportion to the size of the member-states) inherently favours the interests of the larger members, namely Britain, France, Germany, Italy and Spain. While steadfastly protected by the more Eurosceptic members (especially the UK), smaller members argue that their interests and influence are often placed second to those of the larger ones. As Finnish Prime Minister Paavo Lipponen recently commented, "many in the big countries still entertain the illusion that they live in the time of 19th century Europe, and that the smaller ones have a smaller stake...big countries tend to act like a directorate, to meet and make deals outside the common table...there should be a place for small countries so that we have a balanced situation."[97]

III.   Reforming the European Commission

The attempts at institutional reform that have been made over the past decade, and that continue to be made, focus for the most part on improving accountability between the European Commission and the European Parliament, without any attention given to reforming the internal structure of the Commission, Council, or mechanisms to include outside civil society and interest group

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[97] Interview Finnish Prime Minister Paavo Lipponen during the launch of the Finnish Presidency of the European Union in Turku, Finland. Article by Martin Walker, The Guardian, (June 25, 1999) 15.

participation. Information and a greater institutional role for the Parliament in the

decision-making process have been the main thrust of these changes. In 1988,

the Commission began forwarding all important comitology proposals to the

Parliament,[98] followed by all proposals relating to the administration of structural

funds in 1993,[99] all draft implementing measures in 1994,[100] and draft committee

agendas and aggregate results of votes taken in management and regulatory

committees in 1996.[101] Most recently, responding to resolutions passed at the

Intergovernmental Conference in 1996, the Commission issued a proposal

providing that:

> "The European Parliament shall be informed of committee proceedings on a
> regular basis. To that end, it shall receive agendas for committee meetings, draft
> measures submitted to the committees for the implementation of instruments
> adopted by [co-decision], and the results of voting. It shall also be kept informed
> wherever the Commission transmits to the Council measures or proposals for
> measures to be taken."[102]

Concerning the Parliament's institutional role, as described above, it obtained a

rather weak commitment from the Commission and Council in the 1994 *Modus*

Vivendi to take into account and accommodate, insofar as possible, the

Parliament's views on implementing policy.[103] A proposal put forward in 1995,

although not yet implemented, recommended that the Commission and

comitology committees pass a resolution making policy decisions subject to a

veto from either the Council or Parliament, requiring that new or revised policy be

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[98] See the Plumb-Delors Agreement of 1988.
[99] See the Klepsch-Millan Agreement of 13 July 1993, 1993 O.J. (C 255) 19.
[100] See the *Modus Vivendi*, 1996 O.J. (C 102) 1.
[101] Commission's Undertaking of 26 September 1996, Budget Resolution of 24 October 1996, 1996 O.J. (C 347) 134.
[102] Art. 7, Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission, 24 June 1998, COM (1998) 380.
[103] *Modus Vivendi*, 1996 O.J. (C 102) 1.

sent for full legislative approval.[104] Currently, the Parliament is also seeking to

obtain powers that would allow them to send new policies back to the

Commission for revisions:

> "The new decision and the resulting inter-institutional agreement should make
> provision for...a guarantee of real control by the Parliament over implementing
> rules, ie. the Parliament's ability to intervene, within a specific deadline, with
> regard to the Commission's proposal for an implementing measure, so that it
> may, if appropriate, question its legitimacy, an abuse of delegated power or the
> content, ie. the wrongful exercise of delegated power, in this event and if a
> representative number of Members of Parliament vote in favour, the Commission
> should withdraw or amend the proposed implementing measure or submit a
> legislative proposal in accordance with the provisions of the Treaty; the
> Commission should do likewise if the Council or its committee objects to an
> implementing measure."[105]

Although the current proposal does not include a formal role for the Parliament in

the comitology process, it would revise the regulatory committee procedure to

eliminate the need to consult the Council. Instead, upon a negative committee

opinion (or if no opinion is delivered), the proposal would require the Commission

to follow the legislative procedure set out in the Maastricht and Amsterdam

Treaties respecting both the Parliament's and the Council's legislative

prerogatives.[106]

Even if Parliament obtains all that it seeks in the next round of comitology

reforms (scheduled to take place early in the next millennium), it still will be hard-

put to monitor and control the Commission's bureaucracy. First, the information

communicated by the Commission, often of a very complex and scientific nature,

must be processed to check for questionable policy choices. The logistical and

administrative burden that would be placed on the Parliament, should this reform

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[104] See the Westerdorp Group Report of December 1995.
[105] Art. 2(b), Resolution on the modification of the procedures for the exercise of
implementing powers conferred on the Commission (Council Decision of 13 July 1987),
Sept. 16, 1998.

be achieved, would significantly diminish the overall efficiency and effectiveness of the current decision-making hierarchy in Brussels and Strasbourg. Second, although a veto power over policy-making rules would give the Parliament a greater voice in decision-making than is currently the case, it still is a fairly weak control device. As the Council's experience with comitology has shown, only very rarely are the Commission and comitology committees unable to reach agreement on policy choices. Therefore, if a parliamentary veto were to operate in place of the current Council veto (namely only in the case of disagreement between the Commission and a parliamentary committee), it would serve as a very sporadic means of holding the executive accountable. Even if the veto were to operate directly upon a Commission proposal, it still is a time-consuming and complex procedure that would most likely only be used in cases of highly publicised issues that parliamentarians and Council members feel they cannot ignore (ie. the Report of the Committee of Independent Experts of March 1999).

IV.   Reforming the European Parliament

Of course, parliaments are often regarded as the core repository of democratic legitimacy, based on their representative character. As previously stated, in order to achieve 'optimal' legitimacy in the European Union, the decision-making process must be based on a principle of reciprocity (both *output* and *input* legitimacy). In other words, parliaments must construct policy based on the best interests of national constituencies *as well as* be proactive in seeking input from those constituencies in decision-making. Since the European

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[106] Art. 5, Proposal for a Council Decision laying down the procedures for the exercise of

Parliament has traditionally been quite weak in both these regards (vis-à-vis the 'democratic deficit'), the powers of the European Parliament at the supranational level remain quite limited.[107]

Plans for increased political union between the member-states invariably include proposals for a further strengthening of the powers of a directly elected European Parliament. Both the Maastricht and Amsterdam Treaties include some transfer of additional powers to the Parliament. The direct legitimation of the EU necessarily includes the strengthening of the powers of elected representatives at the supranational level. The Union will need to go further along this road, bearing in mind that supranational governance at the EU-level is not and is unlikely to become structured along the same lines as the domestic political communities within the member-states.

The transfer of additional powers to the European Parliament, such as the proposed power of electing the President of the Commission, would be a good measure at improving the accountability controls on the EU institutions. However, additional powers for MEPs and the Parliament may not be enough. Political parties, still very much national in their outlook and internal organisation, have largely failed to act as mediators between European institutions and the ordinary citizen, while transnational party organisations remain, for the most part, loose coalitions (ie. the European People's Party, Party of European Socialists, etc.). Not surprisingly, national issues have always dominated election campaigns for the European Parliament. During the 1999 election campaign,

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implementing powers conferred on the Commission, 24 June 1998, COM (1998) 380.
[107] See the resolution of the European Parliament on the 'democratic deficit' in the European Community of June 17, 1988, O.J. (C 187/229).

British voters were hard-pressed to find news or debates on EU policy, other than the potential effects of the U.K. entering into the EMU. Instead, the majority of media coverage centred on the consequences of a predicted (and confirmed) low voter turnout, and the subsequent domestic fortunes of the Labour and Conservative Parties. There remains precious little public debate about Europe-wide issues.

Two additional characteristics of a parliamentary approach to governance are also worthy of mention: (1) that parliaments are supposed to be able to control the operation of the executive, and (2) that the executive is presented as the mere implementation of policy decisions taken through the legislative process. However, in Brussels, unlike national systems, the legislative principal is divided. There decision-making is in the hands of three competing institutions - the Commission, Council, and Parliament - all of whom assert some measure of control over the European Union and its member-states. Technically, the Commission proposes policy and the Parliament and Council make decisions, with the relative power of the Parliament and the Council changing depending on the issue area and the governing Treaty provisions. The Commission is staffed by civil servants and led by Commissioners under a duty to pursue the EU's supranational mission, members of the European Parliament (MEP's) are directly elected (thus tacitly representing the interests of EU citizens), while the national bureaucrats, ministers, and heads of government in the Council of Ministers represent national interests. Often the institutions must compete with one another for influence over administration of the EU, especially difficult because one of the three core institutions - the Commission - is directly responsible for

administration of the EU on a day-to-day basis. A traditional parliamentary approach, designed for only one core institution (the parliament or legislature) and one that directly commands the state administration (the bureaucracy) does not exist at the 'European' level (although the Treaty of Amsterdam has made a number of revisions to the institutional structure of the EU, the empowering the EP and its parliamentarians).

V. The European Parliament and the Treaty of Amsterdam

The European Parliament is largely viewed as the institution that has most benefited from the Treaty of Amsterdam. The Parliament's position has been accentuated in several key respects. Firstly, its legislative powers have been greatly extended. The co-decision process between the Council and Parliament has been entrenched in a number of new Treaty areas, including social policy and public health. Even more significant is the fact that a shift to co-decision was amended in 15 existing provisions, mainly to replace the co-operation procedure (which will henceforth be confined to monetary policy). The key provisions in question cover decisions in areas such as the free movement of workers, the freedom of establishment, transport policy, research and environment policies. Co-decision will therefore emerge as the most frequently used legislative procedure.

Slowly, the strengthening of MEP's powers and authority in the Amsterdam Treaty seems to show that the balance of power is shifting in favour of the European Parliament (vis-à-vis input legitimacy and, by extension and process, output legitimacy). The simplification and the extension of the co-

decision procedure has certainly improved the overall position of the European Parliament. Parliament has also seen its standing improved in the areas of Common Foreign and Security Policy and Justice and Home Affairs. Whereas these areas were once solely confined to the realm of intergovernmentalism, the Parliament must now be consulted in relation to new policy proposals and decision-making.

In addition, Article 158(2) of the Amsterdam Treaty now requires the nomination of the 'President-designate' to be approved by the European Parliament. However, this more or less ratifies already existing procedure in the appointment of the Commission. In July 1994, when the nomination of Jacques Santer appeared to be in doubt following the United Kingdom's veto of Belgian Prime Minister Jean-Luc Dehaene, Santer made it clear that he would withdraw if he failed to rally the support of a majority of MEPs. As Corbett commented, "the nature of the debate on Mr. Santer in July 1994, following his statement to the Parliament, and the meetings he held with the three largest political groups, illustrated the character of the procedure as one of building-up a parliamentary majority for the confirmation vote."[108] The only truly new development introduced through the Amsterdam Treaty regards the position of the President vis-à-vis the other commissioners. The Treaty of Amsterdam now states that, in explicit terms, "the Commission shall work under the political guidance of its President."[109] The President's authority over the Commission may be significantly reinforced by his enhanced status in the appointment procedure (vis-à-vis accountability). Although the President has not been granted disciplinary

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[108] Richard Corbett et al., The European Parliament, (London: Catermill, 1995) 248.

powers, the threat of a non-renewal may assist in imposing a certain discipline on Commission colleagues. It can therefore be argued that the Amsterdam Treaty has made a further step in the direction of parliamentary models in which the head of the executive is recognised as having special authority over the cabinet.

In little more than ten years, the Parliament has moved from the status of a consultative assembly to that of a quasi-legislative body (although the power to initiate legislation remains under the control of the Commission). Furthermore, it would appear that this process is far from completion. However, it is unclear whether this would resolve the dilemma of strengthening input legitimacy in the supranational system. In this sense, the option of strengthening the role of national parliaments in the EU decision-making process is slowing receiving more and more attention.

Some theorists have gone so far as to suggest the creation of an assembly at the 'European' level composed of representatives of national parliaments, which would be given a say in the European legislative process.[110] However, this proposal has not received much success. In 1996 the Intergovernmental Conference unambiguously rejected the creation of a permanent institution with its own staff and location based on what it called 'a second chamber', comprising members of national parliaments. Instead, the Conference reaffirmed that the primary role of national parliaments in relation to 'European' decision-making "lies in the monitoring and control that each

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[109] Ref. the Amsterdam Treaty, Art. 163.
[110] Andréani, 20 and others.

parliament exerts over its government's action in the Council," and that it is up to each state, and not to the Union, to regulate these powers.[111]

The Amsterdam Treaty adopted this approach. While it recognises the need to enable national parliaments to express their views on Community matters, it essentially limits the powers of state legislatures to providing that they should be forwarded all Commission consultation documents and that draft legislative proposals should be made available to their governments 'as appropriate'.[112]

To summarise, the role of national parliaments remains essentially indirect. They may attempt to influence the behaviour of supranational institutions, but they have been denied any direct involvement in the supranational decision-making process, and have such weakened an overall sense of growing input legitimacy. Time will tell whether the Amsterdam Treaty will become a watershed in regards to a strengthening of legitimacy and civil society input into EU affairs.

VI.   Conclusion: Reforming the European Union

In the context of the EU's legitimacy problems, many potential solutions have been forwarded, as outlined above. Indeed, many of these concentrate on strengthening provisions for output, input and social legitimacy, as well as improving the mechanisms that exist to provide for open, accessible and transparent structures of democratic governance. However, as many observers have noted, what is needed in Europe is a profound shift in the way both

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[111] See the Reflection Group's report, 5 December 1995, paragraph 91-93.

decision-makers and individuals perceive their role in the integration process. Without such a change, nation-states and intergovernmentalism will remain the primary ground for political action and allegiance in Europe.

As previously stated, this chapter asserts that that integral mismanagement in the European Commission is more a result of systemic failings attributed to the weak construction of supranational institutions in Brussels and lack of legitimate governance within the EU 'polity', rather than simply a result of character deficiencies amongst some elites and decision-makers. While imposing new rules and constraints on the Commissioners and their directorates may help to improve the perceived accountability problems, it does little to facilitate a strengthening of overall legitimacy as required by the entrenchment of a strong form of democratic governance. In this sense, the argument is that, to ensure greater levels of legitimacy, the institutions of the Union must be restructured to provide for greater linkages between individual citizens and their governors. This includes better linkages between MEP's and their constituents; better avenues to access information on EU policy and programmes; an elected Commission; and strengthening the role of democratically elected national parliaments within the EU hierarchy.

Although European Commission President Romano Prodi indicated his intention to quickly act throughout the tenure of his appointment to improve the overall accountability and transparency of the supranational system, including submitting the newly appointed Commission to a careful review process within the Parliament, these changes do go far in improving the internal structuring of

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[112] Treaty of Amsterdam, Articles 1-2.

one of the key EU institutions, and says little about the overall lack of legitimacy

within the entire hierarchy of the Union itself.

CHAPTER FOUR

CONCLUSION: CHALLENGES FOR INTEGRATION IN THE 21ST CENTURY

The debate over the legitimacy in the European Union is generally based

on whether or not the integration process has engendered the development of

effective democratic rule and institutions at the supranational level. As previously

stated, without adequate levels of 'social legitimacy', sound democratic rule

based on consensual, legitimate representation and governance can be very

difficult to achieve. Indeed, persistent cleavages in socially diverse regions and

states present numerous problems for polities of all types. Constraining these

cleavages and limiting their pervasiveness in any political culture is much easier

to achieve when accepted structures of liberal democracies (i.e. legitimate

democratic institutions) are already in place. Building a new supranational polity

from the ground-up, and doing so in a peaceful, democratic manner, presents a

number of new and interesting challenges for political and social integration in

Europe.

Two basic prerequisites are required for the development of mechanisms

for the protection of, and power-sharing between, various ethnic and social

communities - the common exercise of political authority by consensus between

the democratically-elected community leaders, and the separate, autonomous

exercise of political functions by those communities. While the individual

member-states can be seen to meet these criteria in varying degrees, adopting

common values of political empowerment to both democratically elected leaders

and different social groups across the European Union has been difficult to achieve, particularly given the absence of shared and common values amongst individual citizens in Europe. Since there is no prevalent 'European' identity or mechanisms to effectively restrain autonomous action on the part of member-states or their more activist social groups, 'social legitimacy' has become increasingly fragmented and thus very difficult to fulfill.[113]

There also appears to be little consensus about the most legitimate allocation of policy-making competences between the state, supranational and subnational levels. Some of the dilemma may be decided by *ad hoc*, issue-specific analysis and decision-making. However, most of the dilemma extends to general claims about the comparative efficacy and efficiency of centralized versus decentralized (member-state) regulation. Centralized regulation may be more efficient at the global level compared to the 'European' level; decentralized regulation may be more efficient at the subnational level than at the national level. In fact, the possibility exists that both domestic and supranational institutions within the European Union are '*mutually reinforcing*', providing shared benefits to both sets of institutional actors as a result of political and economic integration. State-level actors may often take credit for accomplishments made at the 'European' level, whereas supranational actors may claim responsibility for structural adjustment mechanisms and other regional policies that directly benefit particular member-states. What is important here, however, is not necessarily safeguarding *efficiency* in policy-making, but the preservation of *effectiveness* in

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[113] Especially related to 'hard-core' political issues, such as security. Although a common foreign and security policy has been proposed, the recent divergent actions of the member-states in responding to the Kosovo crisis highlights this point.

representing the interests of individual citizens and mass publics. In this case, a combination of optimal output, input, and social legitimacy, as well as individualistic mechanisms of democracy, are essential.

Europeans still have much that divides them, and those differences are immediately apparent to anyone who travels across the region. There are different languages, cultural traditions, legal, education and health care systems, social priorities, etc. European also have differences in the way they govern themselves, and in what they have been able to achieve with their national economic and social welfare systems. The further enlargement of the EU, as scheduled to take place within the next decade, will further exacerbate these differences. Managing a bureaucracy in 11 different official languages is difficult enough. Expanding the Union to include Eastern European states may have the effect of making the EU an administrative nightmare (ie. the Common Agricultural Policy), and may subsequently lead to backlashes against a unified 'Europe'. As Sofos noted, in some cases the integration process has given new life to ethnic and cultural conflict in Europe, where "the traditional exponents of nationalist and ethnic/religious particularistic political discourses...[are] fuelled by anti-European rhetoric."[114]

Subsequently, there have been increasing demands for the restructuring of authority in the European Union based on further subnational, or 'regional' representation (vis-à-vis the Committee of the Regions). This approach recognizes that the subnational level is closer to the individual citizens, thus enhancing their opportunities to participate in, and exercise control over some

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[114] Sofos, 10.

degree of political decision-making. It is also recognized that individuals possess strong regional identities. Boyce justifies reinforcing subnational identities as reducing the distance between the electors and the elected, thus improving overall accountability.[115] Moreover, as Sofos contends, "the same process that pushes towards economic and political integration also produces regional consciousness and a growing desire for identification and also membership in a community more distinct and more homogeneous than national society."[116] With the divergence of interests and identities amongst subnational regions and localities across Europe, the best interests of individual citizens would appear to be greatly enhanced through local and/or national representation and continued intergovernmentalism.

Democratic legitimacy of European Union integration clearly hinges upon (1) the strengthening of linkages between individual citizens and decision-makers at the supranational level (input and output legitimacy), and (2) a strengthening of individual identification to the EU (social legitimacy and secondary allegiance). Consequently, the highly technocratic nature of the integration process has distanced the EU institutions from the individual citizen and strengthened his/her 'allegiance' to their respective nation-state (primary allegiance). Although public opinion over the last twenty-five years, as measured through both opinion polling at election time and Eurobarometer studies, shows a steady increase in individual support for integration (53% approval rating in March 1999), it also indicates a general lack of understanding of what the Commission, Parliament

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[115] Boyce (1993), 473.
[116] Sofos, 10-11.

and Council really are.[117] Subsequently, survey studies showing individual support for the Union activities are skewed.

Knowledge of the degree of political legitimacy of a particular institution of governance allows analysing the degree of stability and effectiveness of that institution, as well as a certain understanding of the interrelation among the indicators of legitimacy, stability and effectiveness of the political system in which the institution operates.[118] Essentially, the higher the legitimacy of the institution, the higher its effectiveness (vis-à-vis output legitimacy).

This research argues that an increase in the Commission's accountability would increase the overall stability of the Union itself, which will have an inevitable impact on the institutional legitimacy of the centralised institutions. Indeed, the resignation of the European Commission and Europe-wide ratification of the Amsterdam Treaty has emphasised the fundamental change of role, activity and effectiveness of the European Parliament in the EU system of governance and supranational organisation. Moreover, these actions also demonstrated the necessity to improve the accountability, transparency and institutional arrangements of the EU, which are necessary for the Union's vitality and sustainability as the integration process evolves.

The need for increased individual involvement and, by extension, higher levels of input and social legitimacy are seen to be a vital necessity for the identification and development of the *direct* legitimacy of the EU. The European Parliament is still the only supranational institution of the EU, directly elected by the European public and capable of controlling the activities of the European

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[117] Ref. Eurobarometer 50, March 1999. See also Sobisch, 130.

bureaucracy. The placement on 'equal footing' with the Council of Ministers, enjoyed by the EP after the Amsterdam Treaty came into force, has certainly opened a wider arena for the Parliament in this area to provide administrative control and policy implementation monitoring of the European Commission. Furthermore, once these mechanisms to infuse a greater degree of input, output and social legitimacy into the supranational system have been implemented and given additional support by publics and political leaders at both the state and supranational levels, the European Union itself will gain a higher degree of individual allegiance and support by respective constituencies.

The resignation of the Commission due to "misleading management" emphasises that the power of the European Parliament significantly increased in 1999, giving MEPs a legitimate basis to keep the Commissioners responsible and accountable to the Parliament for their actions. In other words, the institutional crisis represented an important opportunity to reinforce some of the core political dimensions of democratic governance, by strengthening the accountability of the Commission to the Parliament, and by offering the chance to build a new, strong, politically-responsible and efficient Commission. If the Commission was willing to play a significant and important role in the supranational system, it had to experience the reformation and reorganisation of its internal and external effectiveness to increase accountability and overall legitimacy.

The case study of the Report on Mismanagement also highlights the difference between the individual and systemic accountability problems as found

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[118] Christiansen, 75.

within the centralised institutions. While improving the legitimacy 'access points' (vis-à-vis *input* and *output legitimacy*) within the Commission may go far in improving its 'democratic deficit', it cannot fully resolve the dilemma since not *all* of the legitimacy criteria may be accommodated within the Union (namely, that of *social legitimacy*). It is thus reiterated that, while not discounting the possibility that changes may take place to further integrate the political aspects of the European Union within individuals' minds, and a more unified 'European' political community does not seem likely. The nation-state remains the main loci for individual political action, representation, and policy ratification.

The resignation of the Santer Commission last year highlights the accountability problems found within the centralized institutions. However, it is my contention that inherent mismanagement in the European Commission is more a result of systemic failings attributed to the weak construction of supranational institutions in Brussels and lack of legitimate governance within the EU 'polity', rather than simply a result of character deficiencies amongst some elites and decision-makers. While imposing new rules and constraints on the Commissioners and their directorates may help to improve the perceived accountability problems, it does little to facilitate a strengthening of overall legitimacy as required by the entrenchment of a strong form of democratic governance. In this sense, the argument is that, to ensure greater levels of legitimacy, the institutions of the Union must be restructured to provide for greater linkages between individual citizens and their governors. This includes better linkages between MEP's and their constituents; better avenues to access information on EU policy and programs; an elected Commission; and

strengthening the role of democratically elected national parliaments within the

EU hierarchy. For the time being, and until mass publics and individuals in

Europe feel closer to both (1) a 'European' common identity and (2)

supranational institutions of governance, it is clear that European policy-making

remains fundamentally subject to consensual rule between member-state

governments, democratically legitimated by their national constituents and

accountable to domestic parliaments.

APPENDIX ONE

HIGHLIGHTS OF THE 'FIRST REPORT ON ALLEGATIONS REGARDING FRAUD, MISMANAGEMENT AND NEPOTISM IN THE EUROPEAN COMMISSION', 15 MARCH 1999

In the wake of a series of corruption scandals involving fraud and irregularities in EU finances, a commission official, Paul van Buitenen, sent information to the European Parliament detailing cases of fraud in 1998.

In the subsequent showdown between the European Parliament and the European Commission, a compromise deal was worked out. This involved a code of conduct, governing commissioners and their relationships with their personal staff. An independent committee was also set up to investigate the fraud charges. Their report, which led to the resignation of the entire Santer Commission, heading off what would most likely have been a full censure of the Commission.

The following represents an abstract of the findings of this report. Following the resignation of the Commission, Romano Prodi, former Prime Minister of Italy, was appointed to the presidency of the Commission on July 9, 1999. Subsequently, Mr. Prodi's Cabinet underwent an exhaustive review process before the European Parliament to ensure the viability and qualifications of the various candidates.

The First Report on Allegations Regarding Fraud, Mismanagement and Nepotism in the European Commission

- The Head of the EC Tourism Unit was engaged in unauthorised external activities in his sphere of responsibility, giving rise to embezzlement, corruption and favouritism;

- In the Tourism Unit there were a shortage of human resources and inconsistencies in their management which were likely to culminate in conflicts of interest and fraudulent operations;

- The Commission was slow in checking (they took no action between April 1990 and July 1993) the accusations leveled against the Tourist Unit - and when they were checked the inquiries were incomplete;

- In relation to the European Community Humanitarian Office (ECHO), four contracts were awarded in 1993/94 for the provision of humanitarian aid operations in Africa and the former Yugoslavia. These were awarded to three companies. However, one of these three controlled the other two through a fiduciary arrangement in Luxembourg. This 'holding' company had direct relationships with numerous Commission services. It was later established that numerous contracts filed with the Commission were entirely fictitious, even though it was reported that they had been to the Commission (the total sum involved was ECU 2.4 million). More importantly, no investigation was carried out by the Commission until four years after the signing

of the first contract, and then only when the suspected fraud had been leaked to the media.

- In relation to the 'Leonardo da Vinci' programme, a draft internal audit report was issued as early as 20 July 1998. Its findings included:

  - Invoices were submitted for payment without supporting documents; the only requirement was approval of the Director; there was no centralised purchase order system;

  - Nearly all printing assignments and the whole publication budget were awarded to one company - and these amounts represented the company's entire turnover. They were paid ECU 300,000 on average per year;

  - The obligation that at least three estimates should be obtained for expenditure above ECU 10,000 was circumvented by splitting the total amounts charged so that they were all under the ECU 10,000 limit;

  - The Head of Administration received authority from October 1996 to authorise payments up to BEF 100,000. From this point on she wrote cheques made payable to herself totaling BEF 1,500,000 up to March 1998. She was subsequently dismissed when this fraud was detected - but claimed that she had received oral approval from her director to consider these amounts as an advance payment to her;

  - The Director's wife succeeded the sacked Head of Administration (the wife was already an assistant there). She did not have the appropriate qualifications nor spoke a second language - a prerequisite for her position;

  - The Director's wife's vacated position was then filled by the Director's future daughter-in-law;

Although the report found no one commissioner guilty of any direct fraud, it concluded that it was difficult to find anyone with even the slightest sense of responsibility for what had happened.

A number of prominent commissioners were named in the report, which details a culture of favouritism and mishandling of taxpayers' money. It is sprinkled with words like complacency, incompetence and arrogance:

- Jacques Santer, President of the Commission, was criticised over allegations of fraud in the commission's security office, for which he was responsible. Although he was cleared of allegations of favouritism, the Committee accused him of giving evasive and misleading answers to the European Parliament in 1998 on suggestions of fraud.

- Edith Cresson, the former French prime minister, was accused of favouritism. She appointed a close friend, a dentist from her hometown of Chatellerault, to head the EU aids research project. The report also says Ms. Cresson bears serious responsibility for her failure to act in response to serious irregularities in the running of the Leonardo youth training programme.

- Joao de Deus Pinheiro, a Portugese commissioner, appointed his brother-in-law as a key adviser.

- Manuel Marin, Spanish Vice-President of the Commission, was criticised for responding slowly to fraud within an EU aid project, funding help to poorer countries of the Mediterranean region.

- Monika Wulf-Mathies, a German commissioner responsible for regional policy, was criticised for using inappropriate procedures to appoint an associate to her staff.

- Jacques Delors, who presided over the commission before Mr. Santer, was also cited in the Report as failing to follow up allegations of fraud in the commission's security service.

SOURCE: BBC News Online Service.

APPENDIX TWO

"PRINCIPLES FOR MANAGING ETHICS IN THE PUBLIC SERVICE"
OECD RESOLUTION OF 23 APRIL 1998

To find an example of a major international organisation adopting a code of conduct, one recent illustration is provided by the adoption by the Council of the OECD on 23 April 1998 of a set of "Principles for Managing Ethics in the Public Service". Its twelve principles are:

1. Ethical standards for public service should be clear;

2. Ethical standards should be reflected in the legal framework;

3. Ethical guidance should be available to public servants;

4. Public servants should know their rights and obligations when exposing wrongdoing;

5. Political commitment to ethics should reinforce the ethical conduct of public servants;

6. The decision-making process should be transparent and open to scrutiny;

7. There should be clear guidelines for interaction between the public and private sectors;

8. Managers should demonstrate and promote ethical conduct;

9. Management policies, procedure and practices should promote ethical conduct;

10. Public service conditions and management of human resources should promote ethical conduct;

11. Adequate accountability mechanisms should be in place within the public service;

12. Appropriate procedures and sanctions should exist to deal with misconduct.

SOURCE: OECD, Council Resolution of 23 April 1998.

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