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## Legitimate Rule in the European Union

### The Academic Debate

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# 1. Introduction: The Problem of Legitimacy in the European Union [\[Endnote 1\]](#)

Since the beginning of the 1990s, observers of European international relations have been able to witness an apparent ideological contradiction. On the one hand, the communist system collapsed in the Eastern part of the continent as a result of its failure to successfully compete with the Western liberal democracies in the domains of ideological attractiveness, economic performance and social welfare. Liberal democracy established itself as the sole standard of legitimate rule for the entire European system. Although many of the post-Communist societies in Eastern Europe do not meet this standard yet (and it is highly doubtful whether all of them will in the foreseeable future), the standard itself is not questioned by any rival ideology. On the other hand, the signing of the Maastricht Treaty on European Union (TEU) in 1991 triggered an intense public debate about the legitimacy of European political integration and popular opposition in many of the Western European countries, most visibly in Denmark where the TEU was at first rejected by the electorate in a referendum in 1992. At the same time when Western democracy had won its "international debate" with communism (cf. Schimmelfennig 1995), a "democratic deficit" was discovered in one of the core regions of the triumphant system.

This apparently contradictory development provides evidence for a thorough restatement of the issue of legitimate rule in the European international system. The basic ordering principle of the modern European (or "Westphalian") system has been internal and external state sovereignty. Binding commitments may result from agreements among states as legal equals, but there cannot be any *supranational* authority to issue and to enforce legitimate rules pertaining to the external behavior of states or to their domestic affairs. Recent international developments indicate that the modern interstate system is undergoing profound change. This change is described as the evolution of either a "post-westphalian" or a "neo-mediaeval" system (Bull 1977; Zacher 1992). Processes bound to undermine exclusive state sovereignty are the "dehierarchization of state-society relations" (Scharpf 1991: 622f.) and the globalization of many political issue-areas (both limiting the state's internal sovereignty) as well as the transnationalization of foreign policy and the internationalization of governance (both limiting the

state's external sovereignty). These processes are probably more advanced in Western Europe than in any other region of the international system. European political integration is a novel and extraordinary development within the international system: In contrast to other processes of political integration in modern European history, it is neither an example of empire-building of the Napoleonic or Russian/Soviet kind nor of nation-building of the Italian or German type, but the voluntary and peaceful transfer of (parts of) the authority of established nation-states to a multinational organization. To a far greater extent than other international organizations, the European Union has crossed the boundary from horizontal (or anarchical) interstate cooperation to vertical (or hierarchical) policy-making in a multi-level political system, in which the states are but one level of the polity (if still the most important one).

Until the second half of the 1980s, the issue of legitimate rule could largely be evaded in this polity, because European integration was limited to a few policy sectors and decision-making at the European level was based on the consensus of the member state governments. The EC 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 (Wallace 1993: 96f.). Functional and consensual cooperation at the European level was widely held to leave democratic legitimacy at the national level intact (cf. Scharpf 1993: 180).

Since the Single European Act (SEA) and the Treaty on European Union, however, the integration process has made a "great leap forward". Several new policy sectors have been europeanized. The European Union has not just become an internal market, it also possesses redistributive powers. In many issue-areas, such as agricultural policy and policies connected with the internal market, political regulation eludes the control of the individual member states and is subject to policy-making in sectoral multi-level networks composed of specialized national and European interest-groups and bureaucracies (cf., e.g., Héritier 1993; Peters 1992; Schumann 1993). Areas like foreign policy, border controls, and currency, which are supposed to belong to the core of state sovereignty, have been put on the European agenda and may soon come under supranational authority. Moreover, both the SEA and the TEU have expanded majority decision-making in the Council of Ministers. Consequently, European law has not only gone beyond the technical regulation of coordination problems for a small number of sectoral policies, but it can also possess direct effect and supremacy over national law in states which did not consent to them.

Under these circumstances, the Europeanization of policy-making could no longer be mainly based on indirect legitimacy. The more power over issues of core state sovereignty and redistribution was transferred to the European level, the more the Community was in need of its own sources of direct popular support. This has become a salient political issue insofar as the long-time "permissive consensus" of the European societies toward functional European integration has been politicized and turned into widespread mistrust and skepticism toward "Europe" as a result of "Maastricht" (cf. Reif 1993a; 1993b: 134). A European "legitimacy deficit" or even "legitimacy crisis" was discovered, and it triggered a lively political and academic debate about the legitimate order of the European Union.

In multi-level systems, two types of conflict about the legitimate order can emerge: (1) a dissensus about the legitimating principles of rule at each level of the system, and (2) a dissensus about the legitimate distribution of authority between the levels. As stated above, the issue of legitimate rule at the *national* level has been settled in favor of liberal democracy for the time to come. Furthermore, there is a widespread consensus that the standard of democracy is not confined to the realm of domestic rule but must also be applied to European policy-making. And finally, it is almost generally agreed that the European Union in its current state does not meet this standard. [\[Endnote 2\]](#)

The legitimacy deficit is commonly seen to originate from an "uneven denationalization" (Zürn 1992): The transfer of political decisions and allocations from the national to the European level has weakened democratic influence and control at the national level without having been compensated by equally strong democratic

institutions and processes at the European level. The Council of Ministers, the representation of national governments, legislates at the European level without being directly empowered in European affairs by the national democratic constituencies and without being subjected to sufficient democratic control and accountability.

Despite this consensus about the democratic norm and its deficient realization in the European Union, there is neither agreement on the exact nature of the violation of the democratic standard nor about the remedy for this lack of legitimacy. This is mainly because "democracy" is underdetermined - in particular with regard to the multi-level and multi-national European system of governance:

1. There are several historical and theoretical *models of democracy* (Held 1987) which lead to different prescriptions for the best form of democratic rule.
2. There is no consensus about the normative *criteria of legitimacy* according to which "democracy" is considered to be the most legitimate system. Neither does the literature agree on the *empirical prerequisites of a functioning democratic system*. When it comes to democracy at the international level, these normative and empirical criteria lead to different prescriptions for a European polity.
3. The standard theory of democracy presupposes a unitary nation-state and is silent about the *specific questions of legitimacy raised in multi-level, multi-national systems*. It does not tell us anything about the legitimate distribution of authority between the levels (if all levels are democratically ordered).
4. Finally, if democracy means "government by the people", it is far from obvious in a multi-national political system who is "the people".

The aim of this paper is to give a systematic overview of the academic debate about legitimate rule in the European Union. This overview is based on English and German language contributions which have been published in the past five years, i.e. roughly since the signing of the TEU. In order to analyze the debate I use the concepts of argumentation theory. According to the theory of argumentation, the basic situation of a debate can be described as follows: A proponent *P* claims the validity of his standpoint *s* which is disputed by an opponent *O*. If *P* wants to convince *O* of *s*, *P* has to offer an argument *a*. By putting forward *a*, *P* supposes that *a* is valid and convincing ground for *s*. In other words, *P* claims not only that *a* is true in itself but also that the truth or rightness of *s* can be inferred from *a*. This latter claim is called the "warrant" or "backing" *b(a)*. This gives us the basic argumentative formula "*s* because *a* according to *b*". [\[Endnote 3\]](#) Such an analysis of the debate makes the contributions to it comparable and reveals its structure.

The paper sets out with a classification of the standpoints taken in the debate on the legitimate European multi-level system with regard to both legitimate rule at the European level and the distribution of competences between levels (chapter 2). The arguments and backings put forward in support of these standpoints are analyzed in chapter 3. Moreover, the paper points out the theoretical and empirical disputes behind the claims advanced. It thus helps to pose the right questions for social research addressing the issue of a legitimate European constitution, and to indicate what will have to be known in order to advance and, maybe, to settle the academic debate. [\[Endnote 4\]](#) It is my observation that the main standpoints and arguments in the academic debate are on the table and are being repeated over and over again. The focus of research should therefore shift to the theoretical and empirical issues on which the contributions to the debate are based. Finally: Although the European Union is certainly unique in its supranational authority, globalization and international governance widely impinge upon the organization of the state. The European debate may therefore have general implications for the "Third Transformation" of democracy (Dahl 1989: 317ff.).

The debate is mainly based on *three controversial theories* of democratic legitimacy:

1. The theory of *output legitimacy* claims that a political system obtains legitimacy by effectively and efficiently realizing the citizens' goals and solving their problems. According to this theory, the democratic order at the European level ought to maximize the effectiveness and efficiency of policy-making. This

includes an important role for functional organizations and majoritarian decision-making. Competences should be allocated to the level which is most capable of achieving a given goal and to solve a given problem. Whereas it is agreed that this principle requires a competitive allocation of competences between levels, the desirable degree of (de-)centralization is disputed among proponents of output legitimacy.

2. A political system achieves *input legitimacy* if the citizens possess political equality and if they effectively participate in, and exercise control of, the political decisions. Accordingly, the democratic order at the European level ought to maximize equal, direct, and effective citizen influence on European policy-making and government accountability. This includes a strengthening of the European Parliament (EP) and elements of direct democracy. The supreme authority should be allocated to the level at which political equality, participation and accountability are best ensured.
3. According to the theory of *social legitimacy*, the legitimacy of a political order depends on the degree of social homogeneity, the strength of civil society institutions, and the existence of a collective identity among the citizens. Therefore, policy-making at the European level ought to protect the communities which fulfill the conditions of social legitimacy: They are the subjects of democracy and must retain a maximum of political autonomy. In the European Union, this theory requires consensual interstate decision-making and the protection of national autonomy by an exclusive and minimal allocation of competences to the Union.

The analysis of the argumentative constellations in the debate on legitimate rule in the European Union reveals one fundamental *controversy between individualism or cosmopolitanism on which input legitimacy is based and communitarianism on which social legitimacy is based*. I propose to transform this controversy into the empirical question whether an individualistic and majoritarian liberal democracy requires a developed civil society, a high degree of social homogeneity, and a collective identity of its citizens. By reference to the results of comparative political studies, this question can be answered in the affirmative and in favor of social legitimacy. Since the prerequisites of social legitimacy are only weakly developed at the European level, European governance ought to be characterized by a high degree of inter-community power-sharing in the forms of consociationalism and national autonomy.

This result emphasizes the major dilemma to be encountered in the debate, i.e. the *dilemma between the requirements of social legitimacy and of output legitimacy*. In brief, it means that the requirements of social legitimacy - high degrees of national autonomy and European consociationalism - can only be honored at the expense of system capacity and effective political decision-making. There are two ways out of this dilemma: Firstly, there is a dispute about the effectiveness and efficiency of centralized versus decentralized regulation. The dilemma would disappear if it could be shown that decentralized competition between autonomous units was indeed superior. Secondly, there is a dispute about the possibility of strengthening European civil society, homogeneity, and collective identity. The dilemma would also disappear if it could be shown that strong and democratic institutions at the European level would in turn create the lacking prerequisites of social legitimacy. The analysis suggests that these are the core issues to be settled by further research.

## 2. Standpoints

In this section of the paper, I will present a classification of *standpoints* in the academic debate on the legitimacy of the European Union. It has been inductively constructed on the basis of the very diverse views put forward in the academic debate. In a first step, I deconstructed the usually multi-dimensional real standpoints into one-dimensional (most often dichotomic) ones. Wherever possible, I related these one-dimensional standpoints to classifications and categories proposed in the literature about democratic systems. The single-variable classifications were then, in a second step, systematically recombined. I thus arrive not only at a reconstruction of the standpoints taken in the debate, but also at a number of possible standpoints that have not been taken (at least in the contributions to the debate I analyzed). [\[Endnote 5\]](#)



## 2.1. The Legitimate Democratic Order at the European Level

### 2.1.1. The Subject of Democracy

The first and fundamental distinction of democratic orders at the European level results from the answer to the question: "*Who is the subject of democracy?*" The basic dichotomy here is: the *individual* or some *collective*. This distinction can also be found in the conceptualizations proposed by Archibugi/Held and Bienen/Rittberger/Wagner.

- Archibugi and Held (1995: 12) distinguish between *cosmopolitan democracy* and *international democracy*. They define cosmopolitan democracy as "a model of political organization in which citizens, wherever they are located in the world, have a voice, input and political representation in international affairs, in parallel with and independently of their own governments" (13). By contrast, in "international democracy" only states are represented at the supranational level.
- Bienen, Rittberger and Wagner (1996) distinguish between *cosmopolitan* and *communitarian principles* with regard to the subject of democracy at the international level and, thus, already refer to the philosophical background of the individual/collective dichotomy. Whereas cosmopolitans regard the individual as the basic bearer of democratic rights, (democratic) communitarians regard the community as the fundamental democratic entity possessing a value and rights of its own. The national community of the state but also subnational (cultural, religious, ethnic etc.) communities qualify as subjects of international democracy.

If one looks for the simplest but nonetheless the most fundamental distinction of models of democracy at the international level, this is it. However, it does not differentiate enough to capture the great diversity of positions within either the individualistic or the collectivistic camp.

The next, immediately following question is: "*Which individuals and which collectives are the subject of democracy?*" For the individualist position, this question is hardly posed any more. It is now commonly agreed in Western democracies that men as well as women, above a certain age and regardless of their property, are (formally) equal subjects of democracy. The one issue that is currently contested in many democratic countries is the "inclusiveness of citizenship" (Boyce 1993: 459) with regard to alien residents: Should European residents, who are not nationals of a EU member state, have democratic rights in the EU? However, this does not seem to be an issue in the *academic* debate about legitimate rule in the European Union.

More controversial is the choice of the collectives which can legitimately claim to be the fundamental subjects of democratic rule at the international level. The basic distinction here seems to be the one between *territorial* and *non-territorial* collectives. The most important territorial collective, for which most claims of primacy are made, is the *nation*, of course. However, in a multi-level system, the same claim can be advanced in favor of *subnational territorial communities*, like the Canadian Provinces, the German Länder, or the Spanish Regions. The possible variety of *non-territorial collectives*, which cut across territories or live as a scattered group in one territory, is even more diverse: Gender, race, nationality/ethnicity, or religion are plausible non-territorial criteria for the subjects of democracy which, however, do not seem to play a role in the debate about legitimate rule in the European Union. The only non-territorial candidates for democratic subject status are *functional collectives* like interest groups or, more generally, non-governmental organizations (NGOs). The classical example here is (neo-)corporatist decision-making between the state, the employers' associations and the trade unions. [\[Endnote 6\]](#)

### 2.1.2. Participation and Representation

Once the appropriate subject of democracy at the international level has been chosen, the next question is: "How does the subject of democracy participate in politics?" Here, the basic answers are: *directly* or *indirectly*. They

lead to one of the most common distinctions between models of democracy: *direct democracy* and *representative democracy*.

- *Held* (1987), in his comprehensive study of "models of democracy", also distinguishes these two broad types: *direct/participatory democracy*, on the one hand, and *liberal/representative democracy*, on the other (4). Within the liberal-democratic tradition, he distinguishes "two chief variants" (5) along the same lines: Whereas *protective democracy* emphasizes the protection of the citizens "from the governors" by representative and accountable government as well as legally circumscribed and divided state powers (70), *developmental democracy* and its derivatives require the citizens' active participation in political life (102, 262).

Held's models remain themselves firmly rooted in the individualistic model of democracy. And when we distinguish between (elements of) direct and representative democracy, we usually mean decision-making by referendum vs. decision-making by parliamentary vote (the members of parliament being themselves elected on a one person/one vote basis). However, the direct-indirect continuum also makes sense for collectivistic democracies. Both direct and representative modes of participation are possible if the subject of democracy at the upper level of government is a collective. An example for the first mode is the procedure for reshaping the Länder territories in the German federal system. It requires a referendum and a majority of votes *in each* of the territories affected. An example for the second mode is *senatorial representation* - Wyoming elects the same number of senators as does California. In addition, there are two more indirect forms of representation in collectivistic democracies. One is *parliamentary representation*: Here, the lower-level entity is represented at the upper level by members of its legislative - a common practice in Western international organizations like the Council of Europe, NATO, and the WEU. The other form can be called *executive representation*. In this case, the representatives of the collective at the upper level are delegated by the government of the collective. This is the normal form of representation in international organizations. But it can also be found in Germany where the second chamber does not consist of elected senators but of the representatives of the Länder governments.

### 2.1.3. Decision-making

The last major dimension on which models of democracy differ is the mode of decision-making. Two basic answers can be given to the question: "*How are democratic decisions to be made?*" They are: *by majority* or *by consensus*.

- In very much the same way, *Lijphart* (1984) distinguishes between the *Westminster* or *majoritarian* model and the *consensus* model of democracy, although these concepts are complex typologies built on a cluster of variables. [\[Endnote 7\]](#) Some key characteristics of the majoritarian model are: the concentration of executive power in one-party and bare-majority cabinets, the fusion of legislative and executive power with cabinet dominance and a plurality system of elections (6ff.). By contrast, the consensus model "emphasizes consensus instead of opposition, [...] includes rather than excludes, and [...] tries to maximize the size of the ruling majority" (23). This model generally encourages the sharing and the dispersal of power and features executive power-sharing, e.g. by grand coalitions, the separation of powers, and minority as well as proportional representation (23ff.).
- A similar categorization can be found in *Abromeit's* (1993) study of systems of interest mediation. There, the dichotomy is labeled *competition* and *concordance*.

Since majoritarian and consensual decision-making can be combined with all the models of democracy mentioned so far, I arrive at a taxonomy of 32 possible standpoints in the debate about the legitimate democratic order at the European level of policy-making (Table 1). As is generally the case with abstract classifications, real-world systems of democratic rule fall somewhat in between these categories. For example, in two-chamber parliamentary systems, one is often based on individualism (like the French Assemblée Nationale, the German Bundestag or the U.S. House of Representatives), the other on some sort of collectivism (like the French Sénat,

the German Bundesrat or the U.S. Senate). Weighted representation (like the different number of deputies for each country in the European Parliament) or weighted voting (like the different number of votes for the state representatives in the German Bundesrat or the European Council of Ministers) also reflect a compromise between the individualistic and collectivistic models of democracy.

Participation/Representation		direct		indirect						
				individual representation		parliamentary representation		executive representation		
Subject	Decision-making	majoritarian	consensual	maj.	con.	maj.	con.	maj.	con.	
individualistic		1	2	3	4	5	6	7	8	
collectivistic	non-territorial	functional	9	10	11	12	13	14	15	16
	territorial	subnational	17	18	19	21	21	22	23	24
		national	25	26	27	28	29	30	31	32

*Table 1: Standpoints in the Debate on the Legitimate Order at the European Level*

Where would one locate the European system in this matrix? The European system of the Luxembourg Accord of 1966 [Endnote 8] was a clear Type-32 system, which is situated in the lower right corner of the table and most strongly reflects a "Westphalian order" based on state sovereignty. Decisions were made consensually in the Council of Ministers, where the member nations were represented by their governments. The SEA and the TEU moved this system somewhat in the direction of a more individualistic, more direct and more majoritarian democracy:

(a) On certain issues, the Council of Ministers returned to weighted and qualified majoritarian decision-making as originally stipulated in the Treaties of Rome.

(b) The European Parliament, which features weighted individual representation and mainly majoritarian decision-making, was not limited to a consultative role any more. Although its powers do not equal those of the Council of Ministers, the cooperation and codecision procedures gave it some say in the European legislation process. However, since the Council of Ministers with its state representatives dominates legislation, and since majoritarian decision-making (if it takes place at all) is qualified, the European Union system is still predominantly a collectivist democracy of the national kind with executive representation and a preference for consensual decision-making.

## 2.2. Standpoints on Democracy at the European Level

Standpoints in the academic debate about the legitimate form of upper-level democracy can be subdivided roughly into three categories: "Westphalian" conservatism, collectivistic reform and individualistic reform.

### 2.2.1. "Westphalian" Conservatism

*Consensual interstate democracy (32):* [Endnote 9] In the conservative perspective, the EU's recent moving away from the "Westphalian" order of pure interstate democracy towards majority voting in the Council of Ministers and EP co-decision is seen as having increased rather than diminished its democratic deficit (Weiler 1991: 413f.). For the proponents of conservatism, the national government must remain the sole subject of democracy at the European level. It represents the sovereign nation (as the basic democratic community) and is democratically accountable to the national electorate and parliament. Legitimate policy-making at the European level is "to a very large degree dependent on the consensus rule" (Kielmansegg 1994: 30). The model of democracy often referred to by these authors is "consociationalism" (Lijphart), a system of concordance.



For most proponents of consensual interstate democracy, the right level to address the democracy deficit of the European Union is the national level. The lack of democratic empowerment and control of the national governments should not be compensated by strengthening the European Parliament or introducing elements of Europe-wide direct democracy. The legitimate remedy would be to strengthen the role of national parliaments vis-à-vis national governments in European politics: "The 'Europeanization' of national parliaments promises more democratization of European politics than a 'denationalization' of the European Parliament" (Lepsius 1991: 40).

### 2.2.2. Collectivistic Reform

Collectivistic reform of consensual interstate democracy can take three different general directions according to the three dimensions of the democratic system distinguished here: interstate democracy with more *majoritarian* decision-making; *international* democracy with more *direct* forms of representation; and *intercollective* democracy with more disaggregated *subjects*.

#### *Less Consensus*

*Majoritarian Interstate Rule (31)*: This is the standpoint which demands the least far-reaching reform in the European system. It simply requires to replace the consensus principle of the Luxembourg Accord more generally by majority decisions in the Council than heretofore.

#### *Less Mediation*

*Parliamentary Representation (29, 30)*: Witte (1995: 137f.) suggests that the nations be represented by members of the national parliament (instead of the national government) roughly proportional to the population size of the country. She sticks to consensual decision-making in the Council (139) which would result in a Type-30 system.

*Senatorial Representation (27, 28)*: Senatorial representation replaces territorial representation by governments with territorial representation by directly elected senators for each member state. Zürn (1996: 50) proposes this reform under the heading of "democratization of territorial representation" combined with majoritarian decision-making (Type 27).

#### *Less Aggregation*

*Regionalization (23, 24)*: Proponents of regionalization demand that the subjects of European democracy be not (exclusively) the nation-states but (also) the regions, the sub-national territorial entities. For example, the Committee of Regions created by the TEU could change from a mere consultative body to a full parliamentary chamber in the European system (Boyce 1993: 474).

*Functionalization (15, 16)*: In a functionalist perspective, non-governmental private or public interest groups are regarded as legitimate subjects of European democracy (in addition to the state). The European interest group and lobbying system is sometimes seen as an important contribution to representation and accountability at the European level and, to some extent, as a functional equivalent of parliamentarism in this context (Andersen/Eliassen 1996b: 54f.; Andersen/Burns 1996). Examples of this perspective are Evers' proposal to strengthen the Economic and Social Committee of the EU, which up until now possesses a consultative function only (1994: 127f.), and Zürn's (1996: 51) "transparent decision-making networks" in which NGOs should be represented provided that they possess a democratic internal structure. Andersen and Burns demand that "we need to explicate the concept of a citizenship of organizations, an organizational constitution, defining the role of organizations in governance and providing explicit or public norms to regulate them" (1996: 248). Yet, functionalization is never proposed as an exclusive reform strategy but usually in connection with the strengthening of individualism at the European level.

### 2.2.3. Individualistic Reform

*Parliamentarization (3, 4)*: Together with "consensual interstate democracy", "parliamentarization" represents the second major tendency in the academic debate on legitimate rule at the European level. [\[Endnote 10\]](#) Whereas "consensual interstate democracy" is the normal type of international decision-making between democratic states, "parliamentarism" belongs to the fundamental principles of their domestic political systems. By contrast to the standpoint of "consensual interstate democracy", "parliamentarization" considers the democracy deficit to be rooted in the lack of influence of the individual voters and the lack of power of the *European Parliament*. It seeks to strengthen the citizens' representation and parliamentary control at the European (and not only at the national) level. [\[Endnote 11\]](#) Proponents of this standpoint view the changes introduced by the SEA and the TEU as first but highly insufficient steps in the right directions of more individualism, more individual representation and more majoritarian decision-making.

A rather moderate demand for parliamentarization proposes a (true) two-chamber system, in which the legislative powers of the individualistic EP and the collectivistic Council are roughly equal. In accordance with the national model, the Commission would then be elected by the EP. [\[Endnote 12\]](#) This can be termed *federal parliamentarization*. By contrast, *unitary parliamentarization* demands a system in which individualist democracy and individual representation clearly prevail over collectivism and executive representation. Witte (1995: 137ff.), for instance, reduces the role of the Council (consisting of national parliamentarians, not of government representatives!) to constitutional decisions and leaves day-to-day allocations to the EP alone. Teutemann (1992: 335) sees no role whatsoever even for a reformed Council. All European legislation should rest exclusively with directly elected parliamentary bodies. [\[Endnote 13\]](#)

Some of the proponents of parliamentarization accept the principle of weighted national representation (Classen 1994: 248; more implicitly, Witte 1995: 138) or weighted voting (Europäische Strukturkommission 1994: 44) as a concession to collectivism. [\[Endnote 14\]](#) Others regard representation along national lines as inadmissible as the fact that the UK did not go along with the European standardization of the election system. [\[Endnote 15\]](#)

In the order of more and more far-reaching individualistic reform, we can thus distinguish four types of parliamentarization of the EU and name exemplary proponents for each type:

- (a) *federal parliamentarization*: equal two-chamber system with weighted representation in the EP (Bieber 1991; Wieland 1991);
- (b) *moderately federal parliamentarization*: equal two-chamber system with equal representation in the EP (Europäische Strukturkommission 1994; Preuß 1995; Williams 1991);
- (c) *moderately unitary parliamentarization*: EP dominance with weighted representation (Witte 1995); and
- (d) *unitary parliamentarization*: EP dominance with equal representation (Teutemann 1992).

*Direct Democratization (1, 2)*: By introducing the *direct* participation of the European citizens in Union affairs, direct democratization goes beyond parliamentarization. "Europe-wide referenda" (Zürn 1996: 49) would correspond to the classical form of direct democracy. They are favored by the "eurotopia" movement (Erne et al. 1995). "Citizen participation in the networks preparing and implementing EU policies" (Risse-Kappen 1996: 74) seems to be complementary to a more functional view of European democracy. Petersmann (1991; 1993) considers "additional substantive and procedural safeguards of the 'market freedoms' and fundamental rights of EC citizens" (1991: 270) to be the most important element of direct democracy and gives the European Court of Justice (ECJ) an important role in this respect (1993: 419f.). However, this is a rather peculiar, judicial and defensive, perspective on "direct democracy".

It is obvious that many of the potential standpoints contained in Table 1 are not actually taken in the debate. The largest cluster of purely "theoretical" standpoints can be found in the lower left quadrant of Table 1 which combines direct democracy and collectivism. (A decision-making system based on separate referenda in all member countries would fit there.) Table 2 summarizes the classification of reform strategies by which the academic proposals described in this chapter were ordered:

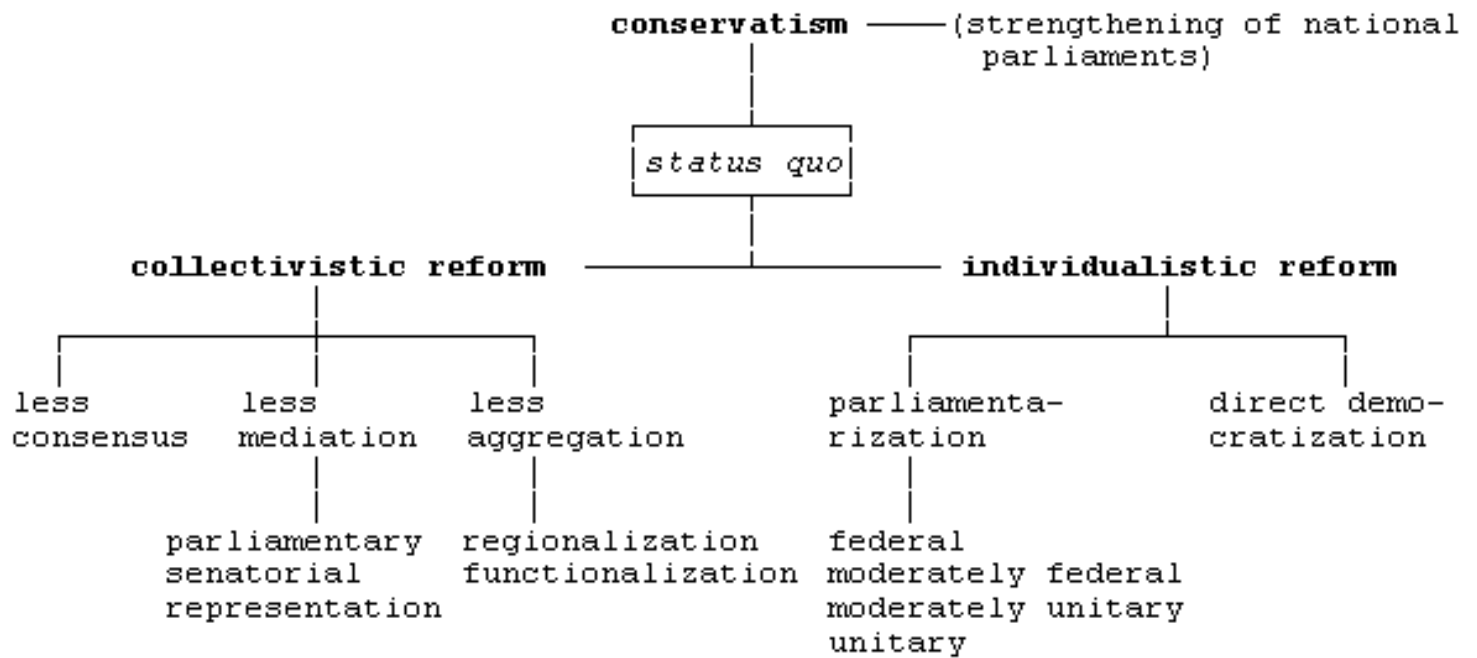


Table 2: Reform Strategies for the European Level

## 2.3. The Legitimate Distribution of Authority Between Levels

### 2.3.1. The Degree of Centralization

The second dissensus in multi-level systems is much easier to conceptualize. Most obviously, standpoints concerning the legitimate distribution of authority between levels vary with regard to the degree of *centralization*. If one assumes three distinct levels of governance in the European system, one arrives at three ideal-typical standpoints. However, the "degree of centralization" is a continuous variable, so that these three positions mark the extreme values and a central value. Real-world standpoints will usually fall in between these values.

1. *Supranationalism* maximizes the centralization of competences. At its extreme, it demands a unitary European government with no autonomy for national and sub-national units. However, a supranational standpoint is also compatible with a federal system in which the federal (European) level is dominant. Such a system is sometimes labeled a "unitarian federal state" and would be realized in a "United States of Europe".
2. *Nationalism* defends the sovereignty of the centralized nation-state, the ideal-type of modern European statehood. This standpoint demands that member states remain the "masters of the treaties", and that they reserve at least the core political functions for themselves. It corresponds with the Gaullist or Thatcherite vision of a "Europe des Patries".
3. *Regionalism* minimizes centralization. At its extreme, this position views Europe as an association of quasi-sovereign subnational entities (Europe of Regions). At a minimum, regionalists demand greater autonomy for the regional level and a greater say of regional governments in European politics.

### 2.3.2. Forms of Federalism

Two dichotomies of federal relationships are often referred to in the academic debate about the legitimacy of the EU:

1. Scharpf (1994: 133) distinguishes a *dual federalism* based on the *principle of separation* (Trennprinzip) from a *cooperative federalism* based on the *principle of interconnection* (Verbundprinzip). In dual

federalism, there is no overlapping of governmental agencies across levels. For instance, national governments only possess authority at the national level and do not participate in policy-making at the supranational or regional level. According to Scharpf, U.S. federalism follows the principle of separation. By contrast, German federalism belongs to the cooperative type. Here, policy-making is interconnected between Länder and national governments or governmental agencies. Although policy-making is quite highly centralized in Germany, the Länder governments are compensated by their own parliamentary body at the national level (the Bundesrat) and by an important role in national legislation. However, this dichotomy can be subsumed under the typology developed above: At the European level, the principle of separation in dual federalism is congruent with individualistic systems in which lower-level governmental bodies would be excluded from EU policy-making. The principle of interconnection is equivalent to executive or parliamentary representation at the upper level.

2. The other dichotomy one often finds in the literature cannot be subsumed in this way. It concerns the allocation of competences to the levels of government. Here, the basic distinction is between *exclusive* and *competitive* allocation (see the *ausschließliche* and *konkurrierende Zuständigkeiten* in German constitutional law). "Exclusive allocation" means that individual competences are clearly assigned to one and only one level, whereas "competitive allocation" means that the allocation is open and variable in principle.

This typology is too simple to classify the European system in more than a very rough and approximate way. It is situated somewhere between supranationalism and nationalism and is based on competitive allocation in some policy areas and on exclusive allocation in others. However, as in the case of the typology of legitimate democratic orders at the European level, it helps to point at general directions of change and reform. Since the mid-1980s, there is a clear tendency toward supranationalism. Most of it can be attributed to competitive allocation of competences with regard to the completion of the internal market. Some of it is best viewed as the transfer of exclusive competences to the European level: monetary union is the most obvious case here.

## 2.4. Standpoints on Authority Distribution

According to the typology developed above, five general directions of reform can be distinguished in the debate about the legitimate distribution of authority and competences: centralization, i.e. *Europeanization*; decentralization in two versions, i.e. *Renationalization* and *Regionalization*; *More Competition*, and *More Separation*. It should be noted, however, that in the literature reviewed here, there was no proponent of regionalization.

### *Competitive Europeanization*

Demands for more centralization in the EU multi-level system usually go together with claims for competitive allocation of competences. In his analysis of "rational competence distribution" in Europe, Teutemann (1992: 143) proposes a higher level of Europeanization than exists at the moment. Avowedly following the principle of "subsidiarity", he advocates more strongly institutionalized international coordination and cooperation for policies like foreign and defense policy, redistributive policies, home affairs, education and culture (285f.). [\[Endnote 16\]](#)

### *Competitive (Re-)Nationalization*

The competitive allocation of competences is sometimes also proposed by authors who are against further centralization and in favor of reserving the core of political functions for the nation-state. Kielmansegg (1994: 319) refers to the principle of "subsidiarity" in order to justify decentralization. Vaubel (1993) opposes Europeanization for two different reasons: In general, he regards decentralized policy competition as the better alternative. And in the few cases in which he accepts the superiority of centralization (foreign and security policies), he views the EU region as the inadequate region of integration.

### *(Re-)Nationalization Through Exclusion*

Most other authors, who share the nationalist conviction, mistrust competitive allocation. They think that competitive principles are too openly defined in order to prevent the expansion of supranationalism and to prevent national competences from being successively eroded. Therefore, nationalists generally demand a clearcut separation of competences between the levels and measures against the uncontrolled or sweeping transfer of authority to the European level. [\[Endnote 17\]](#)

## 3. Arguments and Backings

### 3.1. Backings and Theories of Legitimacy

The "backings" or "warrants" on which the opponents in the debate about legitimate European rule base their arguments can be grouped according to three fundamental ideas of political legitimacy: output legitimacy, input legitimacy, and social legitimacy. As in the case of the standpoints on the legitimate political order at the European level, these principles have been set up inductively on the basis of the contributions to the debate. They have not been deduced from democratic theory but can be associated with the literature on the theory of democracy. In the academic debate, these principles are used descriptively, i.e. as statements about the conditions under which the European Union will be regarded as legitimate by its citizens, as well as normatively or prescriptively. For this reason, they will also be referred to as "theories of legitimacy".

#### 3.1.1. Output Legitimacy

The principle of output legitimacy is the basis of all arguments which rest on the backing of effectiveness and efficiency. "Effectiveness" means the capacity of the political system to achieve the goals and to solve the problems of the citizens; "efficiency" refers to its being able to do so at a reasonable cost.

*(b1) The legitimacy of a political system depends on its capacity to achieve the citizens' goals and solve their problems effectively and efficiently. The higher this capacity, the more legitimate the system.*

Output legitimacy is at the core of technocratic or, more generally, utilitarian theories of legitimate rule (cf. Bogdandy 1993: 220). It emphasizes democracy as "government *for* the people" instead of "government *by* the people". How the democratic process is organized, is secondary to what it achieves for the citizens. A system of rule derives its legitimacy from its capacity; and it is democratic insofar as the output is in the interest of the citizens. Dahl and Tufte define "system capacity" as the capacity of a polity "to respond fully to the collective preferences of its citizens" (1973: 20).

According to the principle of output legitimacy, the political system at the European level should be ordered with a view to maximizing system capacity. This principle does not exclude any of the standpoints on the legitimate order at the European level *a priori*. 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. Legitimate European rule requires that the European "system capacity" is higher than the capacity of the individual states.

#### 3.1.2. Input Legitimacy

"Input legitimacy" subsumes all backings which base the legitimacy of a democratic system on the features of its political process. Dahl (1989: 109ff.) lists five criteria which must be fulfilled: effective participation of the citizens, voting equality at the decisive stage, an enlightened understanding of the matters to be decided, citizen control of the agenda, and inclusion of all adults subject to the binding collective decisions of the association.

*(b2) Legitimate rule must be based on the equal civil and political rights of all individual citizens.*

*(b3) Legitimate rule requires that the governors be directly empowered and held accountable by the citizens.*



*(b4) Legitimate rule requires that the powers be divided and that the executive power be checked and balanced.*

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 by the results these decisions produce). Nevertheless, it is assumed that only "government *by* the people" will ensure "government *for* the people". The theory of input legitimacy is based on individualism: The equal autonomy and rights as well as the equal and effective participation of *individual* citizens are the ultimate reference points for the legitimacy of a political order. In the field of international relations, input legitimacy is best expressed in *cosmopolitanism*. Cosmopolitanism regards the individual as the fundamental subject and bearer of rights in international politics - no matter which social group she belongs to or which state's citizen he is.

According to the principle of input legitimacy, legitimate rule at the European level must ultimately be based on individualism. As to the distribution of competences between levels, the supreme authority should be allocated to the level at which the citizens' political equality, their participation in, and control of, political decisions is most effectively ensured.

### 3.1.3. Social Legitimacy

"Social legitimacy" (Weiler 1991) encompasses those backings which consider the legitimacy of different forms of democratic rule to be dependent in one way or another on the social context in which a political system operates. Important social characteristics in this regard are the degree of social homogeneity, the collective identity of the individuals and the strength of civil society. "Social homogeneity" refers to the objective social structure, "collective identity" to the intersubjective social structure, and "civil society" to the actors and processes required for individualistic democracy to work.

*(b5) Legitimate rule depends on the strength of civil society. Individualistic, majoritarian democracy requires a well-organized civil society. In its absence, the subjects of democracy are those collectives which possess a strong internal civil society.*

*(b6) Legitimate rule depends on social homogeneity. Individualistic, majoritarian democracy requires a high degree of homogeneity. In heterogeneous societies, the subjects of democracy are the homogeneous collectives.*

*(b7) Legitimate rule depends on collective identity. Individualistic, majoritarian democracy requires a sustainable collective identity. In societies with fragmented identities, the subjects of democracy are the collectives towards which the identity of the citizens is primarily oriented.*

"Social legitimacy" is emphasized by the communitarian theory of legitimate rule. As a descriptive social theory, it gives the "community" analytical priority over the individual. According to "input legitimacy", social groups and the society have no subject status of their own. They are but the associations and aggregates of autonomous individuals, and they are legitimate insofar as they mirror the interests of the individuals they are composed of. According to "social legitimacy", however, individuals are not regarded as atomistic constituents of society. They are born and socialized into communities from which they acquire their values and normative orientations and towards which they develop a sense of belonging, a we-feeling, or collective identity. Societies are not politically integrated by the utility of cooperative arrangements for rationally calculating individuals (alone), but are (also) based on "sentiment, solidarity and a degree of political cohesion" (Laffan 1996: 95; cf. also Kielmansegg 1996: 50).

Democracy, then, is not a form of rule that can be established within any association of individuals. Communitarians interpret democracy as "government by the *people*". In their view, the "sovereignty of the *people*" indicates the necessary existence of a pre-political, pre-constitutional entity, a community regarding itself as "the people". This community creates a polity ordered according to its common values and norms: "It is not the constitution which defines the people; rather, the constitution is legitimized by the self-definition, articulated in the constitutional act, of a collective of citizens as the people" (Kielmansegg 1996: 54).

As a normative social theory, communitarianism attributes subject status and autonomous rights to the communities. Insofar as they are the focus of the collective identity and of the social life of their members, they deserve to be protected, e.g. by minority rights or by the principle of non-intervention in international law. One strand of communitarianism regards social legitimacy as a sufficient condition of legitimate rule. In this case, any shared values and norms as well as collective identities constitute a community which has the right to be protected. In this relativist perspective, an Islamic theocracy is no less legitimate than Western-style democracy. However, the strand of (democratic) communitarianism which is relevant in the debate on legitimate rule in the European Union, considers social legitimacy to be a necessary precondition for input and output legitimacy to obtain. In this view, not any community has the right to be protected. It is the democratic community to which the individual feels attached and within which he or she is able to participate effectively in the democratic process.[\[Endnote 18\]](#)

It follows from the principle of social legitimacy that the political order at the European level must protect the communities (by consensual decision-making) to which the collective identities of the individuals are oriented and which possess the best social prerequisites for stable democracy. At the same time, these collectives ought to retain a maximum of political autonomy.

## 3.2. Arguments about the Legitimate Order at the European Level

### 3.2.1. Arguments for Conservatism

*(s1) The legitimate democratic order at the European level ought to be based on consensual interstate decision-making,*

*(a1) because the civil society is nationally organized (b5);*

*(a2) because European societies are very heterogeneous (b6); and*

*(a3) because the collective identities in Europe are predominantly national (b7).*

Conservatism is clearly based on social legitimacy. The central argument for conservatism in the debate on the democracy deficit is the dominance of *national collective identities* in the European system.[\[Endnote 19\]](#)

According to this argument, a stable (individualistic) democracy presupposes the existence of a collective identity if people are to be subjected to majoritarian decision-making. Collective identities are built and stabilized in "communities of communication, experience and memory" (Kielmansegg 1994: 27). They require "the absence of deep ethnic, linguistic, religious, ideological or economic divisions" and the presence of solidarity and value consensus (Scharpf 1992: 296). Such a community does not exist at the European level (or only to a very limited extent). The multilingual structure of the European system severely limits communication, information and participation (Grimm 1992: 59). There is no European public, no European civil society composed of transnational organizations of interest aggregation. Instead, the European level is "characterized by the absence of genuine European political parties and European media" (Neunreither 1994: 300). Ethnic, economic, cultural and linguistic heterogeneity is much higher than in working multinational democracies (Kielmansegg 1996: 55f.; Scharpf 1992: 296). The collective memory is fragmented into national histories (Kielmansegg 1996: 56).

Therefore, a European collective identity, which would take precedence over national or regional allegiances and provide Europe-wide decisions with "social legitimacy", did not develop. Consequently, a liberal parliamentary democracy with individual representation and majoritarian decision-making will not work at the European level. European policy-making must be subject to a consensus between national governments which are democratically legitimated by their *national* constituencies and accountable to *national* parliaments.

Kielmansegg (1996: 60ff.) also opposes the representation of the nation by directly elected senators or members of national parliaments. He suspects that a group of representatives for each country would hardly be able to reach consensus about the *national* position to be defended at the European level and, thus, to pursue the national interest as effectively as representatives of the executive branch of a national government.

### 3.2.2. Arguments for Collectivistic Reform

#### *Less Consensus*

*(s2) The democratic order at the European level ought to be based more strongly on majoritarian decision-making,*

*(a4) because majoritarian decision-making is more effective and efficient than the current, predominantly consensual mode (b1).*

Proposals for the expansion of majoritarian decision-making at the European level are invariably justified by considerations of effectiveness and/or efficiency. Even conservative authors concede the validity of this claim - if not the priority of the backing to social legitimacy considerations (Kielmansegg 1994: 30, 32; Scharpf 1992: 297f.; Weiler 1991: 413). The same argument is sometimes used against the expansion of parliamentary participation either at the national or at the European level: Boyce (1993: 471) and Scharpf (1992: 298) criticize the proposal to enhance the legitimacy of European decisions by strengthening the role of national parliaments as being inefficient; Neunreither regards the direct involvement of national parliaments in European policy-making as counter-productive and leading to confusion (1994: 313).

#### *Less Mediation*

*(s3) The democratic order at the European level ought to be based on more direct forms of popular representation,*

*(a5) because the executive representatives of national governments are not elected in European elections and not accountable to the governed for their European decisions (b3); and*

*(a6) because they mix legislative and executive functions (b4).*

Proposals for less mediation in European policy-making are usually backed by the argument that the direct empowerment and the direct control of popular representatives is more democratic than indirect, mediated forms (Teutemann 1992: 20; Zürn 1996: 50). This argument is based on such fundamental democratic principles as accountability and the sovereignty of the people. Witte (1995: 50) and Evers (1994: 128f.) further criticize the concentration of power with the national bureaucracies: National executives are the legislators at the European level, and the European bureaucracy is not effectively controlled by any representative body.

#### *Less Aggregation*

##### *Regionalization:*

*(s4) The democratic order at the European level ought to be based more strongly on regional representation,*

*(a7) because the regional level is closer to the citizens and thus enhances their opportunities to participate in, and exercise control over, political decisions (b3); and*

*(a8) because citizens possess a strong regional identity (b7).*

Boyce (1993: 473f.) justifies regionalization as reducing the distance between the electors and the elected and thus improving accountability. Weiler (1991: 417) also mentions this backing as a prime motivation for regionalization. Regional identities are referred to, for instance, by Matlár (1995: 114).

##### *Functionalization:*

*(s5) The democratic order at the European level ought to be based more strongly on functional representation,*

*(a9) because functional organizations contribute to the efficiency of European policy-making (b1);*

*(a10) because functional organizations would contribute to societal representation and governmental accountability in the EU (b3);*

*(a11) because functional organizations would balance the executive dominance in the EU (b4);*

*(a12) because European civil society is most developed with regard to the economy and related fields (b5); and*

*(a13) because the EU is most homogeneous in the economic area (b6).*

Proponents of functionalization draw on all theories of legitimacy in support of their position. Evers (1994: 127)

infers his demand for corporate representation from his observation that the European Union is primarily an economic community. Zellentin (1993: 44) stresses the functional character of the European Union and denies its (current or future) statehood. I interpret *a12* and *a13* as being based on a backing which is very similar to the concept of social legitimacy used by proponents of conservatism. If European homogeneity is greatest in the economic sphere largely defined (Kluth 1995: 57), and if the European civil society is primarily a "bourgeois" or an expert society, economic actors and interest groups can be considered the most adequate subjects of democracy in this community. Or, in the more moderate version of a "third way" between conservatism and parliamentarism: If the lack of social legitimacy, a weak party system and a weakly developed European public prevent a full-fledged parliamentary democracy at the European level, a system of functional participation and representation with interest groups, social movements, and public interest NGOs will most effectively serve to mitigate the problems of representation and accountability in the European Union and can serve as a functional equivalent to parliaments in aggregating interests, checking the work of the executives and enhancing the transparency of European policy-making (Andersen/Burns 1996: 245f.; Andersen/Eliassen 1996b: 55; Zürn 1996: 51).

Moreover, parliamentary governance is regarded as increasingly ineffective by some of the proponents of functionalization: "Although parliamentary institutions are the core of Western political systems, they are undergoing systematic erosion. Modern governance is increasingly divided into semi-autonomous, specialized segments or sectors; that is, it is multi-polar with the interpenetration of state agencies and agents of civil society" (Andersen/Burns 1996: 227f.). In the highly complex Western societies, these "new forms of governance are more technically effective and flexible than the forms of representative democracy" (231).

### 3.2.3. Arguments for Individualistic Reform

#### *Parliamentarization*

- (s6) The democratic order at the European level ought to be based more strongly on parliamentarism, (a14) because parliamentary rule is more effective and efficient than direct democracy (b1); (a15) because a parliamentarization of the EU would guarantee the political equality and individual rights of the citizens (b2); (a16) because the EP is the only body in the EU system which represents the citizens of the EU and is legitimated by direct elections (b3); (a17) because the EP has too little power vis-à-vis the national and supranational bureaucracies in the European multi-level system (b4); (a18) because a parliamentarization of the EU would strengthen European civil society (b5); (a19) because the homogeneity of the Europeans is sufficiently high to sustain parliamentary democracy at the European level (b6); and (a20) because a parliamentarization of the EU would enhance the European identity of its citizens (b7).*

The claim of parliamentarization is based on all backings relevant in the academic debate. The main arguments for parliamentarization are the same as in national political systems: (a) Parliamentarization would make European policy-making democratically accountable and subject to popular participation; [\[Endnote 20\]](#) and (b): Parliamentarization would secure and emphasize equal individual rights (Matlárý 1995: 116; Petersmann 1991: 255) and optimize the "pursuit of individual goals" at the European level (Witte 1995: 128).

However, the proponents of parliamentarization do not altogether disregard the conservative preoccupation with social legitimacy. For those who base their argument on *economic theory* and its "methodological individualism", "collective identity" is usually no issue at all (Teutemann 1992, Witte 1995). But Kirchner and Schwartze (1995: 188f.) emphasize at least the requirement of a European public and party system: From the perspective of agency theory, the principals (or individual citizens) will not be able to check their (parliamentary) agents as effectively as in the national political systems if these features of a civil society do not exist. [\[Endnote 21\]](#)

Classen (1994) and Kluth (1995) challenge the conservative argument directly. They try to demonstrate that parliamentarization does not require the existence of a single, united people. In Classen's opinion, it is sufficient legitimation that the European Community is a popularly approved association of the European peoples (247). Kluth (1995: 42f., 66) understands democracy as government by the "totality of the active citizens" and thus considers "democracy without a people" to be possible. Furthermore, they argue that the common historical and cultural heritage, the objective necessity of effective cooperation, and the degree of homogeneity in the areas regulated by the European Union are strong enough to make majoritarian parliamentarism at the European level work. And real-world examples of multilingual democracies are supposed to show that a common language is no *conditio sine qua non* of a working democracy (Classen 1994: 255ff.; Kluth 1995: 59ff.).

Proponents of parliamentarization are ready to concede that the European public, the associations of a European civil society and European parties are as yet weakly organized. In their opinion, however, further parliamentarization and integration will in turn create a European democratic infrastructure and contribute to shift the loyalties of the Europeans to the European Union. The "very important function of the European Parliament to establish links with the citizens will only develop substantially when it gets more powers and when it becomes [...] a major decision-maker of the European Union" (Neunreither 1994: 302; cf. also Bieber 1991: 177). A European public will develop as soon as the citizens possess real influence on European politics (Gerhards 1993: 108).

Among the different models of parliamentarization, a *unitarian* preference is usually justified by the principle of (individual) equality (see *a15(b2)* above; Huber 1992: 363; Steffani 1995: 38). Proponents of a *federal* parliamentary system criticize that "individual equality" presupposes the existence of one people, and in the absence of a single European people must be combined with international proportionality (Bieber 1991: 168ff.; Classen 1994: 248; Preuß 1995: 64). They further justify their preference for a federal system with the heterogeneity and complexity of the European multi-level system (Europäische Strukturkommission 1994: 38; Preuß 1995: 67f.) and with the absence of a coherent civil society, a common political culture, and a collective identity (Europäische Strukturkommission 1994: 39; Wieland 1991: 446). The federalist arguments thus represent a compromise between communitarian and cosmopolitan arguments.

Finally, how is parliamentary democracy at the European level justified in contrast to functional or direct democracy? As far as functional democracy is concerned, the debate reproduces many of the arguments put forward in the debate on pluralism and interest groups in domestic politics: Functional democracy privileges well-endowed and highly organized groups and leads to a fragmentation and disintegration of the polity, whereas parliamentary democracy secures the equal rights of the citizens, integrates the society, and is able to articulate the common interest and pursue the common good. Therefore, even the most outspoken proponents of a greater role for functional representation regard a parliament as necessary in order to monitor and regulate the specialized governance systems (Andersen/Burns 1996: 246ff.). As far as direct democracy is concerned, Witte (following Buchanan) considers direct consensual rule to be the legitimate ideal but nevertheless prefers parliamentarization because of the scarcity of time and other resources and the costs of participatory democracy - an argument based on efficiency (1995: 129; see *a14(b1)*). Obviously, in the eyes of its proponents, parliamentarization covers the middle ground between the extreme input orientation represented by "direct democracy" and the extreme output orientation represented by "functional democracy".

### *Direct Democratization*

*(s7) The democratic order at the European level ought to be based more strongly on the direct participation of citizens,*

*(a21) because direct democracy best implements the equal political rights of the citizens (b2);*

*(a22) because direct democracy maximizes the citizens' participation in, and control of, policy-making (b3); and*

*(a23) because Europe-wide direct democracy would enhance the European identity of its citizens (b7).*

It is a standard argument for direct democracy as compared to representative democracy that it maximizes the



participation in, and direct influence of the citizens on, political decisions. Its proponents emphasize the great need for direct democracy at the European scale, because the European Parliament is even further removed from its constituency than national parliaments (Erne 1995: 229; Gross 1995: 193). Petersmann (1991: 266) adds that not only bureaucracies but also parliaments "often suffer from asymmetries in the organization, representation and political influence of group interests". The proponents of argument *a23* join the critics of parliamentarization as far as the lacking European collective identity is concerned. However, they claim that direct democratic procedures - like Europe-wide referenda which involve the individuals in European affairs and give them real influence - do not require a pre-existing collective identity but rather help to create one in the process. [\[Endnote 22\]](#)

### 3.3. Arguments about the Distribution of Authority Between Levels

#### 3.3.1. Arguments for Europeanization

*(s8) Authority in the European multi-level system ought to be distributed more strongly in favor of the European level,*

*(a24) because many political issues can be dealt with more effectively and efficiently at the European level than at lower levels (b1);*

*(a25) because a centralized regulation improves equal opportunities and the equal treatment of all citizens (b2); and*

*(a26) because a centralized provision of security would strengthen the identification of the European citizens with the European Union (b7).*

A further Europeanization of policy-making is basically justified by the Europeanization or even "globalization" of political problems. If political regulation is to be effective at all, it must be done at the supranational level. In other words, the level of regulation must be congruent with the scope of the problem and with the group of people affected by it (Teutemann 1992: 21; Zürn 1996: 39). The members of the Europäische Strukturkommission infer their demand for an enhanced role of the EU in the provision of external and internal security mainly from the ineffectiveness of national regulation in an internal market with increased mobility and permeable internal borders as well as from the "growing international responsibility" of the EU (1994: 18). However, they also mention that a stronger police and defense would, in addition, serve to gain the confidence of the European citizens (49). [\[Endnote 23\]](#)

Economists base their demand for centralization on theoretical approaches which can be subsumed under "economic federalism" (Kirchner/Schwartz 1995: 186ff.). It is invariably justified by macroeconomic advantages stemming from "economies of scale" or "scope", the reduction of transaction costs, and the internalization of external effects (Teutemann 1992: 57ff.). Centralization and harmonization is required if public goods were otherwise provided at suboptimal levels or if the decentralized competition between public authorities in an integrated market would lead to a downward spiral in political regulation and a "race to the bottom" in social security (Franzmeyer 1993: 69ff.; Sinn 1994: 164, 171, 176). Finally, Europeanization can be justified with the principle of equality: Only centrally decided and implemented policies make sure that all European citizens are treated equally (Pöhle 1993: 58).

#### 3.3.2. Arguments for (Re-)Nationalization

*(s9) Authority in the European multi-level system ought to be distributed more strongly in favor of the national level,*

*(a27) because political issues are dealt with more efficiently at the national than at the European level (b1);*

*(a28) because the national level is closer to the citizens than the European level and thus enhances their opportunities to participate in, and exercise control over, political decisions (b3);*

- (a29) because decentralization serves as a check against the concentration of political power (b4);  
 (a2) because European societies are very heterogeneous (b6); and  
 (a3) because the collective identities in Europe are predominantly national (b7).

Most commonly, the nationalistic standpoint is justified by the same principle of (the dominant) collective identity which is used to back the legitimacy of consensual interstate rule at the European level (Haungs 1993: 134). Since collective identities in Europe are predominantly national, the national level should also be the dominant level of European policy-making and reserve the core competences for itself. It is small wonder, therefore, that both standpoints are often linked (cf. Grimm 1992: 59). Scharpf (1994: 121) and the Europäische Strukturkommission (1994: 32) think that a higher degree of political integration would not be compatible with "the great diversity" of European nations. A related, but more general principle used to justify decentralization is the degree of homogeneity. It is claimed that a system should be the more centralized, the more homogeneous it is. Since Europe is, for instance, more heterogeneous than Germany, European federalism must be more decentralized (Haungs 1993: 134).

A further backing for decentralization with a long tradition in the theory of democracy and federalism are its positive effects on participation, accountability, and the division of powers. [\[Endnote 24\]](#) In the words of Weiler (1991: 416f.), an "integrated polity will not be undemocratic but it will be, in terms of the ability of citizens to influence policies affecting them, less democratic".

Finally, there is disagreement within the economists' camp with regard to the relative efficiency and desirability of centralization and decentralization. In favor of decentralization, it is argued that positive (or political) integration - in contrast to negative (or market) integration - limits the beneficial regulatory competition between political units. Market failures are more efficiently detected and corrected, innovations are more easily implemented in a decentralized system. The individuals' costs of signalling their preferences and of choosing the exit option increase with the degree of centralization. Thus, a centralized system is supposed to lead to inflexibility and to an often more inefficient provision of collective goods. And finally, high-level cooperation and centralization is regarded as being motivated by the political self-interest of politicians and bureaucrats or by rent-seeking interest groups, rather than by the general well-being. [\[Endnote 25\]](#)

In recent years, the principle of *subsidiarity* has been introduced to this inconclusive debate in order to determine the right distribution of authority in multi-level systems. However, analysts of European affairs do not tire of pointing out that "subsidiarity" can indeed mean a lot of things and serve many different interests (cf., e.g. Jachtenfuchs 1992; Rhodes 1992). For some, the "real" measure for competitive success is *efficiency*: Witte (1995: 133) operationalizes "subsidiarity" as a "rational" distribution of competences based upon objectively testable criteria. This will not help much as long as there is so little agreement about the relative efficiency of decentralization and centralization. For others, "subsidiarity" has a decentralizing bias, protective of the lower level collectives. In this interpretation, all competences should rest with the lowest possible level until it can be demonstrated that a transfer of authority to the higher level is necessary - and not just more efficient - in order to achieve effective regulation. Kielmansegg (1994: 31) even requires this necessity to be "obvious". Therefore, "subsidiarity" can be put forward by proponents of both further Europeanization and (re-)nationalization. Because of this ambiguity, proponents of (re-)nationalization generally mistrust competitive principles of competence allocation:

- (s10) *Authority in the European multi-level system ought to be distributed according to the principle of exclusive allocation, because (a30) exclusive allocation protects the national level from the erosion of its competences by the European level (cf. s9).*

The separation of competences is exclusively demanded by proponents of nationalization and justified by the same arguments. It is commonly agreed here that only a clear separation of competences can protect the

autonomy of the lower levels and their capacity to act effectively, whereas competition leads to uniformity (Scharpf 1992: 302; 1994: 120f.).

### 3.4. Theories of Legitimacy and Standpoints

As a conclusion and summary to this chapter, the theories of legitimate rule introduced at its beginning, i.e. output, input and social legitimacy, can now be linked in a general way to the standpoints described in the previous chapter. However, only a part of the prescriptions for legitimate rule in the European Union follow unambiguously from the theories of legitimacy. Some prescriptions are indeterminate or internally disputed. Others are based on more than one theory of legitimacy. Standpoints reflecting a combination of input and output legitimacy as well as standpoints derived from a combination of input and social legitimacy are very common in the academic debate, whereas a combination of output and social legitimacy is hardly found in the literature (see ch. 4.2. below). Table 3 gives an overview.

	<b>output legitimacy</b>	input/output legitimacy	<b>input legitimacy</b>	input/social legitimacy	<b>social legitimacy</b>
<b>subject of democracy</b>	functional organization	individual and functional organization	individual	individual and nation	nation
<b>participation</b>	indirect	individual and functional representation	direct	indirect (federal parliamentarization)	indirect (executive representation)
<b>decision-making</b>	majoritarian	majoritarian	mostly majoritarian	double consent	consensual between nations
<b>degree of centralization</b>	<i>disputed</i>	<i>disputed</i>	<i>disputed</i>	<i>indeterminate</i>	national
<b>allocation of competences</b>	competitive	competitive	<i>indeterminate</i>	exclusive	exclusive

Table 3: Theories of Legitimacy and Standpoints

- (1) According to the theory of *output legitimacy*, the European multi-level system should be based on
- (a) less consensus and more majoritarian decision-making (a4),
  - (b) indirect, representative policy-making rather than direct participation (a14),
  - (c) an important role for functional representation and participation (a9), and
  - (e) a competitive allocation of competences.

However, the theory of output legitimacy seems to be indifferent or indeterminate with regard to collectivistic vs. individualistic democracy and individual vs. parliamentary or executive representation. At least, there are no arguments in the debate that would allow to discriminate between these alternatives. Although there is agreement about the criterion of competence allocation (relative effectiveness and efficiency), there is no clear consensus as to the appropriate distribution of competences between levels. Proposals for both centralization and decentralization are justified by efficiency gains (a5, a6).

- (2) The theory of *input legitimacy* prescribes a European system with less mediation and aggregation (a7, a10, a11). Input legitimacy is maximized in an individualistic and direct democracy (a21, a22). Although a parliamentary democracy based on equal individual representation is more often demanded by proponents of equal rights, individual participation and control (a15, a16, a17), it already represents an implicit or explicit concession to efficiency and thus to output legitimacy (a14). For reasons of political equality, a unitary parliament at the European level is preferred to federalist parliamentarization (a15). On the same grounds,

functional democracy is rejected, although it enhances participation, representation, and transparency on the whole. As to the mode of decision-making, the theory of input legitimacy is not completely determinate. Proponents of this theory usually advocate majority voting based on equal individual rights and input opportunities. Only Witte (referring to Buchanan) argues that a consensus between individuals would be theoretically preferable. In this case, majority voting must be justified by efficiency gains. As to the degree of centralization and the mode of competence allocation to policy-making levels, the theory of input legitimacy is not sufficiently determinate either. Whereas decentralization enhances effective individual participation and control (a28) and the division of powers (a29), centralization may protect and secure the equality of rights of the European Union citizens as well as enhance their equal opportunities (a25).

(3) As stated above, majoritarian parliamentarism at the European level can already be regarded as a concession of input legitimacy to efficiency considerations. However, the combination of *output and input* principles is most obvious in the proposal to link functional representation in specialized policy-making systems with individual representation in parliaments. Considerations of effectiveness, efficiency, and pragmatic representation and participation balance the lack of individual equality in functional systems. In this combination, the indeterminacy of input legitimacy with regard to the principle of competence allocation disappears in favor of "competition", but the dispute on the degree of centralization cannot be solved.

(4) The theory of *social legitimacy* appears to be the least ambiguous. In the most widespread view, it requires a European system with consensual, interstate democracy and a dominance of the national level of policy-making to be secured by an exclusive and enumerated allocation of competences to the European level (a1, a2, a3). However, it is sometimes disputed that national identities are generally stronger than regional ones (a8). Moreover, proponents of functionalization consider the degree of homogeneity and the strength of civil society in the economic sector to fulfil at least the social prerequisites of a limited, functional democracy at the European level (a12, a13). Finally, most proponents of parliamentarization and direct democracy would concede the connection of social legitimacy and interstate democracy from a static perspective. They argue, however, that individualistic representation and centralized regulation will create the prerequisites of social legitimacy at the European level once they are in place (a18, a19, a20, a23, a26).

(5) When the principles of *input and social legitimacy* are combined, both the individual and the nation are regarded as legitimate subjects of multi-level democracy. The result is a mixed, federal system. In this mixed system, federal parliamentarization represents the compromise between government by a unitary European Parliament and government by state representatives alone, and the requirement of double consent, i.e. both by the representatives of individuals and by the states' representatives is the most striking feature of its decision-making system. [\[Endnote 26\]](#) While the degree of centralization cannot be clearly inferred from the combination of input and social legitimacy, proponents of a mixed, federal system favor the mutually exclusive allocation of competences to policy-making levels in order to stabilize the federal balance.

## 4. Suggestions for Further Debate and Research

In the analysis of argumentations, one can distinguish two intractable constellations:

1. In a *controversial argumentation*, the dissensus not only pertains to standpoints and arguments but also to the principle *b* which backs up the arguments. In the absence of a commonly accepted backing, there is no solution to the dissensus.
2. A special kind of controversy is the *argumentative dilemma*, which emerges when the same proponent accepts the validity of two or more backings which lead to contradictory arguments and standpoints. This constellation can be solved, if the proponent orders the backings with regard to priority. In general, however, controversies and dilemmas have to be transformed into competitive argumentations in order to be solved. In a *competitive argumentation*, all opponents recognize the same backing but advance opposite

arguments based on it. Under these circumstances, the dissensus can be dissolved if one of the opponents can give convincing evidence for his or her argument.

In the concluding chapter, I will identify one major controversy - the one between individualism and communitarianism - and one major dilemma in the academic debate on legitimate rule in the EU - the one between social legitimacy and output legitimacy. And I will suggest how these intractable constellations can be transformed into competitive arguments and become the subject of social science research.

## 4.1. Controversy: Individualism vs. Communitarianism

Since the debate about the legitimate order of the European Union is based upon a general democratic consensus of all participants, fundamental controversies are rather the exception, and not the rule. Most obviously, none flatly denies the validity of the principles of input legitimacy. The proponents of output legitimacy do not describe their standpoints as an alternative to input legitimacy, but rather consider effectiveness and efficiency to be enhanced by an indirect, majoritarian democracy with the participation of functional organizations. Neither do the proponents of social legitimacy oppose input legitimacy. They only contest the *applicability* of its principles in the particular social context of the European Union, because this level is considered lacking the political prerequisites that make individualistic democracy work at the national level. Likewise, many proponents of individualistic democracy do not dispute the importance of homogeneity, collective identity, and civil society. They simply do not regard the underdevelopment of these features in the European Union as a fundamental obstacle to parliamentarization - at least of the federal kind - or even to direct democratization. Nevertheless, there appears to be one deep controversy and one widespread dilemma in the debate.

The *controversy* is between the strictly individualistic adherents of input legitimacy, who reject the communitarian principles of social legitimacy, and those contributors to the debate who either give priority to social legitimacy or at least accept its relevance and validity. Incidentally, this controversy follows the disciplinary lines between economics and political science. Basically, it is rooted in the differences between individualism and communitarianism in philosophy and social theory. Economists base their claims about the legitimate European order not only on a methodological but also on a deeply normative individualism, whereas communitarianism attributes subject status and rights to collectives such as the nation. Indeed, the concept of "social legitimacy" based on collective identities and political cultures seems to be so alien to economists that they usually do not even mention and discuss it at all.

In order to solve a controversy, the argumentative constellation has to be transformed into "competition", i.e. from a normative and philosophical to an empirical and pragmatic question. Since all participants in the debate agree upon "liberal democracy" as the legitimate form of rule, this transformation is possible in principle. The pertinent question then is: "What are the social prerequisites of (a stable individualistic and majoritarian) liberal democracy (in a multi-national setting)?" In the order of increasing distance to pure individualism and input legitimacy, four hypotheses - based on backings 2, 5, 6, and 7 - can be formulated as answers to this question:

1. "Democracy needs no other social prerequisites than an association of interdependent individuals with equal civil and political rights." This is the pure cosmopolitan argument in its empirical form (*b2*).
2. "Democracy additionally requires intermediary or meso-institutions like a common public, a common system of societal organizations, and a common party system." This hypothesis adds the civil society requirement (*b5*). It is compatible with individualism, e.g., insofar as a common public can be seen as a prerequisite for the individuals to have equal opportunities for making choices that are in their best interest (cf. Dahl 1989: 112) or insofar as effective intermediary organizations are necessary to bridge the principal-agent gap (cf. Kirchner/Schwartz 1995: 188f., see ch. 3.2.3. above). Thus, this hypothesis indicates a possible area of agreement in the controversy.
3. "Democracy additionally requires a high degree of social homogeneity." In other words: The wider the societal gaps in terms of cultural values and understandings, economic well-being, or social stratification,



the more narrow the area of democratic compromise and consensus (*b6*). As a result, the liberal democratic political system will come under severe stress if the cultural, economic, or social groups are not either homogenized or given a status of their own in the decision-making system. This hypothesis goes beyond the previous one because it claims that the common institutions of civil society will either not come into existence in a heterogeneous context or will not be influential enough to bridge wide societal gaps. However, it does not demand a collective (national) identity as a necessary prerequisite of democracy. This seems to be the position of Habermas (1994: 643): "Democratic citizenship does not need to be rooted in the national identity of a people; notwithstanding the plurality of different cultural lifestyles, it requires, however, the socialization of all citizens in a common political culture." Nevertheless, the wording of Habermas' statement shows that his position cannot be subsumed under individualism anymore.

4. "Democracy requires a collective identity." This last hypothesis requires more than homogeneity for democracy to work. Whereas homogeneity makes it possible to say: "They are like us", collective identity is expressed in the statement: "They are part of us". To some extent, collective identity can even replace homogeneity: It creates solidarity across cultural, economic and social cleavages. It is assumed that without a certain degree of collective identity and solidarity, majority decisions and redistributive measures will hardly be accepted by the minority and by the losers in the redistribution process. Mistrust will prevail, and the democratic system will be in high danger of breaking down.

If a controversy is transformed into competition, second-order debates are triggered, of course. The basic question is: "Which of these hypotheses is empirically corroborated?" Political scientists would point to the comparative analysis of political systems in support of social legitimacy in its strong version. There certainly is a widespread analytical consensus on two points:

(a) "Ethnicity is the most difficult type of cleavage for a democracy to manage", more difficult than class or occupation, because it "taps cultural and symbolic issues - basic notions of identity and the self, of individual and group worth" (Diamond/Plattner 1994: xviii; cf. also Horowitz 1994). As multi-ethnic democratic societies like Canada or Belgium show, a common high esteem for democracy and the rule of law, i.e. a Habermasian consensus about constitutional principles and political values, does not prevent the emergence of separatism and the failure of centralized political institutions.

(b) follows from (a): If democracy is to remain stable in deeply divided societies, it must develop mechanisms for the protection of, and power-sharing between, communities. There are two basic mechanisms: The associational mechanism is "consociationalism" (Lijphart 1969). It means the common exercise of political authority by consensus between the democratically elected community leaders. The dissociational mechanism is "federalism". It means the separate, autonomous exercise of (a varying number of) political functions by the communities. Both mechanisms can be combined, of course, as in the case of Switzerland.

It follows that individualistic democracy presupposes more than just civil and political rights. In negative terms, it requires the absence of persistent social cleavages, especially when they are intersubjectively internalized through socially constructed images and identities. In positive terms, it requires the social glue that is provided by a collective identity based on shared values, understandings, and self-images. Once it is agreed that social legitimacy is an essential prerequisite of individualistic democracy, there appears to be widespread consensus, including the proponents of individualism and input legitimacy, that the characteristics of social legitimacy are lacking in European society: European civil society is hardly developed, its associations and institutions, e.g., the media, grassroots movements, and parties, are nationally fragmented. Heterogeneity is much greater than even in those Western societies, like Belgium and Canada, which currently face constitutional crises because of their multi-ethnicity. Collective identities are predominantly national, not European. At this point, however, there arises a dilemma between social and output legitimacy.

## 4.2. Dilemma: Output Legitimacy vs. Social Legitimacy

The legitimacy dilemma between output legitimacy and social legitimacy (as a prerequisite of input legitimacy) is regularly brought up by political scientists in their contributions to the academic debate. It has long been articulated and discussed in the literature on "size and democracy". In the words of Dahl and Tufte (1973: 138): "No single type or size of unit is optimal for achieving the twin goals of citizen effectiveness and system capacity. [...] Democratic goals conflict, and no single unit or kind of unit can best serve these goals." If citizen participation and control were the only relevant goals, small-scale politics in the homogeneous setting of a strong community would be optimal. However: "For to be truly effective, citizens must have political systems with the capacity to deal with matters that citizens regard as important. This will often call for very large systems" (109).

The European legitimacy dilemma, too, is seen to result from the fact that the principles of output legitimacy and social legitimacy cannot be honored simultaneously in the European multi-level system. As far as this dilemma concerns legitimate rule at the European level, the lack of the requisite communitarian underpinnings for a Europe-wide liberal democracy prevents "the only logical solution from a strict democratic point of view", i.e. "to strengthen the EU Parliament at the expense of the member states" (Andersen/Eliassen 1996a: 10f.). According to Kielmansegg (1994: 30), individualistic and majoritarian democracy "can provide democratic legitimacy only to a very limited extent" in an association of national communities. On the other hand, consensual interstate rule is becoming increasingly inadequate because effective and efficient European Union action requires majority decisions.

As far as the dilemma concerns the distribution of authority between levels, Scharpf (1994: 121) considers the economic integration in Western Europe to "create a political momentum whose immanent logic would correspond to a far higher degree of political integration and unitarization than would be compatible with the national diversity and autonomy requirements of the European countries". The dilemma is posed in a similar way by Zürn (1996: 40) - "While the prerequisite of convergence recommends an extension of the spatial scope of political regulation, the prerequisite of identity points in exactly the opposite direction." - and by Kohler-Koch (1993: 129), according to whom the common market requires political regulation, but the political system of the European Community lacks the capability of reconciling the requirements of effective collective action and democratic legitimacy in the absence of a transnational, European solidarity and civil society.

This dilemma is solved differently depending on which principle takes precedence for the authors. Scharpf and Kielmansegg give priority to social legitimacy. In their analysis, collective identity is the more fundamental principle of legitimacy. Zürn considers congruence to be the primary objective and expects that collective identity will follow in due course. As in the case of controversy, a non-voluntaristic solution to the dilemma requires its transformation into "competition".

## 4.3. Competition

Two competitive argumentations - both are already present in the debate on legitimate European rule - have the potential to solve the dilemma: the dispute about the rational distribution of competences between levels and the dispute about the creation of Europe-wide social legitimacy.

### *Distribution of Competences Between Levels*

The dispute about the rational distribution of competences between the levels of the European system is based on the shared backing of output legitimacy. If it could be shown that a (re-)nationalization or, more generally, decentralization of policy-making is the more effective and efficient way of satisfying the interests of European citizens, the dilemma would disappear. Output legitimacy and social legitimacy would both demand a "Europe des Patries". Only if political regulation at the European level indeed enhanced system capacity as defined by Dahl and Tufte, the dilemma would persist.

As of now, there is no consensus, not even among economists, about the most effective and efficient allocation of regulatory competences between the state and the international level. Some of the competition may be decided by issue-specific economic analysis. However, most of it extends to general claims about the comparative efficacy and efficiency of centralized (authority) and decentralized (market) regulation. An inherent difficulty of this dispute may be that neither of the arguments exclusively favors Europeanization or nationalization. Centralized regulation may be more efficient at the global than at the European level; decentralized regulation may be more efficient at the regional than at the national level. And if the degree of rational centralization depends on the issue at hand, political regulation will have to be split between levels. Such a result, even if it was convincingly established, would not solve the dilemma.

## *(2) The Creation of Social Legitimacy at the European Level*

The most pervasive competitive argumentation in the debate about the legitimate European order concerns the question whether the requirements of social legitimacy are fulfilled or fulfillable at the European level. If it could be shown that homogeneity, collective identity, and civil society develop in sufficient quality as soon as real power is transferred to a higher level of government and to a common parliament or the citizens of community, the dilemma would disappear even if centralized regulation at the European level proved to be most effective and efficient. In this case, both social and output legitimacy would call for a "Europe of Citizens".

This dispute requires to study processes of identity-building. So far, the evidence appears to be inconclusive: (a) On the one hand, identities are no fixed parameters. They can change and they have changed in the course of history. Historical experience to some extent supports the claim that collective identities follow effective common institutions. According to the modern age model of nation-building, the community would have to be actually experienced as a symbol of political identification and, in order to produce a transnational identity, it would have to demonstrate that it provides better protection against external and internal threats and/or a better satisfaction of individual needs than the state (cf. Bloom 1990: 61; Druckman 1994: 59ff.). Bloom (1990: 151) finds that, since the citizens of the member states do not actually experience the EC sufficiently as an autonomous object of political identification, the Community is not able to evoke a European identity. The promotion of European symbols since the 1970s (flag, passport, driver's license, license plates etc.) cannot alone transform existing national identities (cf. Christiansen 1995: 55f.). The greatest identification *potential* of the EU is sometimes seen in the chance that the EU may better assert itself in the global economic-technological competition - an equivalent to the territorial competition and military conflicts in the development of the nation- states - than the individual European countries (cf. Bloom 1990: 152; Münch 1993: 18).

(b) On the other hand, collective identities possess considerable staying power. The optimistic view that an increase in transnational communication and interactions - which is certainly facilitated by the institutions and policies of the European Union - will inevitably reshape the boundaries of collective identities, can hardly be found in the current literature. It is furthermore questionable whether the experience of the pre-democratic age of modern history is still valid today. "Integration before identity" or "state-building before nation-building" was possible then because state-building was the result of force exerted by a small ruling elite. If identity-building from above seems to be anachronistic, identity-building from below is faced with great obstacles, too. It is by no means clear whether European parliamentarization and direct democracy will enhance a European collective identity or strengthen national identities and exacerbate inter-nation conflict. The experience with referenda on European issues has been quite sobering. Wherever a referendum was held, it did not strengthen European identities but revealed that national identities are more entrenched in the population at large than in the elites. Instead of generating "European discourses", they generated nationally fragmented discourses on the future of national institutions. [\[Endnote 27\]](#) Finally, even if this perspective on identity-building was correct: How long would it take for the prerequisites of a European social legitimacy to emerge? A decade or half a century? And what would happen to the European Union in between? At any rate, "nation-building" at the European level would be a very long-term process. It would require a "step-by-step solution which makes use of the interaction between constitution-building and identity-building" (Kleeges 1995: 54; cf. also Christiansen 1995: 60). And it

would lead to the conclusion that inter-community consociationalism will, for the foreseeable future, remain the adequate form of governance at the European level.

## 5. Endnotes

1. I thank Andreas Hasenclever, Volker Rittberger and Michael Zürn for their helpful comments on an earlier version of this paper.
2. The only exceptions I have found are Kluth (1995: 95f.) and Wessels (1996: 63f.). Whereas Kluth claims that the European system is equivalent to the member states' systems in terms of parliamentary government, and that the differences between these systems are due to the federal character of the Union, Wessels regards "the highly differentiated participation of a multitude of actors from several territorial levels and functional groups" as a "new kind of democracy" which is particularly adequate, and stable, in the large area of the EU.
3. The terminology used here is based on Toulmin's standard scheme of reasoning (cf. Toulmin/Rieke/Janik 1979) as simplified, e.g. by Öhlschläger (1979) and Shi-Xu (1992). The term "standpoint" is Shi-Xu's; "argument" follows Öhlschläger's terminology; "backing" and "warrant" are used both by Toulmin and Shi-Xu.
4. Cf. the "claims" and "counterclaims" collected and ordered by Dahl/Tufte (1973: 13ff.) at the beginning of their book on "size and democracy". Many of these claims reappear in the European debate.
5. Nota bene: My goal is neither to pit individual authors against each other nor to criticize individual contributions with regard to their internal logic, clarity, and consistency (although much could be said about it). The aim is to develop a systematic classification, and for this purpose, the standpoints and arguments of the authors are often reconstructed in an ideal-type way.
6. In using the term "functional" I follow Anderson's article about "whether any forms of functional representation can be reconciled with basic democratic criteria of political design" (1977: 131).
7. According to his typology which is based on empirical observations, majoritarian democracies are at the same time individualistic and centralized, consensus democracies are collectivistic and decentralized. Conceptually, however, these dimensions are independent of each other: it is perfectly possible to conceive of democracies in which the consensus of individuals is required or majority vote among collectives is practiced.
8. The Luxembourg Accord of 1966 ended the French "policy of the empty" chair by conceding a right to veto to any state - even when the Treaties provided for majority voting.
9. Cf., e.g., Christiansen (1995), Grimm (1992), Haungs (1993), Kielmansegg (1994, 1996), Lepsius (1991), Scharpf (1992), Schauer (1992), Weiler (1991).
10. Bieber (1991); Boyce (1993: 473); Classen (1994); Matlár (1995: 116); Risse-Kappen (1996: 74); Wieland (1991); Williams (1991); Witte (1995).
11. Most proponents of parliamentarization also demand a stronger parliamentary influence at the national level and closer cooperation between parliaments at different levels (cf. Neunreither 1994: 303ff.; Williams 1991: 172f.).
12. Europäische Strukturkommission (1994: 40); Preuß (1995: 69f.); Weidenfeld (1995: 20 - he is a member of the "Europäische Strukturkommission" quoted above); Wieland (1991: 455); Williams (1991: 171, 173).
13. The reason for using the plural form here is that Teutemann wants the EU to be subdivided into seven functional communities, each with its own parliament. This is no collectivist plan, however, because the individual citizen is the subject of democracy in each of these functional communities.
14. The more "national weighting" is demanded, the more the distinction between parliamentarism and

senatorial representation is blurred.

15. Europäische Strukturkommission (1994: 44); Huber (1992: 371); Preuß (1995: 70); Steffani (1995: 41); Williams (1991: 173).
16. This standpoint is, by and large, shared by Franzmeyer (1993: 71ff.) and Sinn (1994: 164ff.). In a functionalist manner, Teutemann even demands to transcend the borders of the EU in many of these areas.
17. Cf. Europäische Strukturkommission (1994: 23, 32); Grimm (1992: 59); Haungs (1993: 134); Kleger (1995: 54); Lepsius (1991: 36); Petersmann (1991: 262; 1993: 421); Scharpf (1992: 302; 1994: 121ff.); Schauer (1992: 9); Wieland (1991: 447).
18. Cf. Bienen/Rittberger/Wagner (1996) for a comparison of both communitarian strands in the context of the debate on the democratization of the United Nations. For the purpose of this paper, I prefer not to juxtapose "liberalism" and "communitarianism". Firstly, democratic communitarianism is complementary, rather than contradictory, to political liberalism. Secondly, as Kymlicka shows, liberalism does account for "the individual's membership in a community and a culture" in principle (1989: 1).
19. Bogdandy (1993: 222); Christiansen (1995: 53); Evers (1994: 127); Haungs (1993: 135); Kielmansegg (1994: 27ff.; 1996: 54ff.); Neunreither (1994: 300, 312f.); Scharpf (1992: 296).
20. Huber (1992: 356); Kirchner/Schwartz (1995: 188); Matlár (1995: 116); Petersmann (1991: 255); Risse-Kappen (1996: 74); Williams (1991: 155).
21. Agency theory deals with the problem of ensuring that agents (like governments or companies) act in the interests of the principals (like voters or shareholders) - rather than in their own interest. It analyzes "agency slack" and offers institutional designs to remove it.
22. Cf. Jacobs (1995: 246f.); Zürn (1996: 49f.); and less clearly Kleger (1995: 49f.).
23. Although the authors would probably not take their statement as far as that, I deliberately inferred *a26* from it, because it can also be found in the general literature on identity formation (Bloom 1990: 61).
24. These and other arguments are listed by Bermann (1994: 340ff.); Bothe (1994: 24ff.); Dahl/Tufte (1973: 13ff.).
25. Cf. Behrens (1994: 89); Franzmeyer (1993: 69f.); Heinemann (1996); Kirchner/Schwartz (1995: 187, 195); Petersmann (1993: 421).
26. Again, the combination would ideally require a "double consensus". The less strict and most often proposed "double majority" can only be justified by additionally introducing the "efficiency" criterion.
27. Cf. Meunier-Aitsahalia/Ross (1993). It is revealing that Zürn (1996: 49) proposes Europe-wide referenda only for the least controversial issues. He would probably have excluded even the few referenda that have taken place so far, because they involved constitutional issues.

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