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Abstract

EU Legitimacy in a Realist Key

by Jan Pieter Beetz and Enzo Rossi

This paper provides a conceptual analysis of the EU's legitimation status through the lens of a realist account of legitimacy. We propose a modification of Bernard Williams' theory of liberal legitimacy, and use it to make sense of the widely perceived legitimation crisis of the EU. In Williams' well-known formula, "Basic Legitimation Demand + Modernity = Liberalism". Drawing on that model, we put forward three main claims. (i) The right side of the equation is insufficiently sensitive to the importance of popular sovereignty in Western constitutional traditions; (ii) The left side of the equation is best thought of as a 'legitimation story': an account of what plausibly sustains belief in legitimacy. This is, however, not a purely descriptive notion: attending to the meaning of politics in the relevant context rules out both violent domination and ideologically distorted legitimation stories, thus providing a non-moralised normative component for the position. (iii) While most EU member states ostensibly support the Union, the legitimation story offered by the member states to its citizens draws upon a tradition of popular sovereignty that sit badly with the supranational pooling and delegation of sovereign powers that characterises the EU rule. That, we maintain, explains the current legitimation crisis of the EU. Further, we argue that the realist framework requires a solution to the legitimation problem before any advances can be made on the front of social justice.

1. Introduction

The European Union is commonly diagnosed as a particularly severe sufferer of a disease common among Western liberal democracies. Both in academia and in the public culture at large democracy is widely thought to be in crisis: political disaffection, social polarisation, the decline in power of the nation state as well as its political fragmentation are often invoked both as symptoms and as causes of a crisis of democracy, or a democratic deficit (Crouch 2004; Norris 2011). The mainstream account of legitimacy colours the standard understanding of the crisis of democracy. The ideal of voluntary rule provides the connection between democratic representation and legitimacy: all else being equal, representation legitimises the exercise of political power by making it receptive to the will of those over whom it is exercised. To be sure, voluntarism in politics is usually just an aspiration, as continuous actual consent is hardly ever feasible. But still, if not on consent proper, democratic legitimacy is commonly grounded through one of consent's 'cousins' (Edmundson 2011): hypothetical agreements, idealised deliberation, public justification (Bohman & Richardson 2009; Rossi 2013, 2014). And so the crisis of democracy is as a crisis of representation, which in turn is understood as a crisis of legitimacy through voluntary rule.

This broad characterization of the mainstream approach to legitimacy ranges over the tripartition between input, throughput, and output legitimacy familiar from the EU legitimacy literature (Schmidt 2013): once we abandon the chimeric ideal of voluntary rule as direct control over the rulers' actions, and reframe it as a matter of reflecting the normative commitments of the affected citizenry (Shaw 2008), each of the three measures of legitimacy can be understood as a benchmark for the measure in which EU institutions and political processes embody the political ethos of the European citizenry. In other words, according to this reading of the mainstream approach, input, throughput and output legitimacy are achieved insofar as the relevant institutions and practices at each of the three levels (crudely: electoral representation, public administration, and policy outcomes) embody the citizenry's relevant value commitments.

In this paper we provide an alternative diagnosis of the democratic difficulties facing the EU. We aim to renew our understanding of that crisis by challenging the conventional quasi–voluntaristic ideal of representative liberal–democratic legitimacy. Instead we propose a realistic account of legitimacy—one grounded in a less moralised

way of theorising, and in sustained engagement with historical empirical evidence on the conditions of political association. That approach will make it conceptually possible to separate normative legitimation and democratic representation. The guiding insight is the realist idea that coercion is an inescapable feature of politics (Rossi 2010, Rossi and Sleat 2014, Sleat 2013). This rules out the whole spectrum of democratic voluntarist positions that inform the standard EU legitimacy deficit debate: actual (Simmons 1999), normative (Estlund 2009) or hypothetical consent, as well as deliberative (Gutmann and Thompson 2004) and aggregative (Pennington 2010) proceduralism (Rossi 2009). Once the ideal of voluntary rule is set aside, legitimacy can be established in a more realistic manner, namely through a practice-dependent approach (Sangiovanni 2008): legitimation becomes a matter of interpreting and critiquing the point and purpose of existing the legitimation stories and the actual coercive practices that they sustain (Rossi 2012).

The upshot of this modified analysis of the EU's legitimacy deficit is that we locate the deficit in the misalignment between the prominent EU practices of pooling and delegation and the historically formed legitimation story of popular sovereignty used to make sense of political authority. In other words, Western liberal democracies have not yet elaborated a legitimation story that fits an entity such as the EU. The conclusion suggests that, despite it being well-treated territory, a solution to this democratic deficit should take normative priority over questions of social justice.

2. Williams' realist theory of legitimacy and 'bare liberalism'

Bernard Williams' theory of legitimacy is both a direct engagement with a traditional concern of normative political theory, and an attempt to re-orient political theory, in two ways: away from the primacy of matters of justice, and away from the primacy of ethical considerations as constraints or aims for political action. Williams' begins by identifying a "first political question", namely "the securing of order, protection, safety, trust, and the conditions of cooperation." (2005, 3). But, unlike in Hobbes, successfully answering the first political question is a necessary but not sufficient condition for a regime's legitimacy. To achieve legitimacy a polity must meet what Williams calls the "Basic Legitimation Demand" (BLD): "Meeting the BLD can be equated with there being an 'acceptable' solution to the first political question." (2005: 4). Crucially, this acceptability is not the moralized notion familiar from many mainstream theories of

legitimacy. If it is a moral notion at all, it is "a morality internal to politics" (ibid., 7). For Williams, "making sense" is "a category of historical understanding, [...] a hermeneutical category" (2005,11) which assesses whether the legitimation offered by the rulers can be understood as such by those to whom it is addressed. More precisely, however, the idea is about checking whether an "intelligible order of authority makes sense to us as such a structure" (2005, 10) which "requires [...], that there is a legitimation offered which goes beyond the assertion of power". Williams adds that "we can recognise such a thing because in the light of the historical and cultural circumstances [...] it [makes sense] to us as a legitimation" (2005, 11). This idea relies on 'our' ability to differentiate legitimations based on assertions of power from legitimations for the endorsement of which there are reasons other than their hold of power over us.

To turn this distinction into a tool of normative evaluation Williams introduces his 'Critical Theory Principle' (CTP): "the acceptance of a justification does not count if the acceptance has been produced by the coercive power which is supposedly being justified" (2005, 6).2 For Williams, "the difficulty with [this principle], of making good on claims of false consciousness and the like, lies in deciding what counts as having been 'produced by' coercive power in the relevant sense" (2005, 6). At least in principle, this commits Williams to looking at the actual political beliefs of people. A regime turns out to be illegitimate if the people accept its official justification—its legitimation story—only because they have not come to realise yet that there are no other reasons than the power of this regime over them to accept it as legitimate (Williams 2002, 231). The test, though, is best understood as hypothetical. We look at actual beliefs, add an empirically-informed causal story about their origin, and then imagine what the correct response would be once the causal story has been revealed to the belief holders. So we start with the people's current beliefs and imagine them going through a process of criticism, a process in which the test plays a significant part. (2002, 227)1 To clarify what "counts as having been 'produced by' coercive power in the relevant sense" (2005, 6) Williams relies on what Raymond Geuss calls 'reflective unacceptability' (1981, 55-65). To be sure, the hypothetical test is not opposed to also encouraging a process of reflection in actual people on whether they would still hold on to their beliefs (directly or indirectly about the legitimacy of the regime), once they had realised how they came to hold them. At any rate, this process will lead to context-

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[1] Here we set aside the question of extent to which Williams' approach is in danger of introducing pre-political moral commitments from the back door. On this issue see Hall (2014), Prinz and Rossi (forthcoming), Sagar (2014), Sleat (2010).

sensitive evaluations based on one's assessment of what reasons are actually available to the citizenry.

So Williams' realist theory of legitimacy is universal in its abstract form, but it is underpinned by two forms of contextualism. First, politics is a context with its own form of normativity, so that pre-political moral demands do not reach into politics (Jubb and Rossi 2015). Here a lot of work is done by the very concept of politics. Raw domination of the sort endured by the Helots in Sparta just isn't politics, and this is a conceptual rather than a moral claim (Williams 2005, 5; Hall 2014). So this is a form of cross-cultural, conceptual contextualism—perhaps more of a category or scope restriction.2 Second, each legitimation will have to culturally and historically specific elements, as per the Critical Theory Test described above. This is contextualism in the more familiar sense of the term. It is best understood as the need to provide a 'legitimation story' to each citizen (2005, 95). Again, it is not clear to what extent we should take this literally. But the general idea seems to be that the public culture should contain the resources—at times Williams explicitly refers to such resources as narratives (2002, 231-241)—to allow the citizenry to make sense of the power exercised over them. If these legitimation stories are not widely accepted, rule can become perceived as domination resulting in resentment. The latter could threaten the political order, and subsequently economic, social, moral orders in the polity (Sangiovanni, 2008, 156-157).

When applied to our current predicament, these two elements yield Williams' abstract formula: "LEG + Modernity = Liberalism" (2005, 9). 'LEG' signifies a satisfactory answer to the first political questions, i.e. the meeting of the Basic Legitimation Demand. 'Modernity' is an umbrella term for the culturally specific legitimation. The rough idea is that, given the expectations about security and protection of individual rights developed in Western societies, no set of political arrangements other than a liberal one would meet the BLD.

One may ask whether Williams isn't allowing liberalism to pass the Critical Theory Test too easily here, given the actual history of liberal states and of belief in the political centrality of individual rights, and especially the property rights that are characteristic of liberalism.3 Williams' answer to that challenge would draw on what, following Judith Shklar, he calls 'the liberalism of fear' (2005, Chapter 5). This view, sometimes also

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2 One may well contest the coherence of such a move, for instance noting that the concept of politics is essentially contestable. See, e.g., Prinz & Rossi (forthcoming).

3 For this line of argument see Argenton and Rossi (2015).

referred to as 'bare liberalism', is a largely negative defense of some tenets of liberalism. The rough idea is that, historically, liberalism has proved more effective than other systems at preventing the sorts of evils that most people would associate with overly powerful government—cruelty, torture, and, more generally, "being in someone else's power" (ibid., 61), i.e. the same sort of political normativity behind the Critical Theory Test.

For our present purposes it will be important to draw attention to the fit of this sort of minimal liberalism within Williams' equation. On the left side of the equation we have a rather rich story, or at least we should. 'Modernity' is a wide umbrella term. While it seems clear that the bare liberalism on the right side of the equation can provide an answer to the first political question in our context, it also seems rather thin, if we are to think of it as the product of 'LEG' and 'Modernity'. Is a government that can spare us from cruelty all that we have come to expect from modernity? How widely should we understand the ideal of not being in the power of another? To the extent that Western political theory and political culture has developed and consolidated something approaching a consensus in the way to answer those questions, that consensus makes room for the ideal of popular sovereignty. In other words, the liberalism on the right side of the equation is either an inadequately narrow answer result, or it should be understood broadly so as to encompass the de facto union between liberalism and democracy (even if it is just a marriage of convenience) that characterizes successful legitimation stories in our part of the world. We develop this issue in the next section.

3. Popular sovereignty as democratic authorisation of state sovereignty

Our claim is that popular sovereignty conceptually structures legitimation stories of modern political orders. This conceptual structure, however, sits uncomfortably with the dominant ruling practices within the EU-polity: delegation and pooling of sovereign authorities. Let us to take a closer look at this conceptual structure and its dominance first, as it is not uncontested. Bernard Williams, for instance, claims that liberalism is the political tradition used to make sense of the legitimacy of the modern Western state. In contrast to Williams, the modern democratic state is not merely a protection agency of individual rights; It should also act an instrument of the citizenry's will. The democratic state should represent the will of the people. Popular sovereignty has been a powerful legitimation story for rulers of the modern democratic state. The story was also invoked

by that other thoroughly modern regime: the totalitarian state. Claude Lefort, one of the key theorists of modern political orders -- liberal democracies and totalitarian states --, observes that both rulers of democracies and totalitarian regimes claim to exercise of power within their polity in the name of 'the people' (Lefort 1986, 288).4 The legitimacy of both these thoroughly modern regimes came to rely on the sovereign authority of the people. The change from the divine right of kings to popular sovereignty implied a transformation from a vertical to a horizontal principle of legitimacy; normative authority in the polity transferred from the ruler(s) to the ruled (Laborde 2004, 52). This shift has been characterized as "a marked break from the old world" (Rosanvallon 2011, 120). Though popular sovereignty is not necessarily democratic (Morris, 2000, 6-7), as we are interested in the EU's legitimacy crisis associated with the theorem of the democratic deficit, we will focus on this populist interpretation of popular sovereignty.

Democratic stories of popular sovereignty make sense of the legitimacy of political rule in reference to the (enlightened) will of the people. Where European medieval empires relied upon Christianity to ground political authority, bereft of such metaphysical principles, modern democracies require a popular sovereign (Bickerton 2011, 666–668). The people as collective are the sole source of authority within the polity. The reason for this status is the constitutive position ascribed to the ruled in the creation of overarching political regime. The people is the constituent power that creates a political regime -- the constituted power (Canovan 2005; Frank 2010). The (fictional) foundational moment of the modern state is an act of will of the people.5 The people are not only the constitutive authority of the constituted order, but should remain the authorizing agent within the polity after its creation (Kalyvas 2005; Loughlin 2014).6 According to this modern legitimation story, the sovereign people is the fountain of all authority of the modern political order: the sovereign state. Therefore, the democratic rulers of the sovereign state have to appeal ultimately to citizens' interests or will to legitimate their rule.

This conceptual logic has taken on diverse forms in Europe's state polities, but its

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4 See also (Gould 1991; Ingram 2006).

5 Of course, this claim is highly problematic in practice. Violence is the actual foundation of the state's powers, and the people for that matter (Näsström 2007, 625).

6 Challenges present themselves when offering a coherent account of the ruled as being both the source of authority and subjects to the same authority. Academics often concern themselves exactly with these challenges normatively (Kolodny 2014a, 2014b), theoretically (Loughlin 2014), and practically (Glencross 2014). Modern democratic theorists tend to emphasize the importance of the persistent political agency of the constituent power (e.g. Bellamy 2000; Glencross 2014).

impact on the realm of international relations has been rather uniform. Popular sovereignty legitimates the sovereign authority of the state domestically and internationally (Malcolm 1991).7 In the domestic realm, popular sovereignty justifies the state's monopoly on the use of rightful power within the polity. Because, according to the story, the state's sovereignty reflects the will of the popular sovereign. The national understandings of legitimate democratic rule based upon this story have taken on diverse forms. Nordic countries focus on the inclusion of civil society, Southern countries on securing benefits, whilst France focuses on political identity (Nicolaïdis & Young 2014, 1410). Despite ascribing to the same broad universalist democratic values (e.g. Antonsich 2008), the European citizenries hold distinct understandings about the appropriate standards of democratic legitimacy to ensure the state's sovereign rule conforms in some sense to the popular will.

On the other hand, state sovereignty has also become associated with freedom from external interference, and the pursuit of national interests in an anarchic realm of international relations. Important for our purposes is the way that legitimation stories of popular sovereignty relate to this external side of sovereignty. The sovereign state's right to rule that is its exclusive right there to is justified as representative of the constituent power. Leaving aside the restraints on de facto sovereignty8, rulers use popular sovereignty to justify their actions abroad. The rulers represent act in the name of the people, hence their right to make decisions, such as make treaties with other countries, derives from their representation of the constituent power: the people. Since the peace of Westphalia, state interactions have been governed by this norm of state sovereignty (Axtmann 2004, 260; Bartolini 2005, 64). Therefore, international organisations have classically attributed veto powers to state representatives (Hertz 1957, 477–480). In cases of international organizations, rulers often argue that they represent the citizens' collective interests abroad. Certain Pareto optimum considerations feature in these claims, such as peace or greater overall prosperity. In democratic regimes, rulers' status as elected officials bolsters these claims to mandated representation abroad. In addition, modern citizens have been vehicles of national sovereignty (Aron 1995), and continue to use this story to make sense of international politics (Balibar 2004). However, the

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7 These two aspects are arguably related to another, however this is not the space to explore this relationship (e.g. Morgan 2005).

8 Admittedly modern states' autonomy has been limited by other states in the realm of international relations.

internationalization of politics resulted in chances challenging this status quo. International organisations and transnational governance networks are gaining powers, whilst intergovernmental representatives have given up veto powers. From this perspective, scholars questioned these regimes' democratic legitimacy (Dahl 1999).9 With the conceptual structure of popular sovereignty clarified, and some of the ways in which it continues to shape European citizens understanding of democratic legitimate modes of rule, we turn to the EU's ruling practices.

4. European integration, multilateralism, and the legitimacy crisis

If, as we suggested, democratic rulers (have to) legitimate their ruling practices with stories of popular sovereignty, we can gain a clearer somewhat different perspective on the contemporary legitimacy crisis in Europe. In the early days, European integration could rely on the so-called permissive consensus. Citizens offered instrumental support in virtue of the positive outputs of peace and prosperity (Lindberg & Scheingold 1970). The Maastricht treaty forced the democratic legitimacy of the European polity and its regime on the political, public, and academic agenda (e.g. Bellamy & Castiglione 2003, 7-8; Dobson 2006, 511; Friese & Wagner 2002, 342). The persistent lack of popular acceptance has been described a constraining dissensus (Hooghe & Marks 2009) and even a democratic legitimacy crisis (Marks 2012, 17). From our realist perspective, so we will now argue, this deficit primarily results from a dissonance of the prominent practices of political rule at the European level and the stories citizens use to make sense of democratic rulers' authority abroad.10 We thus draw upon Bernard Williams' conceptual framework concerning the BLD as set out in the first section of this paper. Williams' preferred tradition of bare liberalism, however, is less of an issue for the EU's legitimacy, because a number of EU-institutions protect citizens' fundamental rights, such as the EU Charter of Fundamental Rights.11 Therefore, locating the deficit in this tradition seems an unconvincing interpretation. The EU's persistent legitimacy crisis, so we suggest, finds its origins in this incongruity between European rulers and citizens reliance upon

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9 For the alternative interpretation addressing Dahl, see (Moravcsik 2004).

10 We are not concerned with the agents offering these justifications but rather the substance. See, however, (Neyer 2012, 2014).

11 See also Poul F. Kjaer's contribution to this special issue on the importance of the rule of law in transnational regimes.

historically formed stories of popular sovereignty in making sense of political authority, and the dominant practices of rule at the European level in which intergovernmental rulers decide without veto power – pooling of sovereign authority – and transfer authority to supranational authorities – delegation of sovereign authority. Leaving aside the empirical validity of the no-demos thesis (compare Grimm 2009; Siedentop 2000), the central issue is that the categories invoked in legitimation stories of popular cannot make sense of these ruling practices. After outlining the dominant forms of EU-rule, we reflect on this dissonance between the democratic legitimation story of popular sovereignty in its prominent interpretations – national and supranational –, and the prominent practices of rule.

The political practice of rule has taken on multilateral forms in the EU-polity.12 One particular salient question is to offer a coherent understanding of the current practice of European governance (compare Moravcsik 2002; Morgan 2005; Schmidt 2004; Schmitter 2000; Zielonka 2006). This debate continues to echo Wallace's famous analysis of the European Community as 'less than a federation, more than a regime' (Wallace 1983). Therefore, instead of solving this interpretative issue, we focus on the most prominent modes of political rule, because popular sovereignty is first and foremost a legitimation story about legitimate political rule. Francis Cheneval's ideal type of multilaterialism captures the dominant features of EU ruling practices. A multilateral polity is "functionally differentiated constitution of incongruent territorial hierarchies through institutionalized co-operation and integration between states. The multilateral process blends domestic and intergovernmental structures through their linkage to supranational modes of decision-making, dispute settlement, and jurisdiction" (Cheneval 2007, 328). This ideal type captures key features of the EU-regime with its mix of supranational institutions, such as the European Parliament and European Central Bank, and intergovernmental institutions, such as the Councils. This regime of supranational and intergovernmental decision-makers authoritatively decides over a wide range of policies in the EU-polity. Cheneval concludes that in a multilateral regime consists of "limited, differentiated delegation of competences to supranational agents, and of intergovernmentalism in the areas where states cooperate but retain full or shared decision-making power" (Cheneval 2007, 329; italics added). Cheneval's model describes

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12 See again also Poul F. Kjaer's contribution to this special issue on delegation to the transnational level of governance, as well as the importance of its autonomous status.

the two prevalent modes of authoritative decision-making in the EU-regime: (1) delegation, and (2) pooling of traditionally sovereign authorities. These multilateral practices of rule, however, sit badly with the historically evolved legitimation stories of popular sovereignty.

From an intergovernmental perspective, the normative challenge seems straightforward. The European Union has been the product of intergovernmental treaties in which national representatives claimed to act in the name of sovereign peoples (e.g. Milward 1992; Moravcsik 1998; Sassen 2006). Moreover, these intergovernmental agents continue to play a vital role within the infrastructural framework and its design (Bellamy 2013, 508). The current debate on neo-intergovernmentalism illustrates that the intergovernmental agents have taken on a more central role in decision-making procedures (Bickerton, Hodson, & Puetter, 2015). These intergovernmental agents pool state sovereignty increasingly decide upon matters through qualified majorities. The intergovernmental representatives base their domestic authority on their claims to represent the people. Citizens – elites, as well as the general populous – use this frame to make sense of politics beyond the state (e.g. Balibar 2004; Beetz 2015; Díez Medrano 2010). The practices described above clash with the legitimation stories informing this frame. At the European level, national representatives have in many regards effectively given up on the institutional symbol of their domestic claim to sovereignty: the veto. As mentioned earlier, the veto of intergovernmental agents in international affairs represents the people's autonomous right to decide upon matters in their domestic polity. Political agents from other polities have no legitimate authority within other polities. Of course, in practice, international power politics does result in external pressures upon national decision-makers, but this influence constitutes a form of illegitimate domination. These foreign agents illegitimately impede upon the sovereignty of a (democratic) people. The veto makes the legitimation stories of popular sovereignty meaningful in the realm of international relations. The dominant ruling practices of pooling sovereignty at the European level sit uneasily with these domestic legitimation stories upon which the national agents rely for their authority in the EU policy arena.

These ruling practices, however, are also problematic from a supranationalist perspective on popular sovereignty. On this federalist logic, that one can trace back for the modern integration project to the Eurocommunist ideals of the Ventotene Manifesto (Spinelli & Rossi 1941), the European level of governance should represent the sovereign

will of the European people. The supranational regime should become the sovereign decision-maker of European citizens' affairs. In line with this logic, the Maastricht Treaty posited a more direct, political relationship to its EU-citizens (Habermas 2012, 34–35). The current EU-practices of rule remain illegitimate from a supranational legitimation story of popular sovereignty. The primary problem from this perspective is not merely the lack of a European demos or the regime's technocratic tendencies to which we will turn in the next paragraph. The former is a tall order but a necessary one to democratically legitimate European governance (Bickerton 2011, 670). This lack of unity is interpreted as the upshot of supranational democratic institutions (Føllesdal & Hix 2006). With even the strongly pro-European Jürgen Habermas expressing sincere doubts about the possibility and desirability of sovereign federal European state (Habermas 2012)13, 'European' popular sovereignty seems ill-suited to make sense of the democratic legitimacy of the EU. Still, the scope of its decision-making powers have increased over the past couple years despite the 'restraining dissensus'. Competences associated with a state's sovereignty have been transferred to the European level, which has been accompanied strengthening of the position of the Council in European decision-making (e.g. Bickerton et al. 2015; Fabbrini 2015). This brings to the fore an essential issue from our perspective. The supranational legitimation story assumes an institutional expression of the popular will, however the most prominent and increasingly influential decision-makers at the European level of governance are not the supranational democratic agents, such as the Commission or European Parliament, but the intergovernmental ones. As such the dominant practices of EU-rule of pooling rather than centralising sovereignty clashes with a centralised story of popular sovereignty to the EU-polity. As we argued in the previous paragraph, the prominent practice of pooling is also problematic from an intergovernmental variation of this legitimation story. The other dominant practice – delegation – does not fare any better if not worse.

The aforementioned technocratic dimension of the European rule is closely associated with the 'delegation' of sovereign powers to the European governance system. Several theorists have chosen to characterise the European integration as a process of 'delegation' (e.g. Cheneval 2007; Lindseth 1999). They recognise the effective transfer of decision-making powers to executive and administrative EU-institutions. Cheneval, for instance, argues that 'sovereignty' persists because national states remain influential

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13 See, however, (Morgan 2005).

within their polity (Cheneval 2007, 329). This practice, however, transform the historical meaning of at least the external dimension of sovereignty beyond recognition. The contemporary financial and socio-economic crisis illustrates the inadequacy of this characterisation of reality. The current formation of EU-ruling practices has become criticised as a form of 'executive federalism' (Crum 2013; Habermas 2012). The EU's executive 'federal' institutions consisting of the Councils, as well as ECB and CJEU have effectively gained autonomous decision-making power at the EU level without direct democratic accountability. For instance, Ben Crum reflecting on the intergovernmental response to the financial crises concludes that "Ultimately, the tendency towards executive federalism can be expected to lead to states being bound to ever more detailed policy contracts that hollow out their political autonomy in financial and economic matters" (Crum 2013, 628). In other words, these institutions are not tracked the will of Europe's popular sovereign; whether conceived from an intergovernmental or supranational perspective. These institutions might claim to represent the common good of the Europe. The recent euro crisis has sharply brought to the fore the influence of the EU-regime on the autonomy of European states' decision-makers. It has thus become ever more apparent that European political integration does not result in broadly Pareto optimum outcomes (e.g. Bellamy & Castiglione 2013; Lord 2011). The prominent practice of delegation clashes directly with either democratic legitimation story of popular sovereignty. Therefore, unsurprisingly, the current practices of EU-rule result in democratic fuelled resentment toward the European elites.

5. Conclusion

The realist lens of legitimation stories of popular sovereignty brings clearly into focus that the contemporary political practice of European integration sits badly with the stories of popular relied upon to make sense of political authority in contemporary Europe. Leaving aside Europe's institutional complexities (Friese & Wagner 2002, 342; Zielonka 2007, 190), the democratic deficit derives from the in congruency of the dominant legitimation stories of popular sovereignty and the political practices of pooling and delegation at the European level. Before the crisis, this could have been considered defensible as a Pareto optimal decision for large parts of the European population. Yet, the doubts about the EU's democratic deficit are no longer reasoned away in virtue of output

legitimacy. The Eurozone crisis has once more given salience to the EU's democratic deficit (e.g. Bellamy 2013; Bellamy & Weale 2015; Nicolaïdis 2013). From our realist perspective, the EU's democratic deficit is not merely a question of supranational institutions lacking a convincing story about representing a European demos—the renowned no-demos thesis. A democratic deficit also emerges on the national level in which the European peoples are no longer able to self-legislate in a sovereign manner. The modern legitimation story of popular sovereignty posits that the constituted power–the sovereign state–gains its authority directly from its constituent power, the people. In the domestic realm, national executives legitimate their actions through stories about representing their sovereign demos that elected them. In the international realm, these national executives act in the name of their sovereign people, therefore international agents should respect their sovereign decision-making capacities. In the European context, however, the national executives have pooled and delegated sovereignty within a multilateral regime. The current situation of a democratic deficit derives from this incongruence between legitimation stories of popular sovereignty aiming to meet the basic legitimacy demand in a transformed set of social and political circumstances. The European regime might meet the demands of Williams' bare liberalism, because the EU institutions have checks and balances in place. The dominant legitimation story of popular sovereignty, however, sits badly with the practice of delegation and pooling sovereignty. Moreover, these practices incongruence with these widely accepted legitimation stories hence they result in a democratic deficit at both the national and European level. If, as realists argue, the political order sets the preconditions for the socio-economic order amongst others, then it follows that the attainment of legitimacy should take normative priority over the demands of justice, which have been placed on the political and academic agenda by the current Euro crisis. From our realist perspective, the solution lies either in a more suitable legitimation story about ruling practices in the EU-polity or, alternatively, Europe's dominant ruling practices will have to conform to the modern story of popular sovereignty. In practice, both the modern legitimation story and political practices will probably have to transform for citizens to make sense of a political authority able to meet their new demands in an age of economic and technological globalisation.

References

Antonsich, Marco. 2008. "The Narration of Europe in 'National' and 'Post-national' Terms. Gauging the Gap between Normative Discourses and People's Views." European Journal of Social Theory 11 (4):505-522.

Argenton, C. & Rossi, Enzo. (2015). "Libertarianism, Capitalism, Ideology: A Reality-Check." Working Paper

Aron, Raymond. 1995. "The Anarchical Order of Power." Daeldalus 124 (3):27-52.

Axtmann, Roland. 2004. "The State of the State: The Model of the Modern State and its Contemporary Transformation." International Political Science Review/Revue internationale de science politique 25 (3):259-279.

Balibar, Étienne. 2004. "Homo nationalis: An Anthropological Sketch of the Nation-Form." In We, the People of Europe?, 11-30. Princeton, NJ: Princeton University Press.

Bartolini, Stefano. 2005. Restructuring Europe. Centre formation, system building, and political structuring between the nation state and the European Union. Oxford: Oxford University Press.

Beetz, Jan Pieter. 2015. "Stuck on the Rubicon? The resonance of the idea of demoi-cracy in media debates on the EU's legitimacy." Journal of European Public Policy 22 (1):37-55.

Bellamy, Richard. 2000. "Liberalism and the Challenge of Pluralism." In Rethinking Liberalism, 187-201. London and New York: Pinter.

Bellamy, Richard. 2013. "An Ever Closer Union Among the Peoples of Europe': Republican Intergovernmentalism and Demoicratic Representation within the EU." Journal of European Integration 35 (5):499-516.

Bellamy, Richard, and Dario Castiglione. 2003. "Legitimizing the Euro-'polity' and its 'Regime': The Normative Turn in EU Studies." European Journal of Political Theory 2 (7):7-34.

Bellamy, Richard, and Dario Castiglione. 2013. "Three Models of Democracy, Political Community and Representation in the EU." Journal of European Public Policy 20 (1):206-233.

Bellamy, Richard, and Albert Weale. 2015. "Political legitimacy and European monetary union: contracts, constitutionalism and the normative logic of two-level games." Journal of European Public Policy forthcoming.

Bickerton, Christopher J. 2011. "Europe's Neo-Madisonians: Rethinking the Legitimacy of Limited Power in a Multi-level Polity." Political Studies 59:659-673.

Bickerton, Christopher J., Dermot Hodson, and Uwe Puetter. 2015. "The New Intergovernmentalism: European Integration in the Post-Maastricht Era." Journal of Common Market Studies 53 (4):703-722.

Bohman, J. & Richardson, H.S. 2009. "Liberalism, Deliberative Democracy, and "Reasons that All Can Accept"." Journal of Political Philosophy, 17(3): 253–274.

Canovan, Margaret. 2005. The People (Key Concepts). Cambridge and Malden: Polity Press.

Cheneval, Francis. 2008. "Multilateral Democracy: The "Original Position"." Journal of Social Philosophy 39 (1):42-61.

Crouch, Colin. 2004. Post-Democracy. Cambridge: Polity Press.

Crum, Ben. 2013. "Saving the Euro at the Cost of Democracy." Journal of Common Market Studies 51 (4):614–630.

Dahl, Robert. 1999. "Can International Organizations Be Democratic? A Skeptic's View." In Democracy's Edges, edited by Ian Shapiro and Casiano Hacker-Cordon. Cambridge: Cambridge University Press.

Díez Medrano, Juan. 2010. "Europe's Political Identity. Public Sphere and Public Opinion." In European Stories: Intellectual Debates on Europe in National Contexts, edited by Justine Lacroix and Kalypso Nicolaïdis, 315–333. Oxford: Oxford Univerisity Press.

Dobson, Lynn. 2006. "Normative Theory and Europe." International Affairs 82 (3):511–523.

Edmundson, W.A. 2011. "Consent and Its Cousins." Ethics, 121(2): 335–353.

Estlund, David. 2009. Democratic Authority. Princeton, NJ: Princeton University Press.

Fabbrini, Sergio. 2015. Which European Union? Europe after the Euro Crisis. Cambridge: Cambridge University Press.

Føllesdal, Andreas, and Simon Hix. 2006. "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik." Journal of Common Market Studies 44 (3):533–562.

Frank, Jason. 2010. Constituent Moments. Enacting the people in postrevolutionary America. Durnham and London: Duke University Press.

Friese, Heidrun, and Peter Wagner. 2002. "Survey Article: The Nascent Political Philosophy of the European Polity." The Journal of Political Philosophy 10 (2):342–364.

Geuss, Raymond. 1981. The Idea of a Critical Theory. Habermas and the Frankfurt School. Cambridge: Cambridge University Press.

Glencross, Andrew. 2014. "The absence of political constitutionalism in the EU: three models for enhancing constitutional agency." Journal of European Public Policy Early view.

Gould, Carol C. 1991. "Claude Lefort on Modern Democracy." PRAXIS International 10 (3 & 4):337–345.

Grimm, Dieter. 2009. "Defending Sovereign Statehood against Transforming the European Union into a State." European Constitutional Law Review 5:353–373.

Gutmann Amy & Dennis Thompson. 2004. Why Deliberative Democracy? Oxford and Princeton, N.J.: Princeton University Press.

Habermas, Jürgen. 2012. The Crisis of the European Union. A Response. Translated by Ciaran Cronin. Cambridge: Polity.

Hall, Edward. 2014. "Contingency, Confidence and Liberalism in the Political Thought of Bernard Williams." Social Theory and Practice 40(4): 545–569.

Hertz, John H. 1957. "Rise and Demise of The Territorial State." World Politica 9 (4):473–493.

Hooghe, Liesbet, and Gary Marks. 2009. "A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus." British Journal of Political Science 39 (1):1–23.

Ingram, James D. 2006. "The Politics of Claude Lefort's Political: Between Liberalism and Democracy." Thesis Eleven 87:33–50.

Jubb, Robert & Rossi, Enzo. 2015. "Political Norms and Moral Values." Journal of Philosophical Research, forthcoming.

Kalyvas, Andreas. 2005. "Popular Sovereignty, Democracy, and the Constituent Power." Constellations 12 (2):223–244.

Kolodny, Niko. 2014a. "Rule Over None I: What Justifies Democracy?" Philosophy and Public Affairs 42 (3):195–229.

Kolodny, Niko. 2014b. "Rule Over None II: Social Equality and the Justification of Democracy." Philosophy and Public Affairs 42 (4):287–336.

Laborde, Cécile. 2004. "Republican Citizenship and the Crisis of Integration in France." In Lineages of European Citizenship. Rights, Belonging and Participation in Eleven Nation-States, edited by Richard Bellamy, Dario Castiglione and Emilio Santoro, 46-72. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan.

Lefort, Claude. 1986. "The logic of totalitarianism." In The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism, edited by John B. Thompson, 273-291. Polity Press.

Lindberg, L.N., and S.A. Scheingold. 1970. Europe's Would-be Polity: Patterns of Change in the European Community: Prentice-Hall.

Lindseth, Peter L. 1999. "Democratic legitimacy and the administrative character of supranationalism: The example of the European Community." Columbia Law Review 99 (3):628–738.

Lord, Christopher. 2011. "Polecats, lions, and foxes: Coasian bargaining theory and attempts to legitimate the Union as a constrained form of political power." European Political Science Review 3 (1):83–102.

Loughlin, Martin. 2014. "The concept of constituent power." European Journal of Political Theory 13 (2):218–237.

Malcolm, Noel. 1991. Sense on Sovereignty. In Centre for Policy Studies. London: Davlyn Design and Print.

Marks, Gary. 2012. "JCMS Annual Lecture 2011: Europe and Its Empires: From Rome to the European Union." Journal of Common Market Studies 50 (1):1–20.

Milward, Alan S. 1992. The European Rescue of the Nation-State. London: Routledge.

Moravcsik, Andrew. 1998. The Choice for Europe. Social Purpose and State Power From Messina to Maastricht. London: UCL Press Limited.

Moravcsik, Andrew. 2004. "Is there a 'Democratic Deficit in World Politics? A Framework for Analysis." Government and Opposition 39 (2):336–363.

Morgan, Glyn. 2005. The Idea of a European Superstate: Public Justification and European Integration. Princeton and Oxford: Princeton University Press.

Morris, Christopher W. 2000. "The very idea of popular soveriegnty: "We the people" reconsidered." Social Philosophy & Policy 17 (1):1–26.

Näsström, Sofia. 2007. "The Legitimacy of the People." Political Theory 35 (5):624–658.

Neyer, Jürgen. 2012. The Justification for Europe. A Political Theory of Supranational Integration. Oxford: Oxford University Press.

Neyer, Jürgen. 2014. "Justified Multi-level Parliamentarism: Situating National Parliaments in the European Polity." The Journal of Legislative Studies 20 (1):125-138.

Nicolaïdis, Kalypso. 2013. "European Demoicracy and Its Crisis." Journal of Common Market Studies 51 (2):351-369.

Nicolaïdis, Kalypso, and Richard Young. 2014. "Europe's democracy trilemma." International Affairs 90 (6):1403-1419.

Norris, P. 2011. "Democratic Deficits." Cambridge: Cambridge University Press.

Pennington, M. 2010. "Democracy and the Deliberative Conceit." Critical Review, 22(2–3), pp.159–184.

Prinz, Janosch & Rossi, Enzo 2016. "Political Realism as Ideology Critique." Critical Review of Social and International Political Philosophy, forthcoming..

Rosanvallon, Pierre. 2011. "The Metamorphoses of Democratic Legitimacy: Impartiality, Reflexivity, Proximity." Constellations 18 (2):114-123.

Rossi, Enzo. 2009. "The Exemption That Confirms the Rule: Reflections on Proceduralism and the UK Hybrid Embryos Controversy." Res Publica 15(3): 237-50.

Rossi, Enzo. 2012. "Justice, legitimacy and (normative) authority for political realists." Critical Review of International Social and Political Philosophy 15 (2):149-164.

Rossi, Enzo. 2013. "Consensus, compromise, justice and legitimacy." Critical Review of International Social and Political Philosophy 16(4):.557–572.

Rossi, Enzo 2014. "Legitimacy, Democracy and Public Justification: Rawls' Political Liberalism Versus Gaus' Justificatory Liberalism." Res Publica 20(1): 9-25.

Rossi, Enzo and Matt Sleat. 2014. "Realism in Normative Political Theory." Philosophy Compass 9(10): 689-701.

Sagar, Paul. 2014. "From Scepticism to Liberalism? Bernard Williams, the Foundations of Liberalism and Political Realism." Political Studies. doi: 10.1111/1467-9248.12173

Sangiovanni, Andrea. 2008. "Justice and the Priority of Politics to Morality." Journal of Political Philosophy 16 (2):137-164.

Sassen, Saskia. 2006. Territory, Authority, Rights. From Medieval to Global Assemblages. Princeton and Oxford: Princeton University Press.

Schmidt, Vivien A. 2013. "Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'." Political Studies 61 (1):2-22.

Schmitter, Philippe C. 2000. How to Democratize the European Union ... And Why Bother. Lanham, Boulder, New York, and Oxford: Rowman & Littlefield Publishers, Inc.

Shaw, T. 2008. "Max Weber on Democracy: Can the People Have Political Power in Modern States? " Constellations 15(1): 33–45.

Sleat, Matt. 2013. Liberal Realism: A Realist Theory of Liberal Politics. Manchester: Manchester University Press.

Siedentop, Larry. 2000. Democracy in Europe. London: Allen Lane.

Simmons, A. John. 1999. "Justification and Legitimacy." Ethics 109 (4):739-771.

Spinelli, Altiero, and Ernesto Rossi. 1941. "The Ventotene Manifesto." In, ed Emma Urgesi (trans). http://www.altierospinelli.org/manifesto/manifesto_en.html (accessed 13 May 2012).

Wallace, William. 1983. "Less than a federation, more than a regime." In Policy-Making in the European Community, edited by Helen Wallace, William Wallace and Carol Webb, 403–437. Chichester: John Wiley.

Williams, Bernard. 2002. Truth & Truthfulness. Princeton and Oxford, Princeton University Press.

Williams, Bernard. 2005. In the Beginning was the Deed: Realism and Moralism in Political Argument. Oxford and Princeton, N.J., Princeton University Press.

Zielonka, Jan. 2006. Europe as Empire. Oxford: Oxford University Press.

Zielonka, Jan. 2007. "Plurilateral Governance in the Enlarged European Union." Journal of Common Market Studies 45 (1):187–209.

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