

Political legitimacy and its Acquisition: Lessons based on the European Union's search for it

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June 2010

'Legitimacy' is one of the most frequently used and misused concepts in political science. It ranks up there with 'power' in terms of how much it is needed, how difficult it is to define and how impossible it is to measure. Cynically, one is tempted to observe that it is precisely this ambiguity that makes it so useful to political scientists. Virtually any outcome can be "explained" (*ex post*) by invoking it – especially its absence – since no one can be sure that this might not have been the case.

For legitimacy usually enters the analytical picture when it is missing or deficient. Only when a regime or arrangement is being manifestly challenged by its citizens/subjects/victims/beneficiaries do political scientists tend to invoke lack of legitimacy as a cause for the crisis. When it is functioning well, legitimacy recedes into the background. Persons seem to be taking it for granted that the actions of their authorities are "proper," "normal" or "justified." One is reminded of the famous observation of U.S Supreme Court Justice, Lewis Powell, with regard to pornography: "I don't know what it is, but I know it when I see it." With regard to legitimacy, it would be more correct to say: "I may not be able to define (or measure) it, but I know it when it is not there."

Now, if this is true for polities – i.e. national states – that have fixed boundaries, unique identities, formal constitutions, well-established practices

and sovereignty over other claimants to authority, imagine how difficult it will be to make any sense of the legitimacy of a polity that has none of the above! The European Union (EU) is, if nothing else, a “**polity in formation.**” No one believes that its borders and rules are going to remain the same for the foreseeable future. Everyone “knows” that it is not only going to enlarge itself to include an, as yet undetermined, number of new countries, but it is also very likely to expand the scope of its activities and to modify the weights and thresholds of its decision-making system. If this were not enough, there is also the fact that the EU is an unprecedented experiment in the peaceful and voluntary creation of a large-scale polity out of previously independent ones. It is, therefore, singularly difficult for its citizens/ subjects/victims/beneficiaries to compare this *objet politique non-identifié* with anything they have experienced before. No doubt, there exists a temptation to apply the standards that they are already using to evaluate their respective national authorities, but eventually they may learn to use other normative expectations with regard to EU behavior and benefits.

One Definition and Five Implications

First, let us try to define legitimacy in a way that is generic enough to allow us to apply it to the widest possible range of polities. **Legitimacy is a shared expectation among actors in an arrangement of authority such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to pre-established and acceptable norms.** From this, I draw the following implications: The basis upon which these norms are pre-established and become acceptable can vary from one arrangement to another – not only

from one country or culture to another, but also within a single country/culture according to function or place. While it is often claimed that in the contemporary context “democracy” provides the exclusive basis for exercising authority, this denies the possibility (and obvious fact) that particular arrangements within an otherwise democratic polity can be (and often are) successfully legitimated according to other norms.¹ It also obscures the fact that “democracy” can be defined normatively and institutionalized historically in such a different fashion that authority relations which are legitimate in one democracy would be regarded as quite illegitimate in another. The “coincidence” that all of the EU members are self-proclaimed democracies and recognize each other as such does not *eo ipso* provide the norms for its legitimation – indeed, well-entrenched differences in the democratic institutions of its members may actually make it more difficult.

1. The unit within which relations of sub- and super-ordination are being voluntarily practiced can vary in both time and space. While there is a tendency in the political science literature on legitimacy to accept passively the sovereign national state as the “natural” and “exclusive” site, there is no reason why other (sub- or supra-national) “polities” – provided that they have sufficient autonomy in making and implementing collective decisions – cannot have their own normative basis of authority. In the case of the EU, the problem is compounded by the simultaneous need to legitimate –

¹ Although it would be more accurate to stress that these “other” arrangements based on expertise, legality, personal reputation or just plain effectiveness are themselves embedded in a more encompassing framework of national democratic institutions that, at least potentially, have the power to amend or overrule whatever decisions are made by non-democratic means. This contextual property is sometimes overlooked by enthusiasts for central bank autonomy, independent regulatory agencies, oversight boards, judicial review, and so forth.

not only what the unit should be, i.e. to define what “Europe” is – but also the regime that should govern it, i.e. what its institutions should be.

2. The norms must be accepted and “shared” by the actors, both those who rule and those who are ruled. This implies, first of all, that they must know who they are and what their respective roles should be. It also implies that the exercise of authority is “systemic,” i.e. that it is embedded in a collectivity that is sufficiently interdependent and mutually trustful so that disputes over the validity of rules can be (and usually are) resolved by the intervention of third parties within them. Institutions such as courts specialize in this “referential” behavior, but most disputes over rules involve less formal interactions within civil society and between firms in which the intervention of outsiders (actual or potential) is sufficient to produce a mutually accepted outcome. The citizens/subjects/victims/beneficiaries of the EU do not yet know who they are – and not all of them are members of it and, therefore, entitled to participate in its government. Moreover, they remain anchored in relatively independent polities of varying size and power whose roles within EU institutions have yet to be established definitively. Nor have they achieved the level of social interdependence that allows them to rely on informal – “social,” “pre-political” or “extra-judicial” – means for resolving disputes legitimately.
3. The actors involved may be individuals or collectivities of various sorts. The literature conveniently makes the liberal assumption that the unique judges of legitimacy are individual human beings. This allows it to rely

heavily on notions of family socialization, “moral sentiment,” and a personal ethic of responsibility as the source of norms and the virtually unconscious mechanism for their enforcement. And this in turn tends to lead one to the conclusion that it is only in polities that have previously established a high degree of cultural homogeneity – e.g. nation-states – that legitimate political authority is possible. When one introduces, however, the heterodoxical idea that most of the exchanges in modern political life are between organizations and, moreover, that these organizations share norms of prudence, legal propriety and “best practice” that transcend individual preferences and even national borders, it then becomes more possible to imagine how a “non-national” and “non-state” polity such as the EU might be able to generate valid and binding decisions. Which is not the same thing as to say that it will be easy for it to come up with such norms – given all the caveats introduced above, plus the fact that in such a “multi-layered” and “poly-centric” arrangement it may be very difficult to trace the origin and responsibility for them.

4. The basis for voluntary conformity is presumably normative, not instrumental or strategic. In a legitimate polity, actors agree to obey decisions that they have not supported made by rulers whom they have not voted for. They also agree to do so even if it is not in their (self-assessed) interest to do so – and they should continue to do so even when the effectiveness of the polity is in manifest decline. Needless to say, it will not always be easy to assess if this. Rulers often can control the means of communication and distort the flow of information to make it

appear as if they were following prescribed norms; the ruled may only be pretending to comply in order to build up a reputation that they can subsequently “cash in” for material or other self-regarding purposes. Conversely, resistance to specific commands – whatever the accompanying rhetoric – may have nothing to do with challenging the legitimacy of the authority that issued them, just with the performance of individual rulers or agencies. Needless to say, in the case of the EU the compelling nature of norms is even more difficult to gauge. The intergovernmental nature of its Council of Ministers and the European Council virtually licenses actors to pursue national interests exclusively – or, at least, to proclaim to their citizens that they are doing so. The confidentiality of its many committees makes it almost impossible to detect when interaction produces a shared norm rather than a strategic compromise or a concession to hegemony. Add to all this, the propensity for national rulers who can no longer “deliver the goods” themselves to blame the obscure and distant processes of European integration when they have to take unpopular decisions and you have a polity that is bound to appear less legitimate than it is.

One (Interim) Conclusion and Two (Very Important) Implications

From this conceptual analysis, I draw the following conclusion: if we are to make any sense of the present and future legitimacy of the European Union (or any other polity), we have to reach a consensus concerning the apposite criteria – the **operative norms** – that actors should apply when establishing

their presumably shared expectations about how its authority should be exercised.

I am taking two things for granted at this point:

- (1) that the apposite criteria for the legitimation of the EU (whatever they may be in practice) have to be “democratic” in some fundamental/foundational sense;
- (2) that the individual citizens and collectivities that are members of the EU, now and for the foreseeable future, share a “reasonable pluralism” in the interests and passions that they wish to obtain through the integration of Europe.

Just a bit of explication of both points:

1. The meaning and, hence, the institutions and values of democracy have changed radically over time. Robert Dahl has spoken of several “revolutions” in its past practice (often without its proponents being aware of it) and argued that “democracy can be independently invented and reinvented whenever appropriate conditions exist.”² The European Union or any modern polity is unavoidably part and parcel of these changes. Not only must it reflect transformations in the nature of actors (from individual to collective citizens) and role of the state (from redistribution to regulation) that are well underway in the ‘domestic democracies’ of its member states, but it must also adapt to its own uniqueness as a non-national, non-state, multi-level and poly-centric polity that encompasses an unprecedented (for Europe) variety of cultures, languages, memories and habits and is expected to govern effectively on an

2 On Democracy (New Haven: Yale University Press, 1998), p. 9.

unprecedented scale – all this, with very limited human and material resources.

(2) Despite the heterogeneity of its national and sub-national components and, hence, the strong likelihood that major actors will not be in agreement on either identical rules of the game or substantive goals, its members are “reasonably pluralistic,” i.e. the range of their differences is limited and they are pre-disposed to bargain, negotiate and deliberate until an agreement is found. To use another expression of Rawls, those who participate in the EU enjoy an “overlapping consensus.” Moreover, they understand and accept that the outcome of the process of integration will itself be pluralistic, i.e. it will protect the diversity of experiences rather than attempt to assimilate them into a single “European” culture or identity.

Based on this (interim) conclusion, I am first convinced that it is neither feasible nor desirable to try to democratize the European Union *tutto e subito* -- completely and immediately.³ Not only would the politicians not know how to do it, but there is also no compelling evidence that Europeans want it. Nothing could be more dangerous for the future of an eventual Euro-democracy than to have it thrust upon a citizenry that is not prepared to exercise it, and that continues to believe its interests and passions are best defended by **national** not **supranational** democracy.

Moreover, the EU at this stage in its political development neither needs, nor is prepared for a full-scale constitutionalization of its polity. The

³ What I mean by “interim” is that, in the long run, the EU might well acquire the properties of a state and even of a nation – in which case, the deployment of conventional institutions of representation and decision-making and standard notions of citizenship might become much more desirable. However, for the foreseeable future, e.g. 20-25 years, the problem will be to protect and enhance the legitimacy of political institutions that do not have these properties – and that means relying upon novel arrangements and novel norms to justify them.

timing is simply wrong. In the absence of revolution, coup d'etat, liberation from foreign occupation, defeat or victory in international war, armed conflict between domestic opponents, sustained mobilization of urban populations against the *ancien regime* and/or major economic collapse, virtually none of its member states have been able to find the "political opportunity space" for a major overhaul of their ruling institutions.⁴ The fact that they all (with one exception) have written constitutions and that this is a presumptive *sina qua non* for enduring democracy indicates that at some time this issue will have to be tackled -- if the EU is ever to be democratized definitively -- but not now!

However, as I have explored in a recent book, it may be timely to begin sooner rather than later to experiment with improvements in the quality of embryonic Euro-democracy through what I call "modest reforms" in the way citizenship, representation and decision-making are practiced within the institutions of the European Union.⁵ Even in the absence of a comprehensive, i.e. constitutional, vision of what the supra-national end-product will look like, specific and incremental steps could be taken to supplement (and not supplant) the mechanisms of accountability that presently exist within its member states. Since, as seems obvious to me, the rules and practices of an eventual Euro-democracy will have to be quite different from those existing at the national level, it is all the more imperative that Europeans act cautiously when experimenting with political arrangements

4 I can only think of one clear case: Switzerland in the early 1870s. It would be interesting to explore this exception, although the fact that this country had a "one-party-dominant-system" (*Freisinnige/Radical*) at the time must have been an important factor -- and, not one that can be repeated at the EU-level.

5 How to Democratize the European Union ... and Why Bother? (Lanham: Rowman & Littlefield, 2000).

whose configuration will have to be unprecedented, and whose consequences could prove to be unexpected – perhaps, even unfortunate.

So, the path to greater legitimacy for the EU cannot be constitutional or even formal- institutional. It must be substantive, i.e. contingent on the distribution of benefits from the public goods (and bads) it produces. In other words (those of Fritz Scharpf), its “output” legitimacy has to be converted over time into “input” legitimacy.

And the best formula for acquiring (or augmenting) legitimacy is for the EU to **under-exploit** its existing power capabilities – and to do so gradually, experimentally and, hopefully, consistently. For the problem with acquiring legitimacy lies mainly with the powerless (or, better, with them and their potentially more powerful allies). They have to be convinced that those governing the EU are not using their superior resources (greater size, higher level of development, more secure stateness, old vs. new members, *e cosi' via*) in an exploitive manner. The best way to convince them of this is to demonstrate weakness not strength. Or, better, weakness when the potential to use strength exists and is acknowledged. To put it into the conceptual framework of Albert Hirschmann, “loyalty” emerges from a system of political exchange in which the weaker party has more “voice” than it would expect and the stronger party is less inclined to force the weaker one to “exit” (or, in another words, to “submit”).