ORGANIZED CIVIL SOCIETY AND DEMOCRATIC LEGITIMACY IN THE EU

Justin Greenwood[*]

Abstract

Structural limitations in models of representative democracy have enhanced the space for other mechanisms of legitimacy in the European Union, including participatory models in which organized civil society interests are significant players. To some observers, such actors are likely only to aggravate already problematic input legitimacy. A range of less hostile approaches also prevail, from a neutral standpoint through to those sharing the perspective of EU policy practice where such actors are seen as a complementary mechanism of democratic input. Whilst concerns about the impact of asymmetries of power between different types of organised civil society interests arise as potential issues in any democratic setting, a particularly vigorous neo-pluralist regime in which EU institutions actively create and develop as well as empower citizen interest groups effectively mitigate these asymmetries in an EU context, although can give rise to paradoxical tensions of elitism.

Declining public confidence in the traditional institutions of representative democracy, together with increasing public participation in alternative forms of political action, are key among features of what some observers have described as 'the most fundamental transformation of the democratic process since the creation of mass democracy in the early twentieth century.'[1] The decline of deference, open government, the geographical spread of the 'democratic tide'[2], and the growth of transnational authority systems and politics, are further notable features of this wider transformation. The European Union is both an agent of, and subject to, this process. As an agent, some of its features amount to no less than an experiment in democratic processes. As a subject, the expanding role and functions of the EU and its potential impact in weakening national political control have driven demands for it to acquire the core attributes of political control and political equality central to democratic governance[3]. This dualism is reflected in the somewhat dramatic summation of Katz, that 'the EU represents both the greatest hope and the greatest danger to democracy in Europe at the beginning of the 21st century'[4]. To what extent are organized civil society interests friends or foe of democracy in this transformation process? Can the emphasis placed upon them in 'hopeful' accounts as surrogates for faults in representative democracy be justified? Is there anything creative to be drawn from their contribution to the development of EU democratic legitimacy?

EU Boundaries of Representative Democracy: room for other models?

The institutional arrangements and practices of the EU fail to conform to any one conception of democracy. Katz reflects orthodoxy in holding that the idealized model of popular sovereignty implemented through party government, drawn from parliamentary democracy at the national level, is unrealistic at the EU level[5]. This is because of the absence of the full apparatus and usual features of representative democracy, such as EU wide political parties, adversarial parties competing for office, elections which could change a government, a limited extent of budgetary and legislative reach over which the European Parliament has scrutiny, and only indirect structures of accountability for the Council of Ministers and European Council. Further traditional mechanisms which might otherwise bring a 'European wide public space', such as an EU wide media, are also absent. In consequence, the basic requirement of a widely intelligible decision making system[6], or mechanisms to 'transform complicated issues into distinguishable alternatives for decision along clearly defined conflict lines'[7] appear lacking. Of interest is that additional fault-lines which are frequently mentioned bear a resemblance to those typically listed in some emerging democracies, including over- strong executive power, policy making which is elite dominated, and structural weaknesses among political party and civil society representative systems[8].

The absence of a 'European wide public space' contributes towards an alternative focus of institutional politics centred on finding agreements reached within and between multiple institutional actors, on unsure foundations of shifting issue majorities, and is therefore likely to be oriented towards consensus seeking. When these institutional actors are relatively open, so there is an enhanced space for organised civil society actors to contribute to policy-making, and a potential means to seek to legitimise political decisions reached. To onlookers, the result is a relatively inward looking system populated by elites. The diffusion of power also enhances the ability of a wide variety of organised civil society players to draw something of desire from policy-making, with few outright 'winners' and 'losers'. Majoritarian politics are only legitimate in the context of a homogenous society[9] with 'we-feeling'[10], where there are process provisions for the protection of minorities. Democracy is thus linked to social conditions which cannot be created artificially by constitutional acts[11]. In this perspective, a core, and enduring, problem for the EU is one of legitimacy in the form of a lack of acceptance from nationals of one country that representatives of citizens of other countries have a formal share in their rule[12], and which no amount of tinkering with representative institutions can resolve[13]. Another is the sheer territorial scale of the EU[14]. A more democratic EU involving the institutionalisation of a set of procedures guaranteeing the ability of the governed to participate in the adoption of collectively binding decision would not therefore necessarily lead to an increase in its legitimacy, here meaning *popular consent to governance by collectively binding decisions.*[15] In similar vein, using a key distinction between types of legitimacy drawn from Easton's political system model[16], Scharpf holds that the democratisation of European institutions is unlikely to increase *the input-oriented legitimacy* of decisions taken by majority rule[17]. He defines this type of legitimacy as meaning 'that political choices should be derived, directly or indirectly, from the authentic preferences of

citizens'[18], distinguishing it from legitimacy deriving from *outputs*, popularly interpreted as 'winning by results.' Here, 'deriving...from' seem to be key terms, allowing for processes which ensure the protection of minorities among the authentic preferences of citizens, and providing some degree of utility to the 'input' formula.

Despite the widely held orthodoxy outlined by Katz, some underlying tendencies have led to the adoption of more qualified positions. Some authors reserve their position as to future developments by noting that a series of 'institutional reforms of the legislative process have altered the EU *in the direction of* a representative democracy'[19] (my emphasis). To these authors, if popular input and control over EU policy making are further institutionalized, then the preferences of the EU electorate will become significant. If central features of liberal democracy include subjecting the state to public accountability and societal control, the development of measures aimed at achieving these pillars are clearly evident. There is little doubt that a range of measures concerned with facilitating accountability, such as transparency and access to documentation, do attempt to put the recognisable supporting infrastructure of popular control in place, even if the main apparatus of representative democracy is deficient. New European Council provisions requiring the Council of the European Union to meet in public when it considers legislation will, once implemented, enhance the ability of national parliaments to hold their national representatives accountable. Seen in this way, the incremental addition of measures linking direct with the citizen aimed at institutionalising and investing popular control through the creation of institutionalized checks have a progressive, developmental feel about them. Some of these measures, such as access to documents, inevitably depend upon elite specialists, such as organised civil society, with the resources and know-how to operationalise them and bring the potential benefits of placing information in the public domain, to wider civil society.

Added to these perspectives is empirical research which suggests that citizens see EU politics through familiar conceptual lenses they use to interpret politics at the national level, simplifying the complexities of EU politics in ways that make sense to them[20]. Whilst the development of a fully recognisable European party system seems distant, an institutionalized EU party funding system has begun to emerge. The concept of representative democracy in which citizens are mobilized by parties according to their identifications, interests and ideological sympathies may in any event reflect 'a lament for a lost world of national politics'[21]. Nonetheless, Gabel and Hix show how EU political parties are not just arbitrary groupings of national parties or empty vessels. Rather, they do influence the behaviour of their members and shape the agenda of EU politics, and consist of parties with similar constituencies and ideological /policy concerns[22]. Familiar left/right cleavages found at the national level, carried across to political party organisations in the European Parliament, is a major factor in structuring political behaviour towards issues in EU politics[23]. Similarly, recognisable alliances found between political parties and interest groups at the national level work in a very similar way at the EU level. Thus, industry is aligned with conservative/Christian democratic/liberal parties, unions with labour parties, and an 'alliance of

the weak' drawing together environmental and consumer organisations with green and nationalist parties at the EU level[24].

The presence of some of the familiar supporting infrastructure of representative democracy is some justification for its pre-eminent position in the 2004 Treaty establishing a Constitution for Europe. Article 46 is titled 'The principle of representative democracy', the first clause of which unequivocally proclaims that 'The working of the Union shall be founded on the principle of representative democracy.' The second clause notes that citizens are directly represented at EU level in the European Parliament, providing for an indirect mechanism of representation in that Member States in the European Council and the Council of Ministers are accountable to national parliaments, elected by their citizens. Through these mechanisms is embraced, under the third clause, the right of every citizen to *participate* in the democratic life of the EU. Participation outside of formal representative apparatus is covered by a separate Article 47 on 'participatory democracy', in which the secondary role of such mechanisms is enshrined. One of its clauses codifies current practice in stating that 'the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.'[25] This priority order seeks to limit the potential for any clash between the two traditions, in the aspiration that measures for participatory democracy can continue to develop without offending the mainstay principle of representative democracy. Whilst the rather unsure foundations of the European Parliament is partly reflected by its need to recently assert that 'consultation of interested parties with the aim of improving draft legislation can only ever supplement and can never replace the procedures and decisions of legislative bodies which possess democratic legitimacy; only the Council and Parliament, as co-legislators, can take responsible decisions in the context of legislative procedures[26], this does clearly state the position now enshrined in the Constitutional Treaty.

The 1997 Amsterdam Treaty articulated democratic foundation principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law[27]. In its *de jure* design, the EU seems to fulfil some, if not most, of the basic criteria for liberal democracy. Thus, there are: individual rights enabling democratic participation; the institutional separation of powers; an institutionalized system of checks and balances; a representative assembly with most of the usual powers; a growing reach of transparency mechanisms to enable the exercise of these various powers; and powers which are limited in their reach by design[28]. Structural deficiencies there may be, but so too are there (and likely always will be) with every liberal democracy with even core democratic standards[29], and at least in institutional design terms the EU is comparable to standards to be found in the United States[30]. The multi-governance nature of the EU may even put it in an advantageous position from the point of view of institutionalized checks and balances in the system[31], which can also insulate the EU from being routinely dominated by special interests[32]. However, few would claim that this is a sufficient basis for legitimacy, and, while all advanced democracies have work to do in addressing evident popular confidence problems, the EU has more than most to do. The relative youth together with the *sui generis* nature of the EU, may however give it a better excuse than most for a legitimacy deficit, and contributors to the debate can draw satisfaction from a sense of contributing to an early canvas of development.

Whilst the absence of anything equivalent to the voting mechanism in representative democracy has always been a limiting factor for the institutional embrace of participatory democracy, several of the brush strokes applied to the emerging canvas draw from this latter tradition. Armstrong, however, sees little progress in the constitutional ranking of democratic principles: 'If, however, we are to give civil society a significant role as a new front in the democratic legitimation of EU governance we need to develop a more sophisticated analysis than that offered by the idea of a participatory democracy subservient to a standard model of representative democracy'[33]. This somewhat ungenerous treatment fails to offer an alternative, and in doing so leaves unexplored an open question as to whether the contrast between representation by political parties, and participation by civil society groups, is drawn too strictly.

The absence of a fully functioning recognisable democratic representative system provides space for a participatory based model to flourish. Whilst it is mature democracies which have substantial participatory systems alongside them, the tendency towards consensual, rather than majoritarian, politics in the EU contributes to a thriving 'bargained politics' model. In such a bargaining model, organised interests are central players. An old debate is whether such groups came in response to the development of EU competencies[34] or pre-dated these[35] and/or even helped to create them[36]. The substantial institutional incentives for their participation, reviewed in later sections, lend credence to each of these interpretations, but the empirical evidence is most strongly supportive of groups responding to EU competencies[37]. Apart from these incentives, the principal activities to which citizen groups have responded have been attempts to equip the EU with avenues of democratic legitimacy since the Treaty on European Union. Once established, groups have become the source of further demands for participation, indicating a more general mechanism in which the supply of opportunities for participation influences demand for them. This mechanism was foreseen in early accounts of the integration process, in which an agent provocateur Commission stimulates the emergence of EU level interest groups as demand agents of European integration and aspires for them roles as agents of popular legitimacy.[38] An enrichment to this account is derivative from the work of Lindblom (1977), in which an activist bureaucracy develops procedures to empower citizen interest group participation.[39] In Lindblom's version the purpose of this is help resolve asymmetries of power, but the activities of the Commission in directly creating, and nurturing, groups extend someway beyond this, and suggest extensive aspirations for the role of organised civil society in the development of the EU.

Three Approaches to Organized Interests and EU Democratic Legitimacy

Three approaches to the contribution of organized interests to EU democratic legitimacy can be distinguished: deeply reserved or hostile; neutral; and optimistic. The first set of authors' view this contribution as problematic in two ways. The first of these is a general hostility to factionalism, evident from the work of Rousseau's Social Contract, on the grounds that governments have a wider duty to the general interest. A second is the way in which political outcomes arising from bargaining between elites is seen as inherently problematic for wider input legitimacy[40]. This

latter type of summation can be found among a recent collection on informal governance in the EU, where questions are raised as to whether informal networks are sufficiently accountable to remain legitimate over the course of time[41]. A number of contributors to this volume[42] argue that while the participation of organized civil society to EU governance may contribute to decision making efficiency and to output (effectiveness) legitimacy, its elite nature makes it a threat to input legitimacy. Further, these chapters argue that output legitimacy has little contribution to make to the popular legitimacy of the EU. In a retort to the work of Majone[43] and Moravcsik[44], reviewed below, Wincott argues that 'while many scholars still regard the EU as effectively legitimized by efficiency-oriented functional 'outputs', this 'once upon a time' story now has a 'fairy-tale' quality'[45].

A further dimension is added by authors who see attempts to enhance input legitimacy as likely to interfere with output legitimacy. This may happen either by clogging up decision making systems[46], or by the negative externalities of bargaining and coalition building such as the restriction of trade, and/or outcomes which are suboptimal, inefficient, and unworkable[47]. Whilst factionalism may provide a pluralist type outlet for the diversity of civil society, in the 'hostile' interpretation citizen groups fail to take into account broader perspectives required of democratic processes, using wider agendas of 'democratic deficit' to demand attention to relatively narrow issues and a stake for elites who may have little connection with wider constituencies. Despite awareness of such possibilities, Skogstad takes the more benign view of what she terms 'network governance' as a means to enhance legitimacy that arises from the presence of procedures to enable participation[48]. On the other hand, Christiansen and Piattoni themselves take a more qualified view, in that 'informal governance may be crucial for finding creative Pareto improving solutions, but it is not obvious that informal arrangements are well suited for contested distributive decisions'[49].

This view of the problematic nature of distributive, and particularly re-distributive, policy making for EU legitimacy is shared by Majone, who advises a restrictive EU regime limited to regulatory politics on the grounds that the EU never can acquire sufficient legitimacy to engage in re-distribution. Because regulatory agencies have more limited requirements for legitimacy than do re-distributive polities due to the technical functions they undertake, a focus upon legitimacy based primarily upon outputs may suffice[50]. Scharpf[51] shares both a general scepticism of the possibilities of achieving a broader type of EU input legitimacy, and Majone's emphasis upon output legitimacy. This general model resonates with an older distinction between legitimacy based upon either consent (from Locke) or benefit (from Hume)[52]. Examples of output measures oriented at legitimacy include environmental and consumer protection policies, and one proposal to arise in the preliminary work programme preceding the 2001 White Paper on Governance was to deliberately concentrate regulatory activity in such fields as part of a quest for popular legitimacy[53]. Majone's model does allow for policy input from groups, although it carries echoes of negative externalities in warning that regulatory agencies formulating policy primarily on a technical basis need to be insulated from popular pressures which deviate from this. Whilst Majone's model is based upon David Easton's 'input-output' model of politics to EU legitimacy, it

is worth recording that Lipset, and Easton himself, saw outputs as an insufficient basis for a stable political system[54].

From the perspective in which output legitimacy is the main focus, the view of the contribution which organized interests make to the EU political system tends to be positive. This is because of the expert resources which such players bring to assist EU institutions in policy making, implementation and monitoring. The general Majone thesis seems to be strengthened by the viewpoint about the negligible sum contribution such actors might make to input legitimacy. This scepticism is articulated most explicitly by Scharpf, who argues that 'it is hard to see how informal networks of interest intermediation and anonymous expert committees could be considered satisfactory substitutes for the democratic accountability of representatives whose mandate is derived, directly or indirectly, from general elections based on the formal equality of all citizens'[55]. As Scharpf takes no position as to the question of whether such interests could actually be damaging to wider input legitimacy, his is the 'neutral' view. Elsewhere, he does note with approval the way in which 'bargaining' does at least force actors to take a variety of other views into account, placing him on the 'positive' side of neutral[56].

A qualitatively different perspective is provided by those who see organized interests as having a contribution to make to input legitimacy as a complementary structure to outlets of representative democracy. In this eclectic model, organized civil society interests make a partial contribution to compensating for the structural deficiencies of traditional representative democratic models applied to the EU. Such an approach is a familiar one on the general role of organized interests in pluralist democratic concepts. Classic contributions span the recent heritage of authors such as Dahl[57], to deeper roots drawing on the classical traditions of Alexis de Tocqueville[58] and Madison[59]. These writers provide perspectives on the importance of interest groups to democracy through checks and balances, as schools of democracy, or in the broader sense of civil participation as a foundation of mass democracy. The EU is built upon pluralist foundations of checks and balances, with institutional designs to empower interest groups as guardian of the public interest by checking the power of public institutions, reviewed earlier, and upon each other, with very deliberate attempts by the Commission to nurture the landscape and power of citizen interest groups. As is reviewed later, these are supported by funding and by policy initiatives such as open access and transparency to enable actors to observe the actions of each other. There is a tradition which sees them as potential agents of deliberation, reviewed below. It is however much more difficult to make a case for the role of organised civil society interests in fostering mass democracy given the highly institutionalised basis of EU policy-making which incentivises elite bargaining, and the difficulties of mobilising disparate and disengaged stakeholders.

Substantial shades are evident about the ways in which participation by outlets of organized civil society co-exist with representative democracy. These range from those following the tradition of Rokkan[60] and Offe[61] who tolerate the involvement of civil society participation provided it does not come at the expense of parliamentary deliberation[62] to those who stress particular types of benefits, through to those with a generally positive outlook. Those who stress particular types of

benefits at the EU level include Magnette[63], who follows Kant in stressing how all citizens benefit from the mobilisation & vigilance of more active ones, and Curtin[64], who sees digital access to information as the means to achieve more participation. Vibert follows the Madisonian focus on checks and balances in seeing EU organized interests as checks on the authority and reach of the state, following Smith and Hume in seeing them as agents for the maintenance of a private sphere autonomous from the state[65]. In playing such a role, there are however limits on the extent to which groups can participate in state structures, and these outlooks share a view of the limited role such actors can take. Among the less reserved positions on the potential role of EU organized interests to input legitimacy are those by Héritier[66], Wessels[67], Schmitter[68], Lord and Beetham[69], and Smismans[70]. Of these, Schmitter's is by a distance the most prescriptive in advocating the establishment of a semi-public status for associations, the financing of them via compulsory contributions, and the distribution of funds via citizen vouchers. This account has proved somewhat beyond even the most radical thinkers in the European Commission's Forward Studies Unit. Héritier's is the most analytically optimistic in seeing the participation of interest groups in the EU policy process as a substitute for other forms of democratic legitimation, and because 'bargaining democracy creates input legitimation since it prevents individual interests from being outvoted and thereby forces actors to take multiple interests into account'[71]. In this sense, organised civil society provides some degree of legitimacy for political decisions on the basis of their participation. Heritier's position is also similar to Grande's position in focusing on how the dispersal of power to multiple levels in the EU system has pluralistic effects, tending towards consensual outcomes when diverse stakeholders can find ease of access at different points in the decision making system and find something of their input in the character of political decisions reached.

These three broad approaches to the role of organised civil society in EU democratic legitimacy – deeply reserved or hostile, neutral, and optimistic – can be examined further by confronting two features about organised civil society operating at the EU level and their associated features which seasoned observers as to the role of groups in political systems seem to find most distinctive about the EU. These concern the high institutionalisation of organised civil society interests, and the confederal nature of most EU interest groups.

The Institutionalisation of Organised Civil Society in the EU

The most striking features of the institutionalisation of organised civil society interests in the EU are: the role of EU political institutions in interest group formation and maintenance, including substantial funding of non-business groups; the incorporation of selected groups in formal and informal political structures of EU political institutions; and the use of procedures to empower and enhance the role of groups. Around 1500 (some guesstimates go to 2500[72]) groups constituted in law organised at EU level embrace virtually every imaginable spectrum of civil society.

The ways in which organised civil society has become the natural constituency of the European Commission as suppliers of expert resources, political agents of support for more EU powers, bellwethers of legislative chances, and potential agents of input legitimacy, make the Commission

the principal focus as an activist source of initiatives. The Commission's focus on interest groups as potential agents of input legitimacy historically developed in the time when the European Parliament was an assembly without popular election or extensive powers, when the traditional strengths of interest groups as checks and balances on both political institutions, and upon each other, could provide another contributory avenue of popular legitimation. This helps explain the Commission's activism in creating groups and facilitating group formation in and beyond the early stages of European integration, nurturing fledgling groups as necessary, and providing necessary open access to its work. But the role of the Commission has been much more than the 'neutral arbiter of the interest group game' as it would be cast in classical pluralist accounts. Its active role in funding regimes for citizen interest groups, and in empowering citizen interest groups through policy initiatives since the Treaty on European Union and flowing from the landmark 2001 White Paper on Governance, suggests much more of the neo-pluralist type role cast by Lindblom[73] in addressing asymmetries of power between different types of interests as a precondition for group participation in democratic architecture.

The Commission's clear view of the need to facilitate the formation of EU level groups at an early stage can be found in early accounts of the EU interest group process. Sidjanski records the European Commission's attempts to engage only with EU level groups,[74] while a remaining preference for dialogue with EU groups can be found in a 1992 policy statement which remains prominent on *Europa* today.[75] A general pattern of the Commission's role in creating business interlocutors for output related purposes seems to emerge from accounts of domains such as retail[76], and biotechnology.[77]. Some groups have been created by the entrepreneurship of former Commission officials who saw a niche opportunity, including those representing the liberal professions, and the European Women's Lobby. But it is the Commission's role in stimulating the emergence of citizen interest groups, and in funding and nurturing them, which really catches the eye of the observer. The Commission spends around 1 per cent of the EU budget, around €1 billion annually, in funding interest group activities. Virtually every one of an estimated constituency of 300 citizen interest groups organised at EU level receives EU funding[78]. Leading policy oriented citizen groups such as the European Network Against Racism, and the European Social Platform receive 80-90 per cent of their funding from the EU political institutions[79]. Many of the thirty eight members of the Social Platform, embracing some of the largest and best known citizen interest groups working in a broadly defined social field, receive 60-90 per cent of their funding from EU political institutions[80]. As an example of the ways in which active EU policies help address potential asymmetries of power between different constituencies of groups, EU funding assists the WorldWide Fund for Nature EU policy office Brussels, to reach staffing levels which exceed the average of an EU trade association by a multiple of seven.[81]

Fresh observers, and some 'outsider' activist groups, might see such funding dependencies as evidence of over institutionalisation and a limit upon the input legitimacy potential of recipients. Citizen groups organised at EU level instead stress the way in which such funding is a means of independence much in the same way as state funding of political parties removes the need to seek alternative sources of funding which might otherwise create legitimacy threatening

dependencies. A mark of the density of such funding is the speed at which 'outsider' groups critical of the EU become drawn to participation through network links to organisations which do receive EU funding, and by the Commission's 'open doors' approach to dialogue of an institutional or informal kind, summarised later.

EU funding issues arise through group formation as well as maintenance, where something of a pattern seems to arise. Whilst the principal activist in group formation could be any of the corresponding Commission services, one with a particular record is DG Employment, Social Affairs and Equal Opportunities (DG EMP). Bauer describes the European Anti-Poverty Network's relationship with DG EMP as 'lobby sponsorship' whereby the Commission 'starts creating its own constituencies with the clear intention of raising support for particular policy solutions and, thus, of influencing deliberations and indirectly setting political priorities'.[82] A typical starting point for this service has been to create a conference in support of a European Year attached to a particular theme, from which a new interest group will emerge supported by Commission funding. Groups concerned with homelessness, disability, anti-racism and migrants, developed following this type of course. To nurture the group to strength, the Commission service may designate quasi official functions to the groups, such as 'Observatory' status to gather and collect information on the state of a particular problem. The Commission service hopes that such groups will become future demand agents for further European integration, both in terms of the development of EU competencies, and as bridges to grass roots citizens. The EWL were a force behind a new Treaty clause extending equality provisions through the relationship its Spanish member enjoyed with its national government, and apparently helped to build popular support for it by taking popular roadshows around the member states[83]. In this way, member states were presented with an irresistible demand for European integration, with the EWL playing the role very closely cast for groups in the development of European integration by neo-functionalist theory, both through the extension of competencies and building popular support in the member states. DG EMP's institutionalised constituency also includes the European Trade Union Confederation (ETUC), with ETUCs high dependence on DG EMP for funding and to achieve its goals has led to one sustained cost-benefit assessment questioning the final scorecard for the Union movement,[84] despite an amusing description of DG EMP as 'union lobby organisation, old style'[85].

The European Social Platform also arose from DG EMP activism, created in a joint initiative with the European Parliament with a direct remit to campaign for a European 'civil dialogue', and subsequently given an elevated status in funding, in the 'Forum of Civil Society' shadowing the 2003-4 European Convention[86], and in meetings of the informal Council of Social Affairs and Employment[87]. The creation and funding of the European Social Platform is the most direct example of the ways in which the Commission sees groups as agents of input legitimacy. In its 1997 Communication on the role of voluntary organisations and foundations in Europe, the Commission argued that 'voluntary organisations and foundations foster a sense of solidarity and citizenship, and provide the essential underpinnings of our democracy. In the light of the challenges now facing the European Community, and indeed in the different countries of Central and Eastern Europe, these functions have never been more vital'[88].

In pursuit of this outlook a new budget line (B3-4101) was created in the same year with the specific purpose of strengthening the capacity of 'NGOs and other voluntary sector organisations' to engage in 'civil dialogue' at European level. Civil dialogue aimed at an institutionalized role for citizen interest organisations in EU policy making, based around confederated 'family' structures of groups such as the Social Platform in a general aspiration that these might bring aggregated, deliberative type legitimising inputs from civil society into EU policy making. This process did serve to strengthen institutional dialogue with, and the capacities of, the 'NGO sector,' through the creation of outlets such as the Social Platform. Other 'families' of citizen interest group structures either emerged, reformed, grew, and/or came to further prominence, including structures embracing clusters of human rights groups, environmental groups, and world development NGOs, and which later spawned an organisation embracing seven EU NGO families, the Contact Group of Civil Society. These 'family' organisations of cognate groups are representative outlets of organised civil society, rather than organisations seeking to mobilise grass roots citizens, despite this latter task being part of the original remit of groups such as the Social Platform. It is therefore in the interests of such groups to encourage the Commission to pursue policies which favour interaction with representative confederated groups as a principle, the effect of which would be to marginalise groups whose legitimacy is based upon their ability to articulate a cause, or groups encouraging direct citizen membership. These factors are open to interpretation as limiting the contribution of organised civil society to input legitimacy.

The European Commission's 2001 White Paper on Governance specifically raised the prospect of privileged 'extended partnership arrangements' in return for those groups which could provide it with evidence of representativity. Whilst this was quickly pronounced as unacceptable by the European Parliament[89] on the grounds that it would restrict input by favouring certain types of groups whilst marginalising 'cause' groups, extended partnership arrangements have become established as *de facto* practice between the Commission and organised civil society, and mainly with 'representative' groups. The institutionalisation of the Social Platform is recorded above, while a number of its 'family' cousins enjoy a similarly ingrained status in EU policy-making. The longest standing of these (dating from 1974) involves the Commission's structured co-operation over world development matters with CONCORD and its predecessor, representing networks of relief and development NGOs at international and national level[90]. A heavily institutionalised dialogue with organised civil society is also operated by DG Trade, where registered organisations have created new policy initiatives following extensive deliberation in fields such as agriculture and access to medicines,[91] and given active encouragement at Commissioner level. The G10 environmental family enjoys a 'revolving door' relationship with DG Environment such that one Commission official has opined that without NGO support DG Environment itself would not have survived.[92] All of these relationships are based upon a degree of familiarity between the respective partners, but the most regulated and explicit use of the 'representative' criteria involved the EU social dialogue, in which the participation of organisations is tiered on the basis of their representativeness. At the very top level are included representative, 'horizontal' organisations of employers and trade unions, which are empowered under the Treaties on the basis of an

evaluation of their degree of representativeness, to draw up EU legislation in employment related fields.

Institutionalization seems a fate even for those groups which might otherwise be traditionally classed as 'outsiders', including a recent example surrounding claims to have inspired a high profile initiative launched at Commissioner level.[93] The ability of such groups to quickly access EU decision making and get it moving highlights the essential pluralism of the system. Outsider activist groups highly critical of EU actions are among those which have received funding from EU political institutions, challenging fears that Commission funding of groups might create dependency relationships. Indeed, one of the purposes of funding groups is an expectation that they will perform the role of 'unofficial opposition' in a political decision-making system otherwise marked by consensus. A recent report notes how even 'insider' groups created by EU political institutions and overwhelmingly funded by them can deliver stinging public criticism of the European Commission.[94] Generalised fears that Commission funding of groups might create dependency relationships are challenged by this example, but the example also illustrates the pluralistic lengths of Commission actions in the search for input legitimacy through organised civil society.

EU Groups and Membership Dynamics

In 2000 President Prodi and Vice President Kinnock presented a Commission Communication on 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership' which continued the tone of general, hopeful optimism for groups as agents of input legitimacy in asserting that

> NGOs can make a contribution fostering a more participatory democracy both within the EU & beyond…belonging to an association provides an opportunity for citizens to participate actively in new ways other than or in addition to involvement in political parties....organized civil society represents the views of specific groups of citizens to the European institutions...and contributes to the formation of a European public opinion...promoting European integration in a practical way and often at grass roots level [95].

Any reality check would show that almost all EU groups are associations of organisations (in the citizen field almost entirely associations of national or other European associations), and therefore unable to deliver on many of the traditional strengths for interest groups in democratic systems rehearsed in the above citation.   EU groups are political action organisations, not service based organisations, because their members – often national associations, or in the corporate world sometimes large companies – do not need member services. Like US Political Action Committees[96], there are very limited 'collective action problems' centred on the free-riding of publicly available goods and the need to provide special incentives, because the members are already politically active organisations. EU associations of organisations are geared towards meeting the political needs of their members, and therefore incentivised towards institutionalized

dialogue with EU institutions. There are relatively few activities based upon the difficult task of mobilising members from across Europe in Brussels oriented events based activism. Even those founded upon direct action, such as Greenpeace, have a Brussels policy office geared to dialogue with EU political institutions and other stakeholders rather than a campaign office oriented towards engaging in mass activism. 'Playing the Brussels game' means institutionalized dialogue, sometimes in formal settings such as a dense network of EU advisory and consultative committees and expert groups[97], and otherwise in more informal exchanges with EU political institutions and other organisational stakeholders.

There is a wealth of evidence about the limited capacity of EU citizen interest groups to bridge the gap between themselves and citizens in the member states. The EWL 'roadshow' case seems to be exceptional, and needs to be treated with caution as the source for the story is a stakeholder in the form of a previous Secretary-General. On the basis of his empirical research among a sample of EU citizen interest groups which included some of the highest profile on the Brussels 'NGO circuit'[98], Warleigh found that

> necessary structures to allow NGOs an EU socialisation function, such as the existence of methods of internal decision making which allow supporter input into NGO EU strategy, are in general conspicuous by their absence. So too are mechanisms by which NGO supporters or members can hold these organisations to account, or make an input into their decision-making.[99]

> NGOs will be unable to act as agents of civil society Europeanisation unless they are internally democratic and willing and able to act as agents of political socialisation, with particular reference to EU decision making and policy…NGOs are as yet simply not ready to play this role, and...it cannot be assumed that their capacity to act in this way will be improved...their internal governance is far too elitist to allow supporters a role in shaping policies, campaigns and strategies...Moreover, most NGO supporters do not actually want to undertake such a role'[100].

Warleigh's research, findings and conclusions were replicated by Sudbery[101], who, like Warleigh conducted interviews with a sample of EU groups which was weighted towards 'representative' rather than 'cause' groups. A typical comment was that of a respondent from the Social Platform that 'we do not have direct contact with supporters, but rely on member organisations to bring the issues to their attention'[102]. A respondent from an EU environmental organisation commented that 'while ideally it would be good to get people involved, time pressures mean that the most effective use of my time is to get on with advocacy. In the end my role is not to encourage the most participatory governance, but to ensure the best results for the environment'[103].

These latter comments challenge those looking to groups to play the role of bridge to civil society constituencies, because they come from interest groups where the principal source of legitimacy is a claim to representativity. But for the groups themselves these responses are a natural

response to incentives present in both the structure of groups, and from the EU political institutions, to do so. Another of Sudbery's respondents justified their institutional focus by complaining of member lack of interest or even hostility to the EU.[104] This carries echoes of a wider debate about 'diffuse' versus 'specific' interests. The mainstream version of this, derived from the work of Olson, holds that concentrated interests, such as business, are more able to organise than are diffuse citizen interests, resulting in asymmetries of power and the potential for negative externalities such as private gain at public expense through regulatory capture.[105] A diametrically opposed version of this derives from corporatist analysis grounded in principal-agent theory, stressing instead the weaknesses of groups which are over controlled by their members or a powerful segment of them, and the autonomy of groups which are free from such domination because the interest constituency is too diffuse.[106] This close control by members of their trade association is very typical of business groups dedicated to represent a small and specialised constituency of large firms, where competitors work to ensure that rivals are unable to control the positions of associations. At the EU level there are a significant number of highly specialised EU business groups with a small number of members as a result of collective action incentives to organise around narrow similarities. For Streeck and Schmitter, these incentives prevail as a result of the diminished likelihood at EU level of an alternative source of cohesion drawn from corporatist style state 'licensing' of associations, because the EU lacks the properties of a state. Where there are such properties which 'licence' associations, the role of associations between states and markets is held to provide them with independence from members, whilst the imperative of membership facilitates member breadth.[107] Some empirical challenges to the 'no corporatism at the EU level' thesis have led to the concession of 'islands of corporatism'[108], while observers would see in the highly institutionalised relationship between some of the Commission services and particular citizen interest groups something of the Lindblom thesis of neo-pluralism in which an activist bureaucracy seeks to purposefully empower such interests. These have been significantly developed by procedural initiatives, many of which originated in the 2001 White Paper on Governance, which contained a set of recommendations on how to enhance democracy in Europe and increase the legitimacy of the institutions.[109]

Commission Policy initiatives: the White Paper on Governance, *et al*

Despite signs of radical experimentation in the early analyses which preceded the White Paper[110], the final Paper offered little new by way of mechanisms to connect with citizens directly. The realities of finding concrete policy initiatives drove a renewed focus in the Paper upon organised civil society placed in a participatory democracy model as complementary, but secondary, to representative democracy. This had been supported by substantial think tank reflection by the Forward Studies Unit on EU democratisation on how to harness models of interest representation to a working model of EU democracy and to reduce its negative externalities[111]. This firmly agenda set issues of group representativeness, accountability, and inequalities of resources. The White Paper contained these agendas, drawing urgency from the fallout from the 1999 Santer Commission resignation in seeking to put relations with interest groups on a more open, transparent, and formalized footing[112]. It recorded that 'civil society organisations need to tighten

up their internal structures, furnish guarantees of openness and representativity, and to prove their capacity to relay information or lead debates in their member states' [113], providing incentives for these through the prospect of extended partnership arrangements which seem to have been delivered by the *de facto* means previously outlined.

The CONECCS[114] database of interest groups on *Europa* was a resulting catalyst, making inclusion contingent upon the group confirming that it is formally constituted, EU wide, active, with expertise, and prepared to provide information about itself. There are further compulsory questions about group establishment, objectives, and post-holders, and for those involved in EU consultative bodies, about sources of finance and details of members[115]. Whilst the site makes clear that inclusion on the database confers no special privileges and is not to be read as an accreditation scheme, the incentive for groups to be included is that it is used by the various Commission services to identify the relevant groups with which to consult.

A key point is that access to the database is only possible for groups confirming that they have authority to speak for their members, and which have members in at least three or more EU or candidate countries. Whilst this mechanism seems to have been designed with democratic intent with a focus on strengthening the ability of groups to act as a bridge to member state civil society, it perversely seems to weaken the contribution which the totality of organised civil society might make to EU democratic development by favouring 'representative' groups over those groups whose legitimacy is based upon their ability to advocate a cause. Because the constituency of EU citizen groups contain a mixture of both representative and cause groups, while producer groups are almost entirely representative in nature, the measure seems to have the opposite effect to that intended by the thrust of other empowering initiatives. The problem is exacerbated by the incentive for representative citizen groups such as the Social Platform to preserve their elite status by encouraging accreditation based upon the representatative capacity of groups[116]. Most recently, another of the Commission services has raised the question as to whether funding should be linked to the representative capacities of groups.[117]

Sikkink seeks a way forward between the respective polarised positions of 'representativeness' and an 'anything goes' 'marketplace of ideas' approach, shifting the emphasis to groups by observing that those which question the legitimacy of states may reasonably be required to respond to calls by states to demonstrate their own legitimacy. The criteria she suggests include the need to ensure that such groups are not perceived as self-interested, building a moral authority through acquiring a reputation for supplying accurate information, some form of internal democracy, accountability and transparency, monitoring member behaviour, and standard setting for behaviour. The first of these is clearly problematic, both through the author's failure to articulate recognition of how the first of these would disqualify a significant constituency of groups, and the ways in which all types of groups have some degree of organisational prosperity as a built-in feature.[118] Bouwen's response on the part of producer groups is to see legitimacy as vested in their properties as representative organisations, and their ability to aggregate member

opinion to a common position, providing a useful reminder that sources of group legitimacy can be multifarious,[119] thus requiring multiple policy instruments.

Some aspects which appear to favour representative groups in Commission policy do appear in a series of measures adopted for use across the entire Commission as follow up measures to the White Paper on Governance. These include the creation of a series of consultation standards for dialogue with outside interests;[120] compulsory public consultation (and detailed public consultation plan 'roadmaps') for all legislative measures announced in the Commission's forward annual programme of work as part of the effort to produce impact assessments for them;[121] and an associated single access portal consultation tool.[122] The consultation standards state that if groups do not make it apparent how inclusive their representativeness is, the Commission will treat their responses to individual consultations as individual submissions, and there is evidence of active use of this measure in implementation.[123] Whilst this is qualified by a statement that representativeness is not the sole criteria, and a recognition that 'minority views' can be part of the 'essential discourse' of policies, there is a subsequent reference to 'target groups' which was the cause of alarm for both the American, and UK, governments in responding to the consultation exercise.[124] This is an ambiguity, because the thrust of the consultation standards are to open up consultation to all, and to make the responses to consultation transparent. The single access web portal now provides any observer with advance intention of policy initiatives and the ability to respond to them (and in many cases to see the responses of others), while the Commission has pledged itself to articulate how it responded to these consultations in the detailed design of its policy initiatives, a principle repeated in the Charter of Fundamental Rights where administrative justification for decisions is incorporated as a principle. [125] Impact assessments extend stakeholder consideration beyond those who respond to consultation exercises. Whilst a legal basis for the consultation standards (a demand of civil society groups) has been resisted, their adoption is mandatory across the Commission, setting the trend towards open consultation while relegating elite consultation, and there are measures elsewhere which equip citizens with the means to enforce participation. Thus, the EU's signatory to the 1998 Århus Convention provides for access to information, public participation in decision-making and access to justice in environmental matters, while two subsequent directives concerning access to environmental information and public participation in environmental decision-making have been used by EU citizen interest groups in campaigning work against gene splicing technologies. An early test of the consultation procedures seems to have been satisfied by the Chemicals REACH[126] Directive, where a little over 6,000 responses to its initial consultation were evenly split between producer, and citizen, sources.[127]

Whilst the White Paper on Governance has been a major source of initiatives aimed at creating a level playing field of participation, there have been a number of complementary process democracy initiatives. Key to these have been the drive to equip groups with the ability to keep the EU political system accountable, largely by mechanisms of transparency which enable elite groups to access information and place it in the public domain. Transparency as a general principle has been incorporated into the Treaties through an annexed declaration which articulate

its contribution to the input legitimacy of political systems, based around the maintenance of public confidence, as a minimum condition to facilitate participation, and as a supporting measure of accountability. There are routine measures to follow this up, such as public lists of advisors and consultative committees on *Europa*. But the most striking of all are the measures for access to documents, supported by document registers on *Europa*. These allow for the overwhelming majority of documents, including those originating with third parties, to be made available within fifteen working days of asking for them, usually available for delivery direct to an email account, without making any justification or even necessarily providing further details of the requestor.[128] The zeal with which this Regulation has been delivered is testified by the Commission's retroactive implementation, making documents available which authors would not have known at the time of writing would be public. Organised civil society has made extensive use of this mechanism, seeking out interesting looking listings on document registers so as to keep a check on other organised interests and the activities of political institutions. Given that the effect of these is to ensure that issues are drawn into open public arenas where citizen groups can use public support to counter the asymmetries of power business groups might otherwise have in closed public arenas, the impact of such measures is significant. Whilst 'mere procedures' can seem humdrum, measures such as access to documents can assist more exciting icons of modern politics such as public deliberation. The provisions for a 'Citizen's Initiative' in the 2004 Treaty establishing a Constitution for Europe are currently being taken forward in a campaign to enact the measure through a Regulation[129], which, if successful, is likely to further procedurally empower citizen interest groups as trustees of campaigns. Curtin sees deliberative possibilities arising from organized civil society given a set of procedural rules to ensure their structured involvement in policy making and a level playing field for their participation[130].

Deliberative Democracy and Organized Civil Society Interests

Deliberative approaches to the development of EU democratic legitimacy display mixed views as to whether organized interests are friend or foe. These general approaches advocate development through open exchanges based on the public use of reason. They have been normatively applied to the EU in outline form by Habermas[131], by Joerges and Neyer in the context of comitology in the food sector[132], by Curtin[133], and in full by Eriksen and Fossum[134], drawing upon subsequent work by Habermas[135]. A sympathetic hearing is also evident in the work of Lord and Magnette[136] and Warleigh[137]. Whilst Eriksen[138] sees the role of elites in EU policy making as an obstacle to public deliberation, a more pluralist based approach sympathetic to deliberation highlights the way in which ideas have become the market currency of 'Brussels'. In principle, Eriksen sees the opportunities, in that Eriksen and Fossum note how 'in the discourse approach it is the flow of free communication between the associational network of civil society and the parliamentary complex that constitutes and ensures popular sovereignty, not the formal aggregative procedures that the liberals place their trust in or in the coming together in fora and 'halls' that republicans salute'[139].

These authors see the EU as more conducive to deliberation than other types of political systems because of the non-hierarchical nature of supranationality, and the involvement of a range of EU institutions. This perspective is shared by Christiansen, Føllesdal and Piattoni, who add to it by reminding their readers how the lack of majoritarian mechanisms lead to negotiated policy outcomes[140]. In a different vein, Warleigh, citing earlier work by Lambert and Hoskyns, point to the way in which the growing power of the European Parliament may conversely have reduced its deliberative capacity. Thus, mechanisms such as conciliation have had the effect of squeezing out civil society interests in the search to find the grounds for consensus with the Council of Ministers[141]. For these authors, the increasing investment of significant institutional powers in the European Parliament correspondingly reduces its ability to reach out to civil society.

Whilst Christiansen and Piattoni see 'the network of well informed lobbies' as an anti-deliberative element through their elite nature and capacity to monopolise policy making inputs, they are seen as agents of deliberation where extensive consultations arise through networks, and where they are involved in comitology. Among the deliberative elements are a series of issues presented for democratic participation by the complex and opaque world of EU Committees and expert groups in policy making and implementation. The total number of these has been estimated at between 1000[142] to 1500 in number[143], of which around 700 are estimated to be engaged in the process of policy formulation, divided between advisory groups, expert groups, and scientific committees. Of these, organized civil society interests play a formal role on advisory committees which contribute to policy formulation. The wider spectrum of committees have routinely attracted concerns about opacity and scope for privatisation of policy making, once again prompting the use of procedures to support democratic norms. Thus, in the post White Paper on Governance environment a Commission Communication on the Collection and Use of Expertise[144] sought to minimise the risk of vested interests distorting advice, and required public justification of opinion and the placing of uncertainties and divergent opinion in the public domain. The initiative led to web based registers of Expert Groups[145] and Consultative bodies[146] of the Commission. Beyond procedural measures, Joerges and Neyer have seen them as potential agents of democratic legitimation as a forum of deliberative politics,[147] finding evidence from a study of food committees that the perspectives of differing interests and a wide variety of stakeholders are taken into account in a manner resembling deliberative processes. Joerges cites the incredulity of Kohler-Koch: 'none other than comitology, that notorious system of inter-bureaucratic negotiation-diplomacy that even parliamentarians wish to abolish in the interest of democracy, is supposed to bring an element of democratically-legitimated politics into the Community'[148].

In such committees in the foodstuffs domain Joerges sees a high level of debate contributing to a high level of European protective standards: 'by virtue of its feedback links to Member States, comitology can, in principle, take all social concerns and interests into account while, at the same time, links with science (seen as a social body) can be shaped so as to allow for the plurality of scientific knowledge to be brought to bear'[149]. Joerges draws attention to the way in which the Scientific Committee on Food publishes its opinions and exposes them to wider public debate,

and uses the internet to disseminate its findings, reflecting that 'the potential of this form of publication in terms of participatory democracy cannot be overestimated'[150].

It is easiest to see deliberative mechanisms operating through policy networks, whether tightly based around policy making in with shared ideas become the key currency, or loosely based around exchanges between opposing 'camps', where iterative exchanges over time result in some common ground. These concepts resonate with those used in the wider literature on sociological institutionalism, where belief systems arising from socialisation effects of institutional participation help explain the behaviour of actors[151]. Börzel[152], and Skogstad, are among those to assess the extent to which EU networks are friend or foe of input based legitimacy, concluding that characteristics of networks result in variation concerned with their degree of institutionalisation.[153] The factors of variation involve the composition of groups and the degree of their inclusiveness, and where such networks are highly inclusive and pluralistic, so they can be agents of input legitimacy.

A number of authors have also assessed the presence and extent of deliberation by organized civil society interests in the context of the Open Method of Coordination (OMC) inclusion agenda in support of the wider Lisbon process, and have seen in it a grass roots procedure of public deliberation among stakeholders[154]. Clause 38 of the Lisbon European Council 2000 declaration launching the process states that 'the social partners and civil society will be involved using various forms of partnership'. Objective 4 of the OMC inclusion process is to 'mobilize all relevant actors,' both as an end in itself and as a means to achieve wider goals such as deliberative style best practice learning. Whilst there is a mixed record of drawing groups in to Lisbon goals, a 2002 survey undertaken by the European Foundation for the Improvement of Living and Working Conditions found a direct contribution of social partners in writing National Action Plans in 7 of EU-15 countries, and high satisfaction about participatory conditions in 6 countries[155]. This is a similar view to the one taken by the Council at the time of its inception as 'an important tool to improve transparency and democratic participation'[156]. On the basis of two case studies, de la Porte and Nanz (2004) take a guarded assessment from the results obtained so far from OMC, finding some wider development but relatively little evidence of anything resembling *deliberative* outcomes or practice.[157]

Conclusion

Sudbery records comment from members of the Commission team working on the Governance White Paper which reveal their core doubts about the feasibility of moving beyond output legitimacy to search for input legitimacy. One member of the team told her 'perhaps the most effective way to link with the citizen is by more effective results'[158], and, more startlingly, that 'the issue about bringing in the citizen is for speeches, for the rhetoric. This organisation will never touch the citizen directly'[159]. With one eye to output legitimacy and such doubts about direct inputs there will always be a focus upon elite, often confederated, groups, particularly within a system leaving such a strong trail of incentives for institutional participation whilst disincentivising

mass mobilisation. Nonetheless, there are clear signs of development. Lord and Magnette argue that the EU

> is arguably precocious in new forms of governance which may have their own
> representative qualities. It often bargains solutions in networks that are inclusive of a wide
> variety of actors, deliberates them in settings where scientific and normative opinion
> assumptions have to be defended, and uses decision-rules to make it hard even for
> oversized majorities to capture the benefits of co-operation for themselves, rather than
> distribute them more evenly[160].

These attempts to harness, and adapt, participatory mechanisms with representative traditions seems to map a pathway of development by addressing some of the negative externalities long associated with the contribution of organized civil society to input legitimacy. The EU model of participatory democracy centred on organised civil society matches very closely the neo-pluralist typecast of Lindblom, in which an activist bureaucracy works directly to address asymmetries of power between different constituencies of civil society, actively intervening to empower citizen interest groups to act as checks and balances viz. each other and political institutions. Among the most striking of these are issues surrounding the institutionalisation of groups, including measures to stimulate citizen group formation and maintenance such as the substantial funding of citizen groups, and the bureaucratic accommodation of them in the corresponding Commission services. The institutionalisation of outsider groups with a hostile message complaining of exclusion to the point that they are able to drive policy initiatives seems only to provide ironic evidence of the essential pluralism of the system, and of the ways in which institutionalism can address asymmetries of power.

There are concrete achievements of process democracy in addressing asymmetries of power, and of particular note is the vigour of these. They include procedures to: consult on all legislative initiatives announced in advance in an annual forward programme; ensure open consultations; making transparent the basis of policy choice; impact assessments which assess the effect of measures upon every kind of stakeholder; a transparent basis for the use of expertise throughout; and transparency measures which support the ability of groups to keep the political system accountable, and to enact various of mechanisms of checks and balances. Equally significant in this latter endeavour are the design features of a multi-level governance system reviewed herein as highlighted by Grande, in which the fragmentation of power between political institutions and actors prevent any one type of interest from routinely dominating by creating a natural system of checks and balances and facilitating access for all. Together with collective action logics these seem to contribute to levelling the playing field. Of note here is a landscape of competition among business interests, but in particular the apparent triumph of corporatist over Olsonian logic, where a combination of the fragmentation of power in a multi-level governance system, and the confederate nature of groups, means that specific interests have the disadvantage of restriction, and diffuse interests the advantage of autonomy. Whilst the issues surrounding the contribution of organised civil society to democratic legitimacy and the neo-pluralist role of political

institutions to this end have a familiar ring about them to those of developed democracies, at the EU level there are striking features which seem to make a difference. These derive from features of the transnational level itself and its impact upon group design and internal characteristics of power dynamics and operation, the extreme diffusion of power in a multi-level governance system, the vigour of procedural measures and the degree of bureaucratic activism. Of the three broad approaches to the role of organised civil society in EU democratic legitimacy outlined herein, all of these features lend themselves to the optimistic outlook, with reservations as to the apparently clumsy privileging of 'representative' groups over other types. To the observer familiar with the role of groups in democratic systems, the degree of institutionalisation of groups in the EU system and all its manifestations and consequences, without necessarily weakening their role in input legitimacy, is striking.

[*] Department of Economics and Public Policy, Robert Gordon University, Aberdeen, UK.

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