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**Is Economic Analysis of Any Help in
Studies of Legitimacy in the EU?**

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Is economic analysis of any help in studies of legitimacy in the EU?

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ABSTRACT: The transaction cost approach in economics has been applied in theorizing how Europe is governed. In providing a functionalist explanation of political organization, it encourages beliefs that reforms improving organizational efficiency also increase the legitimacy of European leadership. This paper discusses institutional perspectives on how democratic legitimacy is built by those, who aspire to rule the EU. An economist's view will be discussed against a background of models of legitimacy by Scharpf and Schmitter. In addition, a governance practice directed to diffusion policy is fenced off and a future empirical study is outlined.

Keywords: Legitimacy, Multi-Level Governance, Transaction Costs, Social Norms, Institutional Leverage

JEL Classification: H70, L50

1 Introduction

Sometimes the European Union is described as a multi-level governance system and the key to understanding EU policy is the understanding of how power is shared across supranational, national and sub-national levels. It is arguable that delegation of tasks from national level politics to the supra-national level may improve the efficiency of policymaking. In some EU countries the costs of patent protection are five times as much as in the US and Japan. These costs could be reduced with EU institutions that give inventors the option of obtaining a patent legally valid throughout the EU through a single application to the European Patent Office. To avoid that technology producing firms and other owners of patents run the risk of legal action before national courts in each member country, a centralised community court to rule disputes arising from Community Patents could be set up.¹

Would changes in the organization of the European Union, which improve efficiency, increase the legitimacy of those, who rule the EU? In trying to answer this question, I note that there is no unquestioned view of democratic legitimacy in the literature. Yet, it seems to be a minimum of consensus that democratic legitimacy rests on both procedural and substantive values. While procedural values concern the degree to which groups of the population exercise influence through voting and participation in decision making, substantive values are associated with the idea that the delivery of a public service is democratically legitimate if the users are satisfied with the way the service is performed, i.e. believe that production is run efficiently (Aif politicians do it in the right, then it is legitimate) (Jacobsson 1997), (Erlingsson 1999).

Small wonder, then, that there are authors arguing that improvements in efficiency help the legitimacy. The previous vice president of the EU Commission Leon Brittan (1998 p 3) concludes that European integration "is a highly sophisticated attempt on the part of the European countries" to protect their sovereignty in a world of globalized economic activity. He defends these shifts of sovereignty to the supra-national level by arguing that the populations are willing to accept reductions in legislative sovereignty as it gives welfare returns. While legitimacy has to do with popular support for political decisions (governance ability without force), politicians responsible for

¹ This kind of EU institutions are suggested in 'Activities of the European Union – Summaries of Legislation: Intellectual Property' and 'EU Institutions press releases: Results of the Competitiveness Council of Ministers, March 2003'.

European technology policy should consider citizens, who professionally take part in work, where technological knowledge is produced and processed, as important. Like other electors they are bounded and committed to a particular member country (or one of its provinces) and, thus, have an interest in keeping technological knowledge secret in order to protect income deriving from localized comparative advantages. Analogous to Brittan's reasoning, these engineers and technical workers may be prepared to give up opportunities to influence on domestic political institutions for consultations and participation if income from intellectual assets are protected more efficiently by European institutions (which lack the national-level opportunities for consultations and participation).

Also economic analysis associates legitimacy with values of a high service capacity. At the same time, values of various aspects of community associated with traditional liberal democratic institutions are neglected. Legitimacy deriving from how governments democratically select office holders, how consultations are carried out and from electoral approval of political programmes is not given enough attention. An efficient EU is legitimate even if it is less democratic than national governments. Economic analysis usually authorizes political organizations that minimize the costs of producing public services and the transaction costs of running the organizations. At the same time, national traditions and institutions are neglected implying that analyses of European integration tend to rely on functionalist explanations: transaction costs of European-level institutions are small and domestic organizations adapt smoothly to these institutions (if designed for efficient performance of specific tasks).

The functionalist explanation of European integration shows the influence of the Coase theorem on the new institutional economics. This theorem requires zero transaction costs, which is fulfilled only if bargaining to an efficient agreement does not depend on the bargaining power of the different parties. Another condition for transaction costs equal to zero is that the benefits individual parties receive, and costs and risks they bear, can be evaluated as being equivalent to some cash transfer that all costs and benefits can be reduced to.² But in European politics powerful states defect from European legislation leading to considerable bargaining costs and many electors have preferences for national democratic institutions and they also have territorial identities. In these cases, side-payments ("cash transfers") are often unable to compensate citizens for losing national

² The Coase theorem is discussed in Coase (1993) and in Milgrom & Roberts (1992).

democratic institutions, which are based on regional and national identities. According to economic reasoning an increased number of institutions for civic participation in the EU is no acceptable solution to the problem of lacking legitimacy as it would increase transaction costs considerably. In economic literature on corporate governance, for instance, it is argued that costs of collective bargaining increase with democratic representation and participation, which may remove the social gains of a governance system (Tirole 2001), (Hansmann 1996). Hansmann, however, argues that rulers and those ruled are willing to accept democratic procedures in case of homogenous preferences and interests, as it tends to reduce the transaction costs. Yet, aspects of community have no value per se. They are not considered as a solid foundation of a democratic representation.

It is true that identity, where citizens think about themselves as belonging to different social categories, and values of democratic procedures are not emphasized in economic analysis. But economists usually consider various types of transaction costs (see ‘motivation costs’ below), which helps our understanding of EU legitimacy. A broad perspective on transaction costs may give significant insights into electors’ attitudinal support of European integration. A future research project on *EU diffusion policy* (influencing economic growth through transfers of technology), outlined in the following, will hopefully provide some evidence for this hypothesis. It also notes that many new technologies are useful in a broad spectrum of applications. This probably reduces the interest of engineers and technical workers to keep technological knowledge secret as it reduces technology diffusion and imposes serious limitations on the range of technological applications. Many producers of new technology, therefore, prefer to make their technological knowledge public through information sharing and through markets for trade with intellectual property (patents and licenses).

In practice the legal protection of trade secrets is far from complete. Scholars have documented how engineers and technical workers in Silicon Valley exchange technological knowledge through frequent job-hopping and the explanation to high labour turnover is that trade secret protection is weak in California (cf. Fosfuri & Rønne 2004). It might well be that protection by EU institutions also will be weak implying that producers of technology may prefer to solve problems with multi-purpose technologies through voluntary exchange of information and informal talk according to the “academic model”. EU initiatives for the creation of ‘Community Patent’ and a more coherent ‘European Research Area’ may reduce the transaction costs of legislative processes and of the

coordination of innovative activities. But in forming their opinion about EU integration, technology producers are probably also affected by 'motivation costs'. This type of transaction cost depends on perceptions among the technology producers of being victimized or of imperfect commitment by the EU policymakers to provide the services they have promised. 'Motivation costs', to which I return below, are discussed by Milgrom & Roberts (1992).

It is arguable that citizens support European integration if it provides service capacity at a proper level. But the legitimacy of new institutions in Europe cannot only be judged in terms of efficiency of problem-solving and transaction costs. It is claimed that citizens also use social norms, which are based on trust that can legitimise democratic procedures. A necessary condition for a common political space in Europe, and a European demos, is that ordinary Europeans become aware of the involvement of a supra-national political system in Europe that influence on the daily life. Even if scholars claim that this awareness has increased during the last couple of decades (Svetlozar 2004), it is arguable that people cannot see that improvements in their daily life come from European institutions. Therefore, in the following disclosure and transparency become crucial aspects legitimacy.

This paper outlines a Danish case study aiming at a better understanding of circumstances under which politicians derive legitimacy to transfer sovereignty to EU institutions. It is claimed that insights into these circumstances are provided if the study focuses on a particular policy area. At the centre of concern are diffusion policy and the opinion of engineers and technical workers. The institutional approach applied in Transaction Cost Economics has overshadowed theorizing about governance and merits due consideration in the paper. It is a prime aim, however, to extend this approach with alternative explanations of legitimacy.

The second section of the paper, which discusses some theoretical issues, draws attention to what Burt (1992) calls the "social structure of markets". In applying this notion to my view of legitimacy, I argue that legitimacy can be explored in terms of policies affecting the market performance of members of specific constituencies. It is also explained how market structures provide a bridge between politicians and their constituencies and prepare the way for the application of the notion of social norms and an institutional approach to legitimacy. The explanations offered will be flavoured with empirical evidence of a few institutional practices in the area of EU diffusion policy.

These are presented in section three, which also is devoted to a discussion of various models of legitimacy. Since the economic model has been criticized for being “undersocialized”, it is extended with models suggested by Scharpf and Schmitter. Section four presents my plans for a Danish case study. The widened approach to legitimacy will be applied in a future study of social market structures that connect constituencies of engineers and members of a few parliamentary committees. At the centre of concern is the formulation of national standpoints of relevance to these markets structures. The state policies considered are formulated to be pursued in the EU. It is also explained how this policymaking could be angled towards regional politicians. Section five, finally, contains a few concluding remarks.

2 Theoretical issues

Legitimacy is a special right politicians have to exercise power without using force. The legitimacy of those who rule the EU cannot easily be related to voting (elections to the EU parliament). It is unclear whether a low voter turnout is a signal to the politicians that the citizens are satisfied with the way Europe is governed or a signal about lack of legitimacy. If a voter is satisfied, she or he may not see any reason for obtaining information and spend time on voting. An alternative way of approaching legitimacy is outlined below.

I look behind voting behaviour and also violate economic models, where electors and politicians choose their actions according to principles for optimization. Instead I imagine political actions as (for the most part) taken by routine. Citizens are concerned about legitimacy when they realize a need of examining and revising prevailing routines. The explanation offered in the following sets out to study new routines that are brought into mind when electors become aware of EU institutions influencing their interests as professionals. For engineers and technical workers, who protect their earnings in various markets (labor markets, markets for technology, markets for corporate control), this happens when European integration affects these markets. In facing institutional environments (EU- and national institutions, institutions for civic representation and participation), technology producers also take the opportunities to adjust their routines to ensure flows of critical resources both from markets and from institutional environments (Hannan, Freeman 1977), (Hannan, Freeman 1989), (DiMaggio, Powell 1991), (Gunnarsson 2001).

In violating the optimisation metaphor in economics, I also try to argue that individuals, instead of maximizing their utility, 'try to do the right things'. In doing that, they give social norms and their social identity some thoughts. Moreover, preferences (individual interests) become endogenous and determined as the individuals figure out the appropriate behavioural rule in a given situation (Risse 2004 p 163). Obedience to social norms and identities implies the existence of pre-established norms, which may be shared by the rulers and the ruled. These norms and identities provide a basis for the legitimisation of political institutions (cf. section 3). That is, aspects of community have a value per se in the sense that social norms shared by a large group of people is a solid foundation of procedures for assigning a legitimate representation and shared responsibilities between various levels of governance and centres of decision making.

Examinations of how the engineers think about and form their beliefs about critical market situations, behavioural routine and social norms will circle around civic activity. This brings me to the social structure of markets, which I consider an important bridge between politicians and their constituencies. Burt (1992) shows how this structure is linked to competitive advantages for satisfying individual interests in markets. It is also associated with social capital in the form of "norms of reciprocity and networks of civic engagements" (Putnam 1993 p 167). Burt also shows that network structures with few 'redundant contacts' provide 'information and control benefits'. Thus, civic activity in connection with market structures (networks connecting individuals through trust-relations, obligations and through exchange) also seems to be an efficient way of organizing learning about social norms, beliefs about individual interests and behavioural routine. In sum: the social structure of markets is a source of critical resources that serves people's rationality in EU governance and shapes their attitudes to political organizations.

Norms are changing and convergence of politicians and voters on the same social norms helps the ruling of the EU. In order to better understand these changes, I will look into the communicative activities between politicians and their constituencies. The conditions for learning about politics by members of a constituency are more favourable if information costs are low. Special attention is, therefore, paid to social structures of markets such as professional networks and societies with low information costs. Consequently, political actions should be more visible in market structures with a high level of organized activity. In addition, the voter turnout is high among citizens engaged in civic activities. Taken together these conclusions imply that citizens involved in these activities

constitute a vital audience for politicians, who aspire to power in the EU (Cox (2003) discusses empirical evidence showing that a high level of civic engagement implies a high voter turnout). The existence of a vital audience gives politicians an opportunity for communicative actions that could change preferences and norms.

In recognizing the importance of communicative activities between politicians and their constituencies, I admit that disclosure and transparency are important attributes of democratic legitimacy. Thus, the will to make information public is a crucial aspect of ruling the EU. The European Commission mentions as a hindrance to legitimacy that people cannot see that improvements come from European rather than from national decisions (2001 White Paper). Even if EU directives and laws lead to much national lawmaking, people cannot see how domestic politics derive from the EU. Politicians are not always visible and therefore unable to signal to their constituency the reason they have for their political actions. Better direct communication between the Commissions, national- and regional governments may help.

Legitimacy to rule the EU requires that the electors can see that political actions are connected with European institutions, which they perceive as efficient and have trust in. These insights require transparent communicative activities. The legitimacy is also helped if European institutions are underpinned by social norms the politicians share with their constituencies. One question to be examined is if there are domestic institutions that either prevent or speed up the convergence on social norms that derive from a European identity. The diffusion of these norms is hindered as long as politicians and citizens are 'locked in' due to the historical legacies of domestic institutions (Gunnarsson 2003), (Pollack 2004).

Domestic institutions may prevent politicians from communicative activity, which increases the information costs of their constituencies. I note, for instance, that Lehman Schlozman, Brady and Verba (1997) have found, firstly, that policymakers can expect an outcry when organized interests are threatened. Secondly, as the distribution of civic engagement is unequal, certain groups are ignored with impunity. They are "...simply not part of the campaign discourse" (p 6). In other words, politicians become visible providers of information only when they are challenged by 'loud voices' deriving from organized activity. That is, a national institution such as civic activity affects the strategies the politicians have for informing their constituencies. For my study, this conclusion

points to the need of detailed examinations of politicians' responses to opportunities for taking political actions. They realize this kind of opportunity after focusing attention on, collecting and interpreting information about the institutional context in which they are. At the centre of concern are national institutions for party politics and institutions that regulate the relations between the national and regional levels (I return to the importance of the regional level in section 4).

3 Empirical and theoretical context of the research

A segment for policy-analysis

The explanation offered in this research is flavoured with empirical evidence of a few institutional practices in the EU. When Danish engineers are asked about their support for a particular EU institution their opinion probably reflects attitudes to a wide range of policy areas. It is also a combined effect of all types of legitimacy discussed below. Consequently, when I use interaction between engineers and politicians to find an answer to my research questions a wide spectrum of political actions and notions of legitimacy have to be considered.

An exploratory method is used to fence off relevant political actions. To begin I note that many of the worries engineers have about how to assure themselves a proper earning from technologies they produce depend critically on *diffusion policies* in Stoneman's sense of the word (Stoneman 2002). By this notion he refers to political actions aiming at influencing economic growth through transfers of technology. The preparation of a Community Patent and a centralised community court to rule disputes arising from Community Patents belong to this category of policies. All member states take part in the Munich Convention on the European Patent, which gives inventors the option of obtaining a patent legally valid throughout the EU through a single application to the European Patent Office.

Since intellectual capital has become a crucial asset in most European companies, conflicts between employees and shareholders about rights to earnings of new technology are growing in importance (Rajan, Zingales 2000), (Audretsch 1995). These conflicts are channeled through the national corporate governance systems, which are becoming Europeanized due to EU policies. To help a

common capital market in Europe, the national governments have been encouraged by the EU to liberalize and deregulate in order to make it easier for foreigners to invest in domestic firms.³ The Europeanization of corporate governance is also driven by EU directives for a modern European company law framework. This framework aims at establishing protection throughout the EU “for those who are involved in and affected by the affairs of the company”.⁴

Obviously, policies on a Community Patent and on a European company law are related. Engineers become aware of EU institutions within these areas, as these institutions influence on the competitive (market) advantages of technical workers. Accordingly, they are included in my studies of legitimacy. These studies recognize that there is a shareholder interest that policies on a Community Patent and on a European company law assure investors the controlling rights to intellectual property. It is difficult to prevent the employees (such as engineers), who personify the human capital in a firm, from running with valuable assets. This “integration problem” has been noticed recently by Rajan and Zingales (op. cit.). Intellectual property promotes codification of knowledge (set knowledge free from the employee) and link shareholder rights and knowledge, which improves the conditions for shareholder control. While there is knowledge, which cannot be set free by intellectual property (or the costs for obtaining and protecting patents are high), shareholder control may be improved if the employees are paid in shares and stock options. This is often believed to reduce inter-firm mobility.

Will a European company law that integrate engineers into the firms be considered as legitimate in the eyes of the technical workers unless it protects this group from losing intellectual capital in case of dismissals? The EU framework for a European company law does not place producers of new technology on an equal footing with the shareholders and the creditors even if they are providers of capital. On the other hand, due to the subsidiarity principle and to differences in national laws and codes of practice, there are significant national differences in equality. There is about forty ‘codes of conduct’ in Europe. In Germany, where legal rules bring employees in a relatively strong position in the labour market, there is a clause in EU’s takeover directive giving the board of a

³ The political elite in the EU has been more or less successful in pursuing member countries, where England distinguishes herself as one of the most active to open up for foreign investors, while, for instance, Germany has been passive. The Scandinavian countries are gradually changing their attitudes (Brown and Raines 2000).

⁴ High Level Group of Company Law, final report, 2002 page 29

target firm the right to refuse a takeover bid by reference to other stakeholder interests than those of the shareholders⁵.

A closely related issue concerns rights for universities to own patents and to set up companies for the commercialisation of knowledge. This brings me to the third area of political action with a bearing on this study. This area concerns investments in infrastructure such as universities, science and technology parks, laboratories and equipment. Investments in training of scientists and technicians are also included. The inclusion of these policies into the empirical study brings me beyond policies on intellectual property. It raises interesting questions about the way EU policymakers safeguard the academic model based on free research and education. My study will through light on conditions for legitimising policies on cooperative arrangements for exchange of technology (a 'European Research Area') among engineers and technical workers. Much of university education and research has up to now been built up on such arrangements.

Innovations in the European frameworks for patenting, company law and politics on infrastructures (universities) will enforce governments and parliaments in the member states to revise their national policies in these areas. The national agendas will include items such as the role of the national patent office and issues on European Works Council. Politics on infrastructure is linked to EU's R&D activities, which constitute an integrated part of EU's regional policy. Changes in this area are expected to influence on the role of the regional authorities in the formulation of national standpoints in the EU. While the main research question (how politicians legitimize EU policymaking) will be angled at the formulation of national standpoints in the EU, examinations of national responses are important in the following. From this angle I also hope to better understand how EU policymaking can conserve national perspectives but also create a European outlook among those included in the study.

Will the adaptations to EU rules become more legitimate in the eyes of engineers and technical workers if some tasks in EU's legislative process are delegated to the national and regional levels? There is evidence showing that EU's subsidiarity principle is applied in the policy areas included in the study. Thus, the framework for a European company law is set up at the EU level, while the detailed law-making is left over to the national level. But already in primary company law

⁵ Information picked up from an interview with an expert of international company law

legislation at the EU level, consultation takes place with industry, commerce, services, professions and other interested parties in the member countries.⁶ That is, national views of corporate governance, to be pursued in the EU, are formulated by the national governments and parliaments. Recently the federal government in Germany has succeeded in establishing consensus about one national system of codes. Before, there were regional differences between the two main financial centres in Frankfurt and in Berlin. This is not to say that it is more common in federal states that corporate governance practices are politicised at the regional level, which is obvious from Belgium, where the stock exchange in Brussels has authority over both Flanders and Wallonia.⁷

Perspectives on legitimacy

In explaining legitimacy, economic analysis emphasizes the ability of the EU to produce outcomes that are favourable in terms of cost-efficiency. It authorizes political organizations with low production and transaction costs, where losers from European integration are compensated by side-payments. This approach has some bearing on EU governance. While the national governments derive legitimacy through democratic procedures for election, transparency and consultation ('input-based legitimisation'), the EU, with less developed democratic institutions, has to rely on an efficient service production. Yet, European citizens may be reluctant as the European administration is weak as compared with the national administrations with limited capacity to influence national-level processes (Svetlozar 2004)

Economists also note that conflicts between member states are common and the states have an incentive to defect from European legislation. The Transaction Cost Approach suggests that in this situation cost-efficiency is best served if European institutions are insulated from political pressure, for instance, through the realization of a single market in Europe. It helps the growth of an efficiency-oriented policy provided by experts and regulatory institutions, such as the European Commission, isolated from political pressure (Jachtenfuchs 2001). The European Commission has an important role to monitor member state compliance and the huge amount of EU committees is designed by the principal (the member states) to supervise the supranational agent (the Commission) (Pollack 2004). Some scholars even argue that an increased reliance on expertise (suggested by the transaction cost model) leads to increased legitimacy. Thus, a political agent

⁶ *ibid* page 32

⁷ Information picked up from interview with an expert of international company law

lacking the adequate expertise may increase his or her credibility by delegation of tasks to individuals and organizations that are not directly accountable to the voters or their elected representatives (Majone 1996).

Analyses of European governance usually bring the member states into the fore placing the citizens in the background (Svetlozar 2004). In the broader perspective on transaction costs discussed by Milgrom and Roberts (1992) this is not the case. They include ‘motivation costs’, which provides insights into the attitudinal support of European integration by the electorate. It was found in section 1 that many engineers and technology producers worry about how to protect their economic interests in knowledge assets. They may believe that they will be victimized if they give up opportunities to influence on legal protection of their earnings through national democratic institutions. European institutions for technology diffusion will never be established and if they appear they will be perceived as illegitimate.

‘Motivation costs’ could be associated with situations in which citizens do not have all relevant information they need to approve of transferring sovereignty to the EU (information incompleteness and asymmetries). In this case, legitimisation of EU governance concerns issues on disclosure and transparency. Another source of ‘motivation costs’ is the inability of politicians to bind themselves to follow a mandate given to them by a constituency (imperfect commitment). Here jurisdiction and efficiency-oriented institutions occupied by experts may reduce the deficits of legitimacy. While much power has been given to the European Commission and its expert committees, the EU may even have an advantage in this respect as compared with national governance.

Economic analysis is too narrow to explain the legitimacy of policymaking in the EU. This is evident from the argument that the EU legitimacy problem is reduced through increased representation by expertise to which problem-solving can be delegated. It neglects that experts and private consultants (the role of the “European Round Table of Industrialists” for the 1992 Single Market Programme) are powerful and have their own private interests to serve. Instead of becoming a lever of increased legitimacy, regulatory institutions populated by persons, who give expert advice (in business, law etc), may create capture problems. I also agree with Granovetter (1992 p 72), who argues that transaction cost economics rely on an “undersocialized conception”. This brings me to models of legitimacy, where citizens value aspects of community. In an interesting article by

Schmitter (2001) legitimacy is defined as “a shared expectation among actors in an arrangement of asymmetric power 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 norms”. In assuming that behaviour is governed by a set of norms shared by “those who rule” and “those who are ruled”, this approach violates the principal-agent perspective on governance in economic analysis. On the contrary, Schmitter argues that there are common institutions affecting all parties to comply with generally accepted rules. Legitimacy does not primarily derive from efficiency due to low transaction costs, but voluntary conformity to social norms for what is institutionally appropriate behaviour is also important.

Schmitter’s perspective is applied to my approach. As broadly defined institutions are emphasized, I will not run the risk of relying on functionalist explanations of governance arrangements. It is interesting to note that Schmitter points to limitations on European integration. It is pluralistic and “will protect the diversity of experiences rather than attempt to assimilate them into a single ‘European’ culture or identity”. On the other hand, the actors at the national and sub-national levels are “reasonable pluralistic” in terms of “pre-disposed to bargain, negotiate and deliberate until an agreement is found”. This suggests that legitimate European institutions develop within smaller islands with favourable conditions for community. Schmitter refers to these islands in terms of “fuzzy” practices of governance, but also in terms of deliberate “European Governance Arrangements” (EGA), to which power is delegated and has a purpose and rules for reaching decisions.

The unit of analysis, used in this study, is blurred. It requires at least that there is a mutual recognition across the public-private border of a need to coordinate market decisions and policymaking. Thereby, Schmitter’s request that state and market mechanisms are combined is satisfied. Political institutions are ranging from arrangements for private contracting to government-enforced regulation. In addition, the preparation and implementation of policies are based on more or less intimate communication links between market agents and the authorities. That is, legitimacy is both ‘input-oriented’ (rooted in principles for identity-based majoritarian democracy) and ‘output-oriented’. While the democratic legitimacy of a state primarily rests on procedural values, the situation in the EU is different, and as Scharpf (1999) suggests ‘output-oriented’ explanations are important.

Sharpf's perspective on legitimacy is also interesting. It confirms Schmitter's view of the EU as composed of multiple governance practices and multiple collective identities. Scharpf calls attention to various legitimizing mechanisms referring to procedural values in the sense that they presuppose the existence of an "identifiable constituency". There is no reason to assume solidarity among the members of a constituency, or to believe that they will pursue the public interest. 'Output-oriented' legitimacy only requires that all individual interests can be interpreted in terms of institutionalized norms that serve public interests (ibid p 13). When applied to the unit of analysis used in my study, the 'constituencies' coincide with the market practice of engineers and the corresponding social market structure. The EU is angled at a specific market segment of engineers and the 'norms that serve public interests' become obvious from explorations of the collective values learned through communication links between engineers and politicians.

Economic analysis often neglects relations between individual interests (individual preferences) and shared interests (social norms), which seem to be crucial in Scharpf's perspective on legitimacy. Yet, scholars in the field of experimental and behavioral economics use social norms and argue that they may be brought to mind by political institutions (lawmaking, voting), which affects behaviour (Tyran, Feld 2002). In this field, political institutions are perceived as an expression of what one ought to do. It is an interesting question if this normative force of political institutions derives from input- or output-oriented legitimacy. Another question arising is how social norms and individual interests are learned in a combined fashion.

In trying to answer these questions, I suggest an approach to legitimacy, where the general public is a crucial audience watching politics. Transparency and incentives politicians have to signal the reason they have for their political actions and to demonstrate how wealth depends on decisions made by them are crucial determinants of legitimacy. Similar ideas are expressed in a model of "institutional arguing" suggested by Neyer (2003). If all actors with an interest in the same problem-solving process can participate in the arguing, and non-governmental parties accept to engage in a constructive discourse, then a political agent is encouraged to "advance his or her interest sufficiently well by justifying, explaining and persuading" (ibid p 693). Legalization is a necessary instrument to structure the discourse, and as legalism dominates much of EU politics, EU institutions provide the legalism needed.

Nyer's idea about "institutional arguing" is interesting. It seems to have a common denominator with the principal-agent model in economic analysis. Both admit the need of aligning those, who rule, with interests of those who are ruled. Moreover, states have incentives to default and, therefore, the "agency costs" are large. But the "agents" (EU politicians, the Commission, individual member states) derive incentives to cooperate and derive legitimacy from a consensus on common rules for information sharing, transparency and the use of good arguments. Yet, in the down-to-earth perspective on communicative activity I suggest, the interlocutors also try to gain from information benefits and explain and argue in order to advance private interests. Also the legalism of EU institutions is violated in my approach, where learning takes place in various national contexts involving various institutional identities.

4 Research outline

Social market structures, which connect engineers and politicians, will be examined in a Danish case study. One question arising is if the economic model of legitimacy, combined with the models suggested by Scharpf and Schmitter, will increase our understanding of how politicians become legitimate. In trying to answer this question, I will focus on the segment of EU governance discussed in the beginning of section 3 and on legitimacy in the eyes of technical workers. Empirical evidence suggests that Danish engineers are motivated by technological professionalism and adjust their competences to increased competition with other professional groups⁸. It is a prime task of my future research to examine if the engineers become aware of how EU diffusion policies influence their interests as professionals. More specifically, I concentrate on effects on the ability of the engineers to protect their rights to income of increased intellectual capital. Another task is to find out if this awareness influences their opinion about those, who rule the EU. In response to increased political consciousness, the engineers may be encouraged to increase their information benefits by intensified organized activity in social, cultural and professional networks.

⁸ Ingeniørforeningen i Danmark, "Fremtidens ingeniørprofiler – et debatoplæg om ingeniørers kompetencer og uddannelser", oktober 2002 and "IDAs strategiske samarbejdsrelationer og alliancer", Ingeniørforeningen i Danmark 2001

The European Commission promotes efforts made to upgrade competences for the common European market. In addition, the Society of Danish Engineers points out that in most European countries engineers are lacking and admits that the task to increase the number of engineers cannot be delegated to market forces. The Danish association is arguing in favor of collective action but refers to the EU Commission that asks the labor-market organizations to solve the problems instead of passing them over to the lawmakers⁹. Accordingly, the Society of Danish Engineers has recognized a need for coordination across the public-private border. Being a necessary condition for the evolution of a governance practice (cf. section 3), this fact is crucial for my study.

Social market structures provide cheap information to engineers, who become an audience to be addressed by the politicians. The learning effect of EU policymaking, however, varies between the member countries depending on different traditions for civic activity. If the national responses to decisions and directives by the EU appear in the shape of lawmaking, then standard procedures for letting trade unions and professional societies being heard are usually applied. If, on the other hand, lawmaking is replaced by procedures for negotiations between interested parties (important in Denmark), then civic activity probably displays more sector variation.

National responses also depend on the politicians. In exploring the research questions, I use the formulation of national standpoints to be pursued in the EU as empirical evidence. More specifically, I concentrate on politicians, who aspire to power in these processes and what they can do to legitimize the establishment of new European institutions. Committees in the Danish parliament are involved, and since I explore legitimacy in the context of diffusion policies, the Committee for Science and Technology (CST) ought to be of special interest. In accordance with discussions about theoretical issues in section 2, I argue that the politicians in these committees are limited by national institutions. At the same time, their institutional roles are changing in consequence of the development of new European institutions. The need of altering the national institutions is obvious from table 1 showing that the number of issues on the agenda that concerns the EU is increasing. No wonder, then, that the members of the committees wish to get more information and to become more involved in EU policymaking. Therefore, new procedures are implemented implying that all information about the EU from the government is no longer sent only to the EU Committee (EUC), but to all parliamentary committees and it is up to them to

⁹ Ingeniørforeningen i Danmark, "Notat. IDAs internationale arbejde", 30. april 2001

Table 1: Number of issues concerning the EU on the agenda for the Committees in the Danish Parliament

	1992-93	1998-99	2001-02
Committee for Science and Technology	1	5	12
All committees (the EU Committee excluded)	23	220	205

Source: Jensen (2003)

respond to this information (Jensen 2003).

Due to this change, the politicians in the CST have gained information benefits in the sense that they have got an opportunity to interfere early in the legislative process, where decisions in the European Council are prepared. The decisive phase of the bargaining about national standpoints seems to be before a policy is discussed in the EUC. EU institutions and structures also affect the institutions for party politics in ways that may empower some members of the CST. Jensen (2003) mentions efforts to avoid situations, where party representatives in the EUC argues in favour of one political standpoint, while representatives in other committees argue from contrary standpoints. To solve this problem EU policies tend to be coordinated within political parties and in good time before they are set on the agenda for the EUC.

A politician in the CST, who aspires to power in EU policymaking, should respond early to information received from the government or bring up new EU issues. As the time for party group-meetings is spare, a policy issue has to be anchored through informal meetings. This is important as influence in EU policymaking requires that a politician becomes the standard-bearer of his or her party in the EUC. A party allocates its representatives between committees according to expertise and it also moves its 'experts' from a committee to the EUC when particular expertise is needed (Jensen 2003 p 124). It is the leading party representatives in the EUC, who, through the coordination of the various party positions, prepare the national standpoint. This tuning takes place before the meeting in the EUC.

In recognizing the importance of the standard-bearers, I will examine if they can help the legitimization of new European institutions through the way they arrange their communication with the electorates. One question arising is if the changes in information procedures and party politics just mentioned imply that communication tends to be guided by a national perspective rather than by Europeanised views and outlooks. If this is the case, forces that create the legitimacy of European institutions will be weak. Another question arising is if a weak European identification within the electorates make politicians hesitate to disclose their EU strategies. If they reveal their strategies, the chances of their party for winning the next election may be reduced. In addition, if the European identification is weak, the politicians may have an incentive to connect welfare returns of European institutions with decisions made by national governments and parliaments. The credibility the authorities get by taking part in European politics is never transferred to the EU.

A prime concern in the following is how activities in the parliamentary committees develop together with market practices of the Danish engineers. To get the empirical examinations started, I will ask engineers how they obtain their beliefs about EU institutions and structures. It is also interesting to ask about perceptions of motivation costs (information incompleteness and imperfect commitment). The answers will be related to observations of communicative activity across the public-private border and of engineers' learning in small group-settings.

It is also a prime concern to examine what community means to the engineers and if this meaning could provide a solid foundation of a democratic representation from which rulers derive legitimacy. This brings me to a norm prescribing that 'one ought to share the technological knowledge one possesses with everybody, who accept this norm'. Historically, this norm has guided university research and education. It is assumed that privately organized activity among engineers directed towards mutual assistance also obeys this norm. At the same time, there are occasions, when the engineers reject the norm and there is a broad consensus among them that technological knowledge should be kept secret. While the 'social structure of markets' is based on trust-relationships, the engineers count on their colleagues' discretion, i.e. they are sure that their colleagues are able to judge when knowledge is secret and when it is public.

Beliefs engineers have about norms for dealing with technological secrets and damages will be examined. It is an interesting question if their trust in politics derives from beliefs that the

politicians share these norms. Some insights into the legitimacy of European rulers may be provided if the engineers are asked if they are prepared to extend the trustworthiness they have in one and another to politicians by transferring judgements about these norms to them.

Regional-level politics

This study is a continuation of research on regional empowerment in EU policy networks (Gunnarsson 2001), (Gunnarsson (2003). It looked into questions of how regional authority alliances with firms help this empowerment. The regional authorities derive a favourable bargaining position, because business circles and powerful groups in EU policymaking perceive them as competent and as having output capacity. That is, regional-level policymaking is believed to contribute to the efficiency of the legislative process. According to economic analysis, this contribution improves the legitimacy of the regional authorities in the EU.

The study, discussed in this paper, extends this perspective on legitimacy of the regional authorities. My approach, however, requires that regional empowerment and the formulation of state policy in the EU can be seen as two parts of the same joint problem-solving process. There are national differences producing differences across member countries with regard to regional involvement in EU policymaking. Do common European institutions in general increase or reduce regional involvement? Do the national governments compensate the regions for power they eventually lose in the course of the European integration?

The ability of regional politicians to make their voices heard when the national EU policy is formulated depends on how powerful they are constitutionally and historically in their national systems. Regions having constitutional rights to take part also have a supervisory role to play. Probably, the incentives regions have to take part in national-level politics are strong in policy areas that involve the Council of Ministers. Also institutional leverage helps regions in EU policymaking. The establishment of a 'partnership' when the Structural Fund was reformed in 1988 ensures the regional authorities a role in EU regional policy. This innovation implies that "Community operations shall be established through close consultations between the Commission, the Member State concerned and the competent authorities designed by the Member State at the national, regional, local or other level" (Ansell et. al. 1997 pp 354, 355). One objection may be that this

leverage effect is isolated to EU's regional policy and, thus, irrelevant to policymaking considered in this study. But as Sharp and Pereira (2001) point out, research and technological development has become a main instrument of the Structural funds. That is, the Framework Programme - pulling together EU's all R&D activities - performs a complementary role to regional policy.

In further developing the idea about a leverage effect on regional involvement in state politics, I draw on Burt (1992). He identifies 'control benefits' of "third parties", who are able to play one part against another. Unlike Burt, who finds that these benefits derive from positions in network structures, I refer primarily to institutional relationships and responsibilities (Ansell et. al. 1997), (Gunnarsson 2003). The role of regional authorities as a "third party" does not primarily derive from an ability to play a critical brokerage role between parties as in Burt's theory, but from institutions giving opportunity to confer legitimacy on role claims. As there are institutions in the EU that promote the regional authorities to share the control over EU decisions with the national governments, the Commission can point to these institutions in negotiations with the governments. It uses 'two-step-leverage' in attempts to influence the national governments through the intermediary of a "third party" (the regional authorities).

One lesson to be learned from this is that the national governments have a duty to involve regional politicians in the formulation of national standpoints in the EU. Regional politicians, who aspire to power in EU policymaking, can use national-level politics in EU multi-level governance to achieve their aims. Therefore, empirical evidence of how regional politicians in Denmark can help the legitimization of European institutions is probably provided by my studies of committees in the Danish parliament. I will concentrate on the way regional politicians arrange their communication with their electorates. Communication is brought about more easily through local forums for political debates, where regional politicians can inform their constituencies about the reason they have for their policies. Increased legitimacy of EU policymaking, due to these forums, derives both from a direct and an indirect effect. Indirectly as more information about the EU will come to the citizens and directly as these forums increase civic participation in the EU.

Forums, where regional politicians exchange opinions and ideas with their constituencies, are created in many ways. For example if tasks in national politics are delegated to regional-level politics. Here economic analysis can be used in arguing that national-level party politics directed to

EU issues often lead to high bargaining costs. At the same time, party politics at the regional level are characterized by shared territorial interests with regard to EU policies. Thus, it is legitimate to increase the number of political decisions made at this level as long as bargaining costs are reduced. New forums also come into being due to shortcomings in EU-level politics. It was argued in section 3 that cost-efficiency is served if the legislative process is insulated from EU politics. For example, when industrial regulation becomes an integrated part of EU legislation, power in the industrial policy area moves from government-to-government negotiations to the EU Commission. One implication of this process is that procedures for dispute settlements have been established, where businesses can complain to the Commission (Brittan 1998). If a regional authority has an office in Brussels it gets an opportunity to take part in dispute settlements as advocate of engineers and technology producing firms that complain to the European court or to the Commission. If organized suitable, these activities could help the development of a firm political basis in local constituencies, which gives the regional authorities democratic legitimacy, which is deficient in the EU (cf. Jerneck, Gidlund 2001).

These forums may help the legitimacy of EU still more if the regional authorities have become part of personal networks for word-of-mouth communication with the business community. It is claimed that the political elite in the EU listens to regions in alliances with firms, as these alliances increase the regional competence for participation in Community legislation (Gunnarsson 2003). In return, a strong position in EU bargaining will bring the regional authorities in a position, where they can inform their constituencies early about new EU policies and also to exercise influence to their benefits. The vitality of local forums is increased, which, in combination with a more efficient legislative process in the EU, will increase the legitimacy of the regional politicians as well as of the EU .

This reasoning finds support in literature pointing out that the EU suffers from a bureaucratic deficit, where the capacity and working conditions of the Commission have been described in terms of “adolescent bureaucracy” (cf. Jerneck, Gidlund 2001 p 112). Devolution helps positive institution-building (see Fioretos (2001)), where national institutions are supplemented with common European institutions to achieve goals that member states are unable to achieve alone.

Empirical findings concerning the legitimacy of a regional role in EU politics show variation across EU member countries. While, for instance, politics in Southern Sweden is partly directed to regional emancipation from the state, the Danish behavioral and policy norms stipulate that national and regional policies should be coordinated (Jerneck 2000), (Gunnarsson 2003). When asked about social norms concerning technology sharing, whether these norms should be safeguarded by private or by public arrangements, the Danish engineers will have the opportunity to reveal their territorial identities. They will be asked whether the legitimacy of public protection of technology-sharing interests changes if arranged at the regional, national or at the supra-national level of EU policymaking.

5 Conclusions

The European Union provides a wide spectrum of governance structures that differ from the way states are governed. Beliefs flourish that the efficiency of the legislative process could be increased if sovereignty moves from the national to the supra-national level, or by involving non-state actors such as experts, firms or regions into decision-making. In the paper, I argue that institutional theory inspired by the Coase theorem and Transaction Cost Economics adds fuel to these beliefs and to beliefs that increased efficiency increases the legitimacy of the EU. Legitimacy is perceived as a special right politicians have to exercise power without using force.

Institutional theory in economics emphasizes that individuals are inviolable. Accordingly, economics simplifies stressing that a political order loses its legitimacy if individuals are coerced into communities that fail to express the individuals' interests or at least compensate by side-payments. From this perspective a politician, who aspires to power in the EU, should respect the principle that societies are run by private contractual arrangements. Political organizations for specific purposes develop if they are more efficient in increasing wealth than private contracts. Established EU institutions were also examined to illustrate the economic argument. It was referred to the principal-agent model showing that states have incentives to defect from European legislation. Here economists argue that European institutions should be insulated from political pressure. Legitimacy is increased by means of regulatory institutions such as the European Commission and expert committees designed to supervise the Commission. However, delegating tasks in politics to experts may create capture problems.

Devolution was also mentioned. In this case regional authorities, which form authority-firm alliances, may gain extra leverage in EU bargaining, or high bargaining costs in national-level party-politics may be avoided if decision-making is decentralized to regions. Since there is reason to believe that devolution may increase the efficiency of the legislative process, some economists would argue that EU institutions that promote the national governments to share the control over EU decisions with regional authorities are democratically legitimate.

The paper referred to Granovetter, who points out that the contractual approach in economics relies on an undersocialized conception. I have tried to argue that there are important social norms that mean something to people. Politicians, who comply with these norms, derive legitimacy. The first category of valued aspects of community, considered in the paper, is associated with Nozick's notion of universal principles for the guidance of how to act in distinct situations (Nozick 1988). It is claimed that beliefs about norms for the sharing of technological knowledge and information are such guiding principles. A study of the legitimacy of EU diffusion policy was outlined, where the importance of these norms will be examined. The second category of valued aspects of community derives from historical continuity and tradition inside the member countries. These norms often prevent smoothly adaptations to the European integration project. At the centre of concern are national institutions for party politics, for civic activity and for the regulation of interaction between the national and the regional levels.

A future study of diffusion policy angled towards the interplay between Danish engineers and politicians formulating national standpoints in the EU was outlined. I have tried to argue that legitimacy partly is built through communicative activity. It is also arguable that the conditions for learning about politics by members of a constituency are more favourable if information costs are low. This is the case with organizations such as professional networks and societies that make up the social structure of markets. While political actions are more visible, citizens involved in these activities constitute a vital audience for politicians. Yet, politicians sometimes have reason not to inform about welfare returns of European decisionmaking. Therefore, the paper mentioned circumstances in domestic politics, which affect information costs and obstruct signals from politicians about their reason for political actions.

The building of legitimacy in the EU can be seen from the perspective of regional politicians. When the formulation of national standpoints in the EU is angled towards regions, it becomes obvious that regional politicians in some member countries have constitutional rights to participate in the making of state politics and to perform a supervisory role. In other cases they can legitimise their involvement by reference to increased efficiency (advocates in dispute settlements, delegation to regions a mean to avoid bargaining costs of national-level politics). Also the broader normative approach to legitimacy makes the involvement of regions in national level policymaking sensible. In this case regional politicians try to become “third parties” in negotiations between national governments and the Commission. If there is a strong popular support for a social norm that there ought to be a regional role in EU policymaking, regional politicians may derive legitimacy from this role for sharing the control over EU decisions with the national government.

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