COMMITTEES IN THE EUROPEAN UNION:
AN EMPIRICAL AND NORMATIVE ASSESSMENT

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ABSTRACT   This paper examines European Union (EU) committees in two parts. The first part presents an empirical overview of the three types of committees that constitute what may be called the "EU committee system". After examining Commission expert groups, Council working parties, and Comitology committees to elucidate their key traits and primary roles in the policy process, the first part of the paper demonstrates that despite diverse roles and variations in constitutional and procedural formality, the different committees play equally influential roles in the policy process. This section concludes that committees make an essential contribution to the politics and policy of the EU. The second half of the paper turns to a more normative assessment of committees. In light of growing public hostility toward committees, this section searches for normative strategies to redress the legitimacy deficit of committee governance. This part of the paper reviews the existing normative debate over committees but rejects the implied reform strategies as impractical and unrealistic. As an alternative, five models traditionally used to legitimize administrative processes are applied to the committee system. While individually insufficient, together the five models offer a realistic set of reform options capable of boosting the legitimacy of committee governance while preserving the features of EU committees that are so crucial to the EU policy process.

INTRODUCTION

Over the last ten years, attention to committees in the European Union (EU) has grown in both the academic community and the public sphere. Scholarly work on EU committees existed before that time, of course, but such work was sporadic, primarily legalistic, and focused on one type of committee: those associated with the implementation of Union law, or "Comitology". The 1990s witnessed a great expansion of the academic literature on EU committees, emerging from diverse disciplines and encompassing more comprehensive views. This literature exposed committees as a vast and influential administrative resource within the EU, forcing us to re-think "textbook" approaches to understanding the European polity. In the words of Joseph Weiler, once we have understood the contribution of committees to European governance, the distinct outline of the European institutions gives way to "an altogether more flattened, albeit complex and hazy, landscape which requires, in turn, a second revolution in the ways we describe, think and conceptualize European integration" (1999: 339).

Progress made in the study of EU committees thus far has been impressive and thoughtful. However, another development in the 1990s precludes scholars from resting on their laurels. The public, as represented by journalists, citizen interest groups, and national parliamentarians, has also become aware of EU committees. This awareness is hardly the result of sympathy and gratitude. On the contrary, EU committees have been subject to strident criticism in reaction to a series of unpopular EU policy decisions and failures. The perceived failure of committees to address the BSE crisis and Belgian dioxin scare drew the sharpest condemnation, although public discontent was evident also in reaction to banking fee decisions and trading law rulings. Whatever the merit of these complaints, public criticism cannot be ignored or

explained away. Criticism of committees coincides with the broader collapse in support for EU policy solutions and the deterioration of the "permissive consensus" underlying European integration. To not address such problems exposes the EU to even more criticism and further damages its credibility in the eyes of European citizens. Here, then, scholars' empirical evidence of committee proliferation meets normative concerns regarding the appropriate influence of committees in the EU political system.

Empirical and normative concerns constitute the two-part focus of this paper. The first part offers a broad-brush overview of the EU committee system. Evidence gathered from an earlier research project on the "phenomenon" of EU committees (Rhinard 2002) is presented on three types of committees: Commission expert groups, Council working parties, and Comitology committees. Elaborated in this empirical section are the membership, operation, and influence of these committees, as well as their historical role in integration and utility in contemporary decision processes. The second part of the paper provides a normative account of the EU committee system and calls for essential but measured reform. In doing so, this normative section demonstrates how current scholarly approaches to committee reform offer unrealistic solutions. Arguing either from a conventional democratic perspective demanding radical reform, or more contemporary deliberative approaches encouraging not less but more committee governance, these "all-or-nothing" solutions offer few concrete suggestions for change. In lieu of these perspectives, the paper outlines five different types of arguments traditionally used to legitimize bureaucratic processes, and uses these arguments as a collective guide for future reform. Indeed, the central argument of this paper is that the committee system provides an essential administrative resource within the EU political system; as such, changes should be made in-line with practical models of administrative legitimacy rather than unrealistic democratic principles applicable to a full regime.

THE EU COMMITTEE SYSTEM: AN EMPIRICAL ASSESSMENT

Viewed in numerical terms alone, committees constitute a significant part of the EU's institutional infrastructure. By most accounts, there are some 1,400 committees existing in Brussels at any one time, bringing together around 50,000 public and private sector actors from the European, national, and sub-national levels. This number can be divided roughly between 800 "expert groups" convened by the Commission, 200 "working parties" set up by the Council to review Commission proposals, and 400 "Comitology" committees stipulated in legislation to oversee the Commission's implementation of Directives (Rhinard 2002). This does not include the committees within the European Parliament (EP), of which there are seventeen permanent and six temporary. Parliamentary committees are few, well publicized, and formally institutionalized; as such, they lay outside of the focus of this paper. As we shall see in the second part of the paper, however, Parliamentary committees could

play a more integrated role in a more accountable and open EU committee system in the future.

Commission Expert Groups

Significant variation exists between the various types of committees in the EU. The first set of committees, which I term "Commission expert groups", is the most numerous and least formal. The nature and role of these committees is understood more clearly in light of the Commission's broader role in the EU policy process. For most legislative proposals (and in the first "Community Pillar" of the EU, *all* proposals), the Commission has the sole right of initiation. Proposals are addressed to the Council and/or Parliament (depending on the subject matter), and must be both technically feasible and politically palatable to stand a chance of being approved by those bodies. To meet these challenges—and as a relatively small bureaucracy with few "in-house" sources of expertise and advice—the Commission must leverage its own resources by drawing upon external actors for assistance.

One way the Commission channels external assistance into policy formulation is by creating specialized committees. Commission expert groups draw together subject-specific technical experts in a subject area, national and sub-national administrators with knowledge of how a policy will "play out" when implemented, and any other actors with information required for the development of viable policy. Indeed, this last factor is the primary criteria for membership in expert groups: whether or not an individual can contribute to the creation of viable policy and can help maximize support for legislation in the Council. The Commission controls not only membership in these types of committees, but also their remit and operation. For some long-standing committees, a remit or "rules of procedure" may be codified, but this is the prerogative of the Commission DG, Directorate, or Unit responsible for convening the group. More ad hoc committees, formed for a limited duration or only for a single piece of legislation, tend to operate under their own terms and through informal procedures. On the whole, Commission expert groups "whistle test" new Commission ideas, offer suggestions, and shape the direction of policy proposals drafted by the Commission. Through the provision of certain information and expertise, they may nudge the Commission into new policy directions or put the brakes on existing proposals. Christiansen and Kirchner thus argue that Commission expert groups "have developed significant political power in shaping the agenda and ultimately the nature of EU policies", especially in areas not already heavily regulated by EU law (2000: 6).

Council Working Parties

The second type of committee operating within the EU, termed "Council working parties" here, has a slightly more formalized role in the EU policy process than

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Commission expert groups, with a more specific membership list. When Commission proposals are sent finally to the Council for approval, the initial hard work of examining, discussing, and reaching preliminary agreement on the proposal is done not by the full Council or even its COREPER preparatory bodies, but by a host of subordinate committees. These working parties are made up of representatives of the member-states, originating either from the Council's General-Secretariat, the permanent representation of a member-state in Brussels, or seconded directly from a member-state for the purpose of the working party. Each grouping is chaired by the Council Presidency and includes the Commission official responsible for the original proposal. This fairly standard and established membership roster must be qualified, however. In the case of some Member States, especially smaller ones, it is likely that the same individuals who participated in the Commission expert groups in the policy formulation stage—then representing their personal "expert" view—also represent their government within Council working parties. Moreover, for highly technical matters, some Member States have been known to send private industry officials as their declared national representative.

The remit and working patterns of these types of committees are fairly straightforward. However, Council working parties, like their Commission counterparts, operate under informal procedures: working parties are not mentioned in the Treaties, and they are referred to in one sentence in the Council's broader rules of procedure. In effect, working party members get a "first cut" at any Commission proposal, and are charged with determining the feasibility of the Commission's proposals, both in terms of its technical viability and political acceptability within each member-state. This web of committees, therefore, exists to prepare legislation for more formal decision by COREPER and the Council. And they do so with great efficiency: by several accounts, Council working groups working within the first "Community" pillar decide on up to 90 percent of the final text of legislation, enabling COREPER and Council to simply rubber-stamp uncontested legislation (van der Knapp 1996: 88; Rometsch and Wessels 1994: 213). Because working parties are more readily identified within the EU policy process, several researchers have gained access and confirmed that working party members are highly task-oriented, seeking to solve problems and resolve conflicts in a timely fashion. Of course, when working groups do not agree on some aspect of a regulation, directive, or decision, those problems are passed "up the line" for higher-level negotiation. In sum, Council working groups are a crucial part of the Council's decision-making infrastructure, entrusted with detailed analysis and consensus-seeking that, in turn, lends significant authority to these committees.

Comitology Committees

The third and final component of the EU committee system consists of "Comitology committees". Comitology is the accepted term for a narrowly defined set of

committees associated with the implementation of EU legislation. Again, a brief outline of the broader policy process sheds light on the role of Comitology committees within the EU. The Council—and, increasingly since the Maastricht Treaty, the Parliament—is the major legislator in the EU, but it cannot enact the required detailed rules or apply and/or adjust them to changing conditions. For this reason, the Council delegates executive competences to the Commission. So as to prevent the Commission's abuse of its executive powers, and to preserve some element of control over the process of implementation, the Council has established "Comitology" committees of national officials to monitor and to assist the Commission. In this way, Comitology committees are the most formalized in the system—Council acts which require implementation usually stipulate precisely which new or existing committee will oversee implementation. Comitology committees are formed around particular policy subject areas, and have considerable rule-making authority. Since Comitology committees are used by the Commission to flesh out and adjust framework legislation, they often produce considerable amounts of secondary legislation. For this reason, Comitology has been the subject of critical scrutiny first by lawyers, and subsequently by political scientists and even political psychologists.[1]

The membership, remit, and rules of Comitology committees are the most formal of the three types of EU committees. The Commission sends a delegation to chair each committee (typically the official or officials responsible for formulating the original act). The Commission not only calls the meeting, but sets the agenda, submits proposals for enabling legislation, and writes the protocols. Member State officials make up the remainder of the membership, and each national representative is expected to protect their country's interest in the rule-making process. A 1987 Decision on Comitology by the Council sought to standardize the process for establishing committees and to specify their operating rules. Three different kinds of committee—regulatory, management, and advisory—were thus established, each stipulating a slightly different relationship between Commission and Member States within the committee. In a regulatory committee, the strictest rules are placed on the Commission: the Commission must seek a qualified majority of the Member States to approve its proposals. For a management committee, that requirement is less restrictive, as the Commission can be prevented from acting only if a qualified majority of Member State votes against a proposal. Finally, in advisory committees, the Commission simply has to take the opinion of the committee "into utmost consideration" before proceeding. A Decision in 1999 further standardized the committees, and even prompted the Commission to issue standard rules of procedure for all Comitology committees. It was soon confirmed that most committees were operating rather informally, with only a vague notion of the formal rules.

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[1] For legal analyses, see Lenaerts and Verhoeven 2000; the chapters within Joerges and Vos 1999; Bradley 1992, 1997; Haibach 1999. For approaches mainly within political science, see Wessels 1998; Hix 2000; the collection of case studies in van Schendelen 1998; and Demmke et. al. 1996. Some unique approaches to Comitology from a more political and socio-psychology point of view can be found in Joerges and Neyer 1997a, 1997b.

On the face of it, Comitology reflects a desire by the "principal" Council to reign in the "agent" Commission, so as to prevent the Commission from straying from the Council's original intent. In reality, there is, once again, a remarkably consensual approach to deliberation and decision-making. Two factors offer possible explanations. First, both Member States and the Commission want to arrive at a mutually beneficial position on implementation decisions. Member States realize that, not withstanding their own influence within regulatory committees, the Commission has considerable power to ease or strengthen implementation requirements. Commission officials understand that Member States forced to implement undesirable or unfair protocols will do so poorly or not at all. Second, the members of Comitology appear to be guided by a "problem-solving", rather than instrumental, ethos in discussion and negotiation (Joerges and Neyer 1997a, 1997b). This approach downplays potentially divisive issues by breaking problems into constituent parts and focusing on solutions. In this way, Comitology proceedings are not viewed in terms of "zero-sum" bargaining, but in "positive-sum" problem solving.

EU Committees and Supranational Integration

The preceding review illustrates the prevalence of committees in the EU political system. In many respects committees are the "workhorses" of the EU, active at every stage of the policy process: Commission expert groups shape legislative proposals, Council working parties scrutinize legislation and work towards consensual decisions, and Comitology committees oversee implementation. At all stages and in all types of committees, opportunities for influence exist for committees and their members.

Yet, to examine committees only in *quantitative* terms, or to look at their influence at certain points of the policy process, obscures the *qualitative* importance of committees in the EU. Committees provide the essential arenas necessary for the pursuit of collective decisions. In other words, they are a key feature—both part and parcel—of supranational governance. Committees bring together a variety of actors, from diverse countries and cultures, into an often-informal policy-making environment that privileges consensus over conflict. Difficult issues, many touching upon sensitive national interests, are broken down into their technical components and solved through joint accommodation. In this way, committees are not just an institutional feature of the EU, "but an important contribution to its particular mode of governance" (Christiansen and Kirchner 2000: 8). What we might call "committee governance" is, in qualitative terms, a microcosm of the broader process of integration and contributes to the EU's particular mode of supranational governance. In this respect, committees can be viewed as an essential administrative component of the EU.

The role of committees in European integration was particularly critical in the early development of the EU. The daunting task facing the founders of the ECSC from its earliest days was to draw together a diverse array of officials from multiple levels of government, each with different cultural norms and policy-making styles, into a process-based and functionally specialized system of governance capable of overcoming the divergent interests of stubborn national governments. Committees quickly developed as the instruments to overcome this challenge, providing arenas for consultation and operating as catalysts for decision-making based on consensus and conciliation. By meeting in small, intimate groups, officials would set to work on discrete policy problems, downplaying broader political issues by dividing the policy agenda into functionally limited fields. In this way, committees were fully consistent with the "Monnet method" or "integration by stealth" as it has been called (Hayward 1996), a strategy that served the goals of European integration well for several decades.[2] Seen in this light, "government by committee is not an accidental or incidental feature of decision-making within the EU, but is rather a logical implication of the overall strategy that such integration entails" (Weale 2000: 161).

Committee governance is no less important to the contemporary EU. Modern policy-making has become increasingly complex, and the issues under the remit of the EU are no different. Indeed, as EU legislation in the 1980s and 1990s covered ever wider areas of economic and social life, a greater number of specialists have had to become involved in policy-making (Christiansen and Kirchner 2000: 3). Internal market regulations and rulings can be extremely technical and specialized, requiring competent professionals scrutinizing legislation in close-knit groups. In addition, EU policies implicate a wide array of actors both public and private at supranational, national, and sub-national levels. Committees provide the only practical way to accommodate the input of these actors in both policy formation and implementation. Finally, there is another aspect of committee governance not related directly to the policy process but nonetheless important. Committees are a "linking" mechanism between the main EU institutions. The need for ongoing cooperation between institutions, as well as intensive inter-institutional coordination in the wake of treaty reform, necessitates small-group environments like committees. For both the contemporary policy process and for inter-institutional relations, therefore, committees provide the essential context for the pursuit of European integration.

The importance of committees to the EU's administrative apparatus explains why, over the last two decades, their number has mushroomed. In part, this expansion is a corollary of the EU's increasing competencies in a wider array of policy sectors. The

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[2] As William Wallace has noted, looking "back on the era of post-war reconstruction, the central role played by rational administrators working within the permissive limits of political consensus is impressive" (1996: 239). Lindberg and Scheingold describe the strategy of the Monnet method: "The tactics of M. Monnet and his supporters were clearly designed to reduce to a minimum the likelihood of an inflammatory public debate on the scheme. Thus the bargaining and brokerage that went into the supranational compromise served not only to satisfy but also to quiet major political forces (1970: 21)

"great leap forward" of the Single European Act in 1986 and the Treaty of European Union in 1992, for instance, greatly increased the role of the EU in European political, economic, and social affairs. In the absence of a parallel expansion of the EU's personnel and civil service, committees were called upon to absorb much of the administrative and procedural burden of European policy expansion.[3]

The irresistible rise in EU committees over the past two decades has had a two-fold effect. On the one hand, by raising the profile of committee governance, it has highlighted the major role played by committees in the creation and administration of European policies. Stating that committees are the "workhorses" of the EU is not hyperbole—they provide a substantial portion of the administrative capacity that is vital to the successful functioning of the EU. On the other hand, committee expansion, along with a series of poor policy outputs from some committees, has engendered criticism from actors external to the EU political system. More precisely, the "public" (shorthand for journalists, citizen interest groups, and national and European parliamentarians) has reacted to the rise of committee governance with concern and even outright hostility. Such hostility erodes the "permissive consensus" that once underpinned the development of the European polity. From this perspective, the current controversy surrounding EU committees bodes poorly for the long-term prospects of supranational governance. The twin developments of more committees and more criticism, therefore, direct our attention toward normative issues.

THE EU COMMITTEE SYSTEM: A NORMATIVE ASSESSMENT

An empirical perspective on committees in the EU, presented above, sheds new light on the operation of the EU's policy-making and administrative apparatus. Yet is also serves to stimulate discussion of the normative aspects of committee governance. Indeed, the rash of empirically oriented committee studies published in the 1990s prompted a spate of fresh assessments of the democratic nature of supranational governance. For some writers, revelations of committee influence confirmed their worst fears: like the broader EU, the committee system is an opaque, exclusive, and unaccountable entity and contradicts fundamental principles of democratic governance. Other writers take a different stance: committees provide the necessary conditions for rational, accommodative, and deliberative decision-making and thus hold the potential to enhance the democratic credentials of the EU. If changes to the EU committee system are to be made in response to public criticism, these two normative positions imply very different solutions.

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[3] Committees are likely to play a similar role in the upcoming round of EU enlargement, when the responsibility for resolving policy coordination issues and tackling difficult accession questions will likely fall to committees.

This section offers a normative assessment of committees based on the premise that some reform is necessary to shore up the legitimacy of committee governance. After demonstrating how the existing democratic debate over committees leaves little concrete suggestions for change, the section then proposes an alternative approach. Five approaches to administrative/bureaucratic legitimacy are reviewed and assessed in light of committee governance in the EU. Taken cumulatively, the five approaches offer suggestions for reform but are not meant to imply a total "democratisation" of the EU committee system. Indeed, the underlying argument here is that, as major feature of the EU's administrative capacity, the committee system should be judged by criteria of administrative legitimacy, rather than broad-based and impractical principles of democratic politics.

Committees and Legitimacy: The Existing Debate

Despite the many angles by which scholars evaluate the democratic credentials of EU committees, their conclusions generally fall into one of two distinct camps. The first camp offers a rather pessimistic diagnosis. Scholars such as Schaefer, while acknowledging the importance of committees from an empirical perspective, conclude that committees represent a "serious defect" in the EU's institutional architecture (1996: 23; see also Hoskyns and Newman 1999). Hayward offers a more fundamental critique, suggesting that "government by committee has lost the people's confidence". He implies that the "Monnet method" of small group, technically-oriented problem solving is no longer an appropriate strategy of European integration (1995). From that perspective, the administrative mechanisms of collective decision-making in the EU need to be re-tooled. Wieler and Scharpf are equally as unforgiving. In a recent review of a volume on Comitology, for instance, Weiler describes the accepted growth of committee governance as a "normative disaster" (1999:346). He decries the elitist nature of committee participation and demonstrates how the informal procedures and operation of committees marginalize accountability and obscure the rule-making process. Weiler considers the democratic credentials of the entire EU policy system on shaky grounds, of course. As a result of the "no *demos*" problem, Weiler's prescription for the EU is a radical reorganization so as to clarify the distinction between national and supranational competences (1995). Thus we might infer that a similar prescription holds for EU committees: they must be abolished in their current form and be restructured so as to enforce a division of powers and thus preserve the "constitutional integrity" of the EU (1995: 38). Scharpf's account of democracy in Europe is similarly pessimistic: the lack of a "'thick' collective identity" in Europe impedes the EU's ability to ever evolve into policy-making apparatus capable of taking on a full host of policy competences. At the moment, Scharpf argues, the values that underpin input-based forms of democratic legitimacy (participation, elections, procedural guarantees, and consensus) are absent; the EU can only hope to improve upon output-based forms of legitimacy (1999: 9-10). In sum, committee detractors are unforgiving of the democratic failings of European

committees and either implicitly or explicitly call for a major restructuring of the EU committee system that will solidify its normative foundations.

A second group of committee analysts makes an altogether more sympathetic assessment. Scholars in this camp argue that applying strict democratic principles to the EU committee system is both impractical and even unwise. Christiansen and Kirchner, for instance, hold committees up to considerable praise, commending their role as "an intrinsic and essential feature of European integration" (2000: 8). Weale takes an equally supportive stance. He is willing to overlook the democratic defects in committee governance as a result of the key role committees play in European governance (2000). Indeed, he suggests that without the small-group, interactive style promoted by committees, "European integration would not have reached the point that is has today" (2000: 161). The most impressive work from this perspective, however, comes from the research initiated by Joerges and Neyer (19971, 1997b; see also Joerges and Everson 2000, Joerges 1999). These scholars argue that, rather than castigating committees, we should appreciate the novel function of committee governance and its success in resolving the inherent tension between with intergovernmental and supranational modes of policy-making. In particular, Comitology is credited with providing an essential arena for "deliberative supranationalism", where inclusive conversation, rationale discourse, and the downplaying of divisive interests not only accommodates minority interests but also transcends typical models of power negotiation. Committees increase the deliberative and communicative processes that improve societal decision-making—and can even bring an element of democratically legitimated politics to the EU. In sum, according to the viewpoint of committee "apologists", committees play a crucial role in European governance, and may even help to legitimize the EU far into the future.

Given the rise of public criticism and the deterioration of the "permissive consensus" underlying European integration, few would deny *something* must be done to shore up the legitimacy of EU committees. Yet, the widely diverging normative positions outlined above have disturbing implications. For committee detractors, to make committees truly democratically legitimate, wholesale changes must be made. This implies reforms that ensure the type of accountability, participation, and transparency with which we are familiar in national contexts. The regular election of governors, constitutional lines of authority between officials, publicly-ratified decisions, and open meeting procedures are some "ideals" put forth when discussing democratic legitimacy from this perspective. Considerations such as these, however, are best suited to discussing democracy in conventional, national settings, not in the context of a supranational administration such as the EU committee system. No one can seriously propose such a radical democratization of committees without acknowledging how the EU committee system would suffer serious damage. In effect, committee detractors lean toward the "nuclear" option: an all-or-nothing strategy for democratizing committees. Committee apologists veer toward the other

side of the spectrum. They are prone to argue that the wholesale enactment of conventional democratic principles will destroy the social and professional fabric of committees that are a condition for their successful operation and the emergence of deliberative democracy. A few "sunshine" laws and internet publication requirements may be appropriate from this perspective; any more serious changes will likely spell the end of effective and efficient committee governance in the EU. The danger is that any reforms proposed from this perspective run the risk of impotence and superficiality; the insincerity of such measures will do little to alleviate the concern of the public over committee governance in the EU.

In the interest of moving forward the debate about the EU's legitimacy, the following section takes a "middle-range" approach. Several assumptions should be made clear at this point. First, we presume that abstract, broad-scale principles of democratic government are unrealistic criteria by which to judge EU committees. Indeed, the wider discussion over "democracy in the EU" has questioned whether such conventional principles can be applied to a *sui generis*, multi-level governance system such as the EU broadly, much less its committee system, specifically. Second, we recognize that committees play a key role in the EU policy as important sites of policy formation, deliberation, decision, and implementation. We are thus reminded of the important bureaucratic or administrative function of committees. In this sense, we believe that options for ensuring *administrative accountability* are the way forward in reforming the EU committee system, rather than seeking to "democratize" committees through idealistic proposals. To that effect, the following section proffers five different approaches typically used to justify administrative functions and to improve their acceptability in the eyes of the broader public.

Five Rationales for the Legitimacy of Bureaucratic Processes

In general terms, five rationales for the legitimacy of bureaucratic processes have been proposed by public policy scholars and administrative law experts (Baldwin 1995; Beetham 1991; Stewart 1975). Most of these arguments rest on the assumption that the broader regime or governmental system, within which the administrative apparatus operates, enjoys an accepted and legitimate status. We cannot make such a luxurious assumption with the EU, and therefore it would be wrong to mechanically transpose such rationales to the European level. However, these rationales provide useful yardsticks for evaluating the potential legitimacy of decisions taken within the EU committee system (Dehousse 1999: 115). Individually, the claims below cannot guarantee the legitimacy of administrative processes. As has been suggested by Baldwin (1995: 42), it is their *cumulative* force and balanced assessment that proves important. Where the EU committee system scores poorly on one criterion, it may fare more successfully on another. For each legitimacy argument below, we consider (a) the conventional application of the argument, (b) how it might be applied to EU

committees, (c) how a prioritization of that rationale would affect the normative claims of committee "detractors" and committee "supporters".

• **The legislative mandate rationale.** This rationale is the most traditional and features in early writings on how to legitimize administrative law-making (Stewart 1975). Here, administrative proceedings and outcomes are considered more legitimate if they follow as closely as possible the orders of a representative body, such as Parliament. Rules made by administrative bodies must strive to achieve the objectives set out by Parliament in original governing legislation. If committees follow such guidelines closely, they may be considered legitimate. There are, of course, problems with this rationale, as pointed out by a variety of critics of the traditional model of bureaucratic legitimacy (see, for instance, Stewart 1975). Parliaments (or other elected sources of democratic legitimacy) often provide broad discretion to administrators. This is usually because Parliament does not have the time or expertise to solve all problems in advance; or, it may deliberately decline to set a mandate so as to allow an administrative body to make judgments on policies or implementing strategies. Despite such situations, the flow of legitimacy from elected bodies to administrative agencies can still be quite potent.

How feasible is the "legislative mandate" as a source of legitimacy for the EU committee system? As will be evident for the other rationales below, legitimacy is conferred more easily upon some types of EU committees than others. In the case of Comitology, the legislative mandate approach may be feasible. At the moment, Comitology committees enjoy considerable discretion in administrative rule making through making "adjustments for technical progress" or adding annexes to existing legislation. The European Parliament has, even before the introduction of co-decision in 1993, condemned this situation and called for a clearer delineation between decisions taken through Comitology and those requiring a proper legislative procedure (Bradley 1997: 234). Further pressure in this direction would place Parliament in a stronger position to set guidelines and standards to be adhered to by Comitology committees, thus conferring more legitimacy in line with the "legislative mandate" rationale. For Council working parties, legitimacy is less problematic, as the legislative mandates for participants are set by national governments. Where private sector interests double as national representatives (as may be the case for some small Member-States considering highly technical issues) the lack of any formal mandate reappears as a problem. Commission expert groups are perhaps the least amendable to legitimacy by legislative mandate, as the Commission has sole control over their operation and influence. Unless Parliament is given some role over the remits and actions of Commission expert groups, legitimacy through "legislative mandate" is more difficult to achieve. However, one possibility is for Parliament to set an annual policy platform which could, when presented in collaboration with the Council, be used as a set of guidelines (and limits) for policy-making within

committees.[4] We should not be blind to the impact this would have, of course, on the role of the Commission as a supranational engine of integration.

There are, of course, problems with such an approach to legitimizing EU committees. First, the fundamental democratic credentials of the Parliament itself are in doubt. Lacking a source of legitimacy from single European "demos" (Weiler 1995), the European Parliament cannot function as conduit of the "peoples voice" required by the legislative mandate approach. Second, it seems unlikely that the Parliament would have the time, expertise, and experience to set tight mandates for EU committees; nor would it be able to anticipate all the potential problems that arise in the implementation stage, for instance. The Parliament would no doubt prefer to delegate responsibility for technical tasks back to committees, again lending significant discretion to those bodies. How would such a source of democratic legitimacy influence the normative positions of committee analysts? For committee detractors, any legitimization of committee governance through a legislative mandate might be seen as an improvement. However, without addressing the problem of the European "demos", a precondition for legitimacy by legislative mandate, committee critics are not likely to be impressed. For committee apologists, any Parliamentary control over the goals and guidelines of committee work would be viewed as harmful to committee governance. Indeed, the informality, broad discretion, and flexible working style of committee are often held up as the key features ensuring success (Christiansen and Kirchner 1999). At best, then, the legislative mandate approach would only be a partial and imperfect form of legitimation for EU committees. Fortunately, our aim here is not to put our full faith in one approach; the other avenues of legitimacy may offer supplementary support.

• **The accountability or control rationale**. Like the legislative mandate rationale above, this approach confers legitimacy based on the relationship between a representative body and a political system's administrative apparatus. However, this approach does not rely on the people's voice as expressed solely by Parliament; it also allows for narrower conduits for the democratic voice. Whether these conduits are the courts, an executive cabinet, or the Parliament itself, they confer legitimacy when they oversee, monitor, and have the potential to sanction administrative behavior. Such agents have the power to "check" and the potential to hold administrators accountable, thus rendering administrative activities acceptable to the broader public. Importantly, unlike the legislative mandate source of legitimacy, the existence of a conventional demos-representing Parliament is not a precondition for legitimacy. On the contrary, Parliament plays a different, more specific role: one of oversight and control, rather than setting mandates according to the abstract public will.

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[4] This is not unlike what the European Council periodically issues: a set of policy targets and goals to guide the EU's agenda.

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Could the accountability and control rationale for legitimacy play a role in improving the normative foundations of EU committee governance? This approach appears much more feasible than the "legislative mandate" model. The lack of a European demos would not bar the Parliament from lending legitimacy to committee proceedings, because Parliament could play the role of overseer and sanction committee transgressions. The public would likely see this as at least an improvement in the current state of affairs, thus serving to boost the reputation not only of committees but also the European Parliament. Actual events associated with Comitology confirm that Parliament is moving in this direction as the result of its higher legislative profile.[5] The Plumb-Delors agreement of 1987 stipulates that Parliament would be notified by the Commission of most draft implementing measures. These notices are supposed to be sent to the relevant parliamentary committee for comment and criticism. While this has not been a spectacular success in practice (Dehousse 1999: 118; Bradley 1997: 237), in 1999 the Commission and Parliament reached another set of agreements that should strengthen the Parliament's oversight.[6] Additional legitimacy for EU committees could derive from similar parliamentary control over Council working groups, although here the right of Parliament to do so is less clear. On the one hand, co-decision in 1993 gives Parliament its own, strengthened role the policy process and thus undermines any drive for oversight of the Council's working group activities. On the other hand, continued criticism of working groups' opacity and secrecy begs additional scrutiny, which could be provided by Parliament or some other body. Finally, the accountability and control approach would be an excellent way to improve the legitimacy of Commission expert groups. Parliament, or perhaps a special grouping of Member-State authorities, could monitor the creation and operation of expert groups, requiring committees to report on their creation, membership, proceedings, and decisions. Such an arrangement could go some way toward renewing the public's faith in the accountability of committee governance.

Of course, we cannot be overly optimistic that this approach alone will solve the issue of legitimacy. In the first instance, such sources of accountability have long been questioned in the national context, given the time pressures and workloads of Parliaments, courts, and other bodies. Parliamentary control over executives, for

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[5] Parliament has long decried the inconsistency of the fact that, since 1993, it had a co-equal role alongside the Council in many decision areas; yet in supervising the Commission's implementation of those decisions in Comitology, the Parliament was excluded. Since the 1999 reform of Comitology and its working practices, Parliament has won the right to review all rules of procedure, agendas, and minutes from Comitology sessions (See fn. 6).

[6] In the first instance, the Commission agreed to simplify its Comitology proposals so as to limit the number and types of committees in operation. In the second instance, Parliament won the right to review not only implementing decisions, but also agendas, minutes, and rules of procedure for Comitology committees. The documentation will be passed to Parliamentary committees through an electronic mailbox system, something that should make it easier for the Parliament to scrutinize Comitology documents (Council of the European Communities 1999).

instance, has long been seen as flawed and growing weaker over time (Colomer 2002). However, our goal here is not perfection, and each rationale reviewed here must combine with others to achieve their full effect. How would committee critics and committee supporters react to the implementation of such a strategy for administrative accountability? For committee critics, the answer might depend on the extent of the effort. Transparency measures such as the publication of documents and public notification of actions (along the lines of an American-style Administrative Act), may be seen as facile and inadequate, hardly addressing what detractors consider the fundamental faults of committees. For committee supporters, transparency and control mechanisms might be tolerable to the extent that they do not destroy the "fabric" of committee governance. The degree of openness and transparency thus must be measured by their impact upon the efficient operation of committees. In sum, the accountability and control rationale holds considerable promise as a source of legitimacy for the EU committee system, and may be able to overcome the objections of committee critics and supporters alike.

• **The procedural rationale.** The "procedural" rationale for legitimacy is based on the fairness of decision-making processes. Procedures are set in place to ensure that full consideration be given to the interests of those affected by administrative decisions. This can be contrasted with the traditional mandate approach, where decisions are expected to reflect the broader will of the general public. Here, procedures designed to associate, include, and draw in persons to the decision-making process are essential. As noted by Dehousse (1999: 115), procedures must vary according to the decision being taken. Under the "due process" requirements, administrative agents must consider the interests affected by each and every decision. In terms of rule-making, a concern for procedural fairness should also lead to the adoption of rules ensuring transparency, consultation, and participation (see also Luban 2000). The assumption underlying this rationale is that administrative governance is more acceptable to the public when procedures are in place to ensure the participation of concerned parties.

Like the accountability approach above, the procedural method of conferring legitimacy is not wholly unfeasible in relation to the EU committee system. Starting with Commission expert groups, one of the frequent arguments made in their defense of such committees is their functional utility in accommodating a variety of affected interests. Indeed, this role is crucial in an ensuring a basic level of legitimacy, i.e. that the decisions issued by the EU are accepted and respected (van Schendelen 1998). It is certainly the case, however, that the actors considered "relevant" to a decision could be interpreted more broadly, so as to include representatives of public interest groups, social movement organizations, and other citizen groups in decision-making. Procedures designed to systematically strengthen the participation of a broader array of actors, therefore could bolster the legitimacy of Commission expert groups. The procedural approach is more problematic in light of existing Council working group

practices. Currently, national officials, designated by elected governments, consider legislative proposals in isolation from outside interests (although one might argue that here, outside interests receive more a "voice" – through national governments – than in any other committee). Even here, though, an effort to design procedures capable of drawing in broader interests could be worthwhile. A basic starting point may be a stronger procedural link between different sectoral Councils, given that legislation is discussed often in isolation from other policies. Finally, a very strong argument could be made that Comitology committees demand stronger procedures to assure participation and publication of critical decisions. Committee sessions could be opened to outside observers, and a variety of rules based on participatory principles and openness doctrines would be quite helpful. Indeed, applied to all committees in the EU system, more institutionalized procedures to broaden participation and publicize procedures could narrow the growing gap between citizens and government in Europe. Such a change would broaden the profile of European issues and maybe even contribute to the formation of a truly pan-European public space.

As a complete approach to legitimacy, the procedural rationale is also limited. Attention only to individuals' rights may hinder the pursuit of broader collective and social needs. Moreover, this approach may conflict with other sources of legitimacy such as adherence to legislative mandates and/or efficiency (below). No less a challenge are the practical impediments to this approach. As it currently stands, it is difficult even to determine the total number of committees in the EU system, much less their operation and outcomes. Committee detractors are unlikely to give much credence to the procedural rational for legitimacy. Procedural guarantees have always been viewed as an important, yet only partial source of democratic legitimation (Caparaso 2000). Without a more fundamental re-think of the democratic underpinnings of committee governance, committee critics are sure to remain unsatisfied. More sympathetic observers of committee governance may also be hostile to a proceduralization of committees. Broad participation could undermine the close-knit interaction of existing committee members and impair the deliberative quality of current processes. Committee apologists argue that the current conditions for committee governance success apply only to those actors *immediately* affected by committee decisions. To broaden the circle of participants, these commentators might suggest, will cause the system to fail.

• **The expertise rationale.** According to this rationale for administrative legitimacy, governmental and regulatory decision-making require expert judgment beyond the capability of a legislature. Technical professionals and specialized experts must take part in administrative functions and be given considerable discretion: to assess evidence, to take into account uncertain and shifting technical standards, and to analyze the merits of competing options. Legitimacy is conferred upon such processes because representative bodies and "political" forces are kept at arms-length from administrative officials; indeed, legitimacy from this perspective is weakened by

strict guidelines or legislative mandates. The assumption here, according to Baldwin, is that the professional expert "will take the most appropriate action when given an area of freedom in which to operate and that his / her performance will improve over time" (Baldwin 1995: 45). Technically proficient and workable policy outputs will secure the public's confidence in administrative rule-making and thus justify the expertise approach.

As an argument to rationalize EU committee governance, "expertise" is invoked often. The first part of this paper indicated how early integrationalists put great faith in the ability of sector-specific professionals to solve technical problems in depoliticized settings. Committees thus became a long-standing feature of the EU, drawing in experts to process complex issues and pushing integration forward sector-by-sector. Today, committees continue to draw together a wide array of experts to assist in the policy formation, policy decision, and policy implementation process. As Dehousse argues, "Providing much needed expertise is clearly an important achievement of the European committee system" (1999: 116). From this perspective, the "expertise" rationale is already in effect in the EU, and lends some legitimacy to policy-making outputs at the European level. However, the expertise rationale has failed to ward off strident criticism of the EU policy process. Observers condemn the perceived "rule by experts" in Europe (Black 2001) and ridicule any effort to impose a "philosopher king" model of governing (Weiler 1999). Following the recent policy failures associated with consumer health issues, and the public reaction to early EU biotechnology proposals, little public trust remains for experts or the expertise rationale in Europe.

The expertise rationale is especially unsuited to appeasing the hard-line critics of EU committees. Their standpoint on the undemocratic nature of EU committees will not be swayed by arguments that some issues are "political" while others are "technical". Of course, even committee detractors acknowledge that technically complex issues are a part of modern decision-making, and experts must take part in governance procedures. Yet committee detractors would argue that expertise-based regulatory agencies at national levels are connected to representative, legitimate government institutions (see, for instance, Shapiro 1988). In the EU, committees have no such connection; therefore, expertise remains a poor source of legitimacy for the European committee system. Committee advocates take a different approach. They would prioritize this rationale for committee legitimacy, arguing that the ability to produce technically competent legislation is a key pre-condition for any public support of the EU. Indeed, supporters rely on much of the past success of committee governance in the EU to justify the discretion and authority lent to professionals and experts today. While this argument has been undermined of late, it is still useful to remember how expertise can be used to legitimize some administrative rule-making procedures.

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• **The efficiency approach.** The last rationale suggests that legitimacy is conferred onto those administrative organizations capable of delivering efficient policy outcomes. What "efficient" means is open to some debate, of course, although two widely acknowledged criteria are (a) the ability to deliver in a timely fashion, and (b) the ability to deliver competent decisions (Baldwin 1995: 46). If government can deliver timely and effective decisions, some degree of legitimacy is bestowed onto those operations. In recent times, the efficiency rationale has taken on a greater importance, as governments are called upon to address increasingly complex, uncertain, and risk-related policy questions. In short, administrative structures must produce "workable" policy for the public. This aspect of legitimacy is captured by the broader discussions of "output-based" forms of legitimacy. Scharpf, for instance, argues that this is the only genuine form of legitimacy enjoyed by the EU (1999). From whatever perspective, it is useful to remember the practical importance of "efficiency" in gaining acceptance from the general public.

In terms of the specific committee system, could the efficiency rationale provide a stronger basis for legitimacy? Like the expertise model, the efficiency claim already is used to justify the legitimacy of committee outputs in the EU. The central argument here is that committees bring together enough representation to make policy decisions, but not so much that procedures get bogged down and so that efficiency suffers. The like-minded approaches of committee personnel, combined with their problem-solving ethos, make decision-making quicker and more effective. Given the considerable complexity involved with European decision-making, along with the diversity of actors involved, this is no small achievement. Committees can thus be credited with producing decisions in a timely fashion. After all, without committee policy outputs over the last few decades, there would be little to celebrate in the integration of Europe. Are committees legitimized by their ability to make "good" decisions? How we define "good" is of course a difficult issue, but in terms of practical workability and technical feasibility, the track record of committees since the EU's inception is quite positive. However, the efficiency model of legitimacy, like that the expertise approach before it, has been progressively undermined by growing criticism. The BSE crisis, the dioxin scare, and other consumer policy failures have focused attention on the fact that committees, even as currently operating, have produced inefficient and ineffective policies.

The broader criticism of efficiency claims for legitimacy are that "effective" decisions are interpreted differently by different actors. Indeed, the most effective policy outputs may not be the quickest; one person's criteria for efficiency may be another's definition of arbitrary or authoritarian rule-making. Moreover, efficiency goals often ignore the "political" aspects of policy outcomes, including the distributional consequences of decision-making. How might committee detractors and committee supporters react to a claim like "efficiency" for the legitimacy of EU committee governance? The former are not likely to put much faith in such a claim, arguing, as

they might for the expertise rationale, that "output" based forms of legitimacy are at best partial, and at worst flawed, sources of legitimacy. From this perspective, efficiency alone cannot legitimize committee governance. The latter are more sympathetic to the role of efficiency in justifying the current EU committee system. The production of efficient and effective decisions, like the use of knowledgeable experts to tackle complex policy problems, has long been held up as a prime advantage of committee governance. Recent policy failures, committee supporters might argue, do not discredit expertise or efficiency-based forms of legitimacy. If anything, previous problems point to the need to provide more latitude for expertise and to focus more on effective and efficient policy-making.

The above-mentioned rationales for the legitimacy of bureaucratic practices cannot stand alone as justification for committee governance in the EU, but nor are they mutually exclusive. For some rationales, committees score quite low (legislative mandate, for instance), while on others committees fare better (expertise, efficiency). It is the cumulative force of these rationales that are important, for each approach suggests various strategies for reform that together can improve the legitimacy of committees. From this perspective, alterations to the EU committee system should proceed in light of two criteria: (1) reform attention should focus first on the rationales where committees score poorly, (2) reform in any one rationale should proceed only if that reform will not weaken significantly the legitimacy derived from another rationale. In this way, committee reform must achieve a careful and considered balance between different sources of legitimacy.

CONCLUSION

This paper offered an assessment of EU committees in two parts. The first part presented an empirical overview of the three types of committees which, when taken together, constitute what can be called the EU committee system. Commission expert groups, Council working parties, and Comitology committees were shown to vary widely in constitutional and procedural formality, while at the same time playing equally influential roles at different stages of the policy process. Through specifying the precise nature and prevalent role of committee governance in the EU, this section argued that committees make a major contribution to the EU's administrative and bureaucratic capacity.

The second part of the paper provided a more normative assessment of EU committees. The premises underpinning this section were two-fold: (a) that committees provide an administrative function essential to the effective operation of the EU, and (b) that despite this, growing public hostility demands reform solutions that will bolster the legitimacy of committee governance. The section demonstrated that existing approaches to assessing committee legitimacy are unhelpful: two camps have emerged with widely varying and impractical policy prescriptions. The section

then presented five approaches traditionally used to legitimize bureaucratic processes. After applying each of the five approaches to the EU committee system, the section concluded that the approaches, when used cumulatively, offer a realistic set of reform options capable of boosting the legitimacy of EU committee governance.

The two-part structure of this paper reinforces a central argument underpinning the analysis: empirical realities must be considered before any attempt to "democratize" EU committees is undertaken. The EU committee system provides the necessary conditions for collective rule making amongst diverse states—without small, close-knit arenas in which national differences can be aired, addressed, and resolved through "upgrading the Community interest", the EU as an effective and substantial form of supranational integration will surely fail. At the same time, the growth of public criticism of that same system, and the policies and policy failures that have emanated from it recently, is putting committee governance at risk. This double-edged sword presents a difficult challenge: reform the EU committee system to ensure its survival, but not so recklessly as to destroy the very fabric that enables committees to function effectively. This paper offers a necessary, but not sufficient, start toward resolving this dilemma.

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