

Deliberative Democracy and the Legitimacy of the European Union: A Reappraisal of Conflict

Amandine Crespy

Université Libre de Bruxelles

Connecting the relevant literature in sociology, political theory and European studies with original empirical research, this article calls for a reappraisal of conflict when addressing the issue of the democratic legitimacy of the European Union. It offers a critical account of rationalistic and consensus-based deliberative democracy both in the classical theories of deliberative democracy and in the practices institutionalised in the EU. Drawing on the model of 'discursive democracy' theorised by John Dryzek, it provides an account of the contentious debate over the EU Services Directive (also known as the Bolkestein Directive). It is argued that the EU can function as a polity where democratic legitimacy is granted by deliberation. However, this holds only under two conditions. First, deliberation must be conflict based; that is, it must allow for the voicing of dissent and its channelling into political institutions. Second, supranational institutions and decision making can only be responsive and engage in alleviating conflict through deliberation when conflict is structured along transnational – as opposed to national – lines.

Keywords: European Union; conflict; legitimacy; democracy; social movements

Since the mid-1990s, there has been an ongoing academic debate as to how the legitimacy of the European Union (EU) should be assessed. Some scholars have argued that, since the EU could not be compared to historically evolved national states, its legitimacy should be considered in terms of output, that is, its capacity to solve problems and deliver efficient policies (Majone, 1998; Scharpf, 1999). However, the failure of the Lisbon Strategy, launched in 2000, and of the 2009 Copenhagen Summit on climate change, are only two examples of the very limited room for manoeuvre that the EU has to deliver efficient policies while dealing with resistance to change and exogenous crises. A greater number of scholars have argued that in the case of the EU, a supranational political system, it is more appropriate to apply the democratic criteria for input legitimacy, that is, representation and accountability performed *vis-à-vis* the citizens (Beetham and Lord, 1998; Thomassen, 2009). In this respect, the spectacular increase of the European Parliament's competences should be understood as an attempt by European elites to remedy the so-called democratic deficit, while strengthening the representative dimension of the European institutional architecture (Costa and Magnette, 2003). However, waning turnout at European Parliament elections and the painful ratification of the last treaty provide evidence that strengthening the input legitimacy in the EU is neither straightforward nor uncontroversial. In order to overcome the conceptual dialogue of the deaf between the advocates of input and output legitimacy, it is useful, following Vivien Schmidt, to focus on actual interactions between diverse groups, arenas and institutions during the making of public policy in the EU or, as Schmidt puts it, on government *with* the people or 'throughput' legitimacy (Schmidt, 2004; 2013). In this respect, a number of scholars have been inspired by deliberative democracy to elaborate descriptive as well as normative

accounts for decision making in the EU (Cohen and Sabel, 1997; Eriksen and Fossum, 2000; Joerges and Neyer, 1997).

However, because of the technocratic nature of EU governance, an elite-based and consensus-oriented understanding of deliberative democracy within the various EU organs and bodies has prevailed. The exclusion of grassroots and dissenting voices has tended to undermine the legitimacy of the EU polity. This article argues that the contribution of conflict to the democratic legitimacy of the EU should be reappraised. The grassroots and conflict-oriented conception of deliberative democracy is not new and can be found in political theory and in the social movement literature. However, it has not yet been satisfactorily connected with the debate surrounding the problematic legitimacy of the EU. Claims for the democratic value of contestation and participation per se often preclude a reflection over how conflict can serve to legitimise – rather than delegitimise – the EU while ensuring a more effective form of deliberation, that is, one where conflict (grassroots deliberation) can actually impact on decision making. This case brings evidence that the EU *can* function as a discursive democracy along the lines of the model put forward by John Dryzek (1990; 2002; 2010). In this perspective, democratic legitimacy is generated when deliberation implies that conflict can be expressed by citizens and organised groups, channelled by political institutions and eventually alleviated by decision making and policy output.

While it should not be seen as a case reflecting the general functioning of the European Union, the investigation of the highly contentious debate over the ‘Bolkestein Directive’ provides empirical support for this argument (Crespy, 2012). The directive proposal for services liberalisation in the EU has triggered unprecedented mobilisation between 2004 and 2006, epitomising the eruption of conflict in the normally technocratic European decision-making process. The Bolkestein controversy demonstrates that the transnational expression of contestation allows for a more coherent response from European policy makers than conflict that only takes place at the domestic level. After two years of transnational mobilisation by associations and NGOs belonging to the global justice movement, trade unions and left-wing political parties, the EU Commission’s proposal for liberalising and deregulating all services activities in the EU was substantially amended by the European Parliament (EP). The final draft took concerns about the liberalisation of public services into account as well as seeking to address fears of social, wage and regulatory dumping. These questions are more crucial now than ever as the crisis of the Eurozone has triggered dramatic policy responses in the form of austerity plans which will affect several generations of European citizens. Certainly, these measures will raise new questions about the relationship between the making of public policy in the EU and the legitimacy of the EU in the eyes of national constituencies. The article is divided into two main sections.

The first section offers a critical examination of how conflict avoidance is paramount in classical theories of deliberative democracy as well as in the deliberative practices encouraged by European institutions; it then discusses the contribution of the social movement literature to the debate over the legitimacy of the EU. The second section presents Dryzek’s model of discursive democracy and then provides an account of the ‘Bolkestein’ debate based on this framework, thus adducing evidence to support the contention that the practice of conflict-based deliberation can enhance the legitimacy of the EU. The con-

cluding remarks highlight the limitations of this argument and stress the importance of the institutional setting in conflict-based deliberation.

Conflict Avoidance: Solution or Problem?

Classical theories of deliberative democracy have typically ignored or depreciated the role of conflict in democracy. An elitist and consensus-based model of deliberative democracy has emerged as the major response to the post-industrial trend of declining legitimacy of representative democracy. However, the strategy of conflict avoidance that characterises deliberative practices in European politics has been rather counterproductive in this respect. Critics of consensus-based deliberation as well as scholars of social movements offer interesting insights as to why and how conflict can feed the democratic legitimacy of the EU.

The Pitfalls of Classical Theories of Deliberative Democracy

The deliberative paradigm of democracy was originally developed both in American political theory and, more famously, in the work of the German philosopher Jürgen Habermas. An in-depth account of the theoretical debate over deliberative democracy is far beyond the reach of this article. The objective here is rather to pinpoint the aspects of the debate that are relevant with regard to the legitimacy of the EU. The grounding principle of deliberative democracy is that legitimate decisions are the product of an exchange of reasonable arguments between equal individuals. Importantly, deliberation will lead the participants to alter their preferences: in this regard, deliberation differs from conceptualisations of political decisions as bargains or negotiations between individual interests and this opposes the paradigm of rational choice. When compared to other modes of decision making based on interest aggregation (such as bargaining or voting), deliberation arguably produces decisions that are more efficient, more legitimate and more respectful of social justice, and such deliberatively produced decisions potentially bring moral and intellectual benefits to participants (Elster, 1998b). Typically, the liberal elite-based conception of deliberation represented by John Rawls is contrasted with the more democratic-participatory theory of Habermas. However, the respective importance of participation and representation in Habermas' work is the subject of academic debate: deliberative democracy implicitly associates two concepts – deliberation and participation – which are in fact not necessarily interrelated (Blondiaux and Sintomer, 2002). The question 'who shall deliberate?' therefore remains controversial. While, according to Jon Elster, isolation from public pressure can be more conducive to common will under exceptional historical circumstances (Elster, 1998a), the question of the social representativeness of those who deliberate is crucial for the democratic quality of deliberation (Gargarella, 1998).

The over-rationalisation of deliberation can be seen as a main pitfall of the theory of deliberative democracy (Mouffe, 2000). While Rawls' 'overlapping consensus' and Habermas' 'communicative reason' do not imply the same mechanisms, their respective theories rely on the idea that deliberation is a rational process by which a moral agreement, rather than an aggregation of individual interests, can emerge. In Habermasian theory, consensus is the result of interactions in an ideal speech situation, where communication is open to all participants who have equal rights to use speech, question the agenda and reflect on the

communicative procedures (Benhabib, 1996; Habermas, 1984). These theoretical requirements have been an easy target for critics to question the practical relevance of deliberative democracy and deplore the gap between theory and praxis. They have underlined, for instance, that when deliberation is broadly participatory, it tends to be disconnected from the sphere of decision making and *vice versa* (Blondiaux and Sintomer, 2002). Furthermore, as equality between participants does not exist, one should remain aware that deliberation can lead to 'ideological domination' of groups endowed with more resources (Przeworski, 1998). Eventually, Chantal Mouffe (2000) argues that such an emphasis on consensus and rationality comes from the incapacity to acknowledge the basic paradoxes that characterise democracy. For her, deliberative democracy negates – rather than solves – the conflicts induced by value pluralism and unequal power relations. Not only is the will to eradicate conflict mistaken from a theoretical point of view, but it is also dangerous from a practical point of view.

These critiques of the deliberative paradigm help to explain why the legitimisation strategies that European elites have employed so far have failed. While seeking institutional arrangements that aim at preventing conflict, the instrumental use of deliberative democracy has resulted in the negation of politics and of democracy. The normative point of view of this article is a conception that puts popular sovereignty at the centre of democracy. One corollary is that the possibility for grassroots groups to raise conflicts and express dissent is a vital condition of democracy, since 'the people are involved in public affairs through the conflict system. Conflicts open up questions for public intervention. Out of conflict the alternatives for public policy arise' (Schattschneider, 1960, cited in Mair, 1997, p. 950). The essence of democratic politics is the very possibility of expressing disagreement (Rancière, 1999), a possibility that relies on the recognition of the other as a subject endowed with the right to speak. As opposed to the 'exclusive consensus', democracy implies a disagreement on the subjects to debate, on the groups allowed to do so and the existence of a 'stage' for the people to appear (Rancière, 1999). In contrast, the elitist 'neo-Madisonian' vision of the EU has very much been based on state rather than popular sovereignty. Continuous institutional innovations and the multiplication of checks and balances among states have been conceived by European elites as a recipe for generating legitimate and democratic government at the European level (Bickerton, 2011).

Deliberative Democracy, Social Movements and the EU

Deliberative democracy has strongly appealed to scholars of social movements. While broadly embracing the paradigm, these scholars have nevertheless often been critical of ideal speech conditions and have sought to confront the political theory of deliberative democracy with the real world of contemporary politics. The main concern of sociology-oriented scholars is the inclusiveness of deliberative processes. Iris Marion Young (2000) and Jane Mansbridge (1999) have both promoted a model of deliberation that allows for the voicing of conflicts between interests and identities in order to avoid the disqualification of deprived groups that are less likely to use the argumentative and rational forms of communication. The power of deliberation is not to suppress conflict, but rather to alter power relations: some groups can be empowered in the course of participation and previous points of equilibrium are displaced in the course of deliberation. The absence of

economic or cultural equality in the real world and the resulting need for more conflict-laden forms of politics are particularly central in this debate. While the (bourgeois) 'deliberative democrat' might deny the capacity of the (grassroots) 'activist' to engage in a reason-based exchange of arguments, the activist might 'be suspicious of the claim that he ought to engage in deliberation with the powerful agents he believes perpetuate injustice' (Young, 2001, p. 675). Confrontation is thus necessary when deliberation tends to reproduce hegemonic discourse. Archon Fung (2005), for instance, advocates a form of deliberative political activism that allows the use of non-persuasive or coercive forms of action when these are necessary in order to emancipate activists from unjust conditions and obtain the institutionalisation of deliberative settings. Drawing from sociological case-based observation of deliberative processes in connection with policy making, Loïc Blondiaux argues that contention can be considered as a desirable precondition to deliberation in three respects: it fuels minimal grassroots participation; it structures deliberative communication; and it is more likely to lead to deliberative processes exerting an impact on decision making (Blondiaux, 2008).

The equation between deliberation, conflict and democracy has been at the core of the literature on the evolving forms of governance and collective action in Europe. Scholars of social movements and collective action in the EU contribute to the debate about the EU's democratic legitimacy because their work follows a research tradition embodied by Charles Tilly and grounded in the idea that 'democracy emerges contingently from political struggle in the medium run rather than being a product either of age-old character traits or of short-term constitutional innovations' (Tilly, 2004, p. 9). Theorising on the basis of historical evidence, Tilly and his colleagues have established modes of change induced by social movements that lead towards more democratic political systems (Giugni, 1998). This literature has developed along three lines that are relevant with regard to a reappraisal of conflict in deliberative EU politics. First, in so far as 'they are particularly sensitive to the ideas and practices of democracy, both in their internal life and in the political systems they address' (Della Porta, 2005, p. 1), contemporary transnational social movements can be seen as a laboratory of transnational deliberative democracy. Such movements typically value horizontal organisation through networks over hierarchy, subjectivity and diversity over obedience and homogeneity, and participation and transparency over efficiency and decision making. In short, the 'organisational ideology' of the global justice movement aims at putting the ideal of deliberative democracy into practice (Della Porta, 2005). Therefore, the organisations involved, for example the European Social Forum, can be seen as a form of 'subaltern counter-public' (Fraser, 2003) managing the multicultural and multilingual nature of deliberation in the EU (Dörr, 2008).

Second, regarding the external activity of these movements in the institutional environment of the EU, confrontational strategies of mobilisation deserve more attention. Many scholars have pointed to the domestication of conflict in Europe: they have established that the institutional structure of the EU has fostered the professionalisation and bureaucratisation of civil society with a preference for conventional repertoires of action as opposed to protest (Marks and McAdam, 1999). In a context where the EU has been described as a governance system producing 'policies without politics' (Schmidt), the impact of contention on decision making is greater when mobilisation campaigns are more contentious, that is,

using ideological frames, and rooted in national politics rather than focused on providing policy expertise for the Brussels microcosm (Parks, 2008).

Third, the question of whether contentious civil society contributes to the legitimisation or, on the contrary, to the delegitimation of the EU, has more recently been raised. On the one hand, movements of job seekers, migrants or cosmopolitan post-materialists voice wider discontent towards the perceived asymmetric bias of EU policies, thus feeding Euroscepticism among the 'losers' of globalisation (Balme and Chabanet, 2008). On the other hand, transnational social movements indirectly legitimate the EU as a political centre while, using it as a target for political mobilisation (Imig and Tarrow, 2001), they contribute to the building of a European transnational public sphere. Furthermore, they do not reject the idea of a post-national polity, but rather call for such a polity to be better integrated – a more social, greener and more cosmopolitan EU (Della Porta, 2006). While deliberation, conflict and legitimacy have been discussed in relation to social movements, the manner in which contentious forms of collective action can feed a form of deliberation that enhances legitimacy in the EU has not been yet theorised, nor has it been empirically demonstrated. Indeed, to the extent that it has taken place to date, the institutionalisation of deliberative practices in the EU has mainly been geared towards the evacuation of conflict.

The Counterproductive use of Deliberative Democracy in EU Politics

The EU has been increasingly conceived as a deliberative political system by policy makers in EU institutions as well as in academia. However, two criticisms can be addressed at this model: first, the democratic input of civil society has proved rather poor as it mainly serves efficiency in policy formulation; second, the organisation of decision-oriented deliberation has been mainly elite based and contained within EU institutions and bodies.

Alongside the continuous strengthening of parliamentarism, the idea of 'good governance' developed as a major political response to the issue of the legitimacy deficit of the EU (European Commission, 2001). As a bureaucratic non-elected body, the EU Commission strategically sought to promote new norms in the institutional competition for increased legitimacy with the European Parliament (Smismans, 2003). Originally rooted in the norms of transparency and consultation promoted by international organisations, the idea of European governance was increasingly inspired by deliberative theories. A dialogue with European 'civil society' (or civil dialogue) was institutionalised as a main device. Typically, this strategy is grounded on the unclear boundaries between deliberation, participation and representation and therefore had a cold reception from territorial representation-based European bodies such as the EP, the Committee of the Regions and the Economic and Social Committee.

After more than a decade of research about the role of civil society and deliberative governance in the EU, there is relatively unanimous agreement about the paucity of its contribution to the EU's democratic legitimacy.¹ The main reason for this failure is that, in spite of pleas for enhanced citizen participation, deliberation has been encapsulated within epistemic communities of national experts and NGO representatives, interest group spokespeople and union officials at the elite level, thus generating strong socialisation effects within the EU microcosm in Brussels. These exclusive deliberative arenas have remained remote from national public spheres, hence they have not generated much citizen aware-

ness, nor have they promoted increased levels of popular participation in EU policy making. The professionalisation of people dealing with EU issues within national associations and the setting up of large platforms speaking for national members in Brussels have led to a strong segmentation and eventually to the absence of participation of national associations in EU politics. The civil dialogue is mainly the result of interdependence between European institutions and civil society: while the Commission and the EP use NGOs as providers of expertise, the latter enjoy the institutional recognition of their role as stakeholders and representatives of social groups or even of all European citizens (Sanchez Salgado, 2007). The logic underpinning governance is therefore more functional than democratic: the purpose of institutionalised practices of deliberation in the EU arena has mainly been to make policies more efficient, that is, to foster output legitimacy. Particularly blatant at the European level, this trend characterises contemporary politics more broadly: the legitimising potential of deliberative democracy has vanished, for the most part, in the gap between the theory of participatory deliberative democracy and the instrumental use of deliberative practices as a mere governance technique (Blondiaux and Sintomer, 2002, pp. 26–9).

Beyond the instrumental use of civil society involvement, scholars of EU integration have explored ‘integration through deliberation’ (Eriksen and Fossum, 2000). One problem with this literature is that it often blends normative with empirical accounts of the EU. Erik Oddvar Eriksen and John Erik Fossum have provided major insights while arguing that democratically legitimate post-national integration can result from a process of ensuring the exchange of norm-based arguments. Here, the emphasis is put on procedural and legal arrangements allowing such deliberation. However, once again, empirical examples display the elitist bias of such deliberation, as it is only put into practice by political and administrative elites in the framework of comitology, inter-parliamentary cooperation or constitution-making bodies. In contrast, as the authors and their colleagues underline, the conferral of direct democratic legitimacy by citizens enjoys very few channels into the institutional architecture of the EU (Bellamy and Castiglione, 2000; Eriksen and Fossum, 2000, p. 264). In 2007, The Commission and the European Parliament engineered an experimental deliberative poll among randomly selected citizens under the auspices of European think tanks and the American deliberative democracy experts James Fishkin and Robert Luskin. When engineered by EU institutions themselves, such experiments are bound to be reduced to instruments of political communication geared towards the staging of intercultural consensus (Aldrin and Hubé, 2011).

The main result of the institutionalisation of the ‘participatory norm’ in the EU (Saurugger, 2009) has been the eviction of contention from the realm of legitimate politics. This has created an exclusive – as opposed to inclusive – political system with insiders and outsiders, thus precluding channels for voicing citizens’ concerns with regard to policies decided at the EU level. In order to maintain the consensus at the centre over an asymmetric integration focused on negative integration, the most contentious groups – such as the alterglobalist movement – have been kept outside civil dialogue. The European Trade Union Confederation (ETUC) has tried to maintain itself as a contentious insider incorporated into the institutional system through social dialogue and at the same time able to endorse more conflict-based forms of involvement. This model of deliberative governance has been unable to generate new strands of democratic legitimacy; if anything, the

opposite has occurred: efforts to contain political dissent have contributed to the continuous weakening of the legitimacy of the EU in the eyes of major sections of public opinion. The impossibility of organising and voicing opposition and the contemptuous reaction of elites to negative referenda results on European treaties' ratification are the main arguments invoked by alienated citizens and Eurosceptic politicians today (Crespy and Fimin, 2013). More generally, the problem of the EU lies in the gap between the openings to input legitimacy (such as EU elections or referenda), on the one hand, and the refusal to deal fully with the implications of democracy, that is, to accept dissent, on the other hand. Since the traditional form of linkage suffers from the peculiarities of the EU representative mandate (Costa, 2002), the challenge of creating some form of ownership among citizens is greater at the EU level. In a political system where violent or unconventional contention is very much contained, participation is most likely to occur through contentious debates allowing political actors to make claims and exchange conflicting arguments.

Contention about the Bolkestein Directive: the EU as a Discursive Democracy

This section presents the model of discursive democracy put forward by Dryzek as a framework for conflict-based deliberation in the EU. Discursive democracy is extremely useful for bridging the gap between theoretical relevance and the practical expression of conflict in democratic politics. An empirical account of the conflict over the Bolkestein Directive is then provided: it explains the mechanisms through which discursive democracy can work in the institutional setting of the EU.

Discursive Democracy: A Model for Rethinking Deliberation in the EU

Discursive democracy provides several highly useful insights for thinking of the legitimisation of European democracy. Indeed, it is surprising that Dryzek himself did not apply it more explicitly to the EU. Before turning to the empirics, it is important to explain how discursive democracy addresses those pitfalls of deliberative democracy that have been outlined above. First, Dryzek calls for democratising rationality (Dryzek, 1990) by contrasting instrumental rationality with communicative rationality, that is, the coordination of action through discussion oriented towards intersubjective understanding and common socialisation (Dryzek, 1990, p. 14). Communicative rationality is not grounded on interest maximisation and 'can pertain to the generation of normative judgments and action principles rather than just a selection of means to ends' (Dryzek, 1990, p. 14). In this respect, Dryzek argues for the rehabilitation of rhetoric and emotions with regard to representation and deliberation (Dryzek, 2010, ch. 4). Dryzek's critical assessment of rationality is important, since the EU can be seen as a bureaucratic system relying on over-rationalised procedures for policy making. As such, building democratic legitimacy may mean weakening the bureaucratic-rational dimension of legitimacy.

Second, Dryzek is concerned with the contribution of critical political theory to political praxis in order to tackle the problems of contemporary democracy (Dryzek, 1990, p. 19; 2010, p. 8). In this respect, he proves sceptical about the practical relevance of deliberation in ideal conditions of speech, and underlines that the idea of a possible overarching consensus has been very much put into perspective by most advocates of

deliberative democracy (Dryzek, 2010; Elster, 1998b). He therefore stresses the potential of deliberation with regard to voice, and conceives discursive democracy as a process of contestation of discourses in the public sphere (Dryzek, 1990, p. 33), and hence as a process retaining the potential for resistance to the hegemony of instrumental rationality (Dryzek, 1990). It then becomes clear that the outcome of deliberation cannot be exclusively conceived as a consensus, since 'the key to conflict resolution is the reconstruction of private or partial interests into publicly defensible norms through sustained debate' (Dryzek, 1990, p. 124; see also Elster, 1998b, p. 12). Rather, it should be conceived as a working agreement based on the mutual acceptance of different – but still reasonable – motives and which can be located in the 'conceptual space between a communicatively achieved consensus and a strategically bargained compromise' (Dryzek, 2002, p. 5; Eriksen, 2006). When examining empirical examples of deliberative arenas – what Dryzek calls discursive designs – such as processes for international conflict resolution, dispute settlements, citizens' parliaments and mini-publics, the aim is to generate an understanding across different frames of reference (Dryzek, 1990, pp. 53–4), rather than to achieve the definitive reconciliation of conflicting values.

Interestingly, Dryzek holds that, because of the decentralisation of power relations and the absence of a state as such, international arenas are more favourable to discursive designs than national states. This point runs counter to the reflections of a number of intellectuals and political theorists who deny democratic legitimacy to the EU on the grounds that only the framework of the nation state can guarantee the exercise of democratic rights by the sovereign people (Lacroix, 2010). Dryzek further establishes the (ideal) features of discursive systems, which help to conceive deliberation in highly fragmented and large-scale polities such as the EU. He notably distinguishes the public space, which includes all citizens and all forms of social communication, from an empowered space where deliberation in institutions producing collective decisions occurs. Both spaces should be connected through mechanisms of transmission, via which the public space exerts influence on decisions, and on accountability, and by means of which actors in the empowered space shall respond and endorse the decisions made. Meta-deliberation over the organisation and functioning of deliberation constitutes the last element of the system, while decisiveness refers to the degree to which these five elements together determine the content of collective decisions (Dryzek, 2010, pp. 11–2). This means that, whereas deliberation and public discussion serve participation, they should not be restricted to symbolic politics, but should also have an impact on policy outcomes. Eventually, Dryzek seeks to resolve the tension between representation and participation in defining deliberative legitimacy as the resonance of collective decisions with public opinion, defined in terms of the provisional outcome of the engagement and contestation of discourses in the public sphere as transmitted to public authority in empowered space (Dryzek, 2010, p. 40). Again, such a conceptualisation helps to make sense of legitimacy in the EU in so far as, because of the persistence of national institutional and symbolic structures, legitimacy can only rely on mediation and discursive interactions. Building on the empirical study of the conflict over the EU services directive, the next section demonstrates how the possibility of having a contentious debate at the European level can not only have a major impact on decision making but also enhance the legitimacy of EU policies and institutions.

I argue that the EU can function as a polity where democratic legitimacy is granted by deliberation. However, this holds only under two conditions. First, deliberation must be conflict tolerant; that is, it must allow for the voicing of dissent and also facilitate the channelling of dissent into political institutions. Second, supranational institutions and decision making can only be responsive and engage in alleviating conflict through deliberation when conflict is structured along transnational – as opposed to national – lines. In the case of contention over the Bolkestein Directive, this is allowed by the co-decision procedure. Roughly speaking, the conflict over services liberalisation in the EU can be divided into two broad phases. From January 2004 to June 2005, a range of (relatively radical) left-wing organisations succeeded in organising bottom-up contentious mobilisation and Europe-wide politicisation of the Bolkestein Directive proposal. After the shock of the failed referenda for the ratification of the European Constitutional Treaty (ECT) in France and the Netherlands, a second phase started, where conflict was alleviated by deliberation within the parliamentary and governmental arenas. In the perspective of Dryzek's discursive democracy, these two phases reflect a two-stage deliberative process in which politicisation and the expression of conflict in the public sphere lead to a transmission of grievances to an empowered space, therefore guaranteeing the decisiveness of deliberation. The in-depth study² of the impact of contentious debates on decision making allows us to begin to specify the mechanisms connecting conflict and democratic legitimacy.

Contention and the Production of Linkage in the Political System

The mechanism of transmission put forward by Dryzek echoes the concept of linkage in classical democracy theory, that is, the idea that democratic legitimacy derives from a connection between citizens and decision makers. In the highly fragmented European political system, such linkage is particularly weak. MEPs remain hardly known in their constituencies, and turnout in European elections has dramatically decreased since 1979. Moreover, governments often avoid endorsing decisions made at EU level and are rather inclined to engage in 'blame shifting' to the EU. In contrast, the eruption of conflict in the European decision-making process implied the mobilisation of all channels leading from the citizens to the top of decision making at the EU level. This process relies on the simultaneous formation of coalitions in the three countries under study (namely Belgium, France and Germany) and the Europeanisation of conflict. Mobilisation started in Belgium a couple of weeks after the adoption of the directive proposal by the Commission. A broad coalition, including all organisations of the Belgian Social Forum, gathered around the *Parti socialiste* under the banner 'Stopbolkestein'. Following a lively controversy with Commissioner Bolkestein's spokesman on the Belgian national broadcasting medium,³ a first demonstration against the Bolkestein Directive was organised as early as May 2004 in Brussels. These events therefore allowed an efficient politicisation in the Belgian media and political sphere. Through common activist networks among the unions and Attac, the debate then diffused towards France. A coalition building on networks of the radical left used the Bolkestein issue intensively when launching its campaign against the ECT in October 2004. The services directive increasingly gained importance in French public discourse, thus directing the referendum campaign towards the social issues at stake with EU

policies and forcing the main party leaders and President Chirac to take a critical stance. In Germany, early mobilisation by the *Linkspartei* and Attac could not achieve high visibility in the public sphere. However, the contestation against the Commission proposal gathered pace in 2005, when the SPD entered the debate, under combined pressure from the unions and the German rapporteur in the EP in the context of the French referendum. Therefore, the conflict rested on national coalitions and succeeded in mobilising a public debate in the national public spheres.

Furthermore, the contentious actors of the left adapted their strategy to the multi-level structure of the EU. Following a well-known typology in the social movement literature, they used a threefold strategy of transnationalisation, supranationalisation and internalisation of the conflict (Della Porta and Caiani, 2007; Imig and Tarrow, 2002). First, the associations, unions and parties diffused contentious expertise and arguments among the transnational networks built on long-established relationships between national trade unions or the European Social Forum. Second, they also used the more institutionalised connections within supranational platforms, in particular the European party federations and EP groups and the ETUC. Third, traditional channels of influence within national parliaments and governments were also mobilised. Moreover, the strategy was adapted to the peculiar institutional architecture of the EU. While the European Commission was targeted as the main antagonist in the conflict, all organisations were aware that they could have most influence on the EP and the Council via national governments. Many political groups or individual MEPs were open to resistance to the Commission's project; hence, from 2005 on, the EP was very often pictured as an ally in the conflict. The debate therefore contributed towards creating some linkage between the empowered space of decision making, on the one hand, and the larger public sphere as well as grassroots members of unions and associations on the other. Beyond linkage, there was even a mechanism of transmission with, for the first time in the history of European politics, a clear impact on decision making. The frame analysis nevertheless shows that the bottom-up transmission of grievances was possible not only because of institutional adaptation to the multi-level structure of the EU, but to a great extent also because of a very efficient and transnational framing of the issue.

Contention and the Production of Meaning

The in-depth frame analysis shows that the framing of services liberalisation as a case for the defence of a social Europe was decisive in allowing for an impact of mobilisation on co-decision (Crespy, 2010). In 2004 and early 2005, the idea of the necessary defence of the European social model spread out from the most radical and peripheral organisations (Attac, neo-communist parties, leftist unions) to more central actors in the European decision-making process (social democratic parties, the ETUC, the Socialist Group in the EP, etc.). Beyond the very general normative model of social Europe, the various organisations shared a common framing, as far as more specific levels of discourse are concerned. In relation to political programmes and paradigms, the idea of regulation and harmonisation – as opposed to deregulation and competition – were central discursive elements underpinning criticism towards the directive proposal. As far as policy problems are concerned, all organisations focused to a large extent on the impact of liberalisation and deregulation on the provision

of public services and social dumping. Of course, the frame analysis shows national and ideological variations, especially as far as explicit criticism of the EU as a neo-liberal polity is concerned. But overall, the defence of social Europe became a common frame allowing for some discursive coherence (and partial coordination) within a loose and heterogeneous coalition. Both cognitive coordinative discourse within policy communities and normative communicative discourse addressing public opinion at large were important. But while the former is the usual *modus* of European politics, a clear articulation and salience of the latter by European elites is much more unusual. Framing performs meaning work (Benford and Snow, 2000); that is, it makes sense of integration while mobilising ideas and counter-ideas, thus providing a substance for a deliberative public sphere to exist. For sure, such a framing entailed an important strategic dimension and does not meet the requirement of ideal deliberative speech. However, it allowed the transformation of particular interests to a generalisable common interest. This was particularly important for the contentious actors to escape the Eurosceptic label.

Framing in terms of social Europe proved to be particularly efficient and brought about a certification of contentious discourse by central decision makers, that is, an external authority's signal of its readiness to recognise and support the existence and claims of a political actor (Tilly and Tarrow, 2007, p. 215). In the first half of 2005, the impact of discourse is strongest. In the context of the French referendum campaign, President Chirac radicalised the French position and personally committed the country against the Commission proposal. In a more spectacular fashion, the German government, which had so far supported the country of origin principle in the Council, reversed its position. Under the combined pressure of the unions, the SPD group in the Bundestag and the German rapporteur in the EP, Chancellor Schröder came to adopt a critical discourse towards the Bolkestein proposal. At the European Council in March 2005, it is clear that many decision makers adopted the framing emanating from the left-wing mobilisation. The Prime Minister of Luxembourg and holder of the EU Presidency, Jean-Claude Juncker, Jacques Chirac, Guy Verhofstadt, Gerhard Schröder and José Manuel Barroso themselves all said that social dumping should be avoided, and the Council conclusions invoke the defence of the European social model. Discursive interactions therefore took the form of deliberation resulting in preference changes and were a main driver of decision making.

Extra-Parliamentary Opposition and the Regulation of Conflict

While discursive contention can be seen as a desirable primary stage of deliberation, democratic politics also relies on the (partial and temporary) resolution of conflict through working agreements. While the notion of extra-parliamentary opposition refers to ambivalent experiences in the history of European regimes,⁴ it can feed a renewed approach to political opposition (Brack and Weinblum, 2011) by connecting protest with institutionalised forms of decision making. In the West German republic of the 1960s, for instance, the protest movement led by students was labelled *ausserparlamentarische Opposition* (APO). Originally it protested against the emergency laws passed by the Bundestag without any party objecting; it then mobilised more broadly for the de-Nazification of the German establishment and against nuclear weapons and the war in Vietnam. Extra-parliamentary opposition was used by young people to make themselves heard, as they did not feel

represented by their MPs. The principle underpinning extra-parliamentary opposition is that when the possibility for opposition is absent or defective in the parliamentary arena, opposition should be voiced by citizens in the public sphere. It is therefore an interesting heuristic device to reflect on forms of opposition in the EU, which is deprived of formal parliamentary opposition. The idea is to underline the possible interactions between MEPs and civil society organisations. On the one hand, the latter can hope for support for their claims, while on the other the former – when they are in the minority – can use protest and voice to strengthen their position within the assembly. These reflections bring us back to traditional categories of opposition established in the literature such as classical opposition versus principled opposition (Kirchheimer) or constitutional opposition versus anti-system opposition (Sartori). With regard to the EU, it is suspected that, in the absence of organised opposition against policies, grievances against the EU are more likely to turn into anti-system opposition (Mair, 2007). The conflict over the Bolkestein Directive shows that, when they are channelled into the institutional system, resistances led by outsiders can to a large extent be defused and alleviated.

More specifically, the connection between extra-parliamentary contestation and intra-parliamentary decision making happens through the validation of contentious discourses emanating from the former through the latter. The normative relevance of such a process is grounded in the idea that, in political systems lacking a unified demos, the representation of discourses may be as relevant as that of groups or individuals (Dryzek and Niemeyer, 2008). Besides the social Europe frame, the idea of a parliamentary compromise, which we have conceptually defined as a working agreement, was a main theme used by actors, both within and outside the assembly, to turn a majority of MEPs into allies of the movement. The idea of an agreement over the proposal – rather than a mere rejection – reflected the ideological preference of the Social Democrats, the group in charge of the report. This reflects a conception of European integration where liberalisation is accepted as a main instrument for building the internal market, leaving national states with some capacity for social regulation. Rather than the rejection of the draft, such a strategy geared towards an agreement was very efficient in convincing the European People's Party (EPP) group that there was a need for amending the Commission proposal. However, negotiations were difficult. The mobilisation of public opinion and organised civil society was a great asset for the Social Democrat rapporteur Evelyne Gebhardt. The ETUC was crucial, both inside and outside the parliamentary arena. On the one hand, it endorsed the leadership of protest, rallying two major Euro-demonstrations in Brussels and in Strasbourg, in spite of tumultuous relationships with the alterglobalist movement. On the other hand, it was a precious ally for the rapporteur since it played the role of a broker between the two main EP groups, while promoting and reformulating major amendments. In Dryzek's terms, the ETUC acted as a transmission channel between the public and the empowered spaces. In February 2006, while about 50,000 people were demonstrating in front of the Parliament building in Strasbourg, a majority of MEPs voted for a substantially amended version of the directive which limits the scope of application, preserves labour law and waters down the country of origin principle.

While the debate over the Bolkestein Directive had a detrimental impact on the ratification of the ECT in France, it can be argued that it enhanced the legitimacy of EU

policy over services and the legitimacy of EU institutions, primarily that of the EP. Although the first reading of the EP is only an early stage of the co-decision procedure, conflict was diffused as a result of parliamentary agreement. Even the most contentious groups could not find convincing arguments for further mobilisation. The parliamentary agreement had a similar compelling effect on the Council. After the first reading of the EP, European ministers were still divided. The endorsement of the agreement forged in the EP turned out to be the only possible term for agreement. Subsequently, the directive went through the Council's first and second readings almost unchanged. The most contentious actors in the process – Attac, the leftist unions and the French Socialists – were not satisfied with the final outcome of co-decision, which they found still belonged to a neo-liberal agenda of integration. However, many actors involved expressed positive views about the impact of contention over the decision-making process. The role of the EP as a channel for the voice of civil society into the institutional system of the EU was especially underlined. In contrast to an inflexible Commission and a closed Council, the EP enjoyed a better reputation among left-wing activists. Thus they strategically insisted on the fact that the EP was responsible for listening to the *vox populi* and restoring the democratic legitimacy of the EU against the background of the rejection of the ECT by the French and the Dutch. For most actors, the conflict was therefore a symbolic victory, accounting for the ability of contentious mobilisation to have an impact on the European decision-making process.⁵ Many representatives of the Union mentioned the contribution of the episode to enhanced coordination and communication within organised civil society in the EU.⁶ Some even considered the conflict as evidence for the progress of democracy in the EU.⁷ The emerging picture is that of an extra-parliamentary movement performing the role of an opposition while connecting with the elected representatives. The expression of conflict in the public sphere and its alleviation by parliamentary decision making therefore not only had an impact on the legislative outcome; it also had an impact on the subjective perceptions of the EU. Overall, the democratic legitimacy of the EU as a whole was enhanced because it accounted for the capacity of the EU to be responsive towards public opinion and secure decisiveness of deliberation.

Conclusion: The Importance of Institutional Settings

More than in any other political system, the fundamental tension between pluralism and unity, contention and agreement, reflects the intrinsic nature of the EU – which remains a mosaic composed of highly differentiated peoples, cultures, institutions and frames. This article has made a normative argument concerning the value of conflict with regard to today's democracy and the legitimisation of the EU. This argument was fed by historical and empirical underpinnings. The elite-based forms of deliberation aiming at consensus institutionalised in the EU have not proved capable of enhancing legitimacy in the EU. The contentious debate over the Bolkestein Directive, in contrast, provides an illustration of a model of conflict-based deliberation or, in Dryzek's words, discursive democracy, able to produce linkage and meaning in the highly fragmented political system of the EU. Furthermore, the eruption of conflict in the realm of EU politics can secure decisiveness of deliberation while performing a transmission between the wider public space and the empowered space in the EU arena. The resulting resonance of collective decisions with

contestation emanating from the public sphere is better able to enhance the legitimacy of EU policies and institutions than weak (EP) or indirect (Council) representation or hypothetical policy efficiency.

To conclude, some qualifications of this argument must be pointed out in three respects. First, the nature of the institutional settings allowing for contentious discursive interactions is crucial. This point is central to the discursive institutionalist theoretical approach to politics and policies. The Europeanisation of conflict is the necessary condition for conflict to be channelled into the institutional system and result in enhanced legitimacy of the EU polity. When no common transnational framing and mobilisation are possible, then conflict is rather likely to contribute to the exacerbation of centrifugal forces. In contrast, when conflict takes place in a national institutional setting, discourses are also framed nationally, as accounted for by campaigns over EU treaties (Seidendorf, 2010). The crucial point here is not that the transnational expression of conflict is better per se, but that it allows for a coherent response of decision makers to contestation, thus assuring the effectiveness of deliberation. In contrast, nationally structured conflict, as in the case of national referenda over EU issues, leads to the institutionalisation of disagreement (e.g. the granting of opt-outs) and the delegitimation of the EU. However, the politicisation of the EU cannot be a mere and unproblematic reproduction of conflict lines at the national level (Hix, 2008). The Bolkestein case shows that left–right conflict is strongly mediated by national political cultures and institutional arrangements. This remark leads us to the second limitation of the politicisation argument: the consociational mode of conflict structuring and agreement forging often implies an important gap between symbolic politics, on the one hand, and actual policy outcomes, on the other (Magnette and Papadopoulos, 2008). This can be seen with the vague legal nature of the agreement forged by the EP over services liberalisation and the ensuing debates in the transposition and implementation phase. Even if an agreement is deemed satisfactory from a political point of view, some of the problems can arise again through the back door in sequences of the policy process where decisions are made by national authorities and administrations remote from public debate. Finally, the question remains open as to whether such ephemeral moments of conflict-laden deliberation in the EU can generate a dynamic of sedimentation and result in a long-lasting politicisation of European integration. So far, the rather sporadic politicisation of certain issues and the rare Europeanisation of conflict have not brought a satisfactory response to the legitimacy crisis of the EU. The intergovernmental setting in which the policy responses to the current debt crisis are forged, coupled with rather weak legitimisation discourses at the national level, suggest that the legitimacy of its policies and institutions will continue to be an issue for the EU and its member states in the years to come.

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About the Author

Amandine Crespy is Assistant Professor of Political Science and European Studies at the Université Libre de Bruxelles (ULB). Over the past years she has been invited as a visiting fellow to the Freie Universität Berlin, Sciences Po in Paris and Harvard University. Her research deals with political conflict over the socio-economic dimension of

European integration (services liberalisation and responses to the European debt crisis) with a special interest in the role of ideas, discourse and conflict in European democracy. She has authored a number of articles in international journals as well as a monograph entitled *Qui a peur de Bolkestein? Conflit, résistances et démocratie dans l'Union européenne* (Economica, 2012). Amandine Crespy, Department of Political Science, Université Libre de Bruxelles, CEVIPOL/ Institut d'Études Européennes, CP 124 Avenue F. D. Roosevelt 50, Bruxelles 1050, Belgium; email: acrespy@ulb.ac.be

Notes

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- 1 This was for instance clear in the plenary discussions at the international conference 'Bringing Civil Society In: The European Union and the Rise of Representative Democracy' held at the European University Institute in Florence on 13–14 March 2009 which brought together an important number of specialists in EU integration and civil society.
- 2 The research results presented here draw on the study of mobilisation by 21 associations, trade unions and political parties in Belgium, Germany and France as well as at the EU level, including 47 semi-structured interviews conducted with representatives of these organisations and a frame analysis based on 206 documents retrieved mainly from their websites, official and non-official documents.
- 3 During a vivid debate with a representative of the Belgian Socialist Union FGTB on air at the RTBF, Jonathan Todd had compared the flyers handed out by the unions with the propaganda of right extremist parties.
- 4 One can for instance think about the far-right leagues protesting against parliamentarianism in the 1930s in France or about the revolutionary movements against the communist regimes in Central and Eastern Europe.
- 5 'The result of mobilisation was very positive. The directive was not suppressed or withdrawn, but it was watered down. The combination between a parliamentary struggle and social mobilisation could alter the position of the EP, above all on the key issue of the country of origin principle': Interview with a Member of the National Board of Attac France, Paris, June 2009; also Interview with a representative of the *Ligue communiste révolutionnaire*, Paris, June 2009.
- 6 Interview with a representative of the Belgian *Confédération Sociale Chrétienne* (CSC), Brussels, October 2007; Interview with a representative of the German union *Ver.di*, Berlin, December 2008; Interview with a representative of the *Deutscher Gewerkschaftsbund* (DGB), Berlin, December 2008.
- 7 Interview with a representative of the French *Confédération française démocratique du travail*, Paris, June 2008.

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