CHAPTER 18

Participation in EU Governance: A “Multi-Level” Perspective and a “Multifold” Approach

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1 Introduction

At the beginning of its history, the European Economic Community (EEC) was a sui generis organization with a narrow focus on economic matters.¹ Now, after over fifty-five years, the European Union (hereafter, the “EU”) encompasses twenty-eight Member States, pursues an extensive set of purposes and has accordingly gained the power to legislate in many areas, ranging from social policy to asylum and immigration.

Since 1957, profound constitutional changes have occurred, these being dictated by the geographic and functional expansion of the EU but also by the need to heal its original sin: the “democratic deficit”. David Marquand first used the term “democratic deficit” in 1970.² Since then, for over forty years, scholars, journalists and politicians have claimed that the EU suffers from such a deficit, making it an ambiguous cliché.³ The substance of the “democratic deficit”, the reasons for its existence, its fundamental causes and the ways to eliminate it have been variously theorized.⁴ As Craig

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¹ ECJ Judgement of 5 February 1963, Case 26/62 Van Gend and Loos, para 3.
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explains, the “democratic deficit” has been mostly identified as a disjunction between power and electoral accountability, or as recently expressed by Raphaël Kies and Patrizia Nanz, it is primarily (although not exclusively) conceived as a

discrepancy between the pervasive effects of the regulative power of the EU and the weak authorization of this power through the citizens of the Member States who are specifically affected by those regulations.

This contribution embraces this view and contends that the “democratic deficit” is a lack of procedural legitimacy or “input legitimacy”, which demands that those who are affected by a norm have somehow to be included (and have the right to be included) in the process of its formulation. “Input legitimacy” qualifies as the participatory quality of the procedure leading to laws and rules as ensured by the “majoritarian” institutions of electoral representation. Put simply, “input legitimacy” depends on mechanisms and procedures that are able to include the will of the people in decision making and then translate it into political decisions.

Since 1957, the “institutional triangle” consisting of the Commission, the Council and the European Parliament (EP), already enshrined in the

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7 The concepts of output and input legitimacy as applied to the EU have their origins in the work of Fritz Scharpf: inter alia see F.W. Scharpf, Governing in Europe (Oxford: Oxford University Press, 1999), 7 ff. Although Scharpf finds both input and output necessary for democratic legitimation, he concludes that, for the EU, the focus must be on institutional output because the EU lacks not only the majoritarian institutional inputs (direct elections for a government) but also its constructive preconditions, a European demos. Schmidt recently discussed the concept of “Throughput Legitimacy”: see V.A. Schmidt, “Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput” (2013) 1 Political Studies 2–22.