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Leibniz-Gemeinschaft

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Leibniz-Institut
für Sozialwissenschaften

CONNEX Final Conference

Efficient and Democratic Governance in a Multi-Level Europe

Mannheim, March 6-8, 2008

Workshop 5: Putting EU civil society involvement under scrutiny

Panel: A Normative View on Civil Society Involvement

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Beate Kohler-Koch

1. Why bring in the concepts of representation, representativeness, and accountability?

Representation, representativeness and accountability are core concepts in theories of democracy. In the debate on the democratic quality of the EU, the issues of representativeness and accountability are on the agenda, but not so the question of representation. One plausible explanation for the conspicuous absence of a discourse on representation is political: The principle of democratic representation is embodied in the institutional architecture of the EU as defined by the Treaties. When the Commission launched the debate on democratic governance it did not want to interfere with the on-going negotiations on institutional reform. Another plausible explanation is theoretical: Improving the democratic credentials of the Union was so densely linked to the concept of governance that the broader reflections of democratic theory were neglected (Trenz 2007:4). My own proposition is that the neglect of the concept of representation is caused by the self-propelling dynamics of the political discourse (Kohler-Koch 2007: 7-9). Political discourse takes in theoretical insights (though mostly only in bits and pieces), relying on what is widely disseminated and has news value and/or carries positive connotations. Theoretical arguments give meaning to political strategies; they define what the core of the problem is and what could be appropriate and useful strategies of problem solving. Discourse is a path-dependent process, it is pushed by interested actors – in this case coming both from the world of academia and the world of politics – and it responds to in-built rationalities of the argument as it evolves.

The EU discourse on civil society emerged from a pledge to bring the EU closer to citizens and then became linked to the broader issue of democratic legitimacy. Academia deepened reflections on democracy, civil society and the public sphere in the post-national and multi-level European constellation, and, in parallel, became more occupied with participatory governance. EU institutions pledged closer collaboration with civil society and step by step designed a new consultation regime. The institutional re-structuring of EU-society relations triggered controversial discussions about the concept of civil society - what it is, who qualifies to represent it, and what role should be attributed to civil society in the EU. The question of

democratic legitimacy came to the fore again, but this time centred on the issue of representativeness and accountability.

Hans-Jörg Trenz, in response to an earlier version of this paper (Kohler-Koch 2007), suggested that research concentrate on "the reformative function of naming and framing" (Trenz 2007: 21). He has argued: "The representative and the mandatory function of civil society are assumed through multiple representative demands put forward by conflicting actors." (ibid) I do not want to discard the high relevance of such a research strategy. But it is committed to a sociological research agenda, whereas my research agenda is influenced by a political science interest centred on democracy and the control of power. Consequently, I will first explicate the normative dimensions of representation and how representativeness and accountability fit in to make representation democratic. Then I will turn to explore the political conditions that channelled the discourse and the choice of mechanisms for bringing civil society into EU policy-making. Finally, I will develop an analytical model to assess the democratic value added of governance reforms.

2. Representation: from an elusive concept to an analytical model

What is representation about? Representation is a core concept in political thinking on democracy. It has been discussed in depth over several centuries and associated with quite different meanings (Hofmann 1974; Manin 1995). The understanding of representation is not only framed by different normative theories of democracy, but is also closely linked to historical practise, which in the case of Europe varies across countries and specific ideological contexts (Hofmann 1974: 35). Thus we should not be surprised that 'representation' is "a many-faceted and elusive concept" (Sartori 1968: 465).

I side with those concepts in political theory that claim that political representation is not just a relation between a principle and an agent in which the represented mandates or instructs the representative. Rather, in contrast to delegation, I conceive of representation as giving presence to something that is "not present literally or in fact" (Pitkin 1967: 8f)[1]. Because the direct link between the representative and the represented has been severed, representation is closely linked to the idea of responsibility and accountability. Representational responsibility is more than responsiveness to the demands of a constituency or the reliability of a delegate. It also comprises the notion of "functional responsibility" (Sartori 1968: 468), of meeting given

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[1] "According to Pitkin representation is "the making present in some sense of something which is nevertheless not present literally or in fact", see: Hannah F. Pitkin (1967). For a similar statement see Carl Schmitt (1928/ 1954: 209).

standards and adhering to established principles, norms, and rules. Representation is also closely associated with representativeness. Representativeness is a social phenomenon which implies similarity and like-mindedness. Since semblance does not come by chance and is not easy to appraise in a many-to-one relationship, procedures of accountability take precedence (Sartori 1968: 468).

What is the essence of representation that makes it attractive for democracy? Some authors primarily attribute an instrumental value to representation since it facilitates democracy in a mass society by reducing the scale of participants in the political process without reducing the expression of social diversity. But a long tradition in political thinking values representation as a genuine component of democracy that safeguardes the equality of citizens, freedom, and minority rights.[2] Though I might be accused of giving "historically bounded answers to modern questions" (Pollak 2007: 90) I will look at the core ideas in classic writings. At the heart of the argument was always the firm belief that "(…) government and legislation are matters of reason and judgment" and, therefore, "Parliament is not a *congress* of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole (…) "(Burke (1774) 1969: 175).[3] Accordingly, in Edmund Burke's conception, the representative is a "trustee for the people" (ibid 164) acting in the interest of the represented but, nevertheless, acting according to his own judgement. John Stuart Mill put greater emphasis on the plurality of views in the debate. He called for a "Congress of Opinions; an arena in which not only the general opinion of the nation, but that of every section of it, and as far as possible of every eminent individual whom it contains, can produce itself in full light and challenge discussion; where every person in the country may count upon finding somebody who speaks his mind (…) in the face of opponents, to be tested by adverse controversy; where those whose opinion is overruled, feel satisfied that it is heard, and set aside not by a mere act of will, but for what are thought superior reasons (…)" (Mill (1861) 1969: 187). Correspondingly, a representative should be more an agent than a trustee. Whereas Burke sees the function of a representative body more in arriving at consensus, Mill sees it "as more critical than constructive" (Pitkin 1969: 21).

What is the dilemma of representation? When representation means a substantive acting for others in the interest of others, the relation between the represented and the representative is

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[2] For the sake of clarity, I should mention that I use the term 'democracy' in its contemporary meaning; James Madison, Abbé Sieyès, and Immanuel Kant called the representative system that they favoured 'republic'.
[3] The idea that deputies represent the will of the nation, not the will of the people, is also expressed in the French constitution of 1791.

crucial. The "mandate-independence controversy" (Pitkin 1967: 144-167) has plagued political theorists over the centuries. When representation is conceived of as "acting in the interest of the represented" it all depends on how "in the interest of" is defined: Is it interest the way the represented see it, or the way the representative interpret the interest of the represented or is the representative free in her or his judgement to define what is 'objectively' in the interest of the represented? Insisting on individual positions may produce sub-optimal solutions and the projection of such an outcome gives good reason to discard the view that mandating is the best way to achieve representation. The historical texts quoted above already tell us that the preference for either more independence or for stricter control correlates with the author's image of citizens: Those who are sceptical concerning the advance of 'civilisation' in terms of self-constraint of passion and the diffusion of rationality and knowledge will plea in favour of institutions that further deliberation and reasoning. In addition, the preference correlates with the assessment of what is at stake in politics: is politics about hard choices between irreconcilable values and interests, or is it about ascertaining the common good? Furthermore, the task attributed to the representative is closely related to the political function attributed to representation. When representation is meant to support the exercise of authority then consensus building is put first; when its main function is the control of power, representation is expected to privilege the views of the represented. Context conditions may further influence the exercise of representation. In a conflict ridden society with multiple cleavages, the represented will strive to closely monitor their representatives; from this an antagonistic or, at least, a pluralistic system of representation is likely to emerge. Even then, a certain degree of independence is needed in order to come to political agreement. In a society where conflicts are more about the means than the ends of policies, the represented may be less inclined to inspect the representation of her or his interests. But, in spite of the represented's wide spread apathy, representation might turn out to be close to the interests of the individual.

From the classical literature I conclude that representation should be looked at from two different perspectives. The pertinent questions are:

1. What is the *function* of representation? In a '*constructive' approach* it is to support the 'convergence of wills'. In a '*critical' approach* it is "to throw the light of publicity" on the acts of government (Mill 1969: 186). Consequently, representation may be more closely associated with output legitimacy or with input legitimacy.

2. What is the *task* of the representative? An 'agent' is expected to represent the preferences of the represented and, consequently she or he is subject to what Sartori (1968) called '*personal responsibility*'. The 'trustee' has to bridge the preferences of the represented with principles and norms and hence has also to live up to '*functional responsibility*'. In the case of the EU, functional responsibility relates to adhering to the Treaties and also to the 'finalité politique' and the 'acquis communautaire'.

How do we know if representation lives up to our normative standards? From the classical literature we take the view that the normative quality of representation is defined by the presence of representativeness, reliability, responsibility, and accountability. Political institutions have been designed to secure representation, but institutions as such do not provide a yardstick for measuring the quality of representation; the occurrence of elections is hardly a reliable indicator. Scholars investigating representative government have developed an analytical framework to grasp the phenomenon of representation and to evaluate the capacity of institutions. Bernard Manin, Adam Przeworski and Susan Stokes (1999) define representation as "a relation between interests and outcomes" that develops in a process and includes different phases. The analytical model distinguishes different components of this process: preferences, signals, mandates, policies, and outcomes. Looking at the 'internal' relations between these components it opens the black box of the represented-representative relationship (Manin et. al. 1999: 8-9). The relevant actors in this abstract relation are on the one hand citizens and 'the people', and, on the other, a government. The represented are citizens who voice preferences and people who share a collective interest. A government is responsive to the degree that it responds to signals of preferences and/or to the policy choices expressed through elections or votes (mandates). A government is representative to the extent that it acts in the public interest.

Since the analytical concept has been developed for the study of representative government in nation states, it cannot be applied straightforwardly to the EU. The reason is not that the EU is a multi-level system of governance, which is also a feature common to all federations. The reason is that the EU differs from national federal polities in two respects: First, it is a political system that is not built on a political community; it rather is a union of 'peoples' as it is stated in the preamble of the Treaty. The future prospect of a European demos is highly controversial, but what is not contested is that at present it does not exist. Similarly, it is not contested that the EU is governed without a government. When the term 'government' is used

(Hix 2005), it connotes rather the "powers of government" that the EU institutions have taken on and exercise in cooperation with each other. Thus two components of the model suggested by Manin et al. are of a different nature; this calls for re-designing the analytical approach.

How can we best adapt the analytical model to the EU system? That re-designing will consider the specific characteristics of the institutional architecture of the EU and the rules and procedures that channel EU-society relations. The latter respond to the discourse on improving the democratic legitimacy of the EU that was prevalent in the last ten years. This discourse concentrated on two core concepts, namely on the benefits of civil society and the promises of participatory governance. The political relevance of this discourse is evident in the new Treaty provisions, which oblige EU institutions "to maintain an open, transparent and regular dialogue with representative associations and with civil society.[4] Though all EU institutions are addressed indiscriminately, the concept of governance put the Commission centre stage. The Commission takes a prominent position in the policy-making process and it also presents itself as *the* most relevant partner in participatory governance. From the early 1990s, it has developed an elaborate 'consultation regime' (Kohler-Koch 2008). This regime accentuates the principle of openness, transparency and participation and entails minimum standards for consultation. Furthermore, the Commission reformed procedures (impact assessments; road maps of consultations; feed-back on consultations) and created new instruments (such as online-consultations). Thus, the institutionalisation of EU-society relations is centred on the Commission. Therefore, and in view of its crucial position in EU policy making, the Commission can be taken as a substitute for 'government'. But the role of civil society is not so easily defined.

2. Linking civil society and EU representation

Some authors will categorically question the linkage between civil society and representation. From their theoretical perspective no organisation 'represents' civil society; civil society is a space of participation, not representation (Marlies Glasius in a letter to the author). The different views on civil society pertain to divergent theoretical conceptions and are linked to distinct research questions. Civil society as a space of participation is mostly an issue in research on local grass roots activism and global civil society. The concept of civil society is notoriously ambiguous, and different schools of thought have nourished divergent

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[4] First in the Constitutional Treaty (Art. 47) and now in the Lisbon Treaty (Art. 8B).

conceptions and supported the use and misuse of the concept in political practice (Jobert and Kohler-Koch 2008). Furthermore, academic disciplines have their distinct research agendas and sociologists tend to approach the subject from a different perspective to political scientists. Those who are primarily interested in the formation of a European political society (Fossum and Trenz 2006; Trenz 2007) will take a different stance from those who want to know how the programmatic 'involvement of civil society' in EU governance is taking shape and if it holds the promises of 'participatory democracy' (Kohler-Koch 2008). From both perspectives the issue of representation might be addressed, though in quite a different way.

Scholars who take an interest in the EU as an emerging polity and a political society in the making relate representation to the formation of that social constituency. It is an abstract representation that equates civil society with an active European citizenship. By this reading, European citizenship is not just a set of rights conferred on the citizens by the EU, it is rather a social relationship that stems from citizens lining up with others and participating in political discourse and structures of governance that stretch beyond national borders (Bellamy and Warleigh 2001: 6)[5].

John Erik Fossum and Hans-Jörg Trenz share this sociological approach and argue that the process of European constitution-making sets off a dynamic of social constituency building. In their conception "(…) the EU's social constituency is conceived of as the 'collective representation of the people', which tells us what the Europeans have in common." (Fossum and Trenz 2006: 61) Hans-Jörg Trenz (2007: 17; 2005) sees "civil society as a discursive formation within the public sphere". The constitutional debates (especially when they gained high levels of publicity during the referenda in France and the Netherlands), but also the policy of EU participatory governance promote societal self-description. 'Citizens' and 'civil society' are addressed by EU institutions as partners in EU governance; this conveys a certain social imaginary. Likewise, those who address demands to the EU that refer to general interests and basic rights present them not as individual claims, but as if it were 'in the name of the public'. This interactive process and, above all the search for legitimacy, supports the construction of what I have called an 'imaginary representation'. As Hans-Jörg Trenz has argued in his response: "(…)it is not substantiated through procedural designs or socio-structural determinants. In this quality, the EU's social constituency is foremost a formation of discourse. It is a discourse made up of claims for representation and legitimacy that operates through the imaginary of European (civil) society." (Trenz 2007: 16) When we follow his proposition that "(s)ocieties exist through the practice of their own representation"

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[5] check original quote

(ibid: 18) our attention is directed towards the "(…) autopoietic practice of reproducing and circulating meaning of societal unity and collective self-determination" (ibid). 'Representation' is thus linked to the formation of a 'political society' and addresses a component of 'democratic government' in the well-known Lincoln quote that is often neglected: democratic government is not only government by the people and for the people, but also *of* the people. Thus the link to the question of democracy is quite apparent, but representation in this perspective is a different kind of category to the one we dealt with in the first part of the paper. It does not address the relation between represented and representatives and the core criteria meant to capture the main features of democratic representation are not applicable, namely representativeness, reliability, responsibility and accountability.

The second image of civil society, which comes closer to the political discourse, sits a bit uneasily between deliberative democracy and conceptions of political representation. Again, civil society is the (emerging) political community of the Union, an imaginary European people which constitutes the polity and simultaneously is the source of demands on and support to the political system of the EU. Civil society as such has no actor quality in a system of political representation. This comes with 'organised civil society'. Civil society associations have a performative function. They form and transform civil society through discourse and interaction in the public sphere; they make civil society visible and give societal interests a voice. Organised civil society is said to compensate for the deficiencies of present day democracies by rejuvenating citizens' participation, by reaching out from the grass roots to far away Brussels and by bringing Europe closer to the people. Thus organised civil society is an asset for democratic input legitimacy.

Organised civil society is also attractive as a partner in governance. It is expected to voice the diversity of interests and views and to bring the knowledge and down-to-earth experience of citizens into the policy-making process. Thus, civil society organisations are invited to give advice and to participate formally and actively in the collective decision-making process to improve the quality of EU governance. In other words, they are expected to contribute to output legitimacy.

By this approach, civil society associations are multi-functional: They are important as such and they have an instrumental value. They constitute the emergent European civil society and contribute to its on-going formation. The democratic credentials of civil society rest with their importance for the constitution of a public sphere. Civil society provides the societal infrastructure for public deliberation which is for Habermas and other proponents of

deliberative democracy at the heart of democracy.[6] However, as Rainer Schmalz-Bruns has pointed out "(…) a deliberative perspective puts emphasis not only on internally deliberative procedures, but on an institutional system such that the different parts (on different levels) of the system may reflexively act upon each other and where a variety of democratic forms comes into play – a deliberative system which then also should allow different modes of political interaction and of reaching agreements to play their role." (Schmalz-Bruns 2007: 293)

When we translate this idea into a more parsimonious model we can see that civil society organisations are under stress because they are asked to perform at different plays at different theatres at the same time. Civil society organisations provide the "institutional core" of civil society and "anchor the communication structures of the public sphere in the society component of the lifeworld." (Habermas 1996: 367) The European Union is, however, a composite system and comprises numerous national civil societies which are separate from but also linked to a trans-national European and global civil society. At the same time they are incorporated in the institutions of representative democracy. Civil society organisations are actors in the intermediary public space and called upon to link citizens to government by exerting influence on government and by being a partner in governance. It is an attribution of different, even contradictory roles, and this will have an impact on role behaviour and performance.[7]

But what kind of societal associations qualify as civil society organisations? Habermas (1996) highlights their role as intermediaries that relate citizens' experiences in the private sphere to the formal political decision-making processes via the public sphere. This draws a line between civil society organisations and the ordinary interest groups not by referring to the '*organisational purpose*' but to the communicative practices and the tight connection to the public sphere. Thus it would be difficult to exclude associations a priori just on the basis of what they stand for and what part of society they represent. The emphasis on communication emanates from the core proposition of deliberative democracy that "under modern conditions normativity cannot but be derived from intersubjectivity" (Schmalz-Bruns 2007: 284) which calls for the inclusion of a maximum range of voices in public deliberations. This is important because civil society's influence has to be exerted through the public sphere: "Not influence

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[6] I do not go more into detail on the relevance of civil society for deliberative democracy for three reasons: (1) With respect to my commentators it would be like carrying coal to Newcastle (see among others Schmalz-Bruns 2007; Weale 2007), (2) the paper is getting too long anyway, (3) Christoph Humrich, Barbara Finke and I (Kohler-Koch et al. 2006) have covered it in another paper.
[7] In another paper we elaborate this idea and present some first empirical insights, see Kohler-Koch/Quittkat/Buth 2008.

per se, but influence transformed into communicative power legitimates political decisions" (Habermas 1996: 371).

EU civil society associations, for their part, have chosen *purpose* as their differentiating criterion, claiming that they represent the 'rights and value based NGO sector'[8]. Most scholars working on civil society make the same distinction when they are asked to categorize different kinds of associations. In a survey with close to a hundred respondents from academia the overwhelming majority (85%) classified associations representing 'general interests' as 'qualifying as civil society organisations'.[9] The interests are 'general' in the sense that they are shared by a wider constituency than the membership of the association or that they even cannot get organised at all. When asked for a definition that would come closest to their understanding of civil society, most opted equally for a programmatic approach and a Habermasian concept. This may be read as a confirmation of the prevailing ambiguity: Civil society is linked to the idea of democracy with a strong and vibrant public sphere and also to the idea of a plurality of representative organisations channelling the interests of citizens to government.

The latter conceptualisation looks like a clear case for the study of democratic representation. It resonates with the *pluralistic* image of civil society as EU institutions see it: "Civil society includes all those voluntary and non-profit organisations which play an important role in giving voice to the concerns of citizens and in delivering services that meet people's needs." (Commission 2001: 15)[10] Citizens are represented in EU governance by civil society organisations; it is a case of representation built on the aggregation of preferences formation and democratic control.

The *discursive* image of civil society does not attribute a representative role to civil society associations; rather they are part of and feeding into the public discourse. They respond to the changing societal environment and bring new themes and issues for deliberation into the public sphere. Political institutions are under the pressure of 'communicative power'; civil society organisations may augment this pressure by building up societal consensus in public discourse. But influence comes with the better argument or through the mechanisms of representative democracy. Representation is not a role conferred on actors but emanating from discourse. To make it happen at the EU level civil society organisations need a friendly institutional environment that gives room and opportunities for building a public space.

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[8] See for example the self-ascription of the Civil Society Contact Group; for more details see Kohler-Koch/Quittkat/Buth 2008.
[9] Kohler-Koch/Quittkat 2008.
[10] Here the Commission refers to an earlier definition by the European Economic and Social Committee.

Consequently, it makes little sense to ask whether individual civil society organisations are representative or accountable. What matters is their communicative capacity, the diversity of views offered in the public arena, the quality of the deliberative discourse and the publicity it receives. Therefore, the focus of research should be on the emergence (or not) of a civil society discourse at the EU level and how it connects with the many national and sub-national civil society discourses.

3 Assessing representation and organised civil society in the EU

In recent years, political discourse revolved around strengthening efficient and democratic EU governance not least by involving civil society. The constitutional debate and the EU's policy on EU governance are rhetorically committed to the model of 'participatory democracy'. It is meant to complement the elements of representative democracy on which the EU is founded, namely the electoral representation of citizens in Parliament and member state representation in the European Council and in the Council.[11] The upgrading of the 'civil dialogue' and of consultations is an instrument to boost first of all the legitimacy of the Commission. This move reflects a general trend towards establishing direct working relations between society and the political administration. Therefore, when addressing the issue of civil society and representation, the Commission immediately comes to the fore. Nevertheless, it has to be acknowledged that Commission-society relations are just one facet of representation and that a just assessment of the system of EU representation has to take a broader view. Nevertheless, in the following paragraph I will concentrate on this segment of reality.

Representation in Commission-civil society relations

I will first turn to the *aggregate* conception of representation and present an adapted version of the analytical model which was discussed in the first chapter (Manin et. al. 1999).

The analytical model presented in Figure 1 demonstrates a two-layered relation of representativeness and also a two-layered system of accountability/responsiveness, both of which are supposed to support representation: Civil society organisations at the EU level give expression to citizens' preferences by responding to 'signals' (such as public opinion polls, media coverage of public debates) and/or to demands directly addressed to them either by ordinary citizens or by their members (by mandating representatives through elections) or

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[11] See Lisbon Treaty, article 8A.

supporters. Civil society organisations, on their part, will channel the (aggregated) preferences into the decision-making process by interacting with the Commission.

Figure 1: Representation: responsiveness and accountability

First order responsiveness/ideational acc.   Second order responsiveness/ideational accountability

Citizens' preferences → signals

national public discourses

CSO positions

CSO positions

Commission policy proposal

ECJ
Council
EP

followers'/ members' preferences → mandates

reliability

horizontal accountability

material accountability
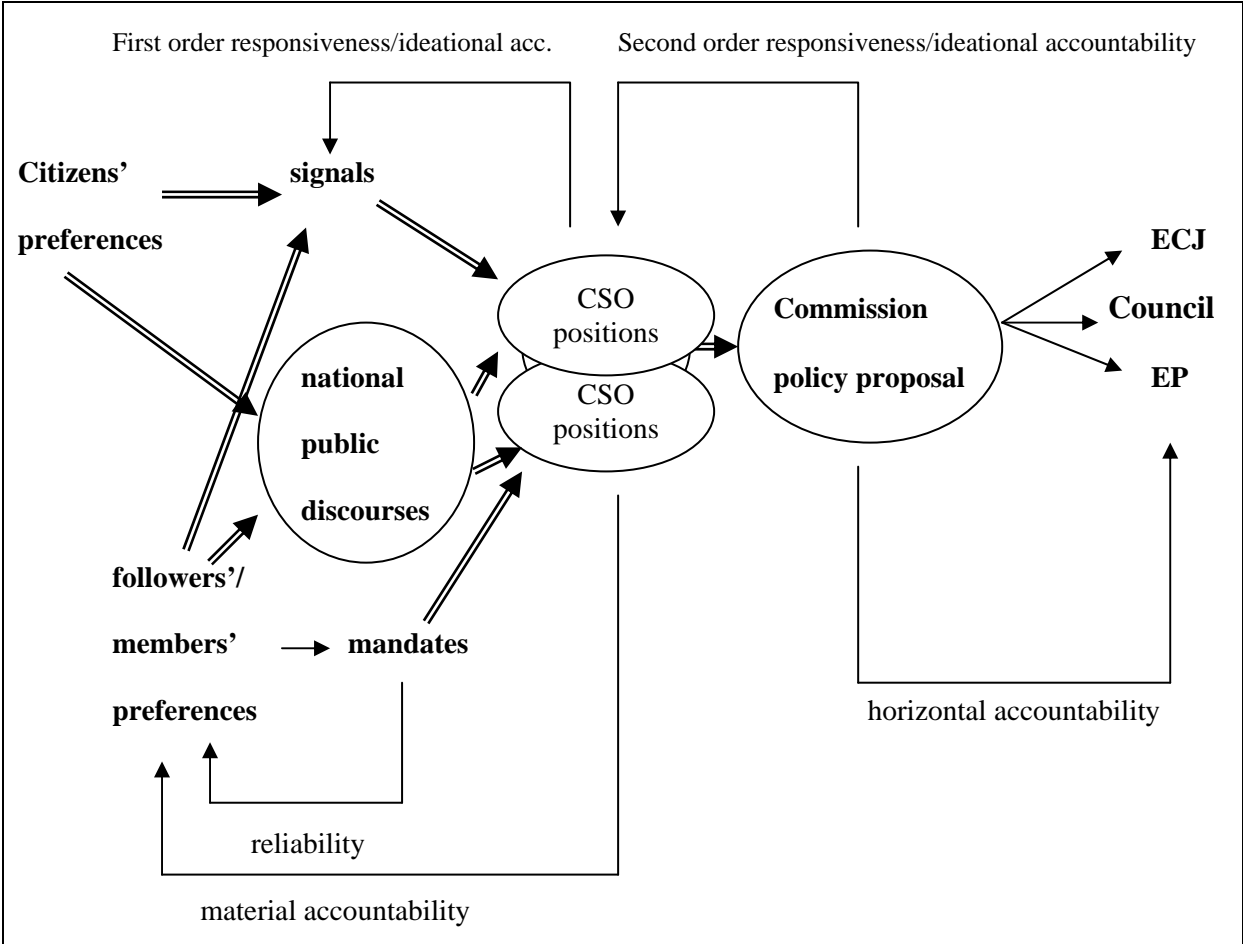
"double" arrows from left to right indicate the chain of giving input

Representativity

A key issue of democratic representation is 'equal' representation and this comes with the representativeness of the actors involved and the representativity of the contributions.

'Representativeness' ranks high on the Brussels political agenda.[12] It is looked at from two different perspectives; one focusing attention on the individual organisation, the other on the spectrum of organisations. The Commission made it an issue that transparency and responsibility should also apply to all those who want to be involved in the policy-making

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[12] See the different efforts by the EESC, commissioned academics, and Commission-stakeholder groups to define criteria; see also the debate in the context of the 'Transparency Initiative'.

process. The mantra is that "With better involvement comes greater responsibility" (Commission 2001: 15) and that all parties involved have to know if the claims put forward by an organisation are reflecting the concerns of the membership or constituency of the respective association. All groups voicing an interest should be responsive and held accountable. Though it is agreed that more transparency on representativeness is needed, criteria are still rather vague and highly disputed. Even quantitative criteria such as the range of countries represented, the numbers of members and individual membership at the national, sub-national or local level are contested. Not all groups are member based associations and even if they are, it is debatable whether the organisations' support base in the member states could be measured by numbers.[13]

Representativeness is also an issue when looking at the whole range of societal actors asking for participation. This time responsibility lies with the EU institutions that are asked to look for more balanced participation. In recent years the Commission has successfully lowered the threshold of access to consultation. When one looks at the numbers, sector and territorial representation are still grossly unbalanced; producer interests and groups coming from the centre-northwest of the EU still outnumber all others. The actors involved downgrade the quantitative aspect and rather focus on the asymmetrical distribution of resources. Policy arguments are won or lost, so the argument goes, on available evidence; therefore, the ability of a group to produce the necessary evidence in time affects the balance of decision-making. This brought the issue of funding into sharp focus in recent years.[14] At present, a broad consensus prevails that EU institutions should ensure that they invite and take account of all views and concerns of stakeholders. Consultation mechanisms should put the principles of openness and transparency into practice, and support equal access and voice. Funding for the purpose of facilitating a more active involvement of certain groups, is still a contested issue.

Accountability is a core mechanism to ensure democratic representation. When applied to the Commission accountability comes in different forms: namely, legal, administrative, political, and even peer review accountability. It is, consequently, a multi dimensional relation. In the first instance, accountability involves a horizontal relation. The Commission is accountable to other EU institutions either on political (European Parliament, Council) or legal (European Court of Justice) grounds. Political control by the European Parliament is well established and

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[13] Even more controversial is the EESC's suggestion that the representativeness of European organisations hinge on having member organisations at member state level, which should "be recognised as being representative of the interests they represent." European Economic and Social Committee 2006: 11.

[14] See the report of the Peer Review Group on Stakeholder Involvement (Commission 2007).

has grown over the years. The Council does not have a formal right to hold the Commission to account. However, we argue that when the Council is rejecting a Commission proposal it is a case of accountability, since the Commission "has to face consequences" (Bovens 2007). The judicial control of the European Court of Justice is the most visible form of 'horizontal accountability' (O'Donnell 1994). The second relation is a vertical one: accountability extends directly to civil society organisations and, due to these organisations' intermediary function, to the different constituencies. The functional role attributed to civil society organisations is to make this system of accountability relations work. A necessary prerequisite is the transparency of policy-making in agenda setting, political deliberation and negotiation right up to decision-making and implementation: Are documents and political processes visible to the attentive organisations or not? A second prerequisite is that nothing impedes civil society organisations from effectively pushing publicity.

It is undeniable that much progress has been made in the previous decade with respect to the access to documents, the transparency of the decision making process through the publication of legislative roadmaps, and opening comitology and expert groups (Brandsma and Curtin 2007; Gornitzka and Sverdrup 2008). But it is also undeniable that this process is not yet complete, and that success varies from one DG to another. Furthermore, we have to ask wether civil society organisations really can have an impact that amounts to political accountability. Political accountability should "induce responsiveness of the rulers to the preferences of the citizenry" (Bovens 2007: 443). Accountability is *a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences."* (Bovens 2007: 450)

Despite improvements with respect to the preconditions of accountability, civil society can hold the Commission to account only in a rather soft way. It may ring the fire-alarm to promote horizontal accountability. It may pressure the Commission to provide feed-back to civil society organisations in the consultation process (Commission 2007). But the Commission up to now is not legally obliged to explain and justify its behaviour and will only have to face the soft consequences of 'blaming and shaming'. Accordingly, I call this 'ideational accountability'. European civil society organisations, for their part, have to give account to their members or constituencies and have to face severe consequences, either through the mechanism of elections or through donations. This I call 'material accountability'. Quite obviously, the Commission does not face material accountability and a direct vertical link of accountability to the citizens does not exist at all.

Assessing the soft modes of accountability brings us back to the discursive approach of judging representation. It draws attention to different kinds of accountability and different modes of exerting accountability. The Commission has a 'functional responsibility' as the 'guardian of the Treaties', as promoter of the 'ever closer Union' and as a custodian of the Charter of Fundamental Rights. Without a functioning mechanism of political accountability, this functional responsibility relies upon the Commission's normative orientation. Norm orientations are, however, not just contingent on individual belief systems and embedded in institutions; they are sustained and altered in public discourse.

The pertinent question than is whether a public discourse will evolve around the participatory governance process that includes both the Commission and civil society actors. The interaction between the Commission and civil society organisations is mostly a vertical relation, predominantly issue specific and, consequently, highly segmented. Initiatives have been launched in recent years to encourage horizontal communication between civil society organisations, and sector associations have established network alliances and formed permanent platforms. Also the Commission has been eager to support dialogues for cross-cutting issues, not least to attain more policy coherence. For the observer it is difficult to judge whether and to what intensity a discursive dialogue takes place in these institutions. The limited publicity makes it safe to conclude that all these interactions far from constitute an EU level 'civil society' discourse.

Individual civil society organisations may raise their voice and gain publicity, but without an arena for the public exchange of views citizens will be unaware of what civil society associations collectively have to say. Only the Commission can obtain an encompassing picture of cleavage lines, and majority and minority views. It may acquire such knowledge either by adding up the individual positions of the numerous interest groups which are approaching it bilaterally or by providing a space for multilateral deliberation. Here it is worthwhile recalling John Stuart Mill: Representation needs an arena in which every section of public opinion "can produce itself in full light and challenge discussion; where every person in the country may count upon finding somebody who speaks his mind (…) in the face of opponents, to be tested by adverse controversy (…)" (Mill (1861) 1969: 187). In recent years the Commission has institutionalised a process of 'open consultation' including fora that offer a platform for public dispute and discourse among civil society organisations. The Commission has the role of a facilitator and mediator, and with 'good reasons' takes sides in the discourse. It is not surprising, therefore, that the Commission portrays itself as

representing the European "common interest" (Commission 2001). Does, as a consequence, representation rests with the Commission?

The model as heuristic devise

Does the model help us to re-establish 'representation' as a meaningful category through which to assess the role of civil society in the Union? Firstly, it provides criteria for a normative assessment. Representation is supported by the horizontal accountability of the Commission vis-à-vis the Court, the Council and the European Parliament. The assessment of the quality of this type of accountability is decisive for judging the Commission's claim to be acting 'in the European interest'. Looking to the other side, representation is linked to responsiveness and accountability vis-à-vis the EU's constituency as represented by civil society. Accountability is clearly lacking. Responsiveness gains normative value if it is supported by representativeness. Since different normative theories of democracy suggest different criteria to judge the democratic quality of representativeness, empirical data will be interpreted in different ways.[15]

The model also puts in perspective the normative limitations of the Commission's claim on representation. It is part of the EU's system of 'composite representation' (Benz 1998) and the legitimacy of the Commission's claim to "represent the European interest" must be assessed against the competing claims of the Council and the Parliament. The competing claims are based on different normative grounds that reflect specific political philosophies. Parliamentary representation is founded on the equal rights of citizens to partake in political rule; member state representation is founded on the federal principle to give political rights to (national) political entities; the Commission's representation in the aggregate model is mainly functional since it is representing citizens as 'stakeholders'. Whereas representation in parliament is based on the idea that politics is about contested decisions and, consequently, that representation has to be organised through competitive elections, the federal principle gives priority to the accommodation of competing interests between established political communities. Functional representation has a technocratic bias: The argument is that civil society organisations ought to pass on the interests of citizens as stakeholders, and deliver expert knowledge; in a process of deliberation and mutual learning, the 'co-operative state', represented here by the Commission, will then arrive at the best problem-solving strategy. Hard choices between values and irreconcilable interests are negated or deferred to the 'political' decision of the Council and the Parliament.

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[15] Kohler-Koch/Finke (2007) offer two alternative theoretical conceptions to assess the democratic quality of representativeness.

Apart from conceptual clarification, the model is a heuristic devise for empirically exploring the quality of representation. When we link representation to first and second order responsiveness and reliability, we gain indicators that can be measured and that will indicate divergent degrees of representation. Furthermore, we can explore the conditions for 'better' representation by asking what contributes to responsiveness and reliability. Empirical research should focus, first, on the institutionalisation of different mechanisms of soft accountability and how they operate in daily routines. Second, responsiveness may be used as an indicator of the effectiveness of these soft modes of accountability.

To conclude: The intention of this paper has been to probe the relevance of a central category of democratic political theory for analysing EU-society relations and for judging democratic relevance. The paper first clarified the concepts of representation and of civil society, both of which are plagued with ambiguities. It drew attention to the divergent conceptualisations that emanate from theories of liberal democracy and deliberative democracy respectively. But irrespective of theoretical positions, the paper concludes that civil society and representation entail an awkward relationship in democratic terms.

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