

# Hovering between channels of legitimation in federal polities. The case of representation in Belgium and the EU

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Matthias Vileyn, Peter Bursens, Dave Sinardet

## ABSTRACT

Due to the increasing importance and complexity of forms of multi level governance, federal polities seem to be in search of democratic legitimacy. Various authors have discussed issues of input-, output- and/or throughput legitimacy. In the current literature we observe that these compound systems are analysed by the same standards as traditional nation-states, even though the debate on the transformation of democracy has shown that complexity demands a new approach. De facto we observe that federal polities are legitimised through an additional channel: the constituent units. In this paper we propose a new model in which we look at democratic legitimacy from the perspective of both citizens and constituent units. Consequently the first contribution of this paper is to conceptualise this alternative approach and see how this fits in the broader debate about democratic legitimacy. But does this uncultivated approach have its virtues? To answer this question we take a closer look at one crucial aspect of democratic legitimacy in two multilevel political systems: representation in Belgium and the European Union. How do these systems interpret representation? And do we observe a difference between citizen and territorial legitimacy? Both polities share some remarkable features, but still have differences incorporated. By comparing these federal polities we seek to give fresh input to the debate on democratic legitimacy. The second contribution of this paper is thus to empirically observe how a reconceptualization of democratic legitimacy would raise new insights.<sup>1</sup>

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<sup>1</sup> This paper fits in a PhD project that compares different dimensions of democratic legitimacy in distinct federal polities, such as Belgium, the EU, Canada and Switzerland.

## INTRODUCTION

*'Democracy is the worst form of government, except for all those others that have been tried from time to time.'*

Winston Churchill

Winston Churchill may have had a point. Storms of democratic protest rage over Western democracies as we speak, while the Arab Spring has just hailed the ideal of democracy. This apparent rupture may well be typical for the very nature of democracy. Whilst not neglecting the virtues of democracy, this paper focuses on the flip side of the coin: the cumbersome relationship between citizens and the political elites. More specifically the focus is on federal polities, prime examples of the democratic evolution. Robert Dahl (1994) was one of the first to discuss the transformation of democracy. The ancient Greek model of direct democracy in city-states gradually evolved into the representative form of democracy that is dominant today. Although representative democracy was already a first step to cope with growingly complex societies, recent events forced democracies to develop even further (see for example Hurrelmann, Krell-Laluhova, Lhotta, Nullmeier, & Schneider, 2005; Zolo, 1992; Zürn & Leibfried, 2005). On the one hand we observe a growing trend of decentralisation, while on the other we also see that polities increasingly pool their sovereignty. Both trends clearly incorporate the federal idea. A study of democratic legitimacy in federal polities is thus hardly irrelevant.

For quite some time the concept of 'democratic legitimacy' has been closely associated with the distinction between input- and output-oriented legitimacy, famously put forward by Fritz Scharpf (1999). Input-oriented legitimacy refers to the ability of citizens to provide input into the decision-making process, whereas output-oriented legitimacy is about the compatibility between the outcome of the system and the preferences of the people. This work proved to be the start of systematically studying democratic legitimacy in the context of the EU. To this date the framework has been revised regularly and one recent example is the work of Vivien Schmidt (2010). She opened up to the systems theory of David Easton and combining these two scholars she adds a third dimension to the debate: throughput legitimacy. This dimension is mainly concerned with the process of decision-making and includes efficiency, accountability, transparency and the openness to civil society. With this contribution it might seem that the debate on analysing democratic legitimacy can go to rest for some years; or at least the debate on how these analyses should be structured. This is not entirely true, however. Especially if we

look at compound, federal democracies it occurs to us that a rather big fish has slipped through the nets. Students of federalism know that one of the most defining characteristics of federal systems is the existence of constituent units, independent but yet cooperating with the federal level of government. These constituent units bring into practice the federal idea of 'self-rule and shared-rule' and consequently they are vital in the working of the federal system (Burgess, 2006; King, 1982; Watts, 1999). Although they play a significant role, the constituent units are not involved in any analysis of democratic legitimacy of multilevel polities. In the traditional sense of the word democracies are mainly citizen-based and consequently the focus in analysing democratic legitimacy is also citizen-based. Several authors have since discussed different issues of this citizen-based democratic legitimacy (cf. Bellamy, 2010; Blühdorn, 2009; Eriksen, 2005; Eriksen & Fossum, 2011; Follesdal & Hix, 2006; Glencross, 2010; Lord, 2004; Michael Marsh & Norris, 1997; Papadopoulos, 2010; Scharpf, 1999; Sigalas, Mokre, Pollak, Bátorá, & Slominski, 2009). In the following we propose a different approach in which we look at democratic legitimacy from another perspective. We do not start from the input-throughput-output lens, but we look at different channels of legitimation. This angle not only includes the citizens, but focuses on the constituent units as well. Or, to put it differently, instead of looking at one channel of legitimation, we look at two: legitimation through the citizen and legitimation through the constituent unit. To some this approach might ring a bell. Indeed, in the framework of analysing the EU's democratic legitimacy academics often mention its 'dual legitimacy'. The EU is legitimated through both citizens and member-states (Eriksen & Fossum, 2011; European Union, 2009; Fabbrini, 2007). This approach is limited to the EU, however. This is surprising, given that other federal polities use legitimation through the constituent units as well. The first contribution of this paper is thus to re-conceptualise the issue of legitimation and prepare this framework for analysing more federal polities than just the EU. Apart from 'citizen legitimacy' we also see legitimation through the constituent units, which we will call 'territorial legitimacy' (cf. *infra*).

In order to find out whether a different approach leads to new insights, this paper researches one aspect of democratic legitimacy: democratic representation. Part of the input-dimension of democratic legitimacy, representation is a crucial aspect in current-day democracies, especially since there is no real alternative at hand (Lefébure, 2009; Lord, 2004). More in particular, this study scrutinises two federal polities: Belgium and the European Union. These units of analysis represent the dichotomy that is inherent in the two emerging trends in democracy (respectively decentralisation and pooling of sovereignty). Even though Belgium is a rather young federation it functions as a prime example of the former trend. The country is a typical case of falling-apart federalism, in which the different constituent units increasingly gain power. And since we observe no federal parties, no federal electoral district or no common public sphere, we expect

to see some remarkable outcomes regarding the representation of citizens and constituent units. The European Union, on the other hand, serves as an excellent example of pooling of sovereignty. One reason to focus on the European polity is the great presence of the constituent units in the working of its federal system. Although significant steps have been made, the EU still remains a highly decentralised federal system with the balance of power remaining at the level of the constituent units, *id est* the member states. This brings several authors (such as Nicolaidis (2004), but also more recently Cheneval and Schimmelfennig (2011)) to talk about the emergence of a democracy, where the different demos remain the dominant force (in stead of a democracy, where the people of most EU member-states form one demos). Some authors would argue that the federal nature of the EU is a matter of discussion, but we argue differently (cf. *infra*). By looking at both polities with a new approach and by describing how both polities interpret representation, we seek to offer fresh insights in the debate. The second contribution of this paper is thus to research what this empirical case can tell us about the difference between citizen-based and constituent unit-based channels of legitimation.

This brief introduction to the research has highlighted two contributions of this paper. On the one hand we want to re-conceptualise democratic legitimacy in federal systems by including the constituent units, while on the other hand we also focus on how this re-conceptualisation affects the way we study representation in democracies. In order to tell this tale coherently, the paper is structured accordingly. In the first part we look at the different dimensions of democratic legitimacy and how this new approach can fit in. This will be followed by a second part, in which a closer look at why the comparison between Belgium and the EU makes sense. In this part we compare democratic representation in both Belgium and the EU by dividing the section into three parts: political parties, citizen legitimacy and territorial legitimacy.

## **RECONFIGURING DEMOCRATIC LEGITIMACY**

In the introduction it was pointed out that democratic legitimacy is often classified into three dimensions: input, throughput and output (Schmidt, 2010). We also introduced an alternative way of looking at democratic legitimacy in federal polities (with more attention for constituent units). Both notions are merged now and evidently mark the first aim of this paper: how can we conceptualise the idea of more involvement of the constituent units in the debate on democratic legitimacy? The answer to this is not plain and simple, so we have opted for a different approach. Instead of answering the question directly, we will conduct this undertaking by answering three other questions. First, what are constituent units? Second, what is citizen and territorial legitimacy? And, third and finally, how can we operationalise this new dimension?

### **What are constituent units?**

Constituent polities can occur in numerous shapes and with a large variety in names. To give some examples: in Germany these would be the *Länder*, in the United States these are called States, in Belgium you have both Regions and Communities, in Canada we talk about Provinces and in the EU the constituent units are the member-states. These constituent units are inherently part of the political set-up of federal polities and accordingly play a crucial role in the working of the polity (i.e. Bednar, 2009; Elazar, 1987; King, 1982; Knop, Ostry, Simeon, & Swinton, 1995; Watts, 1998, 1999). Although federalism reserves more than one driving seat in each federal political system, the way the constituent units are involved in the federal polity may differ significantly. One major distinction that is often made is the one between dual and cooperative forms of federalism. Dual federalism, according to Deschouwer (2009), is characterised by a clear demarcation of competences and has little room for shared-rule. Cooperative federalism, as the term already suggests, leaves a lot more space for shared-rule and consequently there is a higher degree of cooperation between the different levels of government. Although this distinction makes sense, Swenden (2006) reminds us that both are theoretical outliers on a continuum. Even in the most dual of federations, there will still be an overlap or cooperation. But of course the constituent units of a federal system can be defined in numerous ways. To avoid stretching the concepts of this paper too much, the focus is on one particular interpretation of constituent units. In essence the constituent units are about territories, and not about communities or identities. There is the possibility of overlap, of course, since the territorial division of a federal system may be founded on different logics. But here the focus is primarily on constituent units as territorial units of a federal polity.

### **What is citizen and territorial legitimacy?**

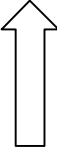

In the traditional sense of the word we only talk about democratic legitimacy while citizen and territorial legitimacy are not part of the discussion. Defining citizen legitimacy is relatively easy though. In fact what we mean with citizen legitimacy is what is commonly known as democratic legitimacy. Following Scharpf (2000, p. 102), we use the concept of citizen (or democratic) legitimacy to define when the exercise of governing authority may be justified. More specifically Scharpf writes about 'the authority to adopt collectively binding decisions and to implement these decisions with resources taken from the members of the collectivity and by resort to the state's monopoly on legitimate coercion' (ibid.). In 'members of the collectivity' the author clearly refers to the citizens. Citizens will obey these collectively binding decisions as a moral duty only when a system is perceived legitimate - even if they conflict with their individual preferences. If this is achieved, a political system can be called democratically legitimate. Schmitter (2001), adding to this, believes that 'legitimacy converts power into authority'.

Without this authority, it becomes much more difficult to sustain the exercise of power in the long run. Additionally it may supply some sort of emotional security for citizens, which could be translated into a stable society. The one who has the power must also have the right to rule if the system is democratically legitimate. What we learn from this definition is that citizens must be involved in the democratic process of a political system.

Traditionally a political system<sup>2</sup> is only legitimised through this citizen legitimacy, but de facto we observe that federal systems are legitimised through the constituent units as well. But how do we conceptualise this? The link between constituent units and its territory is easily made and consequently we have opted for the concept of territorial legitimacy. The definition we use is the following: a political system is legitimated through its territorial units to the extent that constituent units are involved in the functioning of the political system, including the possibilities to provide input, the access to the decision-making process and the overlap between the output and the preferences of the territorial collective. The use of this definition has two implications. The former part of this definition (i.e. ‘the extent that constituent units are involved in the functioning of the political system’) includes both the possibility of autonomy of the constituent units and involvement of constituent units in the federal decision-making process, thus opening up to both dual and cooperative federalism. The latter part of the definition, then, has another implication and refers to the three widely accepted dimensions of democratic legitimacy: input, throughput and output legitimacy. By including the three dimensions in its definition, the concept stresses the different position of the territorial dimension in the broader debate on democratic legitimacy.

In the following table we summarise our approach. The two arrows represent the channels of legitimation, which lead to the federal political level on top. Whereas citizen legitimacy is about legitimation through the citizens, territorial legitimacy is about legitimation through the constituent units.

**Table 1. Channels of legitimation in federal polities**

<b>FEDERAL POLITICAL LEVEL</b>	
	
<b>Citizens</b>	<b>Constituent units</b>
<b>CITIZEN LEGITIMACY</b>	<b>TERRITORIAL LEGITIMACY</b>

<sup>2</sup> We use ‘political system’ and ‘polity’ interchangeably.

A final remark that has to be made is the difference between territorial legitimacy and indirect legitimacy. In our approach we claim that, in federal political systems, attention can be divided between citizens on the one hand and the territorial collective on the other. Both channels of legitimation can be either direct or indirect. Of course the idea of indirect representation is often part of the territorial dimension of democratic legitimacy. In fact it can be interpreted as one of the major examples of territorial legitimacy, but it is not the same either. Basically territoriality refers to another level of analysis and mainly concerns the channel of legitimation. The starting point is fundamentally different. Direct or indirect is just the means to an end, the mechanism to obtain representation. If we have a look at other dimensions of democratic legitimacy it soon becomes clear that there is no such thing as indirect transparency or indirect satisfaction with policy-decisions. Therefore the example of representation is misleading, as it suggests our new approach is redundant. This is not the case, however, since our starting point is different. This will also become clear from the operationalisation in the following part of this paper. Consequently we do not say that our approach is better, but we do say that another perspective might yield new insights.

That said, one thing should not be forgotten. Democratic legitimacy is about finding the right balance between input, output and throughput legitimacy, but also a balance between citizen and territorial legitimacy or between direct and indirect democracy. There is always a trade-off between the different dimensions of democratic legitimacy and if political systems want the highest possible degree of democratic legitimacy, they should seek to keep pushing for the perfect equilibrium. Even though equally important, this research does not make a judgement about the democratic legitimacy of polities; it only offers a different lens to look through.

### **Operationalisation for representative democracies**

How do we know citizen and territorial legitimacy when we see it? This question can only be answered properly by operationalizing both concepts and we will do this here for representative democracies. In representative democracies a look at citizen legitimacy obviously includes a study of how the parliament functions. This political institution is at the heart of representative democracy and consequently numerous ways of legitimating the polity cross its paths. The first and foremost characteristic of citizen legitimacy is of course the existence of free and fair direct elections of representatives. Citizens can directly elect who will represent their interests in the decision-making process. A second option of citizen legitimacy can be found in the presence of a federal electoral district. This is relevant only because we talk about federal polities. The presence of federal electoral districts is a necessary condition for citizens to be able to judge all federal politicians. If the condition is not present, the citizen channel of legitimation suffers a blow, especially since politicians can then rule over citizens who cannot judge their actions. A

third indicator is whether the federal elections are first-order or second-order. First-order elections point to the presence of the citizen channel of legitimation, of course on the condition that these elections are free, fair and if the second condition (federal electoral district) is present. If the federal elections would be second-order, this would mean that the regional level is more important for citizens and consequently that the legitimacy of elections at the federal level would decrease. As a result people would desire a more outspoken role of constituent units at the federal level. The growing role of the territorial channel implicitly means a decline in the role of the citizen channel of legitimation. A fourth possibility of citizen legitimacy can be found in the role of political parties. Political parties function as intermediaries of the people and the stronger these parties are, the stronger the interests of the citizens are represented. The constituent units do not intervene in this relationship and thus it functions as a characteristic of citizen legitimacy.

Even though territorial legitimacy is not used in the literature several of its characteristics are common in federal polities. The first one is the allocation of reserved seats in federal second chambers. By allowing each constituent unit to have its seat, the different territories can have a say in federal decision-making. Thus the constituent units provide legitimacy to the federal level. But not only the different constituent units can have their seats reserved. Other minorities or language-related issues may have their representation assured as well. A second characteristic can be found by looking at the elections. Is there a federal electoral district or do we observe a composition of regional elections? If the second option is present, one could argue that the different regions or constituent units are the dominant force and consequently that there is territorial legitimacy. A third characteristic would be the presence of indirect elections. These provide constituent units with the power to elect federal decision-makers. A fourth indicator is, similar to citizen legitimacy, the status of the elections. Which level is first-order? If the federal level is second-order, this points to territorial legitimacy. A fifth indicator has to deal with the parliaments of the constituent units. Which role do they play in federal decision-making? If they have a significant role to play these sub-federal parliaments can alter federal decision. This points to another territorial channel of legitimation. A sixth option has to deal with the composition of the federal government. To what extent are the federal entities present in this government? This could range between a federal government composed of representatives of the constituent units and a less institutionalised version in which there are certain quota. Finally the existence of a split party system can point to territorial legitimacy as well. If this is the case the political parties only represent the interests of the citizens of the respective constituent unit, not the interests of citizens across the federal polity.

The operationalisation of the two channels of democratic legitimation has revealed different characteristics, summarised in the tick box below. In the upper row the characteristics of citizen legitimacy are summarised, whereas the second row sums up the indicators of territorial legitimacy.

**Table 2. Operationalisation of citizen and territorial legitimacy**

Citizen legitimacy	<ul style="list-style-type: none"> <li>✓ Direct elections</li> <li>✓ Federal electoral district</li> <li>✓ First-order federal elections</li> <li>✓ Dominant role for political parties</li> </ul>
Territorial legitimacy	<ul style="list-style-type: none"> <li>✓ Indirect elections</li> <li>✓ Reserved seats in federal chamber</li> <li>✓ No federal electoral district</li> <li>✓ Second-order federal elections</li> <li>✓ Role of sub-federal parliaments</li> <li>✓ Presence of constituent units in government</li> <li>✓ Split party system</li> </ul>

A final step in operationalising these concepts, is to decide when a certain polity inclines to either citizen or territorial channels of legitimation. This is especially relevant if we wish to determine which channel of legitimation is dominant. A first benchmark would be to look at the presence of the different characteristics. If the characteristics of a polity are solely situated in one channel of legitimation, it is obvious that this channel is dominant. Probably this will not suffice, as the cases in that situation are limited. The next thing we should do is look at the importance of certain characteristics. Therefore we need to take into consideration power. If the major decision-making bodies are situated in the government, the presence of constituent units in government is especially important. The same is true for political parties. If these are omnipresent, issues like the party system are of paramount importance. If the power is mainly situated at the parliament, however, the reserved seats and the role of sub-federal parliaments increases. Based on these observations, it becomes obvious that each case has a different constellation of characteristics. Or put differently, for each case separately we need to determine where the balance of power is heading in order to verify which of the above characteristics are dominant.

## **CASE: REPRESENTATION IN BELGIUM AND THE EU**

The previous part of the paper has focused mainly on the conceptualisation of territorial legitimacy and has indicated how this new approach can contribute to the literature. Now we take the turn to the empirics of the real world, in which we zoom in on one crucial aspect of democratic legitimacy: representation. What do we observe if we compare representation in Belgium and in the European Union? Can we compare both polities? And which channels of legitimation are mainly used? In this second part of the paper the attention shifts to answering these questions.

### **Why representation (and what is it)?**

Put simply, representation is one of the key aspects of democracy. In the traditional typology discussed earlier (or more elaborately discussed by Scharpf, 1999; and Schmidt, 2010) representation is part of the input-dimension of democratic legitimacy. This dimension says that a polity is input legitimate once 'they reflect the 'will of the people', that is, if they can be derived from the authentic preferences of the members of the community' (Scharpf, 1999, p. 6). As Lord (2004) already claimed, this input dimension is by far the most crucial one in democracies. He argues that only democracies are 'open to being justified in terms of a particular configuration of rights and obligations and of procedures that secure those rights' (Lord, 2004, p. 13). Technocracies and even authoritarian rulers may produce the same output as democracies, but this is not the case for input legitimacy. Within this input-legitimacy a special place is reserved for representation. According to several authors there is no realistic alternative to democracy through representatives (Beichelt, 2009). Representation is thus critical for a sound democracy.

But what do we mean when we talk about representation? One thing that is clear is that representation means 'making present of something absent', not 'making something literally present'. This 'making present of something absent' obviously involves an indirect link and leaves room for growing complexity (Lord, 2004). Today the notion of representation refers to the ability of citizens to be represented in relevant decision-making bodies. The better citizens are represented at the negotiation table, the higher the level of input legitimacy of a political system (Burgess, 2006; Bursens, 2009). In current day Western politics, representation is very closely associated with the 'responsible party government' model. In this model several parties present themselves to the voters with policy promises and evaluations of the past performances. In order for this model to work effectively, the parties 'need to provide an alternative set of programmes on the major issues facing the country', while 'voters need to choose parties based on retrospective evaluations of their record in government, or prospective evaluations of their policy platforms'. Last but not least 'free and fair elections need to be held at regular intervals to translate votes into parliamentary seats, and seats into government' (Marsh & Norris 1997, 153-

154). This typical interpretation of representation links the preferences of the citizens to the achievements and performances of governments. However, in federal systems it is not always obvious to organise representation this way. And this is especially true in compound federal systems like Belgium or the EU, where party systems are organised differently. In this respect some authors talk about compounded representation. According to this view, representation is much more complex in federal states than it is in unitary ones and consequently they state that ‘compounded representation can therefore be defined as the interaction between principals and agents under conditions of shared rule, in which multiple agents compete for and share authority in overlapping jurisdictions and are accountable to multiple constituencies’ (Brzinski, Lancaster, & Tuschhoff 1999, 10; Tuschhoff 1999). Compounded representation can be further set out, of course. One possible approach to analyse representation is to make the distinction between elective, semi-elective and non-elective forms (Saward, 2010). We will focus on elective forms in this paper, although it is obvious that representation at the EU-level is characterised by a whole lot more than just elections. Civil society increasingly plays a role in representing the people in multi-level governance. Here the focus is on political institutions, such as parliaments, parties and other ways of representing the people.<sup>3</sup> Although we should not be too positive about the representative function of the political parties, it is paramount to include them in this analysis. Bardi and colleagues (2010) stress that parties ‘have lost their capacity to act as representative agencies’, mainly because their focus is fixed on governing. With this orientation the voices of citizens are not always heard, which brings them to seek options outside of these parties. Despite this observation the role of the parties remains instrumental and consequently it is not odd to focus on the elective form of representation. These elective forms of representation are still more than elections, however. The EU is often considered a system of dual legitimacy, consisting of both citizens and member-states. As we have proposed earlier it might be interesting to include the notion of dual legitimacy in other federal polities as well.

### **Why Belgium and the EU?**

We have outlined why we focus on representation, but why do we focus on Belgium and the EU? Comparative federalism is a discipline on its own and the merits of comparing different federal systems are great. Watts (1999, p. 2) lists some of them and focuses mainly on lessons to be learned – both positive and negative – while also putting forward the functionality of identifying similarities and differences or looking at consequences of certain options. Although ‘one cannot (...) just pick models off a shelf’, all federal systems have common issues. In the introduction and in the previous pages several similarities and differences between Belgium and the EU have

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<sup>3</sup> Direct democracy and deliberative democracy are absent from this analysis as well.

emerged already. A logical next step would thus be to compare both polities. But we need to take one hurdle before we can focus on the comparison, however. Is the EU a federal system?

Hix (2005) has already convincingly argued why we ought to see the EU as a political system. Saying it is a federal political system is one step further, but even this idea is widely accepted in the literature. Basically the main argument is that there is a significant difference between the concepts of federalism, federal political system and federation. Federalism refers to the broader principles, to an ideal. It is a normative term, whereas 'federal political system' is its structure, its real-world application. The third concept 'federation', then, is one possible example of this federal structure (King, 1982; Watts, 1998, 1999). Other examples of this federal structure are confederations, unions, leagues, quasi-federations or constitutional regionalisation (Burgess, 2006; Elazar, 1987). Our starting point in this paper is that the EU is a federal political system. We do not wish to copy the discussion<sup>4</sup> which particular kind of federal political system since the relevance of including this here is limited, but just like Annett we do believe that comparative federalism is the most appropriate analytical framework for the examination of the EU as a polity.

Even though it is now clear that we can compare both polities, the question remains why we should bother. Of course the dual legitimacy of the EU is a good starting point, since this concept was one of the inspirations of this new approach. But there are other reasons as well. Basically this comparison is relevant in two additional ways. On the hand both polities know a certain degree of difficulty regarding their democratic legitimacy. Especially the European Union's so-called democratic deficit has got plenty of attention. The democratic legitimacy of Belgium is a less popular topic, but nonetheless there are some issues as well (Bursens & Sinardet, 2007). The second reason why this comparison is relevant is that both polities have some remarkable similarities, but yet have remaining crucial differences. Some of these similarities are directly relevant for democratic legitimacy, while others have more links with the composition of society. Examples of the latter are the lack of a common public sphere or the presence of multiple languages, whereas examples of the former are the lack of truly federal political parties or the lack of a federal electoral district. Despite these similarities, there are important differences as well. The most obvious difference is of course the fact that Belgium is a typical nation-state, whereas the EU leans more towards *sui generis*. But there is also another crucial difference. Belgium is a centripetal federal system, meaning that it is falling apart. The EU, on the contrary, is a typical example of a centrifugal federal system in which the constituent units are coming together.

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<sup>4</sup> See for example Annett (2010), Church and Dardanelli (2005) or Schmidt (2006).

One could easily derive some expectations from the observed similarities and differences. And here we focus primarily on the differences between both polities. Since Belgium is a traditional nation-state, we could expect to see a stronger presence of the traditional channel of legitimation: the citizen. The EU, on the other hand, has been build from the ground by different member-states and consequently it would be logical to find a stronger presence of territorial legitimation. This is summarised in the table below. The arrow shows the trend towards either more citizen or more territorial legitimacy. Belgium and the EU are to be found somewhere in the middle, with a slight tendency towards either citizen (Belgium) or territorial (EU) legitimacy.

**Table 3. Expectations**



Before we can start the analysis of citizen and territorial representation we still need to sketch one more aspect of our units of analysis: the constituent units. In the EU it is not very difficult to dig them out: the 27 member-states of the European Union. In Belgium, alas, things are a bit more complex. Belgium is the only federation consisting of two sorts of constituent units, namely Regions and Communities, each with their own policy domains. Since these Regions and Communities are overlapping territorially, the construction is not very obvious. Summed up we get the Flemish, French and German Community and the Flemish, Walloon and Brussels Region. All of these are constituent units, even though there are differences in the institutions. One example is that the Flemish Region and Community have merged their government and parliament. Based from these observations it can be concluded that, in Belgium, the constituent units are politically contested concepts. There is no consensus whether the building blocks of the federation should be the Regions or the Communities and consequently this fog of complexity keeps on floating around the institutions. In our analysis all of these institutions fit the label of constituent unit.

**CITIZEN REPRESENTATION: THE ROLE OF PARLIAMENTS AND GOVERNMENTS**

The most obvious way to start studying democratic representation in any political system is to zoom in on the parliament, the primary body of representation in any democratic society. In case of the European Union it is the European Parliament that claims the leading role in representation, as - according to article 10 (2) of the Treaty of Lisbon - ‘citizens are directly represented at Union level in the European Parliament’. Since the EU is founded on principles of representative democracy the democratic representation of citizens is guaranteed. Citizens vote every five years for their representatives (with ‘direct universal suffrage in a free and secret

ballot'), which in their turn represent these people in the parliament and elect the President and officers of the EP (Article 14, Treaty of Lisbon). The second chamber of the EU is the Council of Ministers, which is in its turn characterised by indirect representation. Ministers of each member-state sit together to represent the interests of their citizens. If we introduce the comparison with Belgium the difference occurs immediately: similar to other federal polities the Belgian system consists of two federal houses: the Senate and the House of Representatives. In both houses the electorate directly elects the members of parliament (although not all of them are directly elected in the Senate, cf. Delpérée 2006). Here the first difference is observed, since the Council of Ministers is indirectly elected. A second difference is subtler. The Belgian Constitution stipulates that members of these two federal Houses should 'represent the Nation, and not only those who elected them' (Article 42, Belgian Constitution), implicitly encouraging a trustee conception of representation.<sup>5</sup> This stands in sharp contrast with the European parliament, which sees itself as a body with a delegate conception of representation. Of course this is mainly what the constitution says. Watts (1999, p. 14) legitimately believes that 'there is an important distinction between constitutional form and operational reality'. In Belgium this is definitely the case, especially since politicians focus mainly on their own constituency or electoral college. One does not need to look far for an explanation. One of the most remarkable elements of Belgian federalism is that there is no real contest for Belgian federal political office. This is mainly because the electoral districts are organised per community and we see distinct political parties in each community. Since there are no federal political parties, there is no contest for federal political office. One of the consequences is that not all federal ministers can be held accountable through elections. To give an example: the Flemish constituency cannot punish a French-speaking politician if he/she did not deliver on his/her promises (or reward if he/she did an excellent job). Consequently politicians mainly focus on their own community. Thus the federal houses are actually composed by two regional elections. And here the comparison with the EP is relevant again. Just like EP elections are more national than European, Belgian federal elections are also more regional than federal (Sinardet, 2008).

If we go back to the differences between the Belgian and European polity we also see the importance of elections. While the Belgian federal elections are definitely first-order, the European elections still are perceived as second-order elections. Basically this concept states that one arena is much more important than another one, simply because 'there is less at stake as compared to first-order elections' (Carrubba & Timpono, 2005; M Marsh, 1998, p. 592). Applied to the EU this means that the national arena is decisive, even for elections in the

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<sup>5</sup> According to the delegate conception of representation the delegates are supposed to represent the preferences of their constituency, while a trustee conception sees a role for the representative as a defender of the universal interests (Dovi, 2011).

European arena. Often these elections happen 'in a context of voter disinterest and even at times antagonism towards the EU' (Glencross, 2010, p. 10). Within nation-states often general elections are first-order, while elections at the lower levels are more second-order. This bears the risk of electing MEPs for the wrong reasons, thus not being represented by the right person. In the Belgian federal houses these risks are not as outspoken. Another difference is situated at voter participation. Often used as a barometer for confidence and interest in politics – even as measure of input legitimacy of a polity – these numbers can be interesting. Since Belgium has obligatory voting it is hard to compare the declining numbers of the European elections with the Belgian statistics.

Representation is not limited to parliaments alone, however. Governments are representatives of the people as well, albeit indirectly. People elect parliamentarians, who in their turn give confidence to ministers and other members of government. Being in this role of decision-maker they have to serve and defend the interests of the citizens. This role of the government does not occur in Europe though. Of course there is the European Commission, but this institution is technocratic. People do not elect the Commission, nor do they make clear their policy preferences. And yet the citizens are represented, as the European Commission has the duty to 'promote the general interest of the Union' (Article 17, Treaty of Lisbon). Automatically this implies representation of the citizen's interests. On the other hand this does not fit the label of elective representation. Although alternative forms of representation are paramount in the EU (such as interest groups or civil society), we shall not focus on this here.

One final aspect of representation that needs to be mentioned is the role of political parties. Although not (nearly) every constitution mentions these vehicles of representation, they do play a crucial role. Besides all forms of direct democracy (such as referenda or deliberative processes) political parties are inherently connected to the democratic process. And even in the case of direct democracy political parties can play a role in framing the debate. It is therefore important not to neglect these parties in an analysis of representation. All current day polities reserve a major role for political parties, but they are even more important in consociational democracies. In democracies like that the political elite is responsible for keeping the system stable through consensus-building, an essential element of consociationalism: political power does not rest on a simple majority of political representatives, but on an as large as possible majority, with inclusion of representatives from at least the different relevant segments or groups in a given society (Pinder, 2007; Sinardet, 2010). In such a system, political parties are the prime actors who mobilise the different groups, aggregate their interests and recruit their elites. On the other hand it is between these party elites that the overarching consensus had to be found. In other words, parties notably 'provide the two-way linking mechanism between the

mass and the elite of the encapsulated sub-cultures' (Luther, 1999, p. 5). It would be obvious to see these political parties primarily as representatives of the citizens. Especially in the Belgian *partitocracy*<sup>6</sup> the political parties play a huge role. Due to their strong position they clearly dominate the citizen channel of legitimation. In the EU the role of political parties is less dominant, but still you have the political groups in the European Parliament and the transnational party federations. Analyses of Hix, Noury and Roland (2007) reveal that transnational party federations do matter. In fact they state that voting behaviour is based on European parties rather than on nationality. Much has to do with the increased powers of the European Parliament, but even more important is that only socio-economic matters rest on the plate of the European level. Jurisdictions where territorial interests play a role are often decentralised. The consequence is that territorial cleavages do not play a big role at the European level and thus party cohesion is relatively high. Van Hecke (2010) supports this view by claiming that the European party federations 'offer partisan linkages between different EU institutions, they influence politics and policy-making, in addition to contributing to the increasing politicisation of the EU polity'. However, not everyone shares this analysis, which supports the role of European parties as citizen channels of legitimation. According to Marsh and Norris (1997) party groups are not much more than 'loosely co-ordinated umbrella organisations' and policy alternatives are limited. This is not all that there is to tell about political parties, however, and consequently we will come back to the territorial links in the next chapter, which focuses on territorial representation.

### **TERRITORIAL REPRESENTATION: IMBALANCED OR OVER-REPRESENTED?**

Eriksen and Fossum (2011) have already stated that the EU is characterised by dual legitimacy. And they get support. 'Identifying the equivalent of the government is not an easy task because the EU system of political decision making is built upon a dual representation of both states and citizens (Fabbrini, 2007). One form of this dual legitimacy is representation through the citizens; another is representation through member-states. Or, to put it differently: territorial representation. In the EU this latter form of legitimation is highly institutionalised and consequently this is a great contributor to (the lack of) democratic legitimacy. Best known here is what is often called 'indirect representation'. Institutions like the European Council and the Council of Ministers are indirectly representing the citizens, but at the same time they represent

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<sup>6</sup> A *partitocracy* is 'a system with a strong and central position for the political parties that are present in and control almost all aspects of policymaking' (de Winter, 1998; Deschouwer, 2009, p. 3). Those aspects include control of the government and the public administration, whilst – of course – also being present in parliament. And even beyond political life the Belgian political parties are linked to various social, economic and cultural organisations (Deschouwer, 2009, p. 73; Huyse, 1970).

their respective territorial collective (Norris 1997). Each head of state represents his or her member-state and therefore these institutions are often seen in the intergovernmental tradition of the debate on democratic legitimacy. Article 10 of the Lisbon Treaty states that 'Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens'. A little bit further (Article 16) we read that 'The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote'. It is logical to deduce from this the function of territorial representation. Each Minister or Head of State represents the collective he belongs to. At the Belgian federal level representation of the distinct collectivities has much less in common with the European polity. Contrary to the EU the Belgian polity does not possess any institutions primarily focused on territorial representation (such as the Council of Ministers or the European Council).

But there are some similarities, especially as far as the parliament is concerned. Of course the primary role of the European Parliament is to represent the citizens directly. However, the Lisbon Treaty does add something that ensures the rights of the territorial groups: 'Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats'. With this in place the territorial collective is represented in some sense as well. Of course this has a lot to do with the dual legitimacy of the Union, consisting of both citizens and states. And states matter in the EP as well. This is outlined well by Marsh and Norris (1997, p. 156), who discuss the delegate conception of representation. The EP 'can be understood as an international forum where MEPs represent national interests'. According to this interpretation of representation the parliamentarians are in the first place representatives of the people who elect them and the EP functions as a geographic forum. Consequently their constituency (district, region or even whole country) is of importance here, not their political party. Other authors have written about delegated democracy in Europe as well, where the member states play a crucial role (Sigalas et al., 2009). Voting along national lines has decreased in favour of voting along supranational party lines, however. One of the major reasons might be the increased power of the EP, rather than an increase in internal ideological coherence (Hix & Hoyland 2011). Similar to the European Parliament each territorial collective has its seats reserved in the Belgian Senate as well. In Europe member-states have their seats reserved, while in the Belgian Senate the distinction is made between the different electoral colleges and communities. An additional feature to increase representation of the collective is that – for cases determined by the Constitution – members of both houses need to be divided into a Dutch and a French language group (Article 43, Belgian Constitution). This has, for example, repercussions for the

so-called alarm-bell procedure, but above all it points to a more general trend in Belgian representation: the manifest presence of linguistic diversity and the fact that the essential political dynamics on the federal level are built on the two large language communities. Not only do members of parliament have to be part of a language group, the government needs to fulfil demands of parity as well (Article 99, Belgian Constitution). Apart from the prime minister the Council of Ministers has to be composed of an equal number of Dutch-speaking and French-speaking members. Another example of this is that Belgian members of the European Parliament are also elected per language group. Finally – and as we have seen before – political parties are split along linguistic lines (Deschouwer, 2009). From this analysis one could deduce that the composition of the EP and the Belgian Senate have some remarkable things in common. The similarities between the EP and the Senate are not there to stay, however. In the on-going constitutional reform in Belgium the shape of the Senate is about to change rather drastically. During negotiations on the sixth state reform it has been decided that instead of the complex vehicle it is now, there will be a smaller Senate, consisting of 60 Senators. 50 Senators will be appointed by the different community parliaments: 29 from the Dutch electoral college, 20 from the French electoral college and one final Senator from the German electoral college. The different federated entities will be responsible for the selection of these Senators. An additional ten senators (six from the Dutch electoral college, four from the French electoral college) will be spread along the votes for the House of Representatives – based on the electoral districts. This final measure is especially important to ensure the presence of representatives from Brussels. This reform can easily be interpreted as a shift towards more legitimacy through the territorial collective. The majority of the Senators will be appointed by the different constituent units, thus giving these the opportunity to influence the federal level. It could be mere symbolic, however, since the powers of the Senate will decrease even more after this reform. The need for a strong federal second chamber is not as apparent, however, since several language-related techniques (such as special majorities, parity in government, etc.) ensure that the regional interests are defended anyway (Swenden, 2005). To say that this reform upsets the whole federal system would be exaggerating, but the symbolic step towards more territorial representation is remarkable nonetheless.

Another difference between the European and Belgian polity is situated at the role of the parliaments of the constituent units, being either national parliaments or regional parliaments. At the EU-level they have always played a significant role in holding the representatives of the government at the EU-level accountable. Without the national parliaments, both the Council and the European Council lose their democratic credentials. But since the Lisbon Treaty their role goes (a little bit) further. Most notable here is the introduction of the so-called ‘early warning system’, which gives national parliaments the possibility to control the compliance of proposed

EU decisions with the principle of subsidiarity. In Belgium there is also the Parliament of the Flemish Community, the Parliament of the French Community, the Parliament of the German-speaking Community, the Parliament of the Walloon Region and the Parliament of the Brussels-Capital Region. All of them have their own subtleties and arrangements; all of them represent the citizen. Although categorically similar to the national parliaments in the EU polity, the differences are manifest. While the national parliaments in the EU increasingly function as a 'virtual third chamber' (Cooper, 2011), the role of community and regional parliaments in Belgium is much more crystallised at the level of the constituent units. This is not to say that national parliaments are highly involved at the EU level, however, but at this level their role is increasing. Of course there is a reason why Belgian federalism does not include high involvement of the parliaments of constituent units at the federal level. Belgium is a typical example of dual federalism, where competences are clearly marked and where shared-rule is limited (cf. supra). Although there is some intergovernmental cooperation in Belgium, there is certainly a lack of interparliamentary cooperation. The main lesson here is that the role of national parliaments is increasing at the European level, while their role is insignificant at the Belgian federal level. This could change, however, if the reform of the Senate will be officialised (cf. supra). The downside of this reform is that the Senate will have even less power.

Again we also have the issues of the government. While there is some form of indirect representation of the territorial groups in the Belgian government, there is no such thing in the EU. In Belgium the government has to consist of an equal number of Dutch-speaking and French-speaking members – apart from the prime minister. In the EU we do have similar mechanisms, but on the other hand we can hardly label the technocratic European Commission as a government. Although each member-state has one Commissioner, they explicitly need to defend the European interest. Article 17 clearly underlines the need to be independent. It is thus incorrect to state that they only serve their own territorial group. Research of Hooghe and Nugent (2006) has also shown that Commission officials think far more European than the public. At the same time Hix and his colleagues (2007) believe that parties are far more important than member-states in European politics. This all points to a situation of great independence from the influence of member-states (and thus away from the idea of 'territorial representation'). However, we do see that member-states choose the nominee for the position of Commissioner (Norris, 1997) and that they value this position. One example could be Belgium. In government negotiations for ministerial posts, the post of a Commissioner is highly valued and equals high posts such as Minister of Foreign Affairs (see for example Samyn & Mels, 2011). What we see, thus, is an ambivalent situation. On the one hand member states clearly value the post of Commissioner, on the other hand this position is mainly independent, with a tendency to

being 'European'. And of course the EC remains technocratic, which is not the same as representative.

If we look again at political parties it occurs to us that they are not solely situated at the citizen channel of legitimation. In this respect a lot has to do with the lack of federal party system. According to Sartori a party system entails 'systems of interactions', or to put it differently: it requires parties to compete and interact with one another on certain topics. Both in Europe and Belgium there is no such thing. In Belgium the party system is split up between a francophone and a Flemish part, while the EU has member-states as primary forums for public discussion – or, such as in cases like Belgium, even regions (Bardi et al., 2010). This lack of a federal party system is mirrored in the lack of federal political parties in both polities. The European party federations are still in development, while the Belgian parties separated between 1968 and 1978. Ever since statewide political parties have left the political stage. Instead we see distinct and completely autonomous 'sister parties' in each linguistic community (Pilet & Van Haute, 2011), supplemented by autonomist parties in the different regions and communities.<sup>7</sup> Swenden (2005) even argues that 'Belgium is the only federal EU member state (and to my knowledge the only democratic federal state to our court) without representatives from a state-wide party in parliament'. In Switzerland the parties are also loosely connected, but the four parties in the federal executive still have a quasi-statewide character. If we consider the EU to be a federal polity as well, both polities are a unique example. Swenden does not categorise the EU as such and subsequently states that the Belgian parties are 'even less integrated than the loose transnational European party federations'. Since we do categorise the EU as a federal polity, this only means that we cannot speak of political parties at the federal level in both polities. The link with territorial legitimacy is easily made. In both party systems the territorial links are warmly fostered.

Finally, and apart from the regular institutions active at the European level, we also have the so-called advisory bodies. One of these, the Committee of the Regions, is of special significance for this research. In this body 'representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly' function as representatives of the people (Article 300, Treaty of Lisbon). The existence of this body provides the constituent units and other sub-national polities the opportunity to make their voice heard. The respective territorial collectivities are thus represented as well. In Belgium we do not see something similar, thus pointing to another difference.

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<sup>7</sup> For an overview of the events leading to this rupture, see Verleden (2009). It has to be mentioned, though, that the greens are an exception. There are also two green parties, but since the 1980ies they form one party group in parliament and every now and then they present themselves as one political family.

## CONCLUSION

Being represented at places where it matters most is more than just some value associated with democratic societies. Representation is a fundamental part of current day democracies and the way this is done tells a lot about the democratic legitimacy of a given polity. Both Belgium and the EU are under scrutiny in this respect and therefore a new look at representation in these polities is by no means superfluous. Divided, unsure which direction to head into and unique in their constellation, both Belgium and the EU could use some fresh insights from one another. The previous pages have contributed to this process, by sketching some remarkable differences and similarities. But before we dig deeper into this fruitful comparison we should focus on the first challenge of this paper: the reconceptualization of democratic legitimacy in federal polities. The uses of repeating the conceptual framework are few, so we will skip this here. But one question that needs to be answered is whether territorial legitimacy matters. Does it? The empirics that were found, point out that there are significant differences between the two polities under scrutiny (at least for representation). And the very fact that we observe variation tells us that our approach matters.

One of the major observations uncovered is the relative lack of institutionalisation of territorial representation in Belgium. While the EU can easily be considered a champion in its kind<sup>8</sup> – with special thanks to the European Council and the Council of Ministers, but an honorary mention of the national parliaments or the Committee of the Regions – Belgium has no such institution especially designed to take into account the presence of regional representation. The reform of the Senate is a first step in this direction, but it stays mere symbolic, especially since the second chamber has long been robbed from most of its powers. Saying that the Belgian polity is completely focused on the citizen channel of legitimation would be too harsh though. There are several language-related modifications (such as a quorum in government, the complex constellation of the Senate and the division between language groups in the parliament) and we observe the split party system as well. But still it is an apparent Belgian paradox. Although Belgium is characterised by a strong presence of territorial groups, it can be said that compared to other (less divided) federal polities, the institutional set-up is not adequately adjusted. This outcome eventually matches our early expectations. We expected Belgium to be more closely associated with citizen legitimacy, while we believed Europe would be situated at the territorial end of the continuum. If we stretch this conclusion even further, we could say that the political institutions simply follow the trend the federal system is heading – only slower. But of course more evidence is needed here. The direction both polities are heading (either towards more citizen or more territorial channels of legitimation) was not included in the research.

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<sup>8</sup> See also Grant (2011), who discusses the shift towards a more intergovernmental EU. This idea can be linked to our research.

These findings almost automatically lead the way to a next challenge, namely to explain why these differences can be observed. How can we interpret these differences and similarities? And what explains these findings? The answer to these questions is perhaps even more appealing. Even though some questions are answered, this paper has also raised new ones, paving the way for future research.

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