Expertise and the Process of Policy-Making:
The EU’s New Model of Legitimacy


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Abstract

Expertise and the problem of expert advice has been an explicit focus of an EU white paper, and both expert advice and stakeholder input play a special role in the creation of EU policy, particularly regulatory policy. In this paper I discuss this topic in the context of larger constitutional questions about the EU, and in particular the problem of legitimacy. I suggest that the EU structure should be understood not on the model of democracy but as an alternative to parliamentary democracy with its own legitimating mechanisms, which makes sense in terms of the underlying constitutional tensions in the EU system. I concur with the suggestion that these tensions arise because of the conflict between the treaty model and the overarching authority model, and that they are resolved by a quest for unanimity and win-win solutions. Expertise plays a special role in this quest, by its place in a process in which objections are precluded in the course of consultations first with experts and then with stakeholders, as well as through relations with national bureaucracies. Policy or regulatory proposals thus arrive already legitimated in this 'preclusionary' sense, and are typically constructed with an eye toward the problem of unanimity, and with some sensitivity to the implications of this requirement with respect to public opinion.

With every advance in centralization the man who uses his hands is brought under subjection by the man who wields the sword or pen. The secretariat begins as the servant and ends as the master, as every executive officer in our dominions laments. It is inevitable. In a loose aggregate of small parts where every family must fend for itself, it is the man whose muscles are hard, whose hands are deft, and whose judgment sound that is valued most. . . . But when . . . social activities have to be coordinated from a center then it is necessary to pick out the pure brains, the men who specialize in thinking. For a thinker is really a man who spends his time making other people think as he does, and consequently act as he thinks. (Hocart [1936]1970: 126)

This quotation comes from a book by the English anthropologist A. M. Hocart, who wrote in the first half of the twentieth century and who ignored the trend in anthropology
that placed exclusive emphasis on the study of whole primitive societies and rejected as unscientific the study of the process of civilization itself. The general principle Hocart enunciates here is unmistakably instantiated in the peculiar political phenomenon known as the European Community.

Much of literature on the European Community, however, has emphasized the peculiarities of the Community as a political form, and concerned itself with the question of how to make the European Community more like traditional models—more federal, or more ‘democratic’. What I would like to argue instead is that the European Community is a political form that represents an extension of forms of rule that are found in embryonic form elsewhere in the western political tradition that are not ‘democratic’, and that the emergence of these forms into a practical governing regime tells us more about what is wrong and also historically dead about liberal democracy than the ideal of liberal democracy, used as a standard of evaluation, tells us about the European Community. I will suggest that the vestments of parliamentary democracy are simply misleading about the nature of this regime, and perhaps irrelevant as a standard.

In a note to the passage quoted in the epigram, Hocart commends Tocqueville’s account, in *L’ancien Regime* Book II, of ‘the way in which the clerks have gradually bored their way from the center through the whole feudal structure leaving only the shell’ (Hocart [1936]1970:126, n. 46). In the text, he comments that, as regimes change, ‘those who cannot adapt themselves to change, fade into ceremonial attendants . . . [while] effective power passes into the hands of the clerks, in the old wide sense of the term’ (Hocart [1936]1970:126). My concern here will be to distinguish the ceremonial from the effective, or as Bagehot put it the ‘dignified’ from the ‘efficient’, and the shell from the center.

The standard of liberal democracy is relevant with respect to the question of what sort of a political phenomena the European Community is, though the relevance is negative. What I will argue is that the Community is not, as it has sometimes appeared, merely a kind of peculiar executive department of a quasi-state with a quasi-parliament, but rather represents a distinct form of rule with the capacity to supplant liberal democracy. Indeed, I will argue, part of the point of the European Community, and perhaps its main point, is to provide an alternative political structure which is capable of dealing with issues that European national liberal democracies have been incapable of dealing with. Usually the way one understands a sentence like this would be in terms of ‘the national’ part of the phrase ‘national liberal democracies’. Obviously there are problems that national liberal democracies cannot solve precisely because they are merely national and this is what justifies the creation of supranational bodies through treaty. This feature of the European Community, however, masks a much more important phenomenon, namely the phenomenon pointed to by Hocart, in which intellectuals or more precisely specialists and experts, come to replace the political form that existed before centralization and to absorb to themselves functions and features of the national state, or of other less centralized political forms.

In what follows I will argue that the EC is intelligible as its own form of rule, unlike democracy but taking over the functions of democracy. It is a system with a non-democratic, or rather non-majoritarian, ideal of consensual agreement as the basis of action. It has a political class, which is integrated vertically from the EU down to regional bureaucrats, and organized into categories corresponding to highly differentiated bodies
of bureaucratic and technical expertise, which take over not only executive functions but also the functions of discussion. And it has its own distinctive approach to the problem of legitimacy, which is tied closely to the requirements of its distinctive ideal of agreement and to the work of its political class.

Comitology, Agenda Setting and Unanimity: Experts as the Political Class of the European Community

Commentators have often noted the peculiarity of many of the procedures that have evolved into standard practice in the course of the history of the European Community. One particular practice that has been central to European Community politics at the treaty or constitutional level is the institutional tension between the federalist centralizing thrust of the Community and the existence of checks on this thrust which constrain Community activities and policies by demanding or strongly preferring unanimity in decision making. This is sometimes traced to the contrast between the main precursors to the European Community, the European Coal and Steel Community, which had a ‘High Authority’ and was supranational, and the Organization of European Economic Cooperation, set up to administer Marshall plan money, which was purely intergovernmental and operated through negotiations between states (Tsebilis and Kreppel 1998: 56-7).

The significant ‘constitutional’ events in the history of the European Community reflected the balance between the two principles, as well as their persistence. At the time of the French boycott from 1966 to 1970, requirements of unanimity still functioned in the traditional manner of treaties. The continued existence of the treaty itself required unanimity, and a state which wished to block the activities of the commission was in a position to do so. This particular feature of the constitutional structure of the European Community has continued to have very powerful effects, even as it was limited, reaffirmed for particular issues, and so on.

To simplify a long and familiar history, the present form of this compromise is the comitology procedure, by which conflicts between the Commission and the European parliament, as well as issues of implementation of legislation, are referred to committees. To quote from the European parliament itself,

The committees which are forums for discussion consist of representatives from Member States and are chaired by the Commission. They enable the Commission to establish a dialogue with national administrations before adopting implementing measures. Committees base their opinions on the draft implementing measures prepared by the Commission. (European Commission 2004)

This is a product of the entrenched regulative ideal of unanimity. As one commentator puts it, it is the ‘constitutional fudge which glues the Union together by filling in the fundamental gulf between federalism and intergovernmental cooperation’ (Chambers 1999: 100). And in this and other forms it means instead that an enormous amount of activity must be dedicated to the achievement of unanimity.

One might naturally ask then who is doing the work of achieving unanimity and how is it achieved. The answer is precisely of the kind Hocart would have expected. The unanimity achieved is unanimity among experts or among policy makers who are experts
but also function in some indirect or informal ways as national representatives. Much could be said about, so to speak, the sociology of negotiations under the expectation of unanimity between persons either formally representing different nations or informally doing so and formally and informally concerning themselves with the achievement of policies that would secure unanimity. In the first place this is work that, like diplomacy itself, creates its own culture and since the kind of unanimity that in fact is domain specific, which is to say it is about certain topics such as telecommunications policy, the tendency is to turn such questions into matters of expertise; expertise being itself a form of unanimity seeking, because experts in effect have power if and only if there is unanimity with respect to what it is they are expert about.

The quest for unanimity is, in Kantian terms, a regulative-ideal, that is to say something which one must always desire. It thus produces a specific political task: to produce these consensuses. The more effort required, the more central this activity in this class becomes. But in the European Community this business of reaching consensus, which is very different from the business of reaching consensus in a party system where there is majority voting in parliament, in which such phenomena as party discipline and personal advancement are central, rapidly takes on a life of its own. More importantly, however, is that the task is not, as in diplomacy, the general business of relations between nations involving the actual agendas of nations in relation to one another, but is rather broken into particular bureaucratic sub-groupings, such as telecommunications policy or drug regulation.

Here the relationships between this new class and the class of experts become much more transparent. It is an old saying that people in the same profession from different countries are more alike than people in these professions are like others in different professions from their own countries, and the same point holds in an even more extreme way in relation to expertise. In matters of business, for example, businesses operate across national boundaries, include multinational staff workers and managers, are often also owned by groups with different national backgrounds, and so forth. Employment of individuals flows from company to company. So to be an expert in a particular domain, such as drug regulation or telecommunication policy, is typically to already share in a very rich body of non-national background knowledge and indeed to some extent to be operating in a setting in which nationality is irrelevant though national circumstances and situations are not. This is already the *de facto* situation of the expert. In addition to this, it may be the case that the decision making activity itself requires disciplinary knowledge, for example, in pharmacology or chemistry, which is already largely internationalized. So we not only have a political class, but a class of specialists or experts who share a great deal of common knowledge and common experience which is not shared at all with the public at large.

**Vertical Bureaucratic Integration: Subsidiarity**

The second distinctive feature of the European Community as a kind of political alternative to liberal democracy involves the relationships at the working level between European Community bureaucracies and national and regional bureaucracies. Federalism in its American form operated with clear distinctions between not only the powers of the constituent state and the powers of the federal government but also, in practice, in terms
of distinctions between domains. The federal government basically was not in the business of doing the things that the state governments were in the business of doing. This changed after the U.S. civil war when the powers of the federal government expanded through changes in the constitution and through the interpretation of the constitution in ways that expanded the meaning of clauses in the constitution. The structure of this kind of federalism depends on the fact that at each level, state, county, city, there are elected officials who control their own bureaucracies, which are organized in accordance with the specific functions of the type of government, which differ from one another. In principle there are no direct links of authority from a federal agency to a corresponding state or local agency, and indeed the agencies have legally distinct functions.

Ultimately the revenue collecting powers of the federal government, particularly through taxation on income, greatly exceeded the capacity of states to generate revenue and this led to a relationship in which states could be governed by federal regulations if they accepted federal money for programs that benefited the states but which were designed in a way that reflected federal interests and federal views of particular problems. This undermined the principle of federalism by making it possible for the federal government to impose mandates as conditions for funds. Thus the primary link is fiscal and regulatory relations flowing from fiscal power rather than from the direct authority of the executive. Paralleling this relationship but similar to it in character are vertical regulatory relations between bodies whose primary power is regulatory and whose fiscal contribution is minimal. These are the agencies that can be claimed to be federal by virtue of expanded interpretations of federal powers.

It is this last form, which has been increasing in importance in the United States for over a century, which is completely dominant in the European Community. In both settings it creates a situation in which a variety of bureaucracies are closely related with respect to the conferences they attend, the careers that are carried out through them, to the personnel, and the regulatory issues they address.

The structure of the European Commission is the place to start with this. The commission has a collegium of 20 commissioners, with 23 ‘Directorate General’ offices. These are often run by experts. Appointments are by merit, but there are unofficial national quotas. ‘Decision-making is open, access for interest groups is easy, and national bureaucrats are increasingly interrelated with commission officials in formal and informal working groups. This phenomenon, called engramage, includes about 25 percent of German officials in formal and informal working groups’ (Matláry 1998: 67). These are mainly interrelated at the regional level. In 1992 there were already about 500 expert groups of a certain permanence, ‘where national and Commission civil servants work intensively together’ (Wessels 1992: 46), and there are innumerable working groups (with national bureaucrats), advisory committees (with experts) and formal COREPER (Comité des Représentants Permanents) bodies with functional working groups.

The system is partly formal and partly informal, and reflects features of European bureaucracy. Bureaucratic expertise works in a way different from so called independent expertise, precisely because of the feature of dependence. Experts in the European Community system are part of a career structure that often includes national bureaucracies which themselves are a career structure, and the career structure is strongly biased toward unanimity because those whose careers advanced are those who are good
at producing and securing unanimity. Commission experts deal with same national experts time and again. The policy ‘language’ is professional, cast in expert terms, not in interest terms. The main business of achieving results in the face of different interests is concealed by this, but it is always present. Nevertheless the system ‘demands that participants in the process command the professional aspects of a quite often very technical problem’ (Matláry 1998: 67).

Thus the principle of subsidiarity serves to involve national and lower level bureaucracies in the implementation of commission policies and initiatives through relationships that are cooperative rather than coercive, as in the American system, and which are in many contexts free from the pressure of public politics and public constituencies. The informed constituency on drug regulation is small; the public as a whole, insulated from the issues by complex national medical bureaucracies which make drug decisions, doesn’t particularly understand its interests. The primary agencies whose decisions are affected are governmental agencies rather than individuals directly. So perhaps it is not surprising that business interests have considerably more influence on these activities and that the primary point of reference for bureaucrats in national states or health care administrations is the higher level technical environment shared with other countries and with European Community bodies themselves.

‘Commission’ as a Form of Rule

In what I have said here I have described some governmental mechanisms that ordinarily are found within liberal democracies, which I have suggested have acquired in the European Commission, and, I would argue, elsewhere, their own significance as alternative forms of rule. In this conclusion, I want to follow up this thought by making some more systematic points about liberal democracy and its limitations and discontent. The classical model of liberal democracy is government by discussion with political decisions being made on the basis of the results of discussion as measured through some sort of voting procedure. Representative democracy has representatives doing the discussing and engaging in discussions in their role as representatives with those that they represent. The executive, on this model, executes the laws that parliament or a representative body enacts. The extent to which this model was ever meaningfully descriptive of European parliamentary democracies is an open question. Many European countries simply inherited a bureaucratic structure instead of bureaucracies that were established in situations of strong monarchs and weak systems of representation in which the monarch and the bureaucracies had there own legitimacy and capacity to legitimate themselves apart from the representative bodies. Moreover, ‘discussion’ was never a significant feature in European national politics because the parliamentary systems of each nation were organized around class parties which had ideologies that were primarily designed, if that is the word, to enhance the solidarity of the class or religious groups whose interests they represented rather than to persuade unattached voters.

In short, the very existence of a predominantly class or religiously based party system which operated in parliament primarily in terms of coalition making effectively precluded government by discussion, and indeed discussion in the serious sense of discussion in which the parties to the discussion were open to being persuaded by the
views of the other, at all. This meant that preexisting state bureaucracies, with their own, though limited, capacities for generating legitimacy and acceptance apart from the parliamentary system were significantly more powerful and autonomous than the category of executive in the traditional view of liberal democracy would permit. And this bureaucratic power was also not limited by the judiciary as it was in the United States. Consequently robust traditions of bureaucratic discretion and power persisted largely unaffected by ‘democracy’.

Though European party style democracy in its stable post World War II form was certainly a political triumph and a massive improvement on the weak parliamentary regimes prior to World War I, it was, nevertheless, a weak form of democracy. In particular, it was too weak and its legitimacy too fragile to successfully enforce difficult and unpopular state policies. States with a two party system in which the parties can tacitly accept and impose, regardless of the hardships, a given policy despite a lack of popular support, are more powerful. In multi-party politics, in contrast, there is always criticism and little is left unsaid, despite the fact that little that fits that the parties’ various ideological agendas that is said can persuade opponents to change their position.

In this setting one needs a powerful mechanism for removing difficult political decisions from electoral politics. The European Community, from its inception in the coal and steel negotiations, represented a means for doing precisely this, which is to say, displacing responsibility for unpleasant decisions onto an international body that could not be held as directly accountable and which was never elected in the first place. Such bodies could operate by a strategy of patience and through anticipating that the unpopular policies would eventually be accepted if they worked out. Time is an important political commodity that governments especially in unstable parliamentary regimes did not have, insuring that these regimes would have a strong interest in developing those mechanisms in order to avoid taking responsibility for these policies and measures.

There is of course nothing distinctly European about this pattern or even the mechanism of referring problems to treaties. The fact that international law treaties supersede state law is a convenient legal reason for this, but the motivation is far more fundamental and the use of mechanisms of this sort occurs in many other contexts as well. Monetary policy, for example, was one of the great divisive public issues a century ago. In most countries this policy issue has been expertized, and given to a more or less independent body that is immune from immediate political pressure and given the capacity to wait and be patient. This kind of systematic surrender of political power by liberal democracies in order to move issues off the agenda is indeed so basic to twentieth century political practice that one might even regard it as a characteristic feature of present day liberal democratic regimes. Indeed, in this sense, they appear to be in a continual process of dissolution or rather outsourcing and diminution of their political role.

**Preclusionary Legitimacy**

One kind of legitimacy comes from success in electoral contests in which participants present their ideas and plans and are voted in or out. The classic model of liberal democracy works just in this way: open public discussion, which proceeds in the expectation that the representatives of the voters will respond to public opinion, creates
public opinion, which is then enacted into legislation by the representatives, who are motivated by the fact that elections are contested and adversarial to make promises in accordance with particular positions expressed in the course of public discussion, and implemented by an executive subject to the law. The system has numerous elements of discipline: representatives who ignore public opinion will risk non-election. The adversarial character of the struggle for power assures that discussion made in the expectation of judgment by voters will be serious and lively. Legitimacy is a result of the procedures of majoritarian voting, which are firmly entrenched as the standard for ‘democracy’, as well as a by-product of the efforts of elected officials to secure personal followings.

Although this model is very far from the European Community model, one can ask similar questions about discipline, motivations for discussion, the nature of the policy end-game, and so forth for this system, and also where there are surrogates for the functions, especially the legitimation functions, of liberal democracy. The obvious differences are in the role of parliament. In both systems, there is ‘discussion’ but the primary role of the European Parliament has to do with the end game— it is able to threaten a veto and negotiate changes in legislation. Its role is limited, however. The agenda is set by the commission, whose proposals in turn come from working groups within the commission that rely on experts. The end-game requires, if not unanimity, something close to it, a fact repeatedly complained about in the EU’s own documents (e.g. European Commission 2001b: 22, 29). Contention is thus avoided—contentious issues cannot be resolved by majorities, so there is no point in discussions that produce contention, except to sabotage proposals.

One effective strategy to adopt in this situation is to propose policies that have been pretested to assure that there are no national interests that will contest it and no experts or stakeholders who will be motivated to contest it by mobilizing support from a national representative or member of the European Parliament. We might call this preclusive legitimacy, since its aim is to preclude contention and allow proposals to be accepted unanimously or nearly so.

One of the few constitutional documents from the time of classical liberalism to discuss the problem of expertise explicitly is John Stuart Mill’s On Representative Government ([1861]1962), and the differences between Mill’s notion of ‘council’ and the guidelines for accessing expert advice of the EU are designed precisely for this purpose. Some dramatic differences are immediately obvious. For Mill as for the EU, council can be sought at any stage of the policy making process, and by any responsible decision-making body. But for Mill there is no suggestion that council need be anything more than private, that it need be public, that there should be a transparent procedure by which it is given, or that there is any ‘accountability’ for council other than that which is demanded by the seeker of council, such as a legislator. Implicitly the relationship is personal and a matter of trust and honor.

For the EU, matters are entirely different. The language is public rather than private. Experts are increasingly understood as stakeholders, i.e. in terms of their conflicts of interest and rules for revealing conflicts of interest and their gender (Commission of the European Communities 2002: 12). Departments— remarkably— are given the following responsibility: to ‘consider how to promote an informed and structured debate between policy-makers, experts, and interested parties (e.g. workshops,
consensus conferences), particularly on sensitive issues’ (Commission of the European Communities 2002: 12). The process of advice giving should be transparent and divergent views and persisting uncertainties should be part of the report. Not only should responsible parties make decisions, they should justify the decisions, and cite the evidence, and this responsibility extends not only to experts but to the commission itself, which is urged to not only take responsibility for the decisions, but to ‘be capable of justifying and explaining the way expertise has a been involved, and the choices it has made based on advice’ (Commission of the European Communities 2002: 9-10) and not ‘hide behind experts’ (Commission of the European Communities 2002: 9). But ‘accountability extends also to the experts themselves’ (Commission of the European Communities 2002: 10).

It should be evident that the emphasis here on procedure, public access, and the creation of structured discussion indicates a fundamental change in function from ‘council’ in the liberal sense. The acknowledgment that ‘the interplay between policymakers, interested parties and the public at large is a crucial part of policy-making, and attention has to be focused not just on policy outcome but also on the process involved’ (Commission of the European Communities 2002: 3) needs to be understood as an admission that this ‘interplay’ is a full-fledged surrogate for the liberal model outlined above. The plea for greater openness and emphasis on process reflects considerations of legitimacy: these reforms amount to is a shift to greater procedural or process legitimation, as a solution to problems of legitimacy inherent in current European Community governance.

What are the concerns? They are well-expressed in the White Paper on European Governance (European Commission 2001b: 7): that despite the double democratic mandate through the EP and the Council representing the individual member states, it is perceived to be unable to act effectively (for example on food safety); that when it does act (for example to improve quality of life) it does not get credit, which goes to national governments; that “Brussels” is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested’; and that people do not understand the institutions or ‘feel the Institutions act as an effective channel for their concerns’ (European Commission 2001b: 7).

These concerns lead to the constitutionally novel and odd result that the process of expert and stakeholder advice itself is given the burden of constructing procedures that respond to these problems--even to constructing a ‘discussing class’, to use the term of Donoso Cortes, that is an alternative to the liberal ‘public’. The problem of reaching out to local democracy is done through the principle of subsidiarity, which involves local and regional bureaucrats in the policy making process, is a similar kind of substitution. Local bureaucrats are ‘closer’ to the people, to be sure, but only in an odd way, since the people typically have little effective control over these bureaucrats, who are heirs to the administrative structures of the absolutist state, insulated from politics, rather than accountable ‘representatives’ in the sense of Mill.

The European party system has, as I have suggested earlier, served to interfere in the process of translating public discussion into law by making representation less direct. Here as well we find the system of expert advice coming into a new role as a surrogate for representation. The ‘Report of the working group “Democratising expertise and establishing scientific reference systems”’ (European Commission 2001a) proposes the
creation of new participatory mechanisms to allow for the scrutiny of expert opinions (2001a: 21) as well as suggests ways of reforming the traditional model of expertise itself. ‘Procedures must be established to review expertise beyond the traditional peer community, including, for example, scrutiny by those possessing local or practical knowledge. . . sometimes referred to as “extended peer review”’ (2001a: ii). This is to redefine ‘peer’ in a way that creates a new surrogate for the public and a new locus of discussion in place of the lost public discussion of classical liberalism— all in a quest for something that expertise, in classical liberalism, did not have and did not require, namely legitimacy.

This report notes that “majoritarianism” is generally incompatible with the development and use of expertise (2001: 7), but at the same time claims to be engaged in a process of ‘democratizing expertise’ that strengthens democratic institutions (2001a: 7). The argument for the creation of new participatory mechanisms should be understood in the light of this. These are alternatives to the democratic institutions of national and local democracy which are appropriate to the new political form of a vertically integrated expertized bureaucracy, which relates through a long series of ‘interfaces’ between expert and manager groups (European Commission 2001a: 24), whose ‘policy’ activity is to provide proposals for European Commission regulation and legislation that can be accepted or avoid veto in a series of non-majoritarian steps to ratification at the Commission and European Parliament. Neither the European parliament nor the commissions, the double legitimators of the EU, are sufficient to represent the public. Instead, it is recommended that procedures be created for ‘citizen’s juries, consensus conferences, focus groups, and public hearings’, modeled on such participatory forms as Danish technology panels, which legitimate in a novel way (European Commission 2001a: 21). So there is a transformed notion of the public and a transformed set of institutions through which the public is addressed.

One may well ask if this is a meaningful notion of the public, or if these are meaningful ‘public’ institutions. One important finding of the best available study of these participatory bodies in national settings is that they have had no discernable impact on parliamentary debates or state actions (Hansen 2004). So these efforts are better understood as something other than a form of participation in the process of legislation. Perhaps they should be understood as similar to the sorts of consumer testing efforts that focus groups are traditionally used for. To the extent they help legitimation, they are signs that ‘someone is listening’, even if the listening has no effect. But there is a deeper problem here with the implicit notion of the public itself.

Can there be a meaningful notion of the public without a meaningful notion of accountability to this public, without reasonably direct mechanisms to enforce this accountability, and without the possibility of learning from the use of power? It is difficult to see how. But it is not so difficult to see how a consumer-testing model of public relations cold be conceived as a useful adjunct to a process of rule organized around vertically integrated specialist bureaucratic expert cultures organized around technically specialized problems. The main problem faced by these bureaucracies is output legitimacy, that is to say results, as Scharpf argued in his classic work (1999). But as the Governance paper acknowledged, the public cannot assess most of the intended results, or ascribe the results to the right agencies. Nor can they assess the technical claims made in the internal process of decision-making, and it is well known that public
members of participatory panels have a strong tendency to defer to experts. The only results that the public can assess come in the form of scandals and other public relations failures. So an advance warning of public concerns is crucial; actual input, or participation, is not.

To be very blunt about it, the regime I have been describing here is a parallel to ‘democracy’ in the traditional liberal sense. It can also serve, and does serve, as a surrogate for it. And it is being asked to become more of a surrogate, by providing substitutes for the absent public and absent discussion of EU policy making. The effect of this increasing surrogacy is to make the public activities of the EU even more ceremonial. We need only update Hocart slightly: those who cannot adapt themselves to change, fade into the ceremonial of the European parliament and similar bodies, while effective power passes into the hands of the experts and expert stakeholders, who have the power to preclude alternatives.

List of Literature


European Commission (2001b) ‘Report of the working group ‘Democratising expertise and establishing scientific reference systems ‘ (Group 1b)’, R. Gerold, pilot; A Liberatore, rapporteur (White paper on governance, Work area 1– Broadening


Notes

1. The term is my own coinage, but the idea is well expressed in a passage from Armin Spoek’s thesis, describing the way in which the German food ministry developed policy after the BSE scandal: the German response was to engage all relevant interests. According to one interviewee this was to provide an institutional setting in which both the consumer and the agricultural camps would have to come to an agreement before presenting an institutionally harmonized position to the outside world (Spoek 2003: 35). Such an agreement would preclude democratic contestation and the need for a majoritarian voting solution by maintaining the appearance necessary for legitimacy by precluding the alternatives that would have arisen in a parliamentary debate.