What role for the collective in democratic legitimacy?

The case of representation in the EU

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Abstract
Due to the increasing importance and complexity of forms of multi level governance, federal polities seem to be in search of democratic legitimacy. Issues of input-, output- and/or throughput legitimacy are discussed by various voices. However, one of the major flaws in the current literature is 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. This paper tries to answer this by putting forward an adjusted instrument to analyse democratic legitimacy in federal polities. Compatible with the inherent diversity in federal polities, this paper claims that we need to have a look at collective legitimacy as well. According to this view citizens need to legitimise a polity as a collective as well. More in particular, the paper will focus on democratic representation at the individual and at the collective level as a crucial aspect of democratic legitimacy. In this paper we merge the classical democratic literature with elements from federal theory. We develop an instrument to analyse representation that can be applied to a wide range of current day federal systems. This paper will focus on how democratic representation is interpreted in the EU, both on the individual and the collective level.¹

¹ This paper is work in progress. The eventual purpose of the paper is to compare Belgium and the EU. This version is an exploration of the EU-case. As regards the broader framework this paper fits in a PhD project that compares different dimensions of democratic legitimacy in distinct federal polities.
**INTRODUCTION**

If one drops the abbreviation 'EU' in the same sentence as 'democratic legitimacy', chances are that you will not have to look very far to come across the distinction between input- and output-oriented legitimacy famously put forward by Fritz Scharpf (1999). Scharpf deserves all the credit he gets as his work proved to be the start of systematically studying democratic legitimacy in the context of the EU. Many authors had already opened the debate on the infamous ‘democratic deficit’, but in order to have a complete picture it is necessary to sketch the framework one is working in. To this date the framework has been revised very often and one recent example is the publication of Vivien Schmidt (2010). She opened up to the systems theory of David Easton and combining these two scholars Schmidt describes the difference between input, output and throughput legitimacy. Input legitimacy refers to the ability of citizens to provide input in the decision-making process, while throughput legitimacy is concerned with the process of decision-making and output legitimacy with the compatibility between the outcomes and the preferences of the citizens.

With this contribution it seems that the debate on analysing democratic legitimacy can go to rest for some years, 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 me 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. I will elaborate on this later on in this paper, but the basic idea is that these constituent units seem to be forgotten in the debate on democratic legitimacy. Whether the impact of including these in the debate would have significant consequences, should thus be put to the test. What is the role of the collective in the debate on democratic legitimacy? And how important could this matter be? In this paper I try to answer these questions.
An obvious case to start this approach with is of course the European Union. A lot has been written on the subject, plenty of sources are at hand and the debate can always use some fresh input. Another 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 even brings Cheneval and Schimmelfennig (2011) to talk about the emergence of a demoocracy, where the different demoi remain the dominant force (in stead of a democracy, where the people of the different EU member-states form one demos). And this brings me to the second research question of this paper. How do federal systems handle collective legitimacy? And more specific: how does the EU handle the collective? In this paper I will therefore try to give a glimpse of how more attention for the collective could result in another analysis of democratic legitimacy. Analysing all dimensions of democratic legitimacy would have pernicious consequences for the 'thickness' of the analysis, however, and consequently I will focus on one aspect in particular here: democratic representation.

In order to answer what role the collective could play in analyses of democratic legitimacy and in order to provide an answer to how this is organised in the EU, the paper takes the following structure. In the starting pages I will discuss which role the collective could play in analyses of democratic legitimacy, before focussing on the case of the EU. In this first part I discuss the role of the collective in federal systems, followed by a definition of collective legitimacy. Once the argument has been made, I first dedicate some space to the federal nature of the EU. This will be followed by a study of representation in the EU, both at the individual and at the collective level.

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2 Is the EU a federal system? I answer this question in the following pages.
THE CASE FOR COLLECTIVE LEGITIMACY

What happened to the constituent units?
Many scholars have written extensively on the topic of democratic legitimacy and a vast number of these publications were concerned with the European Union’s so-called democratic deficit. Remarkable here is that these contributions hardly ever emerged in the tradition of comparative federalism. Of course several scholars have argued that the EU is indeed a federal polity (cfr. supra) and multiple studies have emerged that compare the EU with other federal systems, but this federal nature was never the starting point for studies on its democratic legitimacy. One of the consequences is that the assets of federal theory were not adopted in the analysis of its democratic legitimacy. One of the most outspoken characteristics of federal systems is the significant role of constituent units. Due to their absence in the debate on democratic legitimacy they are stuck in an awkward predicament. Whether we talk about traditional federations like the United States or emerging federal systems like the European Union does not matter: federalism reserves more than one driving seat. The existence of constituent units is at the core of the federal idea, without which it would be impossible to talk about basic characteristics like shared-rule or multi-level government (Bednar 2009; Elazar 1987; King 1982; Knop, Ostry, Simeon, & Swinton 1995; Watts 1998, 1999).

A closer look at the different dimensions of democratic legitimacy in federal polities reveals some significant differences with traditional nation-states or simple polities. Consider for example input legitimacy, where the multiplication of access points and the changed nature of the relation between represented and representative are manifest contributors to this variety. And what about accountability, where we see an increase in actor-forum relationships and a considerably longer chain of accountability? Like this there are several other examples. Despite these differences the same instruments are used to analyse democratic legitimacy. One way to improve the instruments used to analyse democratic legitimacy is to reconfigure the framework for analysis and to include the status of the collective.
The most obvious way to study collective legitimacy is by including the constituent units (or the constituent polities) in the analysis. 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 both member-states and sub-state authorities. I will group them under the denominator of constituent units. In several federal systems we see that there is already some form of collective legitimacy, but – as claimed earlier – this is not taken into account in the debate on its democratic legitimacy. Examples of these are apparent in the EU, where the member states (acting as constituent units of the federal polity) are actively involved in the Council. Another example of legitimising the EU-polity on a collective level can be seen in the allocation of a number of seats in the European Parliament to each country. Something similar is to be seen in the German Bundesrat and the US Senate. This recipe has proven its value in every federal system: a second, federal chamber where the different constitutional entities are represented and can participate.\(^3\) These federal chambers are not always without flaws, however. Consider, for example, the Canadian Senate, where Senators are typically appointed by the governor general and retain their seat for life.\(^4\) This could involve issues concerning representation and accountability.\(^5\)

Related to this discussion, but perhaps not entirely the same, is the debate on asymmetrical federalism. Asymmetrical federalism is about autonomy, not about the involvement of the constituent units at the federal level. And although this is another discussion it has links. Gagnon (2001) sketches three moral foundations for this kind of federalism, along the way defending my case for more attention for constituent units. According to the author the importance of communities in social life should not be neglected, thereby referring to normative values such as community, culture, identity and heritage. Social groups are important providers of culture and

\(^3\) Lusztig (1995) sees several theoretical foundations for upper chambers, of which federal representation is one.

\(^4\) In practice they are only appointed with the consent of the prime minister and only hold their seat until they reach the age of 75.

\(^5\) Even tough it is often said that Canada does not work in theory, but does work in practice.
therefore he believes that they ought to be recognised as important players in the field of federalism. A second moral foundation that he sketches is to be found in addressing inequalities, a primary task for sub-federal authorities. The third and final moral argument is perhaps the most telling and definitely the most relevant for this research. 'Asymmetrical federalism reinforces the country's democratic system by encouraging public participation in the decision-making process, accommodating differences between political communities and buttressing the democratic legitimacy of the federal state' (Gagnon 2001, 332). An example here is the Province of Québec. Citizens can participate and are represented in a democratic manner and consequently they should have the feeling that the Canadian system is democratically legitimate on the input side. However, some of the Quebecois also believe that they should have more autonomy than the other provinces, making their case for asymmetrical federalism. In the ideal world of these people, the inhabitants of Québec are not only individually represented but also as a collective. Without this asymmetrical federalism they sense a deficit in federal or political legitimacy. The same, then, is true for participation, accountability or any other aspect associated with the different dimensions of democratic legitimacy. Although only the hardliners fight for such drastic measures Canada does not stand alone in its struggle for collective legitimacy. In Belgium, another example, the Flemish movement has also started building up a distinct Flemish identity (Béland & Lecours 2007). Although not entirely comparable, some inhabitants of the different constituent units want to have a say in the functioning of the federal polity as well. Right now the federal structure does not mirror the demands of collective legitimacy that these people want and consequently one could argue that there is a democratic deficit. From these short examples it is clear that the attitudes and patterns of allegiance of the population have a manifest influence on legitimacy in each federal society. No better argument can be made to support my claim for more attention for the constituent polities in federal systems. If these units are that important in buttressing democratic legitimacy, it is adamant that they play a pivotal role in analysing democratic legitimacy in federal polities as well.
The compound polity of the EU underlines the importance of including collective legitimacy in this story. Several authors have discussed the lack of a common public sphere (e.g. Eriksen 2005; Schlesinger 1999; de Vreese 2007). According to Cheneval and Schimmelfennig (2011), however, this debate only confirms that the EU is not a democracy but a *demoiocracy*, a polity consisting of multiple demoi.6 This theory claims that the size of the polity needs to expand if one wants to tackle cross-border problems. Unfortunately this has negative consequences for citizen participation and influence, while at the same time it undermines collective identity and public spirit. Cheneval and Schimmelfennig claim that ‘participation and identity are unlikely to recover their previous levels’ (2011, 4). One possible answer to this problem could be to encourage deliberative democracy, but it takes time for a collective identity or a common political culture to grow. Thus it can be assumed that the demoi will remain the dominant factor in the foreseeable future. ‘They will continue to possess the strongest collective identities, public spheres, and political infrastructures and enjoy the strongest legitimacy and loyalty on the part of individual citizens.’ Glencross (2010) says something similar, claiming that the member states still play a pivotal role in legitimising the EU through mechanisms of indirect representation and accountability. One of the basics of the EU political system is indirect representation, explicitly referring to the member states. Excluding their contribution from an analysis of democratic legitimacy might therefore have pernicious consequences.

Of course not every federal polity suffers from the same degree of internal diversity, but this tale highlights the possibilities that are inherently part of the set-up of federal systems. Federalism is about a combination of self-rule and shared-rule, about multiple levels of government and about distinct identities that are accepted and even accommodated (Deschouwer 2009; Watts 1998; 1999). Constituent units are part of the game and thus one outcome of this analysis could be that they deserve extra attention. The idea of collective legitimacy especially gains significance in multinational federal systems, where ‘a significant number of citizens identify with a nation

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6 Their work is more fundamental than mine, however, as they discuss the emergence of demoicracy in the broader debate on the transformation of democracy and the nation-state.
distinct from the one projected by the central state’ (Béland & Lecours 2007, 405). One example here is, of course, the EU, where we do not see a single political community (Glencross 2010). But there are other multinational federal systems as well, such as Canada, Switzerland, Bosnia or Belgium. However, the idea of collective legitimacy applies to mononational federal systems as well. The only remark here is that these issues are not always as sensitive. The ‘collective’ refers to constituent units and not necessarily to nations within federal systems. Consequently Australian or American States can claim collective rights as well. And why shouldn't we include cities or other forms of government? Although not typically central in federal studies, cities can be part of the analysis as well. In this paper I will not devote time and space to this, but one could include this in analyses of democratic legitimacy.

In order to take into account the undeniable presence of different constituent polities in federal systems, I believe it is therefore necessary to introduce this aspect in the study of democratic legitimacy. Just like Cheneval and Schimmelfennig (2011) claim that we should reorient our view in analysing democratic legitimacy in the EU, I claim that the scope should be widened to all federal systems. Therefore I argue that, in some instances, we could introduce collective legitimacy as a supplement to the different dimensions of democratic legitimacy. Of course it is inevitable that there is, sometimes, an overlap between collective legitimacy and the other dimensions. Consequently I do not see collective legitimacy as a fourth dimension. Rather I see it as a necessary, crosscutting supplement to all three. With this in mind I suggest the following structure for any framework for analysis that wishes to assess democratic legitimacy.

### Democratic legitimacy in federal polities

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<td><strong>Collective</strong></td>
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One final remark I would like to add is that the collective dimension is especially relevant in federal systems and even more so in the subcategory of multi-national federal systems.
However, the collective dimension can be introduced in non-federal polities as well. The only comment here is that the collective often resembles the nation-state and consequently the collective does not add much to the debate in their analyses of democratic legitimacy. Similarly mono-national federal systems are probably more often characterised by a higher degree of resemblance between the collective and the nation-state as well, although it might be expected that – on average – they take in the position in between centralised and multi-national federal systems. Or put differently, there will probably be less resemblance than unitary nation-states, but more than multi-national federal systems.

Towards a definition of collective legitimacy
Do constituent units matter in the debate surrounding democratic legitimacy? Research has shown that constituent polities do matter for citizens. In some instances it is clear that citizens want their province or state to be treated with more respect in the federal set-up (Kincaid & Cole 2010). If the people, the demos, are concerned with the role of constituent units, the case can be made to insert this in the debate on democratic legitimacy. And besides that it is not uncommon that constituent units have higher rates in trust in government. Let us consider one (hypothetical) example here, which might brighten the picture. In a federal system the constituent units earn more trust from the people than the federal government does. Consequently the people want these constituent units to have more power. If the political set-up of this system does not accordingly reflect the wishes of the citizens, conditions are there for a lack in collective legitimacy. This does not necessarily mean that there is a deficit, however. But if the citizens of the constituent unit identify themselves in the first place with the constituent unit, they might be disappointed that their collective identity is not the main level of government. Of course this is a hypothetical example, as those feelings of collective belonging are never as clear-cut. Sometimes they might not even incorporate ambiguous feelings like ‘identity’. But let us go back to the example. People of a constituent unit could be disappointed that the federal level retains the major policy responsibilities, but this does not automatically mean that the polity lacks collective legitimacy. One way for federal systems to answer the quest
for collective legitimacy is by means of involving the constituent units in the federal decision-making. Several options emerge here, varying among different federal polities. There is the idea of proportional representation; there could be a federal chamber; there could be quota for ministers in government. Federal political systems can be creative here. This example has taught us that collective legitimacy can be raised by a guaranteed involvement of the constituent units at the federal level. And this brings me to a definition of collective legitimacy, a definition in line with the other dimensions of democratic legitimacy: if the people have the feeling that their collective is sufficiently involved in the functioning of the (federal) political system, this polity can be labelled as collectively legitimate. In the following table the definitions of the different dimensions of democratic legitimacy are gathered.

**Dimensions of democratic legitimacy**

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<th>Dimension</th>
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<tr>
<td><strong>Input legitimacy</strong></td>
<td>A political system is input legitimate if citizens have the feeling that they can sufficiently provide ‘input’ into the decision-making processes.</td>
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<tr>
<td><strong>Throughput legitimacy</strong></td>
<td>A political system is throughput legitimate if the quality of the process of decision-making is sufficient, meaning that it is efficient, accountable, transparent and open to civil society.</td>
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<tr>
<td><strong>Output legitimacy</strong></td>
<td>A political system is output legitimate if it is effective in achieving citizens’ goals and if it can provide solutions to citizens’ problems.</td>
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<tr>
<td><strong>Collective legitimacy</strong></td>
<td>A political system is collectively legitimate if the people have the feeling that their collective is sufficiently involved in the functioning of the political system.</td>
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One thing should not be forgotten, however. Democratic legitimacy is about finding the right balance between input, output and throughput legitimacy, but also a balance between citizen and collective 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.

**The EU as a Federal Polity**

In order to show that the EU is a federal polity, it is important to outline the distinction between federalism, federal political system and federation. The first author to make a conceptual distinction between the two concepts of federalism and federation was Preston King (1982). This distinction still stands today and is supported – and maybe somewhat adjusted – by several important authors. In King’s publication he argued that federalism refers to the broader principles, to an ideal. Federalism is the thinking that lies behind the real-world application, driving and steering it. Watts (1999, 6) follows suit and says that federalism is a normative term, ‘referring to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule’. Some authors call this the *telos*, which is the broader framework behind the *techne*. This techne, in its turn, reflects the concept of ‘federal political systems’ and refers to the structure; it can be associated with a particular kind of state or the structure of a federal government. Thus, contrary to the concept of ‘federalism’, the concept of ‘federal political systems’ is not normative, but descriptive. In other words, federalism is the idea behind federal political systems, while a federation is an example of a federal political system – just like confederacies and quasi-federations are other examples (Annett 2010; Burgess 2006; King 1982; Watts 1998, 1999). Elazar (1987) elaborates on this and gives other examples of federal systems as well: associated statehood, unions, leagues, constitutional regionalisation and

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7 I use federal political system and federal polity interchangeably.
constitutional home rule (Burgess 2006). This view of the different concepts is summarised in the figure below.

The unit of analysis in this paper is the European Union, a political system that is often contested as a federation. But here lies the catch. I see the EU as a federal system without claiming it to be either a federation, a confederation or any other specified polity type. Support for this vision can be found with Watts (1998, 1999). Claiming that it is necessary and fruitful to learn from other cases, his typology opens up the possibility to compare widely accepted federal systems like Belgium, Canada or Switzerland to more disputable ones like the EU. And he gets help in the literature. Although the European Union is not a federation in the common sense of the word, Annett (2010) shows that it is indeed possible to compare. She believes that ‘the maturity of its institutional structure, political relationship with its citizens and the solidification of ‘internal’ and ‘external’ spheres of action for the Union’ are enough to label the EU as a confirmed polity-type (ibid., 107). Adding to this the believe that there is widespread scholarly consensus on the federal nature of the EU and given analysis of the origins and developments of the EU, the author is convinced that comparative federalism offers the most appropriate analytical framework for the examination of the EU as a polity. In the publication Annett goes on to describe the EU as a federation, but I will not go this road. My primary aim is to clarify the view of the EU as a federal political system, not to concretise which particular kind of federal political system. Whether you call it a federation (as Annett claims), a confederation (Church & Dardanelli 2005; Watts 1999), a
quasi-federation (Church & Dardanelli 2005) or sui generis (Church & Dardanelli 2005; Schmidt 2006), basically all authors agree that the EU is a federal political system.

**Representation in the EU**
The pieces of the puzzle are slowly coming together. First I argued in favour of including the collective in the debate on democratic legitimacy, followed by a brief discussion about the federal nature of the EU. Now the time is there to merge these two discussions and have a more thorough look at one case in particular: representation in the EU. In what follows I will try to answer the two main questions of this paper: does the collective matter? And if so, what do we learn from representation in the EU in this respect? I will start this piece by briefly outlining what representation encompasses, followed by a thorough look of how things are organised at the EU-level.

**What is representation?**
Representation is one of the key aspects of democracy that is hardly ever questioned. According to several authors there is no realistic alternative to democracy through representatives (Beichelt 2009). But what do I actually mean when I 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 that 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 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 distinguished, of course. One possible approach to analyse representation is to make the distinction between elective, semi-elective and non-elective forms (Saward 2010). I 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. One example here is the existence of political parties. Although not (nearly) every constitution mentions these vehicles of representation, they play a crucial role. Besides all forms of direct democracy (such as referenda) 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. Consequently these play a role in the following analysis as well. Without specifically mentioning the political parties all the time, I am aware of their influence on the process. They are not my main objects of study, however, and thus I will mainly focus on the role of institutions. At the European level the people are represented in two ways. Either they are represented as (individual) citizens or as part of a collective. I will first address how they are represented as a citizen, as this is the most common and also the most direct way to analyse democratic representation. This will be followed by a discussion of collective legitimacy.
Citizen representation
An obvious starter is always the parliament. In the case of the European Union it is the European Parliament that claims the leading role, 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). Within this parliament a huge role is reserved for political parties. The Lisbon Treaty mentions these political parties and states that ‘Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union’. Thus they play a vital role in representing the citizens. Hix and Hoyland (2011) distinguish here between the political groups in the European Parliament on the one hand and the transnational party federations on the other. Both have a big role to play in the everyday representation of citizens. The political groups ‘have evolved into highly developed organizations, with their own budgets, leadership structures, administrative staff, rules of procedure, committees, and working groups’, while the transnational party federations ‘have gradually developed into genuine ‘Euro-parties’, albeit with limited power over their constituent national member parties or the political groups in the European Parliament’. Although these party groups and transnational party federations gain in significance, the political system of the EU still does not meet the criteria of the modern conception of representation. Marsh and Norris (1997) adapt these criteria to the EU and come up with some minimal conditions. According to them the EU needs ‘cohesive and unified parties within the European Parliament (that) need to offer alternative policy programmes on the major issues facing Europe’; ‘the electorate needs to choose parties based on retrospective evaluations of their performance and prospective evaluations of their programmes’; and finally ‘the outcome of parliamentary elections should thereby link voters’ preferences with the policy making process within the European Parliament’. These authors are more pessimistic than Hix and Hoyland, claiming that party groups are not much more than ‘loosely co-ordinated umbrella
organisations' and that policy alternatives are limited. However, 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. This outcome remains surprising, but this is not the forum to elaborate on the different reasons. What we do remember, though, is that political parties play a big role in representing the people at the European level. Not everyone necessarily agrees, however. Marsh and Norris stress the internal diversity within party groups. Although they foresee in an alternative, they immediately state that a widespread consensus among elites, combined with a second-order effect of European elections, prohibits the voters from making a clear choice. And this second-order effect indeed plays a role in democratic legitimacy. Basically it states that one arena is much more important than another one, simply because ‘there is less at stake as compared to first-order elections’ (Marsh 1998, 592). Applied to the EU this means that the national arena is decisive, even for elections in the European arena. Often these elections happen ‘in a context of voter disinterest and even at times antagonism towards the EU’ (Glencross 2010, 10). National elections are first-order elections, while the European elections are second-order. 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.

Eriksen and Fossum (2011) have linked this debate on representation in the EU with deliberative democracy. They argue that deliberative democracy is the answer to the democratic deficit, but they equally acknowledge that modern polities cannot ‘accommodate the participation of all relevant stakeholders’. Therefore they agree that large-scale societies need to rely on representative democracy in order to institutionalise deliberative processes. Vital in
their view is the role of the parliament, which should ensure ‘the proper mediation between the citizens and the political institutions’. As citizens are unable to govern themselves and as deliberation is a necessary process for democracy, the parliament should take over this role. And according to the authors it does: ‘Deliberation is intrinsic to the mode of representation that parliaments are based on, and enables government by discussion’ (Eriksen & Fossum 2011, 5).

Another way of citizen representation is of a more indirect nature: in the European Commission. 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. Of course the Commission is not entirely comparable to a regular government. The Commissioners are not elected, to give one example. The European Commission gains legitimacy through the European Parliament, which can vote on the nominee for Commission President and holds hearings for nominated Commissioners. Once this process is done the European Parliament votes again, now on the nomination of the Commission as a whole. Individual Commissioners cannot be vetoed, but the power to block the appointment of the entire Commission is often strong enough to persuade government leaders to withdraw the Commissioner who failed to persuade the EP (Hix & Hoyland 2011). As such the citizens are represented in the European Commission, albeit indirectly through the European Parliament. Additional evidence is found in the identification process of Commission officials. Research of Hooghe and Nugent (2006) shows that Commission officials see themselves much more as European than the public does. None of them have only their ‘national identity’ (contrary to over 40% of the public), whereas the majority admits to possess a European and national identity. The data shows that they do have a European identity, which supports the notion that they represent European citizens.

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8 Cfr. the withdrawal of Rocco Buttiglione, who was replaced by Franco Frattini in 2004. A more recent example is the withdrawal of Bulgaria’s nominee Rumiana Jeleva.
Collective representation
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: representation through the collective. 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 their respective collective (Norris 1997). Each head of state represents his or her member-state, his or her collective, and therefore these institutions are often seen in the intergovernmental tradition of the debate on democratic legitimacy. Article 10 of the Lisbon Treaty literally 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 collective representation. Each Minister or Head of State represents the collective he belongs to.

Apart from the Council and the European Council we also see the increased role for national parliaments, which is discussed in Article 12 of the Treaty of Lisbon. Of course 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 should have lost 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.

The **European Parliament** has a role to play as well. 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 collective: ‘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 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, 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, Mokre, Pollak, Bátora, e.a. 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).

Something similar can be said about the **European Commission**. 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 collective. 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 ‘collective 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. 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’.

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 collectivities are thus represented as well.

**CONCLUSION**

In this paper I have made it clear that there are several ways and multiple institutions to represent both the citizen and the people at the European level. A classic view of democratic representation would perhaps limit this discussion to citizen legitimacy, claiming that direct representation in the European Parliament, supplemented by some form of indirect representation in the European Commission, would be insufficient. Most analyses of democratic legitimacy in the EU do mention some aspects of collective legitimacy, but above all these are perceived as ‘representation light’ due to their indirect character. If representation of the collective would be appreciated on the same level as citizen representation, however, the picture might be different. In the EU the collective is represented through the Council of Ministers, the European Council, the Committee of the Regions, the national parliaments and to a lesser extent in the European Parliament and the European Commission. These are numerous channels of legitimacy, which clearly outnumber the possibilities of citizen representation. Of course
quantity is not of importance here, as the quality of representation is much more relevant. Judging these was not the primary purpose of this paper, however.

Some perhaps would argue that the difference between collective representation and indirect representation is negligible. I contest this view. In a traditional view of democratic legitimacy one observes that ‘the citizen’ is the starting point of all analyses. Whether this happens direct or indirect is then the matter of discussion. I claim that, in federal political systems, attention should be divided between citizens on the one hand and the collective on the other. In federal polities the constituent units play a decisive role, which should be translated into the debate on its legitimacy. In other words: a democratically legitimate federal polity needs legitimacy from the citizen (as individual) and from the collective (either member-state or region). Of course the idea of indirect representation is often part of the collective dimension of democratic legitimacy, but it is not entirely the same either. Basically the collective refers to something bigger, on another level. 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. The collective consequently does not equal indirectness.

By including the collective in the analysis of democratic representation, this paper has tried to show that the constituent units of a federal polity play a huge role. Not only in the political set-up of the system, but also in terms of providing democratic legitimacy to a political system. The example of the EU clearly shows this as several of the main institutions (among which those with the principal decision-making powers) are build on the idea of representing the collective. Without judging whether the EU has a democratic deficit, it is shown that the introduction of the collective in the democratic legitimacy debate offers fresh insights for future research. It raises questions. Is the influence of the collective also significant in representation in other federal systems? If we assume that the EU is a federal polity, there can be other federal systems depending on collective legitimacy as well. And what happens if we include the collective in research on the other dimensions of democratic legitimacy? Do we also see collective
participation or accountability? Several questions remain unanswered, paving the way for future research.

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