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eu legitimacy and normative political theory

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introduction

The aim of this chapter is to present some of the central research topics found in normative political theory relating to the EU. Normative political theory uses methods of normative reasoning to address concepts, arguments and theories about the substantive normative standards necessary for legitimate political orders, institutions and policies. Topics covered might include 'democracy', 'fairness', 'equality', 'justice', 'citizenship', and 'virtue'.

The 'normative turn in EU studies' (Bellamy and Castiglione, 2003) has largely focused on how European-level institutions should be governed. This subject was placed on the public and political agenda largely as a result of the perceived legitimacy crises wrought by the Maastricht Treaty (and sketched in the first section below). Popular and legal conflicts during the ratification process strengthened the argument presented by politicians and scholars that the EU was suffering from a 'legitimacy deficit'. The second section dissolves this apparent consensus by exploring the various symptoms, diagnoses and medication proposed by experts in this field. The next section provides a taxonomy of conceptions, mechanisms and objects of legitimacy. The fourth section presents a unifying perspective based on the need for trust and trustworthiness, so as to explore how perceived normative legitimacy affects both compliance *and* long-term popular support for the EU. The chapter concludes by reviewing several central areas of normative research which serve to address – and perhaps alleviate – such legitimacy deficits.

the maastricht treaty: the end of popular and legal consensus

Widespread concern about the legitimacy of European integration can be traced to the Treaty on European Union, agreed by the member states in Maastricht in 1991. European governments had long based their involvement in European integration on an understanding that the public provided them with a 'permissive consensus' in support of deeper cooperation. The events of 1991–93 challenged this assumption.

Referendums on the Maastricht Treaty in Denmark, France and Ireland caused wide-ranging public debates about and elite dissent over the proper ends and institutions of the European integration process. The Treaty was rejected in a Danish referendum in 1992 by a vote of 51 per cent to 49 per cent only to be accepted a year later when the Treaty was changed to allow Denmark the right to opt out of the single currency. In France, the Treaty created serious cleavages within political parties, and only just won the support of a majority of the electorate in a referendum in September 1992, by a vote of 51 per cent to 49 per cent. In the UK, meanwhile, the House of Commons succeeded in approving the Treaty in 1993, but only with greatest of difficulty. These reactions served to politicize the European integration process, making it clear to national governments that they must henceforth pay much closer attention to public opinion and opposition elite. Falling support for European integration and falling turnout in European Parliament elections were taken as signs of a 'legitimacy deficit'.

In Germany and Denmark, the ratification of the Treaty was also challenged on legal grounds, though the German Constitutional Court and the Danish Supreme Court found the Treaty compatible with their national constitutions. However, the German Constitutional Court insisted on its right to protect fundamental rights, and to review decisions of the European institutions if it were felt that they might be acting beyond the limits of the Treaty. These requirements ran counter to the European Court of Justice's claim that it had sole competence to ascertain the legality of legislation made by the European institutions. The German Constitutional Court also insisted that the powers of the *Bundestag* could not be transferred without limits being placed on any such transfer; and nor could it be left to the EU to decide whether such transfers were necessary for it to fulfil its aims, as Article 235 (now Article 308) allowed. Moreover, transfers of powers must not reduce the democratic influence of citizens over state authority. The influence of individuals within the member states must continue to be secured, either via national parliaments or by increasing the European Parliament's influence over European policies.¹

By contrast, the Danish Supreme Court found the Maastricht Treaty compatible with the Danish Constitution insofar as the transfer of sovereign powers happened only to a pre-determined and limited extent. Any expansion of authority deemed necessary in pursuit of the objectives of the EU would require the unanimous consent of the Council, and could therefore be

vetoed by the Danish government. In 1998, the Danish Supreme Court also insisted that domestic courts had retained the final authority to determine the constitutionality and hence applicability of EC laws within Denmark, regardless of the decision of the European Court of Justice.

legitimacy deficit: symptoms, diagnoses and cures

Public opinion polls demonstrated falling support for European integration in the 1990s. Yet it is doubtful whether public opinion in general, and the referendums in particular, indicate popular discontent with the EU. Relatively low and falling turnout in European Parliament elections should not come as a surprise. Low levels of attention within political parties and by the media, in part due to institutional factors, generally reduce the popularity of what are often called 'second-order elections'. Scholars point out that public opinion is still highly supportive of European integration, even though that support is falling. Moreover, politicians are losing political support right across advanced industrial democracies (Dalton, 1999). Therefore, this is not a trend exclusive to the EU.

Such disagreements notwithstanding, many governments and EU officials have interpreted these events to mean that the legitimacy of the EU is at stake. Politicians have come to fear that Europeans might refuse to accept future steps towards deeper European integration, which might hamper the governability of the EU. To pre-empt such a scenario, it was felt that something had to be done to secure future popular support. The recent Convention on the Future of Europe offered a response to such concerns.

There were many influential contributions to normative political theory prior to the Maastricht Treaty (Scharpf, 1988; Majone, 1990; Mancini, 1991; Weiler, 1991). Scholarly attention began to increase however, as normative theorists claimed that the negative popular responses and legal challenges to the Maastricht Treaty were symptomatic of a legitimacy deficit, raising challenges for future integration and enlargement. This is not to say that this diagnosis went uncontested: some prominent scholars begged to differ, arguing that the EU was not suffering from a legitimacy deficit, democratic or otherwise. Others denied that there was a legitimacy crisis at all, but acknowledged that the perception of such a crisis does indeed exist (Banchoff and Smith, 1999, 3).

Even those who believe that there is a legitimacy crisis diverge when it comes to explaining the symptoms, diagnoses and cures. Symptoms have been explained using a variety of sources and evidence, including Eurobarometer data on support for the EU, and for one's own country's membership of it; World Values Survey data, showing mistrust amongst Europeans; reported data on mistrust of EU institutions by citizens;² data on the 'variable implementation of , or non-compliance with, EU Directives; Top Decision-Makers Survey findings on disparities between elite and public support for EU membership;

arguments about declining voter turnout in European Parliament elections; the absence of parliamentary control of executive bodies at the EU level; and, the fact that, increasingly, since the 1986 Single European Act, government representatives could be outvoted by a qualified majority in the Council of Ministers. Symptoms such as these led to a diagnosis of a 'legitimacy deficiency' specified as a lack of procedural 'input' legitimacy granted by citizens; as a lack of 'output' legitimacy, due to mismatches between citizens' preferences and what politicians were able to deliver; or as an absence of accountability. Yet others hold that one of the main problems is that European integration creates a democratic deficit *within* the member states, as the latter are no longer permitted or able to achieve popular demands (Scharpf, 1999).

Some analysts are optimistic about the prognosis, finding hope in 'deliberative comitology' (Joerges, 1999), or recommending safeguards through the setting up of independent agencies. Others hold that pessimists ignore the important role of domestic support for many national governments, which would tend to foster compliance even with legislation that emerges from the EU. Some warn against fixing something that 'ain't broke' (Weiler, 2001), while others recommend *keeping* the democratic deficit (Gustavsson, 1997). Yet some fear that the absence of a common language, media or public discussion, and the lack of functioning European-level political parties is problematic, though they disagree on the prospects for a speedy improvement of the situation (Grimm, 1995; Abromeit, 1998; Habermas, 1998).

It is no wonder that reflective scholars – not to mention politicians and civil servants – disagree about the medicine to prescribe. There are disputes over whether this should involve additional arenas for normatively salient deliberation and a simplification of the structures of decisionmaking; a strengthened legal standing for the Charter on Fundamental Rights; more member state discretion through the Open Method of Coordination; or a more efficient Commission, securing the European interest over conflicting national interests. Some have supported a constitution, whereas others suggest strengthening the European Parliament – or, instead, national parliaments (Neunreither, 1994). What makes this a complex question is that different conceptions of legitimacy lead to different prescriptions and proscriptions.

conceptions, mechanisms and objects of legitimacy

The label 'legitimacy deficit' covers a broad range of issues, giving rise to different taxonomies.³ It is possible to identify four fundamental *conceptions* of what legitimacy is about, at least four *mechanisms* for achieving legitimacy, while focusing on at least six different *objects* of legitimacy. We begin with the four conceptions: legitimacy as *legality*, as *compliance*, as *problem-solving* and as *justifiability*.

First, until recently, questions about the legitimacy of the EU could be answered quickly by pointing to the EU's pedigree. Thus, states created the

Table 9.1a Conceptions, mechanisms and objects of legitimacy (I)

Conceptions	Normative		Problem solving	Legality		
Mechanisms	Democracy, participation		Compliance and general support			
Objects	Political Community	Regime principles: objectives and ideals	Consent, output Regime: the political order, including procedural norms	Institution or office	Political actor	Policy or decision

Table 9.1b Conceptions, mechanisms and objects of legitimacy (II)

Conceptions	Mechanisms	Objects				
	Normative		Problem solving	Democracy, participation	Political community Regime principle: objectives and ideals Regime: the political order, including procedural norms Institution or office Political actor Policy or decision	
Compliance and general support		Legality	Consent, output			

EU to act in accordance with legal requirements that they themselves set down (see Weiler, 1991; Wallace, 1993; Weiler, 1995b; Lenaerts and Desomer, 2002). Moreover, democratic member states transferred limited parts of their sovereignty by treaty, forming a *de facto* European constitutional order, in order better to achieve their goals by means of coordinated action. The ruling of the German Constitutional Court on the legality of the Maastricht Treaty explored and accepted this account – within limits. Thus the EU’s authority is only illegal when such limits are surpassed.

Second, much of the concern about the alleged ‘legitimacy deficit’ stems from fears authorities have over its likely impact on levels of compliance and implementation. However, while the ‘permissive consensus’ may be a thing of the past, current compliance may not be affected by the legitimacy deficit, as compliance, in the form of acquiescence, may stem from apathy or cynicism rather than from support for the system (Abromeit, 1998). Such fears may seem overdrawn, then, especially given the broad social acceptance of European integration and the EU political system. But this acceptance varies and seems to be decreasing over time, reflecting changing circumstances and events (Karlsson, 2001). Even so, active disobedience is unlikely to occur unless politically relevant groups mobilize. Nevertheless, politicians may want to

reduce the risk of their citizens rejecting treaties, or refusing to comply with EU laws.

Third, the EU's legitimacy is sometimes seen as having been enhanced when it identifies and implements solutions, securing goals that would otherwise be unattainable. This can only happen where joint outcomes are delivered through the problem-solving capacity of the EU. Such objectives may include economic growth, peace in Europe, human rights compliance, or a sustainable environment. By way of an example, it is often said that the technocratic aspects of EU decisionmaking allow diffuse constituents, such as consumers, to pursue their interests in ways that would otherwise be extremely difficult (Majone, 1998b, 22–3). Similarly, the EU's common currency serves to prevent unilateral exchange rate adjustments, while the independent European Central Bank bolsters the credibility of the member states' commitment to sound monetary policies. Thus, the EU suffers from a lack of legitimacy when it fails to find and implement solutions to common problems.

Fourth, some are concerned about the *normative* legitimacy of the EU, often expressed in terms of *justifiability among political equals*, for instance by appealing to hypothetical notions of acceptance or consent. They 'ask whether the coercive exercise of political power could be reasonably accepted by citizens considered free and equal and who possess both a capacity for and a desire to enter into fair terms of cooperation' (Choudhry, 2001, 383). This form of legitimacy of a political order such as the EU, is seen to rest on whether affected parties *would* or *could* accept it, under appropriate choice conditions (Michelman, 2000; Waldron, 1987; Habermas, 1995; Rawls, 1993; and see also Føllesdal, 1998a; Lehning, 1997).

We may say, therefore, that laws (or authorities) are *legally legitimate* insofar as they are enacted and exercised in accordance with constitutional rules and appropriate procedures. Laws (or authorities) are *socially legitimate* if the subjects abide by them. Finally, laws (or authorities) are *normatively legitimate* insofar as they can be justified to the people living under them, and impose a moral duty on them to comply. Normative theorists often judge *normative legitimacy* to be fundamental. Yet the other conceptions of legitimacy are also normatively relevant. They are interrelated, often compatible, and can be mutually re-enforcing. For instance, simple rules and procedures may make it easier to determine legality and compliance, as well as justifiability – or its absence (Magnette, 2001). *Legal legitimacy*, in the form of constitutionalism and the rule of law, is often regarded as a necessary condition for the justifiability of a political order. Legal legitimacy may be regarded as a special case of social legitimacy where the rulers actually abide by the laws regulating their authority (Beetham, 1991). On its own, *general compliance* is insufficient for normative legitimacy, since people may comply with an unjust rule solely from fear of sanction, lack of alternatives or unreflective habit. Yet for compliance to be assured, it is often deemed necessary that the population believe the relevant institutions to be normatively legitimate

(Beetham and Lord, 1998, 10). Perceived normative legitimacy may also bolster the *problem-solving capacity* of governments. Thus Renaud Dehousse recently noted that 'Comitology's legitimacy is not merely a normative issue: it is likely to become a political problem' (Dehousse, 1999). Legality, compliance and general belief in normative legitimacy may all be necessary but insufficient when considering whether laws, authorities, institutions or the regime is actually normatively legitimate. Compliance and beliefs may simply be due to an ill-founded and mistaken ideology, in the pejorative sense, and not on premises that all have good reason to accept.

These four conceptions of legitimacy can be promoted through a variety of institutional *mechanisms*. These are: legitimacy through *participation*, *democratic rule*, *actual consent*, and through *output*.

First, the legitimacy of the EU is said to increase by including citizens and other parties in the decision process: 'Interest group and expert democracy may be regarded as direct participation, hence legitimate' (Andersen and Burns, 1996, 245; see also Banchoff and Smith, 1999, 11). Citizens may be drawn into political decisions at various stages, and may participate directly in referendums (Abromeit, 1998). Participation may boost compliance, especially if the parties consulted are able to bind their members into systems of network governance (Kohler-Koch and Eising, 1999).

Second, representative democracy is a special and important case of participation. The democratic character of domestic political rule is regarded as central to legitimacy across Europe – and indeed globally (Norris, 1999a). Citizens hold their rulers accountable for their use of public power by selecting among competing political parties on the basis of and informed by discussion of their relative merits and the objectives to be pursued. A prominent criticism of the EU has held that these measures are underdeveloped in European politics, preventing member state governments and parliaments from guaranteeing democratic control. The increased power of the European Parliament granted in the Constitutional Treaty may enhance this kind of legitimacy. Democratic arrangements may also generate compliance, partly because citizens see 'that their interests have been explicitly consulted, and that there are opportunities for re-opening the debate in the future' (Bellamy, 1995, 167; Mill, [1861] 1958; Manin, 1987, 352).

Third, some regard democratic legitimacy as a matter of voters conferring legitimacy by giving their actual consent (Beetham and Lord, 1998). Others stress the need to secure actual consent in the form of an uncoerced and informed consensus reached, on the basis of actual deliberation among all affected parties. Or institutions and a public sphere should be implemented that would come close to yielding agreement on principles that 'meet with uncoerced intersubjective recognition under conditions of rational discourse' (Habermas, 1995, 127; Habermas, 1998). In this vein, some argue that institutional forms such as comitology are embryonic arenas for 'deliberative politics' (Joerges, 1999, 311).

Finally, the problem-solving or 'output' legitimacy of the EU requires that organizations and member states explore, identify and finally agree on options that benefit them all (Jachtenfuchs, 1995; Karlsson, 2001, 273). The EU must then secure these options, achieving objectives that were hitherto out of reach (Banchoff and Smith, 1999). Central mechanisms for doing this are the ability to create *de facto* binding and sanctioned law, as well as the forging of credible commitments through regulatory agencies (Majone, 1998b). These arrangements bind member states and enforce compliance, preventing the free-riding that often threatens cooperative arrangements (Beetham and Lord, 1998; Scharpf, 1999).

Such considerations about legitimacy form part of alternative 'frames' for further integration (Kohler-Koch, 2000). Unfortunately, the different conceptions of and mechanisms for legitimacy can conflict, and may require resolution insofar as prescriptions for institutional reforms strengthen some forms of legitimacy at the expense of others. Efficiency, democracy and constitutionalism conflict, even in principle (Elster and Slagstad, 1988). Mechanisms of veto and rights that require actual consent may hinder efficient problem-solving (Tsebelis, 1990; Scharpf, 1999). Accountability may stifle the creative search for solutions (Scharpf, 1999). If the EU gets authority to tax and redistribute funds, this might increase its ability to solve problems at the expense of participation levels and democratic accountability (Börzel and Hosli, 2002). And the increased democratization and politicization of the EU Commission may threaten its problem-solving capacity and its credibility as a neutral guardian of the treaties (Lindberg and Scheingold, 1970, 269; Banchoff and Smith, 1999; Majone, 2001, 261–2; Craig, 2003, 3).

Normative theorists pursue different strategies of reconciliation. One approach is to question or deny some of these elements of legitimacy; to question, for instance, whether efficient problem-solving has anything to do with 'legitimacy' (Beetham and Lord, 1998). It has been argued that such strategies could proceed by checking support for various conceptions – among political parties, for instance (Jachtenfuchs *et al.*, 1998). However, it remains unclear why the popularity of an approach should be decisive, rather than the reasons offered for accepting some conceptions over others. Others suggest sector-specific resolutions, such as handling the legitimacy of a Common Foreign and Security Policy (CFSP) differently from that of monetary policy (Lord and Magnette, 2004, 190). These suggestions seem sensible, yet prompt questions of *why* different sectors should be legitimated in different ways. After all, disagreement over issues of scope may be as profound as that over the substantive criteria of legitimacy.

Some claim that the EU is *sui generis* as a political order, and that this has profound implications for its legitimacy. For instance, one might question whether the standards of legitimacy that apply to liberal democratic states should be applied in the case of the EU: standards such as voter accountability and human rights (Lord and Beetham, 2001). Should, perhaps, other

standards be used, such as non-majoritarian and post-parliamentary standards and models of accountability (Majone, 1994; Andersen and Burns, 1996; H  ritier, 1999)?

A unified account of legitimacy may serve to guide discussions about trade-offs, scope and institutional design. Discussions about legitimacy and the EU have focused on at least six different objects of legitimacy. The preceding sketch of conceptions and mechanisms help us see how these discussions fit together.⁴ Legitimacy discussions may concern:

- a particular political *decision*, that is, a policy or piece of legislation, which may be legitimated both by being enacted *legally* by authorized officials, and through the *participation* and *actual consent* of affected parties;
- the *authorities*, that is, political actors or officeholders; a particular government or set of representatives legitimated through *democratic* elections and other modes of participation, for example;
- particular *public institutions* such as the European Central Bank. Their perceived legitimacy may come in the form of compliance (see, for example, Schmitt and Thomassen, 1999, chapter 4);
- the *regime*, that is, the political order as a whole. Such studies include an assessment of the procedural norms and authority structures that constitute the formal and informal rules of the game. Such legitimacy may be addressed by asking whether it *can be justified* to those subject to it. A related central issue is the *problem-solving* ability of the system, where empirical evidence must be used to demonstrate whether the EU is able to obtain the objectives stated in the Treaties, and whether it actually does so reasonably well;
- the regime *principles*, including the objectives and ideals pursued, such as general welfare, participation and the rule of law, the scope of decisions and division of powers (see Schmitt and Thomassen, 1999, chapter 3). Should, for instance, the aims of the EU include a social dimension?
- the *political community*, that is, a group of individuals participating in and maintaining common decisionmaking processes. Discussions of whether there is a European ‘demos’ are raised at this point. Are there problems that require a certain community to be in place if they are to be resolved? Kaiser (2001b) addresses this object of legitimacy when noting that there were national and transnational ideological preferences for continued integration *in some form*, even after the failure of the European Defence Community (EDC) in 1954.

The various conceptions of legitimacy address these six objects differently. *Legality* plays a strong and obvious role in linking the first four objects. The legality of the EU regime as a whole was challenged by the German and Danish Constitutional Court decisions. Regarding *social legitimacy*, or political support,

Easton notes the importance of 'diffuse' regime and community support to ensure compliance with authorities.⁵ Citizens may provide *specific support* for particular decisions and authorities based on this more diffuse support for the institutions (Norris, 1999b, 264). Citizens may maintain *diffuse support* for the regime for a while, even if dissatisfied with present policy outputs, as long as these policies generally remain consistent with the regime values and objectives, including procedural justice and a sense of fair treatment (Inglehart, 1999a, 98; Miller and Listhaug, 1999).

The *normative legitimacy* of a particular institution or policy area can often only be assessed on the basis of an evaluation of the performance of the policy decisions emerging from the regime as a whole. Some note that diffuse support for the regime in the form of an affective orientation to it (Almond and Verba, 1963), as normatively legitimate, may arise either from above or below: from acceptance of particular incumbents, or from the legitimating ideologies of the regime when it is seen to regularly yield output consistent with the regime objectives (Easton, 1965, 290).

Against this backdrop, it appears that European integration and enlargement may involve drastic shifts in all four conceptions of legitimacy, across all six objects, including the political community. These shifts appear to threaten diffuse support for the entire political order in Europe, and require a reconsideration of the mechanisms by which legitimacy is induced. One reason why politicians and academics may be right to worry about the long-term consequences of a legitimacy deficit is that *current* levels of compliance are insufficient. Long-term support for the EU requires not only present compliance and support, but also long-term trust in the general compliance of others, both citizens and officials, and a shared acceptance of the legality and the normative legitimacy of the regime.

legitimacy and trustworthiness

An institutionalist normative political theory takes as its central subject matter institutions, defined in a broad sense as 'social practices', for example. In comparison, an interactionist or individual-based theory may also address institutions, but primarily sees them as facilitating and safeguarding the normative claims individuals make towards each other, independent of their institutional relationships. This difference in emphasis has implications for the approach and substantive content of normative principles.⁶

All the conceptions and mechanisms of legitimacy identified in the sections above can enhance political trust and trustworthiness in the EU. The need for trust and trustworthiness arises under circumstances of complex mutual dependence. Cooperation depends on the conscious or habitual expectation of the cooperation of others, with trust being 'confidence of the future regularity of their conduct' (Hume, 1960, 490). Such trust in future compliance by others is central for the long-term stability of a just political order. The truster

must believe that it is in the interest of the trusted to act according to shared expectations, where such interests may vary. The trusted may act out of self-interest, within institutions that sanction misbehaviour. The trusted may act from a sense of appropriateness, such that only certain actions seem open to choice for her. Or the trusted person may be other-regarding, concerned for the truster's well-being. One version of the latter is where the trusted is known to be a 'contingent complier'. Such persons are prepared to comply with common, fair rules as long as they believe that others will do so as well.

Thus contingent compliance occurs⁷ when a citizen decides to comply or otherwise cooperate with government demands either because she perceives government as trustworthy in making and enforcing normatively legitimate policies; and/or she has confidence that other citizens will play their part, out of what John Rawls calls a 'duty of justice' (Rawls, 1971, 336 and see Scanlon, 1998, 339):

that they will comply with fair practices that exist and apply to them when they believe that the relevant others likewise do their part; and to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. (Rawls, 1971, 336)

To ensure long-term support, it is important for institutions to develop and maintain a sufficiently large group of citizens and politicians who are contingent compliers. Trust in the compliance of others is not only a problem among individuals who prefer to free ride on others, but it is also problematic for 'contingent compliers'. The assurance problems among contingent compliers have long been recognized by political theorists, and were addressed by Rousseau (Rousseau, [1762] 1978, 2.4.5; Madison, [1787] 1967). Recent contributions, informed by game theory, have contributed to an enhanced understanding of the importance of institutions in providing sufficient assurance by mixing positive laws, transparency, shared practices, and socialization.⁸ The literature on social capital provides further insights into how expectations concerning the actions of others – facilitated by institutions – affect the complex assurance problems faced in daily life.

Trust is particularly precarious when it comes to institutions that are not obviously in everybody's self-interest all the time. Trust can be engendered by institutions that facilitate generalized trustworthiness among strangers, both through mechanisms that reduce the risks or suspicion that others will defect, and through public mechanisms which socialize certain preferences. Trust and trustworthiness have become increasingly important for Europeans in the context of the EU. Consider, for instance, how changes from unanimity to qualified majority voting increase the need for trust and trustworthiness among individuals and among their representatives, requiring them to adjust or sacrifice their own interests and those of their voters for the sake of other Europeans.

Many social institutions can promote this kind of trust. Contract law, for example, can promote trustworthiness. It may do so both by reducing the risks of failed trust for example, by restricting the scope of valid majority rule by enforcing human rights law, and by shifting the trusted's incentives to make it in her interest to do what the trusted expects. The three various forms of legitimacy – legal, social and normative – are all important in securing such expectations, and hence for the existence of institutions – or so I suggest.

Several requirements must be satisfied if 'contingent compliers' are to comply. As a 'contingent complier' I will comply with rules, institutions and officials' decisions *if*

(a) *I believe they are normatively legitimate.*

This may require, in cases of doubt, public knowledge that:

- i) there is a plausible *public political theory* regarding, for example, democracy in and solidarity towards the political order. This largely appears to be lacking for the European political order. The following section sketches some contributions made by normative political theorists on this subject. Some of the heated debates in the Convention on the Future of Europe also concerned these issues (Olsen 2004);
- ii) the institutions are *simple and transparent* enough for citizens to comprehend and assess. Assisted by the media, citizens and authorities must be able to determine whether institutions and decisions roughly match normative requirements;
- iii) there is a general assurance that the institutions are effective and efficient, in the sense of producing the normatively desired effects without too much loss – at least when generally complied with.

(b) *I believe that most other actors will comply.*

Reassurance among 'contingent compliers' requires *more than* actual compliance by a large number of individuals. Each must also have reason to believe that many others will continue to comply in the future, since compliance by each is conditional on the expected compliance of others. Each must regard the compliance of many others as highly probable. Institutions can socialize individuals to this duty of justice.⁹ When this socialization happens in public institutions, it provides public assurance and reminders that all, or most, citizens, including politicians, share these norms which tell us what justice requires. Expectations of others' future compliance are boosted when rules secure a fair output, and cannot easily be abused. Thus it is important for trustworthiness that the institutions deliver according to their stated aims, providing 'output legitimacy' (Scharpf, 1999). Such trust is at stake if some states or citizens are thought to be unable or unwilling to comply with EU rules due to lack of political will or resources for domestic implementation.

Institutions can also provide sanctions that modify citizens' incentives, reassuring 'contingent compliers' that they will not be 'suckers'. 'To the extent government coercive capacity assures potentially supportive citizens that there will, in fact, be relative equality of sacrifice, governmental institutions contribute to contingent consent' (Levi, 1998a, 26). EU arrangements that aim to harmonize national legislation may serve this role. Institutions provide important reassurance by facilitating the monitoring of compliance, even without formal sanctioning mechanisms. If government authorities believe that their trustworthiness is challenged, thereby reducing governance capacity, they may provide institutionalized sanctions to bolster their claims. Measures of this kind might include monitoring and efforts to simplify and democratize the EU institutions. Transparency, including access to information, may also be crucial for this end (Dehousse, 1999; Héritier, 1999).

Legal legitimacy assures citizens that authorities make decisions within a range that is expected, reducing the risks for those who comply, and ensuring, if the decisionmaking rules are normatively accepted, that the long-term, general result of these decisions will be in accordance with normative standards. Thus trust in the authorities is bolstered by diffuse support for the regime, which secures the authorities' trustworthiness, at least insofar as the regime itself is trustworthy.

'Contingent compliers' will comply with what they regard as normatively legitimate rules if they have good reason to believe that others will comply. Thus monitoring arrangements that confirm past general compliance and assess future compliance may be necessary to support such beliefs. Opinion polls that indicate low support for institutions, however, serve as warning signs to citizens and authorities that compliance might not be secure.

This is one reason why reports of low support for the EU are important, regardless of whether such reports are sound – and even if the EU is normatively legitimate. If it is not normatively legitimate, politicians should heed calls for making the institutions more just. If compliance is still not forthcoming other measures are also required to provide assurance. Thus, the role of the media is crucial in both encouraging and deterring general support.

The publicly shared beliefs about normative legitimacy held by citizens and public authorities are central in several ways to ensure trust. 'Contingent compliers', as defined here, can be expected to comply when they are assured of the compliance of others *and* when they regard the regime, its institutions, procedures, authorities and their decisions as normatively legitimate. If they doubt the latter, they may not comply. To reduce such doubts, the authorities seek to provide assurances that they govern fairly. Measures may include the extension of democratic controls and visible human rights constraints on decisionmaking. There are other mechanisms that provide transparency and control over authorities, such as the treaty requirement that administrators must give reasons for their decisions. Media freedom and vigorous opposition

parties are other elements that are likely to enhance the trustworthiness of political authorities.

Diffuse support rests, then, on a sufficient match between the normative legitimacy of the political community. This consists of participants who accept the need for common decisions for certain ends, that is, the normative legitimacy of the regime. Moreover, it also includes the institutions' performance in specifying and securing outputs, as well as the normative legitimacy of the authorities, including their legal legitimacy.

How can the EU secure and maintain general trustworthiness among 'contingent compliers', especially during the regime changes wrought by treaty modifications? It is clear that a lack of channels for protest *within* a regime, in the appointment of officials, or the voicing of concerns, may lead to reduced support (Hirschman, 1970). Thus there must be visible, effective channels for replacing authorities, including at the European level. Moreover, diffuse support for the regime is enhanced if it appears to be working. Thus, while the Commission resignation of 1999 might be regarded as an illustration of deservedly low specific support for the Commission, presenting this as a way for the European Parliament to enhance the EU's accountability may increase diffuse support for the regime. Likewise, diffuse support for the regime may also increase insofar as the ongoing processes of institutional reforms are perceived as responses to popular pressure. This can be interpreted as illustrating the regime's responsiveness, bolstering trustworthiness in the form of diffuse support.

Three additional points may be made at this juncture:

- The general decline in support for governing institutions may partly be due to a perception of diminishing performance (Dalton, 1999). Insofar as this is the general perception, regime changes must show that the EU is not part of the problem, but part of the solution.
- Some scholars suggest that declining support is due to postmaterialist individuals, who generally express less support for existing hierarchical institutions, yet support democratic principles (Inglehart, 1999b; Dalton, 1999). These are 'critical citizens', who demand evidence that regime changes match their principles, and are likely to provide improved outputs. This group seems particularly interested in participatory mechanisms, which may itself be a reason to explore these kinds of institutions.
- Scholars who study the extent of support for the 'political community' note that disagreements about its membership, borders and purposes may deprive the regime of diffuse support. This suggests that we must take very seriously any lack of certainty over the commitment of citizens in the new (post-2004) EU member states, as well as deep disagreements over the objectives of European arrangements for common decisionmaking.

current normative research on the eu

This account of the relationships that exist among different forms of legitimacy serves as a backdrop to this section, which reviews some of the topics dealt with in normative political theory relating to the 2004 Constitutional Treaty.

One central topic concerns the basic constitutional form of the European political order. Should the regime or 'polity' have largely confederal or federal features, a network structure, or should it be regarded as a political order *sui generis*? There are numerous models of this kind, which reflect, for example, different historical trends (Jachtenfuchs *et al.*, 1998). Neil MacCormick, for example, has explored the distinctions between statehood and sovereignty, arguing that neither the member states nor the EU is fully sovereign in the traditional sense of enjoying legal or political power unlimited by other, higher legal or political powers. Yet the EU is a distinct community of law with a distinct legal order. He suggests that both the EU and the member states are 'commonwealths' in Hume's sense, securing different common goods for citizens (MacCormick, 1999; Hume, [1739] 1960).

The Constitutional Treaty increases transparency with regard to the sites of legal authority in the EU. It does so by identifying certain competences which are constitutionally exercised by member states, others that are exclusive to the EU institutions, and a third category that are shared, thus moving the EU toward a federal order by some accounts (Føllesdal, 2003). This kind of constitutional allocation of competences worries some theorists, because it may be a somewhat premature step for the EU. Such lists may also hinder multilevel cooperation and flexibility. On the other hand, a list of competences of this kind is often thought to prevent the dual risks facing federal orders: namely, creeping centralization and fragmentation (Dehousse, 1994; Abromeit, 1998; Moravcsik, 1998b; Swenden, 2004).

A central topic of concern, therefore, relates to the values and objectives of the EU. In Article 2, the Constitutional Treaty identifies the central values of the EU, including 'respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.' Article 3 goes on to identify the objectives of the EU, including the promotion of peace, its values and 'the well-being of its peoples'. It shall also 'promote social justice and protection', 'economic, social and territorial cohesion, and solidarity among Member States' – at the same time respecting Europe's 'rich cultural and linguistic diversity'. There is a great deal of recent work by normative theorists discussing these values. Some of the objectives are old yet contested. For instance, the 1952 European Coal and Steel Community sought to provide assurances that former enemies would henceforth share the ends of mutual prosperity and peace (Schuman, 1950). While European integration has no doubt promoted economic growth, some suggest that the EU was not necessary for peace in Europe, since it is often said

that democracies do not go to war with each other. Nevertheless, European integration may have served to hasten and stabilize democratization and human rights compliance in Europe.

Other important objectives are more controversial. Some suggest that Europeans must cooperate to provide a counterforce to US military hegemony, or to secure the welfare systems characteristic of European states (Habermas and Derrida, 2003). Yet the efficacy of common decisionmaking among Europeans seems insufficient for the former, and may be unnecessary for the latter. Fritz Scharpf argues that while the mode of current decisionmaking in the EU may have increased the troubles of domestic welfare systems, the solution may actually be to allow greater member state independence (Scharpf, 1999, 27).

One reason for the scholarly attention that has been given to these values and objectives is the perception that they must be shared by citizens. Many note that citizens of multinational federal orders need a shared 'overarching loyalty' if the multilevel order is to remain stable. (Simeon and Conway, 2001; Stepan, 1999, 33). The content of such a shared loyalty remains contested, as seen in recent discussions over Turkey's membership application. Who should members of this political community be? Who are the Europeans? And what normative commitments should unite them? Much of the normative discussion in the literature concerns how European institutions should distribute benefits and obligations among Europeans, and how such decisions should be made (Bellamy, 1999). Several contributions to this literature have addressed whether Europeans must share some commitment towards the establishment of European-level welfare arrangements in order to maintain trust across the EU. David Miller, for example, argues that welfare arrangements can only be maintained among individuals who share a nationality and a culture, thereby denying the prospect of such a development in Europe (Miller, 1995; see Føllesdal, 2000). Others hold that a shared 'thin' political culture, based on commitment to the values of the constitution, may suffice (Habermas, 1992). Continued support for common arrangements only requires a 'civic demos', created by carefully crafted institutions, argues Fritz Scharpf (1997, 20). Such views raise crucial issues of institutional design: how to create self-sustaining institutions that will work both in the short run, with low levels of trust, and that will also promote trust in the longer term (Zürn, 2000).

Federal political orders often exhibit a conflict between the ideals of equality, on the one hand, and political autonomy, on the other. Individuals in different sub-units often enjoy systematically different standards of living, partly as result of the political powers enjoyed by these sub-units. Yet one of the objectives of the EU is social justice; another is the promotion of economic cohesion and solidarity among member states. Thus the present commitment to regional funds and agricultural subsidies, 'demonstrating consistency and solidarity ... between the Member States and between their peoples' (Treaty on European Union, 1997, Article 1) is challenged by the enlargement process. A

commitment to equalize living standards would entail politically unacceptable costs, since the GNP per capita of the new member states is well below the EU average. Can such degrees of economic inequality be defended, as consistent with respect for the equal dignity of all European citizens? Much recent political philosophy has focused on distributive principles which apply to unitary states with a central sovereign (symptomatically see Rawls, 1993, xxii). While normative political theories of federal justice are scarce, they have, all the same, a long and distinguished pedigree (see Althusius, [1603–14] 1995; Hamilton *et al.*, [1787–88] 1961; Elazar, 1987; Norman, 1994; Kymlicka, 1995; Choudhry, 2001; Føllesdal, 1997 and 2001).

An important normative challenge relates to the pluralism of values, institutions and political cultures in Europe. Firstly, there are multiple conceptions of value and many different views about the good life among the European citizenry. Acceptance of such pluralism, within limits, seems highly appropriate for a 'European' theory of normative legitimacy (Rawls, 1993). Secondly, member states have diverse institutions providing different solutions to somewhat similar problems, shaping individuals' expectations and life plans in ways that cause conflict when seeking European-wide consolidation (Scharpf, 1997).

Partly to accommodate such diversity, the allocation and use of competences is to be guided by the subsidiarity principle, which implies that the burden of argument is on those seeking to centralize decisions. In the current Treaty, subsidiarity requires that:

the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (Article 9)

Unfortunately, the concept is fairly vague and contested (Streeck, 1996). There remain many unanswered questions. For example: Should subsidiarity also be used to allocate competences between the EU and the member states, and among regions and municipalities? Who should judge when common action is required? And how is this presumption against centralization best justified?

Another safeguard of diversity is human rights, as included in the Charter on Fundamental Rights in the 2004 Constitutional Treaty. Some scholars hold constitutionalized human rights to be a necessary condition for an acceptable political order (MacCormick, 1999). Others are wary of substantive constitutional constraints on 'unconstrained political debates' concerning norms and requirements (Dryzek, 1990). Democratic attempts at reaching compromises should only be secured by procedural constraints that 'allow individuals to fight for their rights themselves' (Bellamy, 1995 and 1999). In addition to this classical discussion, other normative issues are peculiar

to the EU and other multilevel political orders. Human rights do not only constrain governments vis-à-vis their own citizens and toward other sovereign states: some human rights norms also regulate relations among the member states, holding them in some cases to higher standards. The need to enhance trustworthiness may necessitate human rights constraints of this kind.

Some clarification as to which democratic institutions in the EU are normatively acceptable is required, if for no other reason than such vague and contested terms as 'democracy' may otherwise be misapplied and lend support to reforms on false grounds (Schmitter, 2000). Schmitter thus recommends reforms, rather than revolutions, in seeking to enhance democratic control over EU-level decisions. Some authors hold that individual autonomy should be secured, based on the assumption that self-determination is a fundamental human good. This implies that the EU must be a freedom-enabling order, providing citizens with opportunities for active participation in shaping and sustaining their institutions (MacCormick, 1999, 164). Others hold that self-determination is a contested ideal, hence unsuited to use as a common normative basis. Several authors focus on the interest of individuals in ensuring security against interference and being subject to the arbitrary will of others (Pettit, 1997; Bellamy, 1999; Abromeit, 1998). Others argue that institutions should foster political involvement, both because it is required if the political order is to remain just, and to foster an appropriate human nature (Bellamy, 1999).

The Constitutional Treaty secures a variety of liberties that are considered to be worth protecting and promoting. Lynn Dobson (2004) identifies at least three conceptions: non-interference, non-domination, and enhanced capability sets. The Constitutional Treaty may secure autonomy, in the sense of non-interference through the use of human rights constraints, widely dispersed veto points and low thresholds for blocking coalitions, and the application of the subsidiarity principle. Non-domination, in the sense of freedom from potentially arbitrary interference, is achieved through the separation, checking and mixing of institutional powers, such as through the watchdog function of national parliaments. EU action promotes the capabilities of individuals by developing shared objectives on the basis of qualified majority decisionmaking and effective parliamentary majoritarianism. Discrepancies between citizens' liberties and those of their governments require further analysis, as does the question of immunity for the 'internal affairs' of member states. Difficult trade-offs also remain between various kinds of liberty.

One topic that has received a great deal of attention is the place of deliberation in the European political order. One controversial issue is how public political deliberation affects citizens' basic preferences, as compared to other inputs on character formation, such as the civilizing impact of hypocrisy (see Femia, 1996; Przeworski, 1998; Elster, 1998). Further methodological challenges arise in trying to disentangle processes that occur while parties are talking: when are they *arguing*, and when are they *bargaining*? Arguing is 'intrinsically connected

to reason, in the sense that anyone who engages in argument must appeal to impartial values' (Elster, 1998, 6). By contrast, bargaining involves, in pure cases, processes where '[t]he outcome is determined by the bargaining mechanism and the bargaining power of the parties – that is, the resources that enable them to make credible threats and promises' (Elster, 1998, 6). Yet Elster goes on to acknowledge that arguing may also involve matters of fact (Elster, 1998, 7). Moreover, preference changes that arise from arguments may be changes in ultimate ends or changes in policy choices, with the latter being based on better information. In other words, some value deliberations affect individuals' ultimate ends, whereas others allow individuals to get a better understanding of possible alternatives and coalitions, resulting in more accurate probabilities and value estimates of outcomes (Przeworski, 1998). Many contributors to negotiation theory use 'bargaining' to cover the latter of these two, in the sense of the 'integrative bargaining' of 'Getting to Yes' (Fisher and Ury, 1987). How do we tell the difference between these processes? It is certainly difficult to infer from observed changes to policy preferences whether what has occurred is a modification of ultimate objectives – which is the main claim of some deliberative democrats – or a consequence of bargaining in the broadest sense. In either case it remains to be seen whether such shifts are normatively better, or simply contribute to the advantage of the group.

Another important concern is whether this kind of preference-transforming discussion should primarily take place within institutions that possess authority, or within 'civil society' (for the former, see Nino, 1996; and Weithman, 1995; on the latter, see Dryzek, 1996). It would seem that the impact of deliberation on interest formation rests on assumptions that are less plausible at the European level than at the national. The opacity of European institutions, the lack of a well-developed European public space, and the absence of European political parties, reduce the opportunities for character formation, and limit the informational bases and range of political choice. However, there is little reason to believe that these features are permanent: such pessimism would seem premature.

Note, however, that these considerations do not provide strong arguments that decisions in general should be taken in deliberating bodies, or that more deliberation among a greater number of individuals is always better, since a group may collude against others in what may appear to be deliberation. Nor does the need for preference modification require that we rank deliberation over preference aggregation: in other words, preference formation and other tasks of deliberation do not replace or compete against voting. We can be concerned with deliberation and at the same time be aware of the need for 'post-deliberative democracy'.

Many authors have argued that EU bodies should be democratized. The slow increase of powers to the European Parliament has served to reduce the democratic deficit, especially insofar as it allows directly elected representatives to codetermine legislation and to hold the Commission accountable (see

recommendations in Lodge 1994; Wessels and Diedrichs, 1999; Lodge, 1996). However, these measures are contested. Some authors argue that the democratization of the EU must empower local democratic governance (Landy and Teles, 2001). Others even argue that the EU should maintain its democratic deficit (Gustavsson, 1997).

It is not obvious that majoritarian decisionmaking is appropriate, when segments of the population risk finding themselves in a permanent minority, especially if the majority cannot be trusted to consider the impact of decisions on minorities. The principle of one-person-one-vote may not be appropriate under such circumstances. Hence, the appropriate modes of securing responsive and accountable rule within federal and other multilevel orders for 'plural' societies, have received some scrutiny (Lijphart, 1999; Barry, 1991; Føllesdal, 1997). The heated discussions on the construction of the qualified majority vote in the Constitutional Treaty underscores the importance of voting rules both in allowing for effective decisionmaking and in protecting minorities against being overruled on a regular basis.

Some have argued that the EU must go beyond democratic institutions and instead rely to a greater extent on informal, non-hierarchical networks or independent bodies. There are many good reasons for including affected parties in deliberations or decisions, including the need to prevent domination. Considerations of autonomy and socialization are also relevant here. Yet there remain important and interesting differences among scholars about which arenas are best suited for participation. Some claim that comitology and networks, suitably modified, would enhance the legitimacy of EU decisionmaking. Christian Joerges, for example, argues that comitology can be a forum for 'deliberative politics' (Joerges, 1999, 311), and that this perspective might diminish concerns that comitology is illegitimate (Vos, 1999; Abromeit, 1998).

It remains to be determined under what circumstances observed preference modifications can be explained by shifts in expected payoffs, or, indeed, in ultimate objectives. It is also important to determine the risk of collusion. Such risks may be greatly reduced by constraining comitology. This can be achieved by involving other institutions, such as the European Parliament, to a greater extent.

Others hold that institutionalized networks provide good opportunities for participation, and that this enhances legitimacy (Héritier, 1999). These may be among the many sites where private and public bodies are able to meet to deliberate over solutions to conflicts (Bellamy, 1999). However, institutionalist issues relating to trustworthiness reappear at this point: how realistic is it that such networks will remain open, and not be skewed against emerging new points of view, preventing equal access to the agenda?

Some commentators hold that associations in civil society play an important role in correcting skewed representation, by providing information and socializing citizens (Cohen and Rogers, 1995; Hirst, 1994). It seems that many

of these kinds of arguments are best seen as supplements or corrections to representative democratic channels however – not least because they appear to require the mediation of public power in order to correct what would otherwise be the skewed composition of associations.

Some authors criticize the hierarchical form of structure that ‘inevitably fosters distorted communication and communicative rationality’ (Dryzek, 1990, 141). Instead of focussing on traditional democratic institutions, these authors favour civil society arrangements stretching beyond public power, to involve informal mass movements, so as to avoid political influence and cooptation (Dryzek, 1990, 1996). To some extent these efforts at democratization within civil society and beyond the state are thought of as alternatives to representative democracy, whose current instantiations hardly merit the use of the word ‘democratic’.

There is good reason to promote a civil society where policies and preferences can be openly debated and modified, contributing to fair solutions, consonant with the common good and minimizing the skewing effects of formal power. Such reasons include preference formation, autonomy, learning, and the fostering of a sense of inclusion, as is argued by a large number of democratic theorists, none of whom have been solely concerned with democracy as interest aggregation (Mill, [1861] 1958; Schattschneider, 1960; Schumpeter, [1943] 1976; Key Jr., 1961, 449; Riker, 2003, 172). These innovators hold that democratic arrangements should be replaced (Dryzek, 1990; Eriksen, 2000, 44). Other more cautious commentators explore how these networks may supplement competitive elections and other traditional institutional staples of democracy, and how these arenas may be maintained, undistorted, over time (Femia, 1996; Goodin, 1993).

Other authors have insisted on the need for political decisions, but have doubted the necessity of democratic accountability. Thus, Majone has defended the role of independent agencies, such as central banks, as non-majoritarian, non-democratic mechanisms for trust-building (Majone, 1994). Such mechanisms are legitimate on grounds of effectiveness, and because they are more responsive to diffuse interests (Majone, 1998b; see Magnette, 2000). Majone is correct that some decisions should be insulated from majoritarian political bodies, for reasons of trustworthiness. Yet citizens may also need evidence that these institutions reliably pursue the general interest, diffuse or otherwise. On closer scrutiny, it is also clear that Majone defends such agencies only when they are subject to various checks (Majone, 1998a). Thus, again, the suggestion is that representative democracy should not be replaced, but that bodies can be included in the system as long as they, in turn, are controlled by democratic bodies.

conclusion

The diagnosis of an EU ‘legitimacy deficit’ covers a broad range of symptoms and prescriptions. While both pessimism and optimism is premature, there

seem to be good reasons for scrutinizing alternative strategies for enhancing the transparency, responsiveness and fairness of EU institutions, with an eye to how they can be justified before all citizens. The Constitutional Treaty of 2004 provides much in the way of constructive suggestions in this regard (Dobson and Føllesdal, 2004).

Legitimacy deficits are not, however, merely a matter of public opinion polls registering low levels of political support for institutions, policies and authorities. Legitimacy is about whether citizens have trust in the future compliance of other citizens and authorities with institutions they believe to be normatively deserving of obedience. Indeed, trustworthiness seems crucial for the long-term support of the EU's multilevel political order, and for the authorities' ability to govern. Normative political theory may thus contribute decisively in promoting the long-term stability of the system. '[I]n so far as political philosophy does seek to persuade members of a system of the existence of a verifiable objective common good, it does serve with respect to its possible political consequences, as a response that may aid in the growth of diffuse support' (Easton, 1965, 319, fn 3).

However, normative political theory is double-edged. If theorists were to find that there is no common good for Europe, or that the present regime or particular institutions fail to secure these objectives and values to a reasonable extent, what diffuse support there was may corrode even further. The regime may then lack the moral right to obedience. Normative political theory may bring that out into the open, adding pressure to the need for regime reform, rather than ensuring popular acquiescence to a political order that fails to respect all as equals.

notes

1. German Constitutional Court, 1993, 'Brunner v European Union Treaty' *BVerfGE*, 89: 155 .
2. Such findings must consider that reduced confidence in parliaments, parties and the legal systems seems to be a general trend across established democracies – see (Norris 1999a).
3. For other typologies, see Jachtenfuchs *et al.*, (1998), Beetham (1991), Beetham and Lord (1998), Lord and Magnette (2004), Höreth (1999), and, of course, Easton (1965).
4. I draw in part on the helpful tripartite distinction of Easton (1965), fruitfully expanded by Norris (1999b) and Dalton (1999) who use it for the concept of political support, which is close to but different from the notion of 'social legitimacy'.
5. See Easton (1965) for this discussion. See Luhman (1969) for similar approach: legitimacy as generalised willingness to obey.
6. For such distinctions and their consequences. See, for example Weale (1999, 20) and Pogge (2002).
7. I here modify Margaret Levi's model of contingent consent (Levi 1998a, chapter 2).

8. See Sen (1967), Taylor (1987), Elster (1989b, 187), Ostrom (1991), Scharpf (1997), Rothstein (1998) (Levi 1998b). Recent normative contributions addressing the standards of normative legitimacy on the explicit assumption of such contingent compliance include Rawls (1971), Thompson and Gutmann (1996, 72–3), Miller (2000).
9. Margaret Levi calls this ‘ethical reciprocity’, ‘a norm requiring that individuals in a given population cooperate with government demands but only as long as others are also contributing’ (1998b, 24–5).