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Survey Article: The Legitimacy Deficits of the European Union*

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THE legitimacy of the European Union has become a popular academic and political issue, stimulating debate about alleged symptoms, diagnosis and prescriptions. This review presents some of the central approaches and research issues, as well as an account of legitimacy that accommodates several but not all contributions.

The 'normative turn in EU studies' has tended to address how the European level institutions should be governed.[1] This subject gained political salience largely in response to the contentious Maastricht Treaty ratification process, sketched in Section I. Popular and legal conflicts strengthened the claims of politicians and scholars that the European Union suffered from a 'legitimacy deficit' that has yet to be resolved. Section II dissolves this apparent consensus by exploring experts' different choices of symptoms, diagnosis and prescriptions regarding this deficit. Section III provides a taxonomy of concepts of legitimacy, institutional mechanisms of legitimation and objects of legitimacy. Section IV perhaps over-ambitiously seeks to combine several of these disjointed insights into a somewhat unified perspective. It incorporates empirical concepts of legitimacy as compliance in an account of citizens' political obligation to obey normatively legitimate political orders. On this account, a normative duty to obey political commands requires firstly, that the commands, rulers and regime are normatively legitimate, and secondly, that citizens also have reason to trust in the future compliance of other citizens and authorities with such commands and regimes. To merit obedience, institutions must thus address the assurance problems faced by 'conditional compliers' under complex structures of interdependence. I suggest that this perspective helps address some – though not all – of the central tensions between empirical and normative concepts of legitimacy, and the conflicts between problem solving efficiency and democratic accountability.

[1]Bellamy and Castiglione 2003.

I. THE MAASTRICHT TREATY:
THE END OF POPULAR AND LEGAL CONSENSUS

Member state governments had long pursued European integration on the presumption of a 'permissive consensus' by the public towards deeper cooperation, a few influential contributions to normative political theory notwithstanding.[2] Negative responses to the Treaty on European Union agreed in Maastricht 1991 questioned this presumption of broad consent and raised concerns about the legitimacy of European integration among both politicians and scholars. It became clear to all that popular and legal challenges to the treaty threatened future integration and enlargement.

Referenda on the Maastricht Treaty in Denmark and France caused wide ranging public debate and elite dissent concerning the proper ends and institutions of the European Communities. The treaty was rejected at a Danish referendum 51% to 49% in 1992, only to be accepted a year later when changed to allow Denmark the right to opt out of the single currency. In France the Treaty created serious cleavages within political parties, and barely passed in a referendum 51% to 49%. The UK House of Commons passed the treaty only with great difficulty in 1993.

This politicisation of the integration process, together with falling popular support for European integration and lower participation rates in European Parliament elections, made governments aware that they must henceforth pay much closer attention to public opinion and opposition elites.

In Germany and Denmark the Treaty ratification was also challenged on legal grounds. The German Constitutional Court found the treaty compatible with the constitution, but it insisted on its right to protect fundamental rights, and its right to review whether European institutions acted within their limits. These requirements ran counter to the European Court's claim to have sole competence to ascertain the legality of European institutions. The Constitutional Court also insisted that powers of the Bundestag could not be transferred without limits, nor could it be left to the Union to decide whether such transfers were necessary for fulfilling its aims, as Art. 235 would allow. Moreover, transfers of powers were not to reduce citizens' democratic influence over the state's authority. The influence of the Member States' people must continue to be secured, either via national parliaments or by increasing European Parliament influence on European Community politics.[3]

The Danish Supreme Court found the Maastricht Treaty compatible with the Danish Constitution insofar as transfer of sovereign powers only occurred to a determinate and limited extent. The Supreme Court accepted further expansion of authority required for the objectives of the Union since that would require

[2]Scharpf 1988. Smith 1991. Majone 1990, Mancini 1991. Weiler 1991.
[3]German Constitutional Court 1993. For critical discussion, cf. Wallace 1993; MacCormick 1994; Weiler 1995a; 1999; Abromeit 1998, pp. 19–23.

unanimous consent of the Council, hence be avoidable by the Danish government. The Supreme Court also insisted that Danish courts retain the authority to determine the constitutionality and hence applicability in Denmark of EC laws, regardless of the findings by the European Court of Justice.[4]

II. LEGITIMACY DEFICIT? SYMPTOMS, DIAGNOSES AND CURES

Many governments and EU officials have interpreted events to mean that the legitimacy of the EU was at stake. Politicians gradually came to fear that Europeans might refuse to accept future steps toward deeper European integration, and otherwise hamper governability. The recent Convention on the Future of Europe was in part a response to these fears, to pre-empt such scenarios and bolster future popular support. Yet scholars disagree strongly about the symptoms, diagnoses and prognosis for addressing whatever legitimacy deficit there might be.

Alleged symptoms of a legitimacy deficit include both empirical findings regarding popular attitudes toward the EU and normative assessments of its institutions. The symptoms include: Eurobarometer data on support for the existence of the European Community and of one's own country membership in it;[5] World Values Survey data showing mistrust of other Europeans;[6] reported mistrust of EU institutions;[7] 'variable implementation' or non-compliance with Union directives; Top Decision-Makers Survey findings of disparities between elite and public support for membership;[8] declining voter turnout for European Parliament elections;[9] and a lack of parliamentary control of executive bodies at the EU level, especially since any government representative has been able to be outvoted by a qualified majority in the Council since the 1986 Single European Act.

Rodney Barker has noted that in general, a third strand of research on legitimacy tries to combine these empirical and normative approaches.[10] This approach is applied to the EU in the systematic and thorough analysis by Christopher Lord and David Beetham. They argue that the same normative standards of legitimacy we know from liberal democratic states should also apply to the EU, its complexity notwithstanding.[11] The EU has clearly fallen short of these standards such as voter accountability and prominent human rights safeguards. And dilemmas between such values as efficiency and accountability

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[4]Dansk Højesteret 1998.

[5]For a perceptive analysis, cf. Karlsson 2001.

[6]Fuchs and Klingemann 1999, Nicolaidis 2001.

[7]Again, such findings must consider the fact that reduced confidence in parliaments, parties and the legal systems seems to be a general trend across established democracies; cf. Norris 1999a.

[8]See discussion in Hylland (1990, p. 118).

[9]Jacobs, Corbett and Shackleton 1995, discussed in Sbragia (1999).

[10]Barker 2001, p. 8.

[11]Lord and Beetham 2001.

will not be removed but can at best be displaced. Barker also posits a fourth perspective: the self-legitimation by governments who make claims to authority addressed as much to themselves as to others, that they are justified in their rule. According to this perspective, a legitimation deficit arises because the government of the EU—such as the Commission—legitimates itself inwardly in ways that cannot be sustained externally toward its subjects, with such features as unaccountability and secrecy.[12]

These diagnoses of a legitimacy deficit have been contested. Some question the symptoms. Public opinion polls showed falling support for European integration in the 1990s, but public opinion is still highly in favour of European integration. Scholars also point out that politicians are losing political support across advanced industrial democracies.[13] Relatively low and falling voting at European Parliament elections should not surprise, since political parties tend to focus on domestic issues and national elections, leading the public to regard European issues and European elections as 'second-order' with less salience than national elections. National political party elites even seem to collude to suppress debates about European level choices of policy and institutions, to avoid internal splits on the divisive issues of European integration.[14]

Some scholars argue that the EU does not suffer from a legitimacy deficit, democratic or otherwise.[15] Others deny that there is a legitimacy crisis, but only the perception of one.[16] Even those who believe there is a legitimacy crisis diverge regarding the specific diagnoses. Some point to the lack of procedural 'input' legitimation due to citizens' lack of influence and control. Others may lament the lack of 'output' legitimation due to mismatches between citizens' preferences and politicians' delivery; or the lack of political party articulation and contestation of central EU-level policies and matters of institutional design.[17] Still others hold that one of the main problems is that European integration creates a legitimacy deficit within Member States who are no longer permitted or able to meet popular demands.[18]

Some analysts are optimistic concerning the prognosis. Some warn against fixing something that 'ain't broke;'[19] others recommend *keeping* the democratic deficit;[20] while still others hold that only a European superstate can solve the democratic deficit.[21] Some trust alleged sightings of legitimising deliberation in 'Comitology', while others worry about these extremely complex procedures for executing secondary legislation by committees of the European Commission

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[12]Barker 2001, pp. 13, 31, 64.
[13]Dalton 1999.
[14]Van der Eijk and Franklin 1996.
[15]Moravcsik 2002, Majone 1998a. But cf. Føllesdal and Hix 2005.
[16]Banchoff and Smith 1999, p. 3.
[17]Van der Eijk and Franklin 1996. Føllesdal and Hix 2005.
[18]Scharpf 1999.
[19]Weiler 2001.
[20]Gustavsson 1997.
[21]Sieberson 2004.

where Member States are represented.[22] Others recommend that the EU focus on its role as a 'regulatory state', whose non-democratic independence bolsters the credibility of member states.[23] Still others fear that lack of common language, media or public discussions among the European citizenry without a shared identity or functioning political parties are crucial flaws, but disagree on the prospects of speedy improvements.[24]

No wonder that reflective scholars—not to mention politicians and civil servants—disagree about prescribed medications, such as further arenas of normatively salient deliberation, a written Constitution simplifying the structures of decision-making, a strengthened legal standing for the Charter on Fundamental Rights, more Member State discretion through the Open Method of Coordination and a more efficient Commission securing the European interest over the conflicting national interests. Some suggest strengthening the European Parliament; others seek a stronger role for national parliaments.[25] Unfortunately, different concepts of legitimacy support different, mutually incompatible prescriptions and proscriptions about institutional arrangements for legitimation.

III. CONCEPTS, MEANS AND OBJECTS OF LEGITIMACY AND LEGITIMATION

The label 'legitimacy deficit' covers a broad range of issues, giving rise to different taxonomies.[26] The literature seems to use four different fundamental *concepts* of what legitimacy is about, or at least four institutional *means* of legitimation for expressing or achieving such legitimacy, regarding at least six different *objects* of legitimacy at varying levels of generality.

A. Legitimacy as Legality

Until recently, questions regarding the legitimacy of the European Union were largely an issue of pedigree to be resolved by pointing to its legality. States have created the European Union according to all legal requirements.[27] Democratic member states have revocably transferred limited parts of their sovereignty by treaty, forming a de facto European constitutional order in order to better achieve their goals by coordinated action. The ruling of the German Constitutional Court on the legality of the Maastricht Treaty explored and

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[22]Joerges 1999 and Wessels 1999, respectively.
[23]Majone 1998a.
[24]Grimm 1995, Abromeit 1998, p. 32. Habermas [1995] 1998.
[25]Neunreither 1994. On the other hand, Falkner and Nentwich (1995) warn against allowing national parliaments to control votes of ministers in Council of ministers.
[26]For other typologies, compare: Easton 1965; Beetham 1991; Laffan 1996; Jachtenfuchs, Diez, and Jung 1998; Beetham and Lord 1998; Höreth 1999; Barker 2001; Lord and Magnette 2004.
[27]Weiler 1991, Wallace 1993, Lenaerts and Desomer 2002.

accepted this account, at least within limits. The Union's authority is *illegitimate* when such limits are surpassed.[28]

B. Legitimacy as Compliance

The relationship between compliance and legitimacy is complex. Some may regard compliance not as a concept of legitimacy, but rather as a consequence of perceived legitimacy. On this view, non-compliance is only an indicator that the EU is not regarded as legitimate. Others hold that actual participation in EU arenas of decision-making and compliance with agreements amounts to recognising it as legitimate.[29] Surely compliance in the form of acquiescence may also stem from apathy, cynicism or fear.[30] Yet there is a sense of *social* legitimacy as general compliance that seems close to Weber's account: 'the mores sanctified through the unimaginably ancient recognition and habitual orientation to conform'.[31] And one main reason authorities are concerned about the alleged legitimacy deficit is no doubt nothing more than a fear of non-compliance with EU regulations and implementation by other member state governments or by citizens. These fears may seem overdrawn, given the broad social acceptance of European integration and the EU political system. Even though 'permissive consensus' is a thing of the past, current compliance does not seem to be affected as a result. Yet this acceptance varies and seems to decrease over time, reflecting circumstances and events. Active disobedience might not occur until politically relevant groups mobilise.[32] Still, politicians may understandably want to reduce the risk of populations turning down treaties, or refusing to comply.

C. Legitimacy as Problem-Solving

The EU's legitimacy is sometimes seen as a matter of whether it identifies and implements solutions that actually secure certain otherwise unattainable goals. Groups, organisations and member states must first explore, identify and finally agree to options that benefit them all, and the EU must then secure these hitherto out of reach options.[33] This concept of legitimacy as problem solving requires that preferred joint outcomes can only be obtained with the problem-solving capacity of the EU, and they are in fact so identified, decided on and secured. Such objectives may range from economic growth to peace in Europe, human rights compliance and a sustainable environment. The EU suffers from a lack of

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[28]Beetham and Lord 1998, p. 4.
[29]Banchoff and Smith 1999, p. 2.
[30]Abromeit 1998.
[31]Weber [1948] 1972, pp. 78–9.
[32]Easton 1965.
[33]Michelman 2000. Waldron 1987. Rawls 1993. Cf. Føllesdal 1998; Lehning 1997; Banchoff and Smith 1999.

such legitimacy when it obviously fails to find and implement solutions to common problems.

D. Legitimacy as Justifiability

Normative concepts of legitimacy are now often expressed in terms of *justifiability among political equals*, for instance by appeals to hypothetical acceptance or consent. The legitimacy of a political order such as the EU is seen as an issue of whether affected parties *would have* or *could have* accepted it, under appropriate choice conditions.[34] 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'.[35]

We may thus say 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* insofar as subjects actually abide by them and are so disposed. Finally, they 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 take various forms of *normative legitimacy* to be fundamental, and sometimes overlook the other aspects at their peril.[36] Theorists will disagree about whether to accept all four concepts of legitimacy, or whether social legitimacy, for example, is the primary indicator of normative legitimacy. Still, the three other concepts of legitimacy seem normatively relevant. They are interrelated, often compatible, and they can be mutually re-enforcing. *Legal legitimacy* in the form of constitutionalism and the rule of law is often regarded as a necessary condition of the justifiability of a political order. On its own, *general compliance* is insufficient for normative legitimacy, since people may comply with unjust rule solely out of fear of sanctions, lack of alternatives or unreflective habit. Yet compliance often requires that the population believe that the institutions are *normatively* legitimate:

> There may be many reasons why obedience or compliance is forthcoming. Members of a system may accept a decision out of fear, expediency, habit, or lethargy. But typically, in political systems, at least in those in which the political authorities are not being fundamentally challenged, the capacity of the authorities to rule is closely connected to the presence of an ingrained belief, usually transmitted across the generations in the socialization processes, that the occupants of the political authority roles have a right to command and the other members of the system a duty to obey. The major source of power for these roles resides in the prevalence of the conviction of their legitimacy.[37]

[35]Choudhry 2001, p. 383.
[36]For instance, Parkinson (2003) suggests how a broader perspective resolves some problems internal to 'deliberative' democracy.
[37]Easton 1965, pp. 207–8, cf. Beetham and Lord 1998, p. 10.

Simple rules and procedures may make it easier to determine legality, compliance and justifiability.[38] 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'.[39]

These four concepts of legitimacy may focus on somewhat different aspects of institutional arrangements that serve to secure legitimacy. Several of these arrangements grant *legitimation* to authorities by means of express consent, affirmation or recognition by their subordinates or other legitimate authorities.[40]

E. LEGITIMATION THROUGH PARTICIPATION

The legitimacy of the EU is said to increase by including citizens, interest groups or experts in the decision process: 'Interest group and expert democracy may be regarded as direct participation, hence legitimate'.[41] Citizens might be drawn into political decisions at various stages, and may participate directly in referenda.[42] Participation may certainly boost compliance, especially if the parties consulted can bind their members in forms of network governance.[43]

F. LEGITIMATION THROUGH DEMOCRATIC RULE

One important form of participation is representative democracy, where citizens hold rulers accountable for their use of public power by selecting among competing candidate parties on the basis of informed discussion of their relative merits and the objectives to be pursued.[44] The democratic character of domestic political rule is regarded as central to legitimation and legitimacy across Europe—and, some hold, globally.[45] Indeed, so central is democratic rule that Koen Lenaerts and Marlies Desomer hold that 'the notions legitimacy and democratic legitimacy must be considered as interchangeable' for the purpose of an analysis of EU constitution making.[46]

Prominent criticisms of the EU have held that these democratic measures are underdeveloped, preventing member state governments and parliaments from democratic control. The increased power of the European Parliament granted in the Constitutional Treaty may enhance such legitimacy on the basis of European elections among competing Europarties. Democratic arrangements may also

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[38]Magnette 2001.
[39]Dehousse 1999.
[40]cf. Beetham 1991.
[41]Andersen and Burns 1996, p. 245; cf. Banchoff and Smith 1999, p. 11.
[42]Abromeit 1998.
[43]Kohler-Koch and Eising 1999.
[44]Cf. Weiler and Mayer (1995) for a thorough exposition of the democratic deficits of the EU.
[45]Norris 1999a.
[46]Lenaerts and Desomer 2002.

generate compliance partly because citizens see that 'that their interests have been explicitly consulted, and that there are opportunities for re-opening the debate in the future'.[47]

G. Legitimation through Actual Consent

Some writers place great importance on institutional arrangements where the subordinates and other authorities expressly grant consent or affirm the authorities as legitimate, and where other legitimate authorities expressly recognise them.[48] Some normative theories in the discourse ethics tradition seem to hold that the actual acceptance of a normative justification is required for normative legitimacy.[49] Others, such as David Beetham and Christopher Lord hold that ' "consent" is almost wholly subsumed in the *authorisation* of government through the electoral process. Where the governed themselves decide who is to govern them, there is no further need of actions or ceremonies expressive of their consent beyond the electoral procedure for appointment to office'.[50] This focus may be typical of normative concepts of legitimacy or legitimation, for instance because actual consent indicates that the interests of all are secured, but may well also be desirable for problem solving when parties collectively bind themselves to certain options.

H. Legitimation through Output

The problem solving or 'output' legitimation of the EU firstly requires that organisations and member states explore, identify and finally agree to options that benefit them all.[51] The Union must then go on to actually secure these options, achieving objectives that have been hitherto out of reach.[52] Central mechanisms to achieve this are the ability to create de facto binding and sanctioned law, and the ability to make credible commitments through regulatory agencies. The common currency prevents unilateral exchange rate adjustments, and an independent central bank can bolster the credibility of member states' commitment to sound monetary policies.[53] These arrangements bind member states and enforce compliance, preventing the free riding that often threatens cooperative arrangements.[54] EU decision-making is also said to allow diffuse constituents such as consumers to pursue their interests in ways that are otherwise prohibitively difficult.[55]

[47]Bellamy 1995, p. 167; Mill [1861] 1958; Manin 1987, p. 352.
[48]Beetham 1991.
[49]Habermas 1979, p. 200; McCarthy 1994, p. 46.
[50]Beetham and Lord 1998, p. 8.
[51]Jachtenfuchs 1995, Karlsson 2001, p. 273.
[52]Banchoff and Smith 1999.
[53]Majone 1998b.
[54]Beetham and Lord 1998. Scharpf 1999.
[55]Majone 1998b, pp. 22–3.

I. SIX OBJECTS OF LEGITIMACY

The various discussions of legitimacy, legitimation and the EU turn out to
address different objects or institutional levels, where the different concepts
and institutional arrangements clearly apply better to some levels than others.[56]

Discussions May Concern

– a particular political *decision* such as a policy or piece of legislation.
  Questions of their legitimacy typically concern their legality—whether they
  have been enacted by duly authorised officials—and possibly whether
  affected parties have otherwise *participated* or given *actual consent.*
– the *authorities* or political actors: officeholders, a particular government or
  set of representatives. Their legitimacy is mainly an issue of legitimation:
  whether they have been legitimated through *democratic* elections, delegation
  or other rightful sources of authority. Their problem-solving effectiveness
  may also be at stake.[57]
– particular *public institutions* such as the European Central Bank. Challenges
  to their legitimacy might be of all four kinds. Their social legitimacy in the
  form of compliance may be explored systematically;[58] others may challenge
  whether they were legally established or whether they achieve their stated
  objectives; and finally one may ask whether they and their objectives are
  normatively justifiable.
– the *regime* or the political order as a whole. Questions about its legitimacy
  can again be of the four different kinds. The concern may be about general
  compliance with the rules and authorities or the consistency of procedural
  norms and authority structures that constitute the formal and informal rules
  of the game. Another central issue is of course the *problem-solving* ability of
  the system, where empirical evidence must indicate whether the EU can
  actually obtain the objectives stated in the treaties, and whether it actually
  does so reasonably well. Finally, we may be asking whether the regime *can
  be justified* to those subject to it.
– the regime *principles*. These would be questions about the legitimacy of
  certain objectives and ideals of the EU, such as general welfare, participation
  and the rule of law, and the scope of decisions and division of powers between
  the institutions.[59] Should, for instance, the aims of the EU include social
  policies? The central issues here seem to be matters of normative and
  problem-solving legitimacy. *Legality* is also at stake, at least in the sense that

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[56]I draw in part on the helpful tripartite distinction of Easton (1965), fruitfully expanded by
Norris (1999a) and Dalton (1999), who use it for the concept of political support, which is close to
but different from the notion of 'social legitimacy'.

[57]Barker (2001, p. 32) holds that claims of legitimation mainly tend to concern such persons or
role holders—including both rulers and citizens—not systems, or regimes.

[58]cf. Schmitt and Thomassen 1999, ch. 4.

[59]cf. ibid., ch. 3.

the member states' constitutions may restrict the powers of Union bodies. Thus the legality of the whole regime was challenged by the German and Danish Constitutional Court decisions, and their rulings constrain future development of the EU's objectives.

– the *political community*: the set of individuals participating in and maintaining common decision-making processes for these ends. The legitimacy at stake here is typically normative. Should there be European regimes that include this particular set of states and their citizens? Discussions of whether there is a European 'demos' concern this issue, as do questions about the appropriate borders of Europe: for example, whether Turkey can and should be included in the EU.

There are important interconnections between the various concepts of legitimacy and legitimation regarding these six objects.

Regarding *social legitimacy* in the form of political support, Easton notes the importance of 'diffuse' institutional, regime and community support to ensure *specific support*—and presumably compliance with—particular decision and authorities.[60] Citizens may maintain such diffuse support for the regime for a while even if unsatisfied with present policy outputs, as long as these policies generally remain consistent with the regime values and objectives, such as procedural justice and a sense of fair treatment.[61] Easton notes that diffuse support for the regime in the form of an affective orientation[62] to it *as* normatively legitimate may arise either from above or below: from the legitimating ideologies of the regime when it is seen to regularly yield output consistent with the regime objectives or from acceptance of particular incumbents.[63] Political philosophy about normative legitimacy contributes to such diffuse support for the regime when it persuades members that they have a common good—at least, as long as members believe that the authorities and the regime do in fact promote that common good.[64]

The different concepts of legitimacy and legitimation combined with an awareness of these different levels can provide alternative, possibly complementary 'frames' for understanding the legitimacy challenges facing the EU. Both diffuse and specific support may be at stake, due to European integration and expansion. Support for the regime as a whole is not forthcoming 'from below'—witness the popular dissatisfaction with the Maastrict Treaty— nor is there general agreement about the regime values and objectives of the EU or whether the Union's 'outcome' achieves those objectives reasonably well.

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[60]cf. Easton 1965; Norris 1999b, p. 264. See Luhman (1969) for a similar approach to legitimacy as generalized willingness to obey.
[61]Inglehart 1999, p. 98; Miller and Listhaug 1999.
[62]Almond and Verba 1963.
[63]Easton 1965, p. 290.
[64]Ibid pp. 318–19.

Unfortunately, such a reduction of conceptual obfuscation does not suffice to alleviate the legitimacy deficits. The different 'frames' lead to different, mutually incompatible recommendations regarding institutional changes and the extent of integration.[65] Reforms will often strengthen some forms of legitimacy at the expense of others. Efficiency, democracy and constitutionalism may obviously conflict, even in principle.[66] Mechanisms of veto and other arrangements that require actual consent may hinder efficient problem solving.[67] Accountability may stifle creative searches for solutions.[68] For instance, some argue that increased democratisation and politicisation of the EU Commission is likely to threaten its problem solving capacity and its credibility as neutral guardian of the treaties.[69] The authority to tax and redistribute may increase the problem-solving ability of the EU, but at the expense of participation and democratic accountability.[70]

How, then, might these dilemmas of alleviating the legitimacy deficits be addressed? Some suggest sector-specific resolutions, for instance handling the legitimacy of a Common Foreign and Security Policy (CFSP) differently to monetary policy.[71] Such suggestions seem sensible, yet prompt questions of *why* different sectors should be legitimated in such different ways. After all, disagreement may be as profound regarding these issues of scope as regarding the substantive criteria of legitimacy. Another approach seeks mutual adjustment of the four suggested concepts of legitimacy, and modifies the preferred institutional arrangements for legitimation accordingly. Such a strategy could start by checking support for various concepts, for instance among political parties.[72] But it remains unclear why we should regard such popularity as decisive, rather than considering the reasons offered for accepting some conceptions over others.

Normative theorists pursue several different strategies of reasoned reconciliation.[73] Some deny that problem solving or compliance are plausible concepts of 'legitimation', and instead hold that normative legitimacy is fundamental.[74] However, it still seems appropriate to consider when, if at all, problem solving and compliance are normatively relevant for legitimacy. Indeed, some question whether democratic accountability is a plausible standard for the EU. They claim that the EU is 'sui generis' as a political order, and that this has profound implications for the issue of normative legitimacy. For instance, other

[65]Kohler-Koch 2000.
[66]Elster and Slagstad 1988.
[67]Tsebelis 1990. Scharpf 1999.
[68]Scharpf 1999. Naurin 2004.
[69]Lindberg and Scheingold 1970, p. 269, as cited in Banchoff and Smith 1999, p. 5. Majone 2001, pp. 261–2. Craig 2003, p. 3.
[70]Börzel and Hosli 2002.
[71]Lord and Magnette 2004, p. 190. Smismans 2004.
[72]Jachtenfuchs, Diez, and Jung 1998.
[73]Cf. Barker (2001) for a discussion of some such attempts in general.
[74]Beetham and Lord 1998.

standards might be appropriate, such as non-majoritarian and 'post-parliamentary' standards and models of accountability.[75]

In this vein, some argue that EU arrangements such as comitology are or can be embryonic arenas for 'deliberative politics'.[76] However, the argument seems flawed: while the EU is certainly complex and unique, the tradition of federalism suggests that many aspects of the Union are similar to those found in federal arrangements—each of which tends to be a 'sui generis' response to particular problems of joint and separate rule. Neither the complexity nor the unique features support the conclusion that standard normative principles are inappropriate.[77] Still, one point seems right: the complexity and multi-level nature of the EU forces us to reconsider the reasons for requiring democratic accountability through elections in the first place.

A detailed account that brings together all relevant concepts, means and objects of legitimacy and legitimation in ways that resolve all tensions is beyond the scope of these reflections, and indeed beyond the scope of political philosophy. Still, we may benefit from an account that identifies some of the central arguments and concerns when addressing such tensions, and that can guide discussions concerning trade-offs, scope and institutional design.

To illustrate: how should we assess the objectives of effective and creative problem solving, on the one hand, and transparency and democratic accountability, on the other—not to mention the tensions between them?

In what follows I sketch one such perspective on legitimacy. I suggest that we should distinguish between the normative legitimacy of a political order or regime and the more demanding conditions for when citizens have a political obligation to abide by such rules and commands. The latter requires more than that the rules are normatively legitimate. Citizens have a political obligation only if such rules are also actually generally complied with. On this account, a normative duty to obey political commands requires firstly, that the commands, rulers and regime are normatively legitimate, and secondly, that citizens also have reason to trust in the future compliance of other citizens and authorities with such commands and regimes. Such trustworthiness in institutions and fellow citizens seems necessary for the long-term support of the multi-level political order and for authorities' ability to govern.

Normative political theory may thus contribute significantly to promoting long-term stability. Politicians and academics may be right to worry about the long-term consequences of an 'apparent' legitimacy deficit in the form of low levels of public support for institutions, policies and authorities. 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—

[75]Majone 1994. Andersen and Burns 1996. Hèritier 1999.
[76]Joerges 1999, p. 311.
[77]Beetham and Lord 1998.

and a shared acceptance of the legality and normative legitimacy of the regime. The different suggestions for enhancing the legitimacy of the EU may best be assessed and combined in light of how they can contribute to such trustworthiness.

IV. LEGITIMACY AND TRUSTWORTHINESS

All four concepts of legitimacy and the institutional arrangements of legitimation can enhance political trust and trustworthiness in a normatively legitimate EU among 'contingent compliers'.

In what follows the term 'institution' is used in a broad sense, to include social practices according to publicly known formal and informal rules. That is: an institution exists when its rules specifying offices, rights, powers etc. are regularly acted upon, and this is public knowledge.[78] An institutionalist normative political theory takes as its central subject matter institutions. In comparison, an interactionist or individual-based theory may also address institutions, but primarily as facilitating and safeguarding the normative claims individuals have towards each other independent of their institutional relationships. This difference in emphasis has implications for the form and content of normative principles.[79]

Let us here distinguish between the normative standards for assessing such public rules and the closely related question of when citizens have a political obligation (or duty) to comply with such rules. I shall explore a view according to which citizens have such obligations primarily when the rules are not only legitimate, but also generally complied with—that is, when they are part of an institution in the sense introduced above. For citizens to have a political obligation, then, they must have good reason to believe that the normatively legitimate rules are also generally complied with by others. This requires trust.

The need for trust and trustworthiness arises under circumstances of complex mutual dependence, where the regular co-operation of each individual depends on their conscious or habitual expectation of the regular co-operation of others. Such mutual 'confidence of the future regularity of their conduct'[80] is central for the long-term stability of any political order. Trust and trustworthiness have become increasingly important among increasingly interdependent Europeans. Consider, for instance, how changes from unanimity to Qualified Majority Voting, or the rule of mutual recognition of Member States' regulations, increase the need for trust and trustworthiness among individuals and their representatives, requiring them to adjust or sacrifice their own interests

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[78]Rawls 1971, pp. 55–6; March and Olsen 1989; North 1990.
[79]For such distinctions and their consequences; cf. Weale 1999, pp. 20 ff.; Pogge 2002.
[80]Hume [1739] 1960, p. 490.

and those of their voters for the sake of other Europeans. The majority must trust the minority to obey decisions perceived to be contrary to their own interests and possibly their sense of justice. The minority must trust the majority to both restrain its decisions in light of the plight of the minority, and trust that those who find themselves in the minority in the future will likewise obey future majorities.

The truster must believe that it is in the interest of the trusted to act according to the shared expectations—where such interests may be of several kinds. The trusted can act out of self-interest within institutions that sanction misbehaviour. The trusted can be known to act out of a sense of appropriateness such that only certain actions seem open to choice for her. Or the trusted person can be known to be other-regarding and thus to be concerned about the truster's well-being. One source of such trust has often been assumed to be a 'thick' sense of collective identity—which is absent among Europeans, thus leading to wariness about the use of majority rule—especially as a means of enhancing legitimacy.[81] Some seem to argue that this is the only source sufficiently strong to sustain redistributive arrangements and institutional reforms.[82] Others contest this on historical grounds, arguing that state building has sometimes preceded the nation, or by pointing to the role of parties in integrating local communities into a larger nation.[83]

Another important motivation that involves concern for others is found among 'contingent compliers'. This also crucially requires trust in the compliance of others, but need not rely on sentiments of compassion and 'shared identity'. Contingent compliers are prepared to comply with common, fair rules as long as they believe that others will do so as well, for instance out of a sense of justice. They may be motivated by what John Rawls called a *Duty of Justice* that prescribes:[84]

that they comply with fair practices that exist and apply to them when they believe that relevant others will likewise do their part; and

that they further just arrangements not yet established, at least when this can be done without too much cost to themselves.

A. THE ROLES OF INSTITUTIONS IN RESOLVING ASSURANCE PROBLEMS

The assurance problems among contingent compliers were addressed by Rousseau.[85] Recent contributions informed by the theory of games have enhanced our understanding of how important institutions are in providing sufficient assurance via a mix of positive laws, transparency, shared practices and

[81]Scharpf 1999, p. 9.
[82]Miller 1995, p. 42.
[83]Lipset and Rokkan 1967. Chambers 1963.
[84]Rawls 1971, p. 336; and cf. Scanlon 1998, p. 339.
[85]Rousseau [1762] 1978, p. 2.4.5, Madison 1787.

socialisation.[86] The literature on social capital provides further insights on how firm expectations concerning others' actions—facilitated by institutions—affect the complex assurance problems of day-to-day life.[87] Trust is particularly precarious in the case of institutions that are not obviously in everybody's self interest all the time, and where we must trust strangers, such as majority rule. Under these circumstances trust can be engendered by institutions that facilitate generalised trustworthiness among strangers, both through mechanisms that reduce the risk or suspicion of others' defection and through public mechanisms whereby certain preferences are socialised.

Many legal and other social institutions can promote such trust and trustworthiness. They can reduce both the likelihood of failed trust by altering the trusted's incentives to make it in her interest to do what the trusted expects and the costs of failed trust, for instance by restricting the scope of valid majority rule by human rights.

Several conditions must be satisfied for such contingent compliance to take place in a political order.[88] A contingent complier decides to comply with rules and institutions, and otherwise cooperate with officials' decisions because she

A)   perceives government as trustworthy in making and enforcing normatively legitimate policies; and

B)   she has confidence in other actors—officials and citizens—that they do their part,

Her belief that policies and institutions are normatively legitimate may require, in cases of doubt, knowledge—even public knowledge—of several kinds that are provided by the four different concepts of legitimacy discussed above.

1)   There must be a plausible *public political theory* regarding the objectives and other normative standards of the political order, such as democracy, subsidiarity, solidarity and human rights. The 1952 European Coal and Steel Community, a precursor to the present EU, was set up to promote assurance that former enemies now shared the ends of mutual prosperity and peace.[89] Fifty years later an account of normative legitimacy and the bundle of objectives appears to be largely lacking in the case of the European political order, and is indeed contested. For instance, some of the most heated and intriguing debates in the Convention on the Future of Europe concerned the issue of whether God should be mentioned in the

[86]Sen 1967, Taylor 1987, Elster 1989, 187; Ostrom 1991, Scharpf 1997, Rothstein 1998; Levi 1998a. Recent normative contributions addressing the standards of normative legitimacy on the explicit assumption of such contingent compliance include Rawls 1971, Goodin 1992, Thompson and Gutmann 1996, 72–73; Miller 2000.

[87]Loury 1977; Coleman 1990 ch 8; Putnam 1993; Putnam 1995; Levi 1998b; Newton 1999.

[88]I here modify Margaret Levi's model of contingent consent (Levi 1998a, ch. 2; Levi 1998b; Braithwaite and Levi 1998). See also Goodin 1992.

[89]Schuman 1950.

Constitutional Treaty.[90] Some suggest that Europeans must cooperate to provide a counterforce to US military hegemony, or to secure the welfare systems characteristic of European states.[91] Yet the efficacy of common decision-making among Europeans seems insufficient for the former, and may be unnecessary for the latter.[92]

2)   The institutions must be *simple and transparent* enough for citizens to comprehend and assess them. Citizens and authorities, assisted by media, critical civil society and the political opposition, must be able to determine whether the institutions and decisions roughly match such normative requirements, and that authorities are acting legally.

3)   The institutions must be *effective and efficient* in the sense of actually producing the normatively desired effects without too much loss—at least when generally complied with. Such Problem Solving Legitimacy is thus important for assurance, and media, civil society and political parties may be crucial to monitor this.

The belief that most other actors will comply requires more than a belief that a large proportion of individuals actually complies. One must also have reason to regard the future compliance of sufficiently many others as highly probable. If many others are also conditional compliers, one's belief that sufficiently many others will continue to comply may crucially depend on arrangements that give public assurance of general compliance, since compliance by each is conditional on the expected compliance of others. Various acts of legitimation – both by government officials and citizens—may enhance such trust.[93]

I submit that legitimation as compliance on this account is a component of normative legitimacy. General compliance is not only an indicator or sign of whether institutions are thought to be normatively legitimate, it is also a component of normative legitimacy, since it affects whether citizens have political obligations.

Institutions can contribute to such beliefs about future general compliance in several ways:

4)   They can be known to socialise individuals to be conditional compliers with a duty of justice or a functional equivalent duty.[94] When this socialization happens in public institutions, it provides public assurance and reminders that all (or most) citizens, including politicians, share these norms regarding what justice requires. Such socialisation can happen in the educational system, but also takes place in political parties. In multi-level systems such

[90]Olsen 2004.
[91]Habermas and Derrida 2003.
[92]Scharpf 1999, p. 27.
[93]Barker 2001, pp. 107–117.
[94]Margaret Levi calls this norm one of 'ethical reciprocity': 'a norm requiring that individuals in a given population cooperate with government demands but only as long as others are also contributing' (1998a, 24–5).

as federations several authors underscore the valuable role of cross-cutting parties in fostering 'overarching loyalty'.[95]

5)   Institutions can boost expectations of other contingent compliers' future compliance when the rules secure the intended, fair output, and cannot easily be abused.[96] It is therefore important for trustworthiness that the institutions actually deliver according to their stated aims, providing 'output legitimacy'. This form of problem-solving legitimacy—as well as legality—is thus an important component of normative legitimacy.

6)   Institutions can also provide sanctions that modify citizens' incentives, assuring all who comply that they will not be 'suckers'. When the institutions also distribute the burdens fairly, these sanctions are one way that 'government coercive capacity assures potentially supportive citizens that there will, in fact, be relative equality of sacrifice, [and] governmental institutions contribute to contingent consent'.[97] Trustworthy threats of legal sanctions, delivered according to legal rules, are thus important for assurance.

7)   Even in the absence of formal sanctions, institutions provide important assurance when they monitor the compliance of others, or facilitate such monitoring, and when they report or facilitate reports of others' assurance. Inversely, of course, opinion polls may also indicate low support for institutions, warning citizens and authorities that future compliance is not to be relied upon. This is one reason why reports of low support are important, regardless of whether such reports are sound. The role of the media is thus crucial in both creating and preventing general support. If government authorities believe that their trustworthiness is challenged, with reduced governance capacity as a result, they may set up institutionalised monitoring and sanctions to bolster their claims. The best option may be one where the 'individual benefit depends on the provision of the collective benefit'.[98] Three such measures are to simplify and democratise EU institutions and enhance transparency about their workings through better access to information.[99] This contributes to their legitimacy as compliance, legality and problem-solving, and thereby to normative legitimacy.

All four concepts of legitimacy, duly circumscribed, may thus serve to provide assurance among contingent compliers. Citizens' and authorities' publicly shared beliefs about *normative legitimacy* are central at several points to ensure trust. But contingent compliers can be expected to comply when they are also assured of 'compliance legitimacy'. One indicator of future compliance is public

[95]McKay 2001 and references therein.
[96]Rothstein 1998.
[97]Levi 1998a, p. 26.
[98]Levi 1998a.
[99]Dehousse 1999, Hèritier 1999.

knowledge about diffuse support 'from above' for the regime. Such support draws on information about the institutions' performance both in specifying objectives and its 'problem-solving legitimacy' in securing such outputs, as well as the normative legitimacy of the authorities, which is in part based on their legal legitimacy. Legal legitimacy assures citizens that the authorities make and sanction decisions within the range that can be expected, reducing the risks for those who comply.

B. REVISITING THE TENSIONS OF EFFICIENT PROBLEM SOLVING: DEMOCRATIC ACCOUNTABILITY

We now return to briefly consider some of the central tensions concerning the legitimacy of the EU: between the objectives of effective and creative problem solving, on the one hand, and transparency and democratic accountability, on the other.

Giandomenico Majone has famously argued against making the EU more democratic, since that would prevent its efficiency as a 'regulatory state'.[100] He defends the role of independent agencies such as central banks as nonmajoritarian, non-democratic mechanisms for trust-building. Such mechanisms are said to be legitimate on grounds of effectiveness, and they are more responsive to diffuse interests.[101] Member state governments have delegated regulatory policy competences to the EU level—the single market, harmonisation of product standards and monetary policy of the European Central Bank—to deliberately isolate these decisions from domestic 'majoritarian' governments. Such delegation is a response to market failures and is thought to produce Pareto-efficient policy outcomes (where some benefit and no one is made worse off), rather than (re)distributive or value-allocative outcomes, where there are losers. The credibility of the EU should be increased by more transparent decision making, but Majone warns against a more democratic EU where the European Parliament or a directly elected Commission had more influence. That would inevitably result in redistributive rather than Pareto-efficient outcomes and thus undermine rather than increase the legitimacy of the EU. This account may be challenged on several grounds, including questioning on empirical grounds whether it is possible to place policies on an efficiency/redistributive axis, since most if not all regulatory policies have identifiable losers, and even Pareto improvements pose distributive issues about how to split the gains.[102] If Majone is correct, and even more so if this objection stands, it seems we must consider which institutions can be trusted to identify and implement such policy choices that will maintain citizens' trust. Majone is surely right that some decisions should be insulated from majoritarian political bodies for reasons of

[100]Majone 1994.
[101]Majone 1998b; cf. Magnette 2000.
[102]This line of argument is developed further in Føllesdal and Hix 2005.

trustworthiness. Yet citizens may also need evidence that such institutions reliably pursue the general interest, diffuse or otherwise.

When we turn to consider calls for democratising the EU, we may likewise begin with scepticism about some arguments presented in favour of democracy. In particular, it is not at all obvious that democracy is to be favoured because it expresses *actual consent* in a normatively relevant sense. To the contrary, I submit that existing, legitimate institutions are binding on us *not* because we actually consent, or participate in a daily tacit plebiscite.[103] The act of voting hardly expresses a morally binding tacit consent to be governed. We do not believe that those who vote for the losers or who abstain are morally free to disobey, nor that those who vote under a normatively illegitimate regime thereby give up all moral rights to revolt. Tacit or hypothetical consent is not the *source* of moral obligation to comply. Rather, voting or any actual obedience on the part of individuals can at the very most be taken as evidence of their belief about the legitimacy of institutions, rather than as a justification of these institutions themselves.[104] The upshot is not that non-democratic arrangements are preferable, but that we must pay closer attention to the normative reasons for preferring democracy over other forms of governance in general, and then consider whether these reasons also hold for the EU.

Consider some fairly standard features of democracy: that it requires institutionally established procedures that regulate competition for control over political authority on the basis of deliberation, where nearly all adult citizens are permitted to participate in an electoral mechanism and where their expressed preferences over alternative candidates determine the outcome. This is not intended as a complete definition, but rather as a statement about virtually all modern political systems that we would normally call 'democratic'. The first few features are especially important for delineating apparent dilemmas between efficiency and democratic accountability.[105]

Our concern is with institutional design, rather than particular policy outcomes. When comparing democratic arrangements to others on grounds of efficiency we cannot rely only on singular policy outcomes. We must instead compare their respective tendencies to be reliably and sufficiently responsive over time. We must know whether the effective, nondemocratic arrangements have mechanisms that will reliably continue to ensure acceptable outcomes in ways that provide crucial trustworthiness. For example, essential to democracy is an opposition.[106] Providing opportunities for political parties to form oppositions is important for several reasons. It helps citizens understand the difference

[103]Renan 1939, quoted in Miller (1995, p. 11).
[104]Raz [1987] 1994, 338; *pace* Walzer 1977.
[105]Cf. Beitz 1989, p. 17; Schattschneider 1960, 141; Barry 1991, pp. 24–61.
[106]Dahl 1971.

between the present government and the (democratic) institutions.[107] Competing parties with different policy agendas help citizens determine firstly, what they think should be the policy objectives, secondly, whether particular policy proposals are likely to be effective and thirdly, whether policies have in fact been implemented. Contestation among parties provides a basis for informed decisions about what are the problems, their likely causes, feasible solutions and the aptitude of competing parties. Even when the set of 'output' goals is uncontested citizens will disagree about how to specify, rank and weigh them, and need to monitor the government's performance.

Finally, we may note that a lack of channels for protest *within* a regime, e.g. voting to replace officials and voicing concerns, may lead to reduced support.[108] Party competition is thus crucial for opinion formation, informed policy choice and scrutiny of government.[109]

I conclude that institutions that are defended on grounds of their efficiency must include measures that address such issues of trustworthiness. The authorities must seek to provide assurance that they do a reliable job of governing fairly and effectively over time. Efficient institutions seem to require democratic party contestation and human rights constraints in order to maintain trust and trustworthiness. The upshot is that reliably effective institutions seem to require familiar mechanisms of democratic accountability. There is therefore not a trade-off between the two concepts of legitimacy of the kind often presented by those sceptical of 'democratising' the EU.

Returning to the issue of how to alleviate the legitimacy deficits of the EU, I submit that a focus on the need for institutions that create and maintain assurance among contingent compliers may help. There should be visible, effective channels for replacing authorities who pursue contested objectives and policies at the European level. Currently, the EU offers little room to present rival leadership and policy agendas, and national politics dominate EU elections. There are few national arenas for discussing issues of how the EU should develop and the policies it should pursue. Thus the electorate's views on European issues do not inform the agenda of the European Parliament and EU policy making.[110] General objections that such changes threaten efficiency and problem solving legitimacy do not withstand scrutiny: on the contrary, in order to maintain trust in the objectives, means and good will of 'problem-solving' authorities, democratic accountability seems to be required.

If this line of argument is correct, we should welcome elements of the new Constitutional Treaty. If ratified, it may well enhance the possibility and likelihood of more democratic contestation. It increases the transparency of the

[107]Shapiro 1996.
[108]Hirschman 1970.
[109]Key 1961; Lipset and Rokkan 1967; Manin 1987, pp. 338–68; Schattschneider 1960, p. 68; Powell 2000;
[110]Van der Eijk and Franklin 1996.

legislative process and the powers of the European Parliament, and it formally links the choice of European Commission President to European elections. This is likely to facilitate European party competition for votes on EU issues.[111]

The Constitutional Treaty also enables national parliaments to monitor the application of the Subsidiarity Principle and to give 'yellow cards' when violations are suspected. These mechanisms may stimulate political contestation, since national parliaments will have access to legislative proposals, European Commission consultation documents and suggested Treaty reforms. EU bodies are subject to increased transparency and the European Parliament increases its powers. These changes may well carry costs regarding the quality and efficiency of agreements, for instance preventing creative, secret development of new options.[112] Still, this loss of efficiency and problem solving legitimacy in individual cases does not outweigh the benefits of political contestation and more trustworthy institutions wrought by greater democratic legitimation.

V. CONCLUSION

The diagnosis of 'legitimacy deficit' covers a broad range of symptoms and prescriptions for legitimation arrangements. While both pessimism and optimism may be premature, there seem to be good reasons for scrutinising alternative strategies for enhancing the transparency, responsiveness and fairness of EU institutions with an eye to how they can promote trust and trustworthiness among contingent compliers committed to participating in just regimes insofar as they can be assured that others do likewise. The Constitutional Treaty provides much by way of constructive suggestions in these regards.[113]

The legitimacy and legitimation deficits are not only a matter of present public opinion registering low levels of political support for institutions, policies and authorities. However, I have suggested that such perceptions are indeed relevant for when citizen have a political obligation to obey legitimate institutions. Citizens have such a normative duty to obey political commands when, firstly, the commands, rulers and regime are normatively legitimate, and secondly, when citizens also have reason to trust in the future compliance of other citizens and authorities with institutions that they believe to be normatively deserving of obedience. Such trust seems necessary for the long term support of the multi-level political order, and for authorities' ability to govern. From this point of view, actual compliance and diffuse support, as measured by opinion polls, are highly relevant not only for empirical studies of perceived legitimacy, but also for normative assessments. The focus on assurance also helps explain why democratic arrangements are of great value even though they do not express

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[111]An example illustrating the possibility noted by Schmitt and Thomassen (1999, p. 391).
[112]Elster 1998, 98; Naurin 2004.
[113]Dobson and Føllesdal 2004. Sieberson 2004.

morally binding consent by the electorate. Finally, I have suggested that the benefits of more trustworthy institutions wrought by political contestation and familiar mechanisms of democratic legitimation outweigh some loss of efficiency and problem solving legitimacy in individual cases.

Normative political theory may thus contribute significantly to promoting long term stability. 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 further. The regime may then not warrant obedience. Normative political theory may bring that out in the open, adding pressure to the need for regime reform rather than popular acquiescence to a political order that fails to respect all as equals.

REFERENCES

Abromeit, Heidrun. 1998. *Democracy in Europe: Legitimising Politics in a Non-State Polity*. New York: Berghahn Books.

Almond, Gabriel and Sidney Verba. 1963. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Princeton: Princeton University Press.

Andersen, Svein S. and Tom R. Burns. 1996. The European Union and the erosion of parliamentary democracy: a study of post-parliamentary governance. Pp. 227–52 in Svein S. Andersen and Kjell A. Eliassen (ed.), *The European Union: How Democratic Is It?* London: Sage.

Banchoff, Thomas and Mitchell P. Smith, eds. 1999. *Legitimacy and the European Union*. London: Routledge.

Barker, Rodney. 2001. *Legitimating Identities: The Self-Presentations of Rulers and Subjects*. Cambridge: Cambridge University Press.

Barry, Brian. 1991. Is democracy special? Pp. 24–60 in Barry, *Democracy and Power*. Oxford: Oxford University Press.

Beetham, David. 1991. *The Legitimation of Power*. London: Macmillan.

Beetham, David and Christopher Lord. 1998. *Legitimacy and the European Union*. London: Longman.

Beitz, Charles R. 1989. *Political Equality*. Princeton, N.J.: Princeton University Press.

Bellamy, Richard. 1995. The constitution of Europe: rights or democracy? Pp. 153–75 in Richard Bellamy, Vittorio Bufacchi and Dario Castiglione (ed.), *Democracy and Constitutional Culture in the Union of Europe*. London: Lothian Foundation.

Bellamy, Richard and Dario Castiglione. 2003. Legitimizing the Euro-polity and its regime: the normative turn in EU Studies. *European Journal of Political Theory*, 2, 7–34.

Börzel, Tanja A. and Madeleine O. Hosli. 2002. Brussels between Bern and Berlin: comparative federalism meets the European Union. Constitutionalism Web-papers, ConWEB, 2.

Braithwaite, Valerie and Margaret Levi, eds. 1998. *Trust and Governance*. New York: Russell Sage.

Chambers, William. 1963. *Parties in a New Nation*. New York: Oxford University Press.

Choudhry, Sujit. 2001. Citizenship and Federations: Some Preliminary Reflections. Pp. 377–402 in Kalypso Nicolaidis and Robert Howse (ed.), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*. Oxford: Oxford University Press.

Coleman, James. 1990. *Foundations of Social Theory*. Cambridge: Harvard University Press.

Craig, Paul. 2003. What constitution does Europe need? The house that Giscard built: constitutional rooms with a view. *The Federal Trust*, August 2003.

Dahl, Robert A. 1971. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press.

Dalton, Russell J. 1999. Political support in advanced industrial democracies. Pp. 57–77 in Pippa Norris (ed.), *Critical citizens: Global Support for Democratic Government*. Oxford: Oxford University Press.

Dansk Hřjesteret. 1998. Dom i Sag I 361/1997—Grundlovssagen. *Hřjesterets dombog*, 6 April, 1998.

Dehousse, Renaud. 1999. Towards a regulation of transitional governance? Citizen's rights and the reform of comitology procedures. Pp. 109–27 in Christian Joerges and Ellen Vos (ed.), *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart.

Dobson, Lynn and Andreas Follesdal, eds. 2004. *Political Theory and the European Constitution*. London: Routledge.

Easton, David. 1965. *A Systems Analysis of Political Life*. New York: Wiley.

Elster, Jon. 1989. *The Cement of Society: Studies in Rationality and Social Change*. Cambridge: Cambridge University Press.

Elster, Jon. 1998. Deliberation and constitution making. Pp. 97–122 in Jon Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press.

Elster, Jon and Rune Slagstad, eds. 1988. *Constitutionalism and Democracy*. Cambridge: Cambridge University Press.

Falkner, Gerda and Michael Nentwich. 1995. *European Union: Democratic Perspectives After 1996*. Wien: Service-Fachverlag.

Follesdal, Andreas. 1998. Democracy, legitimacy and majority rule in the EU. Pp. 34–48 in Albert Weale and Michael Nentwich (ed.), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship*. London: Routledge.

Follesdal, Andreas and Simon Hix. 2005. Why there is a democratic deficit in the EU: a response to Majone and Moravcsik. *European Governance Papers*, 1 (2), available at http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-02.pdf.

Fuchs, D. and H.-D. Klingemann. 1999. National community, political culture and support for democracy in Central and Eastern Europe. Guiliano Amato and Judy Batt (ed.), *The Long-Term Implications of EU Enlargement: the Nature of the New Border*. San Domenico di Fiesole: European University Institute. Available at http://www.iue.it/RSC/pdf/FinalReport.pdf.

German Constitutional Court. 1993. Brunner v European Union Treaty. *BVerfGE*, 89: 155.

Goodin, Robert E. 1992. *Motivating Political Morality*. Oxford: Blackwell.

Grimm, Dieter. 1995. Does Europe need a constitution? *European Law Journal,* 1, 282–302.

Gustavsson, Sverker. 1997. Double asymmetry as normative challenge. Pp. 108–31 in Andreas Follesdal and Peter Koslowski (ed.), *Democracy and the European Union*. Berlin: Springer.

Habermas, Jürgen. 1979. Legitimation problems in the modern state. *Communication and the Evolution of Society*, trans. Thomas McCarthy. Boston: Beacon Press.

Habermas, Jürgen. 1998. Does Europe need a constitution? Remarks on Dieter Grimm. *The Inclusion of the Other: Studies in Political Theory.* Cambridge, Mass.: MIT Press.

Habermas, Jürgen and Jacques Derrida. 2003. Unsere Erneuerung. *Frankfurter Allgemeine Zeitung*, 31, 291–97.

Hirschman, Albert O. 1970. *Exit, Voice, and Loyalty*. Cambridge: Harvard University Press.

Höreth, Markus. 1999. No way out for the beast? The unsolved legitimacy problem of European governance. *Journal of European Public Policy*, 6, 249–68.

Hume, David. 1960 [1739]. *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and P. H. Nidditch. Oxford: Clarendon.

Hylland, Aanund. 1990. The welfare state: problems and challenges from a decision-theoretical point of view. Pp. 99–117 in Hans Carlsson and Bo Larsson (ed.), *Problems*

of the Mixed Economy: Cooperation, Efficiency, and Stability. North Holland: Elsevier Science Publishers.

Hèritier, Adrienne. 1999. Elements of democratic legitimation in Europe: an alternative perspective. *Journal of European Public Policy*, 6, 269–82.

Inglehart, Ronald. 1999. *Democracy and Trust*. Cambridge: Cambridge University Press.

Jachtenfuchs, Markus. 1995. Theoretical perspectives on European governance. *European Law Journal*, 1, 115–33.

Jachtenfuchs, Markus, Thomas Diez and Sabine Jung. 1998. Which Europe? Conflicting models of a legitimate European political order. *European Journal of International Relations*, 4, 409–45.

Jacobs, Francis, Richard Corbett and Michael Shackleton. 1995. *The European Parliament*. London: Cartermill.

Karlsson, Christer. 2001. *Democracy, Legitimacy and the European Union*. Uppsala: Acta Universitatis Upsaliensis.

Key, V. O. Jr. 1961. *Public Opinion and American Democracy*. New York: Knopf.

Kohler-Koch, Beate. 2000. Framing: the bottleneck of constructing legitimate institutions. *Journal of European Public Policy*, 7, 513–31.

Kohler-Koch, Beate and Rainer Eising, eds. 1999. *The Transformation of Governance in the European Union*. London: Routledge.

Laffan, Brigid. 1996. The politics of identity and political order in Europe. *Journal of Common Market Studies*, 34, 81–102.

Lehning, Percy. 1997. Pluralism, contractarianism and Europe. Pp. 107–24 in Percy Lehning and Albert Weale (ed.), *Citizenship, Democracy and Justice in the New Europe*. London: Routledge.

Lenaerts, Koen and Marlies Desomer. 2002. New models of constitution-making in Europe: the quest for legitimacy. *Common Market Law Review*, 39, 1217–53.

Levi, Margaret. 1998a. *Consent, Dissent and Patriotism*. New York: Cambridge University Press.

Levi, Margaret. 1998b. A state of trust. Pp. 77–101 in Valerie Braithwaite and Margaret Levi (ed.), *Trust and Governance*. New York: Russell Sage.

Lindberg, Leon N. and S. A. Scheingold. 1970. *Europe's Would-Be Polity: Patterns of Change in the European Community*. Englewood Cliffs, NJ: Prentice-Hall.

Lipset, Seymour Martin and Stein Rokkan, eds. 1967. *Party Systems and Voter Alignments*. New York: Free Press.

Lord, Christopher and David Beetham. 2001. Legitimizing the EU: is there a 'post-parliamentary basis' for its legitimation? *Journal of Common Market Studies*, 39, 443–62.

Lord, Christopher and Paul Magnette. 2004. E pluribus unum? Creative disagreement about legitimacy in the EU. *Journal of Common Market Studies*, 42, 183–202.

Loury, Glen. 1977. A dynamic theory of racial income differences. Pp. 153–86 in Phyllis A. Wallace and Annette Le Mund (ed.), *Women, Minorities, and Employment Discrimination*. Lexington, MA: Lexington.

Luhman, Niklas. 1969. *Legitimation Durch Verfahren*. Darmstadt: Luchterhand.

McCarthy, Thomas. 1994. Kantian Constructivism and reconstructivism: Rawls and Habermas in dialogue. *Ethics*, 105, 44–63.

McKay, David. 2001. *Designing Europe—Comparative Lessons From the Federal Experience*. Oxford: Oxford University Press.

MacCormick, Neil. 1994. The Maastricht-Urteil: sovereignty now. *European Law Journal*, 1, 259–66.

Madison, James. 1787. Vices of the political system of the United States. Pp. 348–57 in *The Papers of James Madison*. Chicago: University of Chicago Press.

Magnette, Paul. 2000. Towards 'Accountable Independence'? Parliamentary controls of the European Central Bank and the rise of a new democratic model. *European Law Journal*, 6, 326–40.

Magnette, Paul. 2001. European governance and civic participation: can the European Union be politicised? Pp. 23–32 in Christian Joerges, Yves Meny and J. H. H. Weiler

(ed.), *Symposium: Responses to the European Commission's White Paper on Governance*. Available at www.iue.it/RSC/Governance.

Majone, Giandomenico. 1990. Preservation of cultural diversity in a federal system: the role of the regions. Pp. 67–76 in Mark Tushnet (ed.), *Comparative Constitutional Federalism. Europe and America*. New York: Greenwood Press.

Majone, Giandomenico. 1994. The rise of the regulatory state in Europe. *West European Politics*, 17, 77–101.

Majone, Giandomenico. 1998a. Europe's 'democratic deficit': the question of standards. *European Law Journal*, 4, 5–28.

Majone, Giandomenico. 1998b. State, market and regulatory competition: lessons for the integrating world economy. Pp. 94–123 in Andrew Moravcsik (ed.), *Centralization or Fragmentation? Europe Facing the Challenges of Deepening, Diversity, and Democracy*. New York: Council on Foreign Relations.

Majone, Giandomenico. 2001. Regulatory legitimacy in the United States and the European Union. Pp. 252–74 in Kalypso Nicolaidis and Robert Howse (ed.), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*. Oxford: Oxford University Press.

Mancini, G. Frederico. 1991. The making of the constitution of Europe. Pp. 177–94 in Robert O. Keohane and Stanley Hoffmann (ed.), *The New European Community*. Boulder: Westview Press.

Manin, Bernard. 1987. On legitimacy and political deliberation. *Political Theory*, 15, 338–68.

March, James G. and Johan P. Olsen. 1989. *Rediscovering Institutions: the Organizational Basis of Politics*. New York: Free Press.

Michelman, Frank I. 2000. W(h)ither the constitution? *Cardozo Law Review*, 21, 1063–83.

Mill, John Stuart. 1958 [1861]. *Considerations on Representative Government*. New York: Liberal Arts Press.

Miller, Arthur and Ola Listhaug. 1999. Political performance and institutional trust. Pp. 204–15 in Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Government*. Oxford: Oxford University Press.

Miller, David. 1995. *On Nationality*. Oxford: Oxford University Press.

Miller, David. 2000. *Citizenship and National Identity*. London: Blackwell.

Moravcsik, Andrew. 2002. In defence of the 'democratic deficit': reassessing legitimacy in the European Union. *Journal of Common Market Studies*, 40, 603–24.

Naurin, Daniel. 2004. Transparency and legitimacy. Pp. 139–50 in Lynn Dobson and Andreas Follesdal (ed.), *Political Theory and the European Constitution*. London: Routledge.

Neunreither, Karlheinz. 1994. The democratic deficit of the European Union: towards closer cooperation between the European Parliament and the national parliaments. *Government and Opposition*, 29, 299–314.

Newton, Kenneth. 1999. Social and political trust in established democracies. Pp. 169–88 in Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Government*. Oxford: Oxford University Press.

Nicolaidis, Kalypso. 2001. Conclusion. Pp. 439–81 in Kalypso Nicolaidis and Robert Howse (ed.), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*. Oxford: Oxford University Press.

Norris, Pippa, ed. 1999a. *Critical Citizens: Global Support for Democratic Government*. Oxford: Oxford University Press.

Norris, Pippa. 1999b. Institutional explanations for political support. Pp. 217–35 in Pippa Norris (ed.), *Critical Citizens: Global Support for Democratic Government*. Oxford: Oxford University Press.

North, Douglass. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.

Olsen, Tore Vincents. 2004. United under God? Or not? Pp. 105–33 in Lynn Dobson and Andreas Follesdal (ed.), *Political Theory and the European Constitution*. London: Routledge.

Ostrom, Elinor. 1991. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

Parkinson, John. 2003. Legitimacy problems in deliberative democracy. *Political Studies*, 51, 180–96.

Pogge, Thomas W. 2002. *World Poverty and Human Rights*. Cambridge: Polity.

Powell, G. Bingham. 2000. *Elections As Instruments of Democracy: Majoritarian and Proportional Visions*. New Haven: Yale University Press.

Putnam, Robert D. 1993. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press.

Putnam, Robert D. 1995. Bowling alone: America's declining social capital. *Journal of Democracy*, 6, 65–78.

Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.

Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.

Raz, Joseph. 1994. Government by Consent. Pp. 339–53 in Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*. Oxford: Clarendon Press.

Renan, Ernest. 1939. What is a nation? Pp. 186–205 in Alfred Zimmern (ed.), *Modern Political Doctrines*. London: Oxford University Press.

Rothstein, Bo. 1998. *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State. Theories of Institutional Design*. Cambridge: Cambridge University Press.

Rousseau, Jean-Jacques. 1978 [1762]. *On the Social Contract*, ed. Roger D. Masters and trans. Judith R. Masters. New York: St. Martin's Press.

Sbragia, Alberta M. 1999. Politics in the European Union. Pp. 469–520 in Gabriel A. Almond, Russell J. Dalton and Jr. G. Bingham Powell (ed.), *European Politics Today*. New York: Longman.

Scanlon, Thomas M. 1998. *What We Owe to Each Other*. Cambridge, Mass.: Harvard University Press.

Scharpf, Fritz W. 1988. The joint decision trap: lessons from German federalism and European integration. *Public Administration*, 66, 239–78.

Scharpf, Fritz W. 1997. *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Boulder, Co: Westview Preses.

Scharpf, Fritz W. 1999. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

Schattschneider, E. E. 1960. *The Semi-Sovereign People: A Realist's View of Democracy in America*. New York: Holt, Rinehart and Winston.

Schmitt, Hermann and Jacques Thomassen, eds. 1999. *Political Representation and Legitimacy in the European Union*. Oxford: Oxford University Press.

Schuman, Robert. 1950. Declaration of May 9. Available at http://www.robert-schuman.org/anglais/robert-schuman/declaration.htm.

Sen, Amartya K. 1967. Isolation, assurance and the social rate of discount. *Quarterly Journal of Economics*, 81, 112–24.

Shapiro, Ian. 1996. *Democracy's Place*. Ithaca: Cornell University Press.

Sieberson, Stephen C. 2004. The proposed European Union constitution: will it eliminate the EU's democratic deficit? *Columbia Journal of European Law*, 10, 173–264.

Smismans, Stijn. 2004. *Law, Legitimacy and European Governance: Functional Participation in Social Regulation*. Oxford: Oxford University Press.

Smith, Anthony D. 1991. *National Identity*. London: Penguin.

Taylor, Michael. 1987. *The Possibility of Cooperation*. Cambridge: Cambridge University Press.

Thompson, Dennis F. and Amy Gutmann. 1996. *Democracy and Disagreement*. Cambridge, Mass: Harvard University Press.

Tsebelis, George. 1990. *Nested Games: Rational Choice in Comparative Politics*. Berkeley: University of California Press.

Van der Eijk, Cees and Mark Franklin, eds. 1996. *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Ann Arbor: University of Michigan Press.

Waldron, Jeremy. 1987. Theoretical foundations of liberalism. *Philosophical Quarterly*, 37, 127–50.

Wallace, Helen. 1993. Deepening and widening: problems of legitimacy for the EC. Pp. 95–105 in S. Garcia (ed.), *European Identity and the Search for Legitimacy*. London: Pinter.

Walzer, Michael. 1977. *Just and Unjust Wars: a Moral Argument With Historical Illustrations*. New York: Basic.

Weale, Albert. 1999. *Democracy*. New York: St. Martin's Press.

Weber, Max. 1972 [1948]. Politics As a Vocation. Pp. 77–128 in Max Weber, *From Max Weber*. New York: Oxford University Press.

Weiler, J. H. H. 1991. The transformation of Europe. *Yale Law Review*, 100, 1–81.

Weiler, J. H. H. 1995a. Does Europe need a constitution? Reflections on demos, telos and the German Maastricht Decision. *European Law Journal*, 1, 219–58.

Weiler, J. H. H. 1999. *The Constitution of Europe*. Cambridge: Cambridge University Press.

Weiler, J. H. H. 2001. Federalism and constitutionalism: Europe's sonderweg. Pp. 54–73 in Kalypso Nicolaidis and Robert Howse (ed.), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*. Oxford: Oxford University Press.

Weiler, J. H. H. with Haltern Ulrich, and Franz Mayer. 1995. European democracy and its critique: five uneasy pieces. *EUI Working Paper RSC No 95/11, and Harvard Jean Monnet Working Paper 1/1995*.

Wessels, Wolfgang. 1999. Comitology as a research subject: a new legitimacy mix? Pp. 259–69 in Christian Joerges and Ellen Vos (ed.), *Social Regulation, Law and Politics*. Oxford, Hart.