Legitimacy Theories of the European Union

By

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Abstract

Until the Maastricht Treaty, European governments had long pursued European integration on the working assumption of a "permissive consensus" by the public. The popular and legal challenges to the Maastricht Treaty questioned the legitimacy of further integration. Normative political theory has responded to this legitimacy crisis by means of normative reasoning addressing concepts, arguments and theories regarding the substantive normative standards for the Europen political order, institutions and policies. After a brief overview of the reception of the Treaty on European Union in Section1, Section 2 explores the different views found in this literature regarding symptoms, diagnosis and medication. Section 3 provides a taxonomy of conceptions, mechanisms and objects of legitimacy. Section 4 presents a unifying perspective that may accommodate many of these various contributions. It focuses on the need for trust and trustworthiness to explore how the perceived normative legitimacy affects present compliance and long term popular support for the European Union. The chapter concludes by reviewing several central areas of normative research in addressing - and perhaps alleviating - such legitimacy deficits.

The aim of this exposition is to present some of the central approaches and research topics in theories of normative legitimacy concerning the European Union, and suggest a unified account of legitimacy that sheds some light on how to accommodate the various contributions.

Normative political theory uses methods of normative reasoning addressing concepts, arguments and theories regarding the substantive normative standards for legitimate political orders, institutions and policies. Topics include such normative concepts and ideals as 'democracy', 'fairness', 'equality', 'justice', 'citizenship' and 'virtue'.

The "normative turn in EU studies" (Bellamy and Castiglione 2003) has largely focussed on issues concerning how the European level institutions should be governed. This particular subject was put on the public and political agenda largely owing to the perceived legitimacy crises wrought by the Maastricht Treaty ratification process, sketched in section 1. These popular and legal conflicts strengthened the calls of politicians and scholars that the European Union suffered and suffers from a 'legitimacy deficit'. Section 2 dissolves this apparent consensus by exploring experts' different choices of symptoms, diagnosis and medication. Section 3 provides a taxonomy of conceptions, mechanisms and objects of legitimacy. Section 4 presents a unifying perspective based on the need for trust and trustworthiness to explore how the perceived normative legitimacy affects present compliance and long term popular support for the European Union. The chapter concludes by reviewing several central areas of normative research in addressing - and perhaps alleviating - such legitimacy deficits.

1. The Maastricht Treaty: The end of Popular and Legal Consensus

Widespread concern about the legitimacy of European integration can be traced to the reception of the Treaty on European Union agreed by governments in Maastrict 1991.

European governments had long pursued European integration assuming that the public gave them a "permissive consensus" toward deeper cooperation. The popular and legal reception of the Maastricht Treaty challenged this assumption.

Referendums on the Maastricht Treaty in Denmark, France and Ireland caused wide ranging public debates and elite dissent concerning the proper ends and institutions of the European Communities. The treaty was rejected at a Danish referendum 51%-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%. In the UK, the House of Commons passed the treaty only with great difficulty in 1993.

These reactions served to politicize the integration process, making clear to governments that they must henceforth pay much closer attention to public opinion and opposition elites. Falling support for European integration and falling attendance at European Parliament elections were taken as signs of the same *legitimacy deficit*.

In Germany and Denmark ratification of the treaty was also challenged on legal grounds. The German Constitutional Court and the Danish Supreme Court finally found the treaty compatible with the constitutions. However, the German Constitutional Court 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. (German Constitutional Court 1993[1]).

The Danish Supreme Court found the Maastricht Treaty compatible with the Danish Constitution insofar as transfer of sovereign powers would only happen to a determined and limited extent. Any expansion of authority deemed required in pursuit of the objectives of the Union would require unanimous consent of the Council, hence be avoidable by the Danish government. The Supreme Court also insisted that Danish courts retained the final authority to determine the constitutionality and hence applicability in Denmark of EC laws, regardless of the findings by European Court of Justice (Dansk Højesteret 1998).

2. Legitimacy Deficit? - Symptoms, Diagnoses and Cures

Public opinion polls showed falling support for European integration in the 90s. Yet it has been doubted whether public opinion in general and the referendums in particular indicate

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[1] For critical discussion, cf. Wallace 1993; MacCormick 1994; Weiler 1995a; Abromeit 1998, 19-23; Weiler 1999.

popular discontent with the European Union. Relatively low and falling voting at European Parliament elections should not surprise. Low party and media attention partly due to institutional factors reduce the popularity of what is often called 'second-order elections' as compared to national elections.[2] Scholars point out that public opinion, though falling, is still highly in favour of European integration. In addition, politicians are losing political support across advanced industrial democracies (Dalton 1999).

Such disagreements notwithstanding, many governments and EU officials have interpreted events to mean that the legitimacy of the EU is at stake. Politicians came to fear that Europeans might refuse to accept future steps toward deeper European integration, and otherwise hamper governability. To pre-empt such scenarios, something had to be done to secure future popular support. The recent Convention on the Future of Europe was in part a response.

Influential contributions to normative political theory were made prior to the Maastricht Treaty, (Scharpf 1988, Smith 1991, Majone 1990, Mancini 1991, Weiler 1991). But scholarly attention increased as many normative theorists claimed that the negative popular responses and legal challenges to the Maastricht Treaty were symptoms of a legitimacy deficit, raising challenges for future integration and enlargement. This is not to say that this diagnosis went uncontested: some prominent scholars beg to differ, arguing to the contrary that the EU does not suffer from a legitimacy deficit, democratic or otherwise[3]. Others deny that there is a legitimacy crisis, but only the perception of one (Banchoff and Smith 1999, 3).

Even those who believe there is a legitimacy crisis diverge regarding symptoms, diagnoses, and cures. Symptoms range from Eurobarometer data on support for the existence of the European Community and of one's own country membership in it[4]; over World Values Survey data showing mistrust of other Europeans[5]; through reported mistrust of EU institutions[6]; "variable implementation" or non-compliance with Union directives; Top Decision-Makers Survey findings of disparities between elite and public support for membership[7]; declining voter turnout for European Parliament elections[8]; to lack of

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[2] Franklin, Van Der Eijk, and Marsh 1995Van der Eijk and Franklin 1996.
[3] Moravcsik 2002, Majone 1998a; but cf. Follesdal and Hix forthcoming.
[4] For a perceptive analysis, cf. Karlsson 2001.
[5] Fuchs and Klingemann 1999, Nicolaidis 2001.
[6] Again, such findings must consider that reduced confidence in parliaments, parties and the legal systems seems to be a general trend across established democracies – cf. Norris 1999a.
[7] 1996, and discussion in Hylland 1990, 118.
[8] Jacobs, Corbett, and Shackleton 1995, discussed in Sbragia 1999

parliamentary control of executive bodies at the EU level; especially since any government representative could be outvoted by a qualified majority in the Council since the 1986 Single European Act. Some such symptoms yielded the diagnosis "Legitimacy deficiency" variously specified as lack of procedural 'input' legitimacy granted by citizens' influence; or lack of 'output' legitimacy due to mismatches between citizens' preferences and politicians' delivery; or lack of measures of accountability. Yet others hold that one of the main problems is that European integration creates a democratic deficit within Member States no longer permitted or able to achieve popular demands (Scharpf 1999).

Some analysts are optimistic concerning the prognosis, staking hope in findings of a deliberative Comitology, or recommending safeguards in independent agencies. Some warn against fix something that "ain't broke"[9], others recommend *keeping* the democratic deficit[10], while others again hold that only a European superstate can solve the democratic deficit (Sieberson 2004). Yet 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[11].

No wonder that reflective scholars – not to mention politicians and civil servants - disagree about prescribed medications, such as more 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, or a more efficient Commission securing the European interest over the conflicting national interests. Some recommend a constitution or a new constitution; others suggest strengthening the European Parliament -- or instead the national parliaments[12]. Unfortunately, different conceptions of legitimacy support different of these prescriptions and proscriptions.

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[9] Weiler 2001.
[10] Gustavsson 1997.
[11] Grimm 1995, Abromeit 1998, 32; Habermas 1998.
[12] Neunreither 1994

3. Conceptions, Mechanisms and Objects of Legitimacy

The label 'legitimacy deficit' covers a broad range of issues, giving rise to different taxonomies[13]. We may distinguish four different fundamental *conceptions* of what legitimacy is about, at least four *mechanisms* for achieving such legitimacy, regarding at least six different *objects* of legitimacy.

Legitimacy as Legality

Until recently, questions regarding the legitimacy of the European Union could be quickly answered by pointing out its pedigree. States have created the European Union according to all legal requirements. (cf. Weiler 1991, Wallace 1993, Weiler 1995b, Lenaerts and Desomer 2002). 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 accepted this account – within limits. The Union's authority is illegal when such limits are surpassed.

Legitimacy as Compliance

Much concern about the alleged legitimacy deficit stems from authorities' fear of non-compliance with EU regulations and implementation. 'Permissive consensus' may be a thing of the past, but current compliance may not be affected: Compliance in the form of acquiescence may stem from apathy or cynicism (Abromeit 1998). The fears may seem overdrawn, given the broad social acceptance of European integration and the EU political system. But this acceptance varies and seems to decrease over time, reflecting circumstances and events (Karlsson 2001). Even so, active disobedience might not occur until politically relevant groups mobilize.[14] Politicians may understandably want to reduce the risks of populations turning down treaties, or refusing to comply.

Legitimacy as Problem-Solving

The EU's legitimacy is sometimes seen as enhanced when it identifies and implements solutions that actually secure certain goals otherwise unattainable. This requires firstly that

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[13] For other typologies, cf. Jachtenfuchs, Diez, and Jung 1998, Beetham 1991; Beetham and Lord 1998, Lord and Magnette 2004; Höreth 1999; Easton 1965.

preferred joint outcomes can only be obtained with the problem-solving capacity of the EU, and that they are in fact so identified, decided on and secured. Such objectives may include economic growth, peace in Europe, human rights compliance, or a sustainable environment, to mention but a few. For instance, the technocratic aspects of EU decision-making are said to allow diffuse constituents such as consumers to pursue their interests in ways otherwise prohibitively difficult (Majone 1998b, 22-23). Similarly, 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. The EU suffers from the lack of such legitimacy when it obviously fails to find and implement solutions to common problems.

Legitimacy as Justifiability

Some express legitimacy in terms of *justifiability among political equals*, for instance by appealing to hypothetical 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). 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. (Michelman 2000, Waldron 1987, Rawls 1993, cf. Follesdal 1998a, Lehning 1997[15]).

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* if the 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. Yet the other conceptions of legitimacy are also normatively relevant. They are interrelated, often compatible, and they 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 of the justifiability of a political order. On its own, *general compliance* is

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[14] Easton 1965.
[15] Possibly MacCormick 1999, 179 and Weale 1989, 80.

insufficient for normative legitimacy, since people may comply with unjust rule solely from fear of sanctions, lack of alternatives or unreflective habit. Yet compliance often requires that the population believe that the institutions are 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).

These four conceptions of legitimacy justify a variety of institutional arrangements or *mechanisms*.

Legitimacy through Participation

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; cf. Banchoff and Smith 1999, 11). Citizens might be drawn into political decisions at various stages, and may participate directly in referendums (Abromeit 1998). Participation may certainly boost compliance, especially if the parties consulted can bind their members in forms of network governance (Kohler-Koch and Eising 1999).

Legitimacy through Democratic rule

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 candidate parties on the basis of informed discussion of their relative merits and the objectives to be pursued. Citizens count as equal in the counting and weighing of votes, for instance when relying on majority rule (Weiler and Mayer 1995). A prominent criticism of the EU has held that these measures are underdeveloped, preventing member state governments and parliaments from ensuring 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 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." (Bellamy 1995, 167; Mill [1861] 1958; Manin 1987, 352.).

Legitimacy through Actual Consent

Some regard democratic legitimacy as a matter of voters conferring legitimacy giving actual consent (Beetham and Lord 1998). Others stress the need to secure actual consent in the form of consensus reached on the basis of actual deliberation among all affected parties: "precisely those principles are valid which meet with uncoerced intersubjective recognition under conditions of rational discourse." (Habermas 1995, 127). In this vein, some argue that EU institutions such as comitology are or can be embryonic arenas for 'deliberative politics' (Joerges 1999, 311).

Legitimacy through Output

The problem-solving or 'output' legitimacy of the EU firstly requires that organisations and member states explore, identify and finally agree to options that benefit them all (Jachtenfuchs 1995, Karlsson 2001, 273). The Union must then go on to actually secure these options, achieving objectives hitherto out of reach (Banchoff and Smith 1999). Central mechanisms are the ability to create de facto binding and sanctioned law, as well as 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 of legitimacy form part of alternative 'frames' for further integration (Kohler-Koch 2000). Unfortunately the different conceptions and mechanisms of legitimacy can conflict, and 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 creative searches for solutions (Scharpf 1999). If the EU gets authority to tax and redistribute this might increase problem-solving ability, but easily at the expense of participation and democratic accountability (Börzel and Hosli 2002). Increased democratisation and politicization of the EU Commission can threaten its problem solving capacity and its credibility as neutral guardian of the treaties (Lindberg and Scheingold 1970, 269 as cited in Banchoff and Smith 1999, 5; Majone 2001, 261-62; Craig 2003, 3).

Normative theorists pursue different strategies of reconciliation. One approach is to question or deny some of these aspects, for instance whether efficient problem-solving is part of 'legitimacy' (Beetham and Lord 1998). Such strategies could proceed by checking support for various conceptions, for instance among political parties (Jachtenfuchs, Diez, and Jung 1998). But it remains unclear why popularity should be decisive rather than the reasons offered for accepting some conceptions over others.

Others suggest sector-specific resolutions, for instance handling the legitimacy of a Common Foreign and Security Policy (CFSP) differently than monetary policies (Lord and Magnette 2004, 190; Smismans 2004). These 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.

Some claim that the EU is 'sui generis' as a political order, and that this has profound implications for the issue of legitimacy. For instance, one might question whether the standards of legitimacy for liberal democratic states should be applied, such as voter accountability and human rights (Lord and Beetham 2001). Should perhaps other standards be used, for instance non-majoritarian and post-parliamentary standards and models of accountability[16]?

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[16] Majone 1994, Andersen and Burns 1996, Héritier 1999.

A unified account of legitimacy may serve to guide such discussions concerning trade-offs, scope and institutional design.

Conceptions			Mechanisms	Objects
	Normative			**Political community**
		Problem solving	**Democracy, participation**	**Regime principles – Objectives and ideals**
	Legality			**Regime – the political order including procedural norms**
				Institution or office
Compliance				**Political Actor**
			Consent, output	**Policy Decision**

Discussions concerning legitimacy and the EU have focussed on at least six different objects of legitimacy. The preceding sketch of conceptions and mechanisms may help us see how these contributions fit together[17].

Legitimacy discussions may concern

- a particular political *decision* – a policy or piece of legislation, possibly legitimated both by being enacted *legally* by duly authorized officials, and through *participation* and *actual consent* by affected parties.

- the *authorities* – the political actors - officeholders, a particular government or set of representatives – for instance legitimated through *democratic* elections and other modes of participation;

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

- particular *public institutions* such as the European Central Bank. For instance, their perceived legitimacy in the form of compliance has been explored systematically (cf. ch 4 of Schmitt and Thomassen 1999).

- 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 of course the *problem-solving* ability of the system, where empirical evidence must tell whether the EU can actually obtain the objectives stated in the treaties, and whether it actually does so reasonably well.

- the regime *principles* – including the objectives and ideals allegedly pursued such as general welfare, participation, rule of law, etc., the scope of decisions and division of powers (cf. Schmitt and Thomassen 1999, ch. 3). Should, for instance, the aims of the EU include social policies?

- the *political community*: the set of individuals participating in and maintaining common decision-making processes for these ends. Should there be European regimes that include this particular set of states and their individuals? Discussions of whether there is a European 'demos' concern this issue. What borders of Europe can best be defended to those on the inside and outside. For instance, are there problems which require a certain community for their solution? Kaiser (2001b, in this volume) addresses this object of legitimacy when noting that there are national and transnational ideological preferences for continued integration *in some form* even beyond the EDC failure.

The various conceptions of legitimacy address these six objects differently.

Legality presumably plays a strong and obvious role in linking the first four objects. The legality of the whole regime 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[18]. Citizens may provide *specific support* for particular decision and authorities based on such more diffuse support for the institutions (Norris 1999b, 264). Citizens may maintain *diffuse support* for the regime for a while even if unsatisfied with present policy outputs, as long as these policies generally

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[18] Cf Easton. Se Luhman 1969 for a similar approach to legitimacy as generalized willingness to obey.

remain consistent with the regime values and objectives, including procedural justice and a sense of fair treatment (Inglehart 1999a, 98; Miller and Listhaug 1999, 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 to determine the combined impact. Some note that diffuse support for the regime in the form of an affective orientation[19] to it *as* normatively legitimate may arise either from below or from above: 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 expansion may involve drastic shifts in all four conceptions of legitimacy, across all six objects - including the political community. These shifts appear to threaten the diffuse support for the whole political order in Europe, and require us to reconsider the several mechanisms for legitimacy. One reason why politicians and academics may be right to worry about the long term consequences of a legitimacy deficit is that *current* compliance is not sufficient. 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 other normative legitimacy of the regime.

4. Legitimacy and Trustworthiness

All the conceptions and mechanisms of legitimacy can enhance the possibilities for political trust and trustworthiness in the EU.

Let us think of 'institutions' in a broad sense, including 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 on, and this is public knowledge.[20] 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 those normative claims individuals have toward

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[19] Almond and Verba 1963.
[20] Rawls 1971, 55-56; March and Olsen 1989; North 1990.

each other independent of their institutional relationships. This difference in emphasis has implications for the approach and substantive content of normative principles[21].

The need for trust and trustworthiness arises under circumstances of complex mutual dependence. The regular co-operation by each depends on their conscious or habitual expectation of the regular co-operation of others - trust being "confidence of the future regularity of their conduct" (Hume [1739] 1960, 490). Such trust in the 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 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 from 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, 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 do so as well, for instance out of a sense of justice. Thus they prefer to cooperate with existing, fair arrangements – given that most others do.

It is important for long term support for institutions that they develop and maintain a sufficiently large group of citizens and politicians who are contingent compliers, with a sense of justice.

Trust in the compliance of others is not only a problem among individuals who prefer to free ride on cooperating others, but also for those who are 'contingent compliers'. They have a contingent strategy of following certain rules as long as others do, for instance out of a sense of justice. Thus they prefer to cooperate with existing, fair arrangements -- if most others do. Contingent Compliance occurs[22] when a citizen decides to comply or otherwise cooperate with government demands because she

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

B) she has confidence in other citizens, that they do their part,
- for instance out of what John Rawls calls a *Duty of Justice*[23]

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[21] For such distinctions and their consequences, cf. Weale 1999, 20pp; Pogge 2002.
[22] I here modify Margaret Levi's model of contingent consent (Levi 1998a, ch. 2).
[23] Rawls 1971, 336 and cf. 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.

The assurance problems among contingent compliers have been long recognized by political theorists, and were addressed already by Rousseau (Rousseau [1762] 1978, 2.4.5, Madison 1787). Recent contributions informed by the theory of games have contributed to enhanced understanding of how important institutions are in providing sufficient assurance by mixes of positive laws, transparency, shared practices, and socialization.[24] 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.[25]

Trust is particularly precarious regarding institutions that are not obviously in everybody's self interest all the time, and where we must trust strangers. Then trust can be engendered by institutions that facilitate generalised trustworthiness among strangers, both through mechanisms that reduce the risks or suspicion of others' defection, and through public mechanisms of socialising to certain preferences.

Trust and trustworthiness have become increasingly important among increasingly interdependent Europeans. Consider, for instance, how changes from unanimity to Qualified Majority Voting increases 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 such trust – contract law, as well as a wide range of legal institutions can promote trustworthiness – both by reducing the risks of failed trust – e.g. by restricting the scope of valid majority rule by human rights - , 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 for securing such expectations, and hence for the existence of institutions – or so I shall suggest.

Several requirements must be satisfied if contingent compliers are actually going to comply[26]. As a contingent complier I will comply with rules, institutions and officials' decisions IF

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[24] 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, Thompson and Gutmann 1996, 72-73; Miller 2000.
[25] Loury 1977; Coleman 1999 ch 8; Putnam 1993; Putnam 1995; Levi 1998b; Newton 1999.
[26] Levi 1998aBraithwaite and Levi 1998.

A) *I believe they are normatively legitimate*.

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

1) there is a plausible *public political theory* regarding democracy, solidarity etc. for the political order. This appears to be largely lacking for the European political order, though the following section sketches some contributions of normative political theorists. Some of the heated debates in the Convention on the Future of Europe concerned these issues (Olsen 2004).

2) that the institutions are *simple and transparent* enough for citizens to comprehend and assess. Assisted by public media, citizens and authorities must be able to determine whether the institutions and decisions roughly match such normative requirements.

3) general assurance that the institutions are effective and efficient in the sense of actually 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 proportion of individuals. Each must also have reason to believe that sufficiently 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 sufficiently many others as highly probable.

Institutions can socialize individuals to this duty of justice[27]. When this socialization happens in public institutions, it provides public assurance and reminders that all - or most - citizens – including politicians - share these norms about what justice requires.

Expectations of others' future compliance are boosted when rules secure the intended, fair output, and cannot easily be abused. Thus it is important for trustworthiness that the institutions actually deliver according to their stated aims, providing "output legitimacy" (Scharpf 1999).

Institutions can also provide sanctions that modify citizens' incentives, assuring 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,

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[27] - which Margaret Levi calls 'ethical reciprocity', "a norm requiring that individuals in a given population cooperate with government demands but only as long as others are also contributing." (24-25)

governmental institutions contribute to contingent consent."[28] Institutions provide important assurance by facilitating monitoring of others' compliance, even without formal sanctioning mechanisms. If government authorities believe that their trustworthiness is challenged – with reduced governance capacity as a result – they may provide institutionalized sanctions to bolster their claims, showing how their roles and institutions are such that "their best option" is one where "their individual benefit depends on the provision of the collective benefit." (Levi 1998). One set of such measures may be the efforts at simplifying and democratizing the EU institutions. Transparency may also be crucial for this end – including access to information (Dehousse 1999), Héritier 1999).

Legal legitimacy ensures citizens that the authorities make decisions within the range that can be expected, reducing the risks for those who comply, and ensuring – if the decision-making 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 the diffuse support for the regime which secures the authorities' trustworthiness – 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 generally comply. Thus monitoring arrangements that confirm past general compliance and assess future compliance may be necessary to support such beliefs. Opinion polls that tell of low support for institutions, however, serve as warning signs to citizens and authorities that future compliance might not be secure.

This is one reason why reports of low support are important, regardless of whether such reports are sound. The role of media is thus crucial in both creating and preventing general support.

Citizens' and authorities' publicly shared beliefs about normative legitimacy are central at several points to ensure trust: Contingent compliers as defined here can be expected to comply when they are assured of others' compliance *and* when they regard the regime 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 assurance that they do reliably, over time, govern fairly. Measures include democratic control and visible human rights constraints on decision-making.

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[28] Levi 1998a, 26.

Other mechanisms provide transparency and control over authorities, such as the requirement of Article 190 of the Treaty of Rome, that administrators give reasons for their decisions. Freedom of critical media and vigorous political opposition parties are other measures that enhance the trustworthiness of political authorities.

Diffuse support rests, then, on a sufficient match between the normative legitimacy of the political community – consisting of participants who agree to the need for common decisions for certain ends, the normative legitimacy of the regime – including the institutions' performance in specifying and securing outputs, and 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?

Lack of channels for protest *within* a regime, e.g. by voting to replace officials, or by voicing concerns, may lead to reduced support (Hirschman 1970). Thus there must be visible, effective channels for replacing authorities, also at the European level. Moreover, diffuse support for the regime is enhanced if it appears to be working. Thus, while the Commission resignation might be regarded as an illustration of deservedly low specific support for those authorities, the presentation of this as a mechanism of accountability toward the European Parliament may be used to enhance diffuse support for the regime. Likewise, diffuse support for the regime may 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.

- 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 how the EU is not part of the problem but part of the solution to some important problem.

- Some scholars suggest that the declining support is due to Postmaterialist individuals, who generally express less support for existing hierarchical institutions yet support democratic principles (Inglehart 1999b, Dalton 1999). They are "critical citizens", possibly demanding evidence that regime changes matches the principles, and is likely to provide the promised

output. Moreover, they seem interested in participatory mechanisms – which may itself be a reason to explore such institutions.

- Scholars considering support for the "political community" note that disagreement about its membership, borders and purposes may deprive the regime of diffuse support. This suggests that we must take very seriously lack of assurance about the commitments of citizens in the accession countries; as well as deep disagreements about the objectives of European arrangements for common decision-making. This is indeed the situation facing the EU today.

5. Current normative research concerning the European Union

This account of the relationships among forms of legitimacy may serve as a backdrop for a review of some of the topics of normative political theory highlighted by the Constitutional Treaty currently considered for ratification.

One central topic is the basic constitutional form of the European political order. Should the regime or 'polity' have largely confederal or federal features, a network structure, or whether it sensibly can be regarded as a political order sui generis. Patterns and historical trends among such models can be traced among political parties and countries (Jachtenfuchs, Diez, and Jung 1998). Neil MacCormick has explored the distinctions between statehood and sovereignty, arguing that neither the Member States nor the European Community are fully sovereign in the traditional sense of enjoying legal or political power unlimited by other, higher legal or political powers. Yet the Community is a distinct community of law with a distinct legal order. He suggests that both the Community and the Member States are 'commonwealths' in Hume's sense, securing different common goods for citizens (MacCormick 1999, Hume [1754] 1882).

The Constitutional Treaty reduces the opacity concerning the sites of legal authority in the Union. The Treaty identifies some competences to be constitutionally exercised by Member States, others by the Union institutions, and some to be shared – thus moving the union toward a federal order by some accounts (Follesdal [2003] 2003). Such constitutional allocation of competences worries some theorists, because it may be premature for a union still in search for objectives. Such lists may also hinder the desired multi-level cooperation and flexibility. On the other hand, a list of competences is often thought to prevent the dual risks facing federal orders: creeping centralisation and fragmentation (Dehousse 1994, Abromeit 1998, Moravcsik 1998).

Another central topic of concern is the values and objectives of the European Union. The Constitutional Treaty identifies the central values of the Union, 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." (Art 2). Article 3 goes on to identify the objectives of the Union, 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." – all the time respecting Europe's "rich cultural and linguistic diversity". Much recent work by normative theorists addresses these various values. Some of the objectives are old yet contested, as is the role of the EU in securing them. For instance, the 1952 European Coal and Steel Community, a precursor to the present EU, sought to provide assurance that former enemies now share the ends of mutual prosperity and peace (Schuman 1950). While European integration has no doubt promoted economic growth, some suggest that the Union was not required for peace - since democracies don't war among each other. Still, European integration may have hastened and stabilized 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 decision-making among Europeans seems insufficient for the former, and may be unnecessary for the latter. Fritz Scharpf argues to the contrary that while the mode of current decision-making in the European union may have increased the troubles of domestic welfare systems, the solution may well be to allow more Member State independence (Scharpf 1999, 27).

One reason for scholarly attention to these values and objectives is the perception that they must be shared by citizens. Many note that citizens of multi-national federal orders need a shared "overarching loyalty" if the multi-level 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 in the shadow of Turkey's membership application. Who should be members of the political community - Who are Europeans? And what normative commitments must unite them?

Much normative discussion concerns how European institutions should distribute benefits and burdens among Europeans, and how such decisions should be made (Bellamy 1999). Several contributions have addressed whether Europeans must share some commitment of solidarity to establish European-level welfare arrangements and to maintain trust. David Miller argues that solidaristic welfare arrangements can only be maintained among co-nationals who share a nationality including a culture, thereby denying such prospects in Europe (Miller 1995). Others seem to hold that a shared 'thin' political culture may suffice, based on commitment to the values of the constitution (Habermas 1992). Continued support for common arrangements only requires a 'civic demos' created by carefully crafted institutions, argues Fritz Scharf (Scharpf 1997, 20). Such views raise crucial issues of institutional design, namely how to create self-sustaining institutions that will work both in the short run with low levels of trust, and promote trust in the longer term (Zürn 2000, Rawls 1999, 15).

Federal political orders often exhibit a conflict between the ideals of equality and political autonomy. Individuals in different sub-units often enjoy systematically different standards of living conditions, partly as result of the political powers enjoyed by these sub-units. Yet one of the objectives of the Union is social justice, and others include 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, art. 1) is challenged by the recent expansion. An unmodified commitment to equalize living standards would entail politically unacceptable costs, since the new states GNP/capita is much lower than the EU average. Or can such degrees of economic inequality be defended within the European political order, consistent with respecting the equal dignity of all European citizens?

Much recent political philosophy has focussed on distributive principles for unitary states with a central sovereign (symptomatically, cf. Rawls 1993, xxii). While normative political theories of federal justice are scarce, they have a long and distinguished pedigree (cf. Althusius [1603-1614] 1995, the Federalist papers Hamilton, Madison, and Jay [1787-88] 1961, Elazar 1987, Norman 1994, Kymlicka 1995, Choudhry 2001, Follesdal 1997, Follesdal 2001).

An important normative challenge is the pluralism of values, institutions and political cultures in Europe. Firstly, there are multiple conceptions of value and views about the good life among the citizenry. Acceptance of such pluralism within limits seems highly appropriate for a theory of normative legitimacy for Europe (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 so-called Principle of Subsidiarity. The burden of argument is on those seeking to centralise 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." (Art 9). Unfortunately, the concept of 'subsidarity' is quite vague and contested, yielding thorough scrutiny (Streeck 1996, Follesdal 1998b for further references). For instance, should a defensible version of subsidiarity also serve to assess the allocation of competences among the Union and Member states – and to regions and municipalities? Who should assess when common action is required? How is this presumption against centralisation best justified?

Another safeguard of diversity is human rights, e.g. as stated in the Charter on Fundamental Rights included in the Constitutional Treaty. Some scholars hold constitutionalised human rights to be necessary for an acceptable political order (MacCormick 1999). Others are wary of substantive constitutional constraints on "unconstrained political debate" concerning norms and requirements (Dryzek 1990). Democratic attempts at reaching compromises should only be secured by procedural constraints that "allow individual to fight for their rights themselves" (Bellamy 1995; Bellamy 1999). In addition to this classical discussion, other normative issues are peculiar to the EU and other multi-level political orders. Human rights do not only constrain governments vis-à-vis their own citizens and toward other sovereign states. Some human rights norms should also regulate the relations among Member States, possibly holding them to higher standards since they share values and objectives, while being more hesitant concerning sanctions since these are internally democratic sub-units. The need to enhance trustworthiness may support some such human rights constraints.

Clarification concerning normatively acceptable democratic institutions in the EU is required, if for no other reason that such vague and contested terms as 'democracy' may otherwise be misapplied and lend support to reforms on false grounds (Schmitter 2000). Schmitter thus suggests reforms, rather than revolutions, seeking to enhance the democratic control over EU-level decisions.

Contributions in this field have both addressed the grounds of democratic institutions, their irreplacability, and details concerning majority rule.

Some authors hold that individual autonomy should be secured, based on the assumption that self-determination is a fundamental human good. This entails that the EU must be a freedom-enabling order providing citizens opportunities for active participation in shaping and sustaining their institutions (MacCormick 1999, 164). Others may hold such self-determination to be a contested ideal of human flourishing, hence unsuited as a common normative basis. Several authors instead focus on individuals' interest in security against interference and against being subject to the arbitrary will of others (Pettit 1997; Bellamy 1999; Abromeit 1998). Some authors also argue that institutions should foster political involvement, both because it is required if the political order is to remain just, and to foster the appropriate human nature (Bellamy 1999).

The Constitutional Treaty secures a variety of such liberties worth protecting and promoting. Lynn Dobson identifies at least three conceptions: non-interference, non-domination, and enhanced capability sets (Dobson 2004). The Constitution may secure autonomy in the sense of non-interference by human rights constraints, widely dispersed veto points, and low thresholds for blocking coalitions, member state competences the subsidiarity principle. Non-domination in the sense of freedom from potentially arbitrary interference is served by the separation, checking, and mixing of institutional powers, e.g. the watchdog function of national parliaments. Individuals' capabilities are promoted by EU action for shared objectives based on qualified majority decision-making and effective parliamentary majoritarianism. Discrepancies between citizens' liberties and those of their governments require further analysis, as do immunity for the 'internal affairs' of member states (and indeed legislative regions). Difficult trade-offs also remain between various kinds of liberty.

One topic that has received much attention is the place of deliberation in the European political order. One controversial issue is how public political deliberation affects citizens' fundamental preferences, as compared to other inputs on character formation. (cf. Femia

1996, Przeworski 1998), such as the civilising impact of hypocrisy (Elster 1998). Further methodological challenges arise in disentangling processes occurring while parties talk: 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) Bargaining allegedly involves - in the pure case - processes where "The 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." (6) Yet Elster goes on to acknowledge that arguing can also concern factual matters (7). And preference changes due to arguments may be changes in ultimate ends or changes in policy choices, the latter based on better information. Some value deliberation for its role in affecting individuals' ultimate ends. Others value deliberation to get a better understanding of possible alternatives and coalitions, and more accurate probabilities and value estimates of outcomes (Przeworski 1998). Many contributors to negotiation theory use 'bargaining' to cover the latter of these two – e.g. the 'integrative bargaining' of "Getting to Yes" (Fisher and Ury 1987). Thus observed shifts in policy preferences after people talk together may be due to arguing leading to changes in ultimate aims, or arguing about facts that have led to different policy choices, or to bargaining in Elster's sense. And how do we tell the difference? It is difficult to infer from observed changes over policy preferences whether what has occurred is modification of ultimate objectives – which is the main claim of some deliberative democrats – or part of bargaining in the broader sense (Follesdal 2005). In either case it remains to be seen whether such shifts are to the normatively better, or simply to the group's good.

Another important concern is whether such preference transforming discussions should primarily happen within institutions with authority, or within 'civil society' in general (for the former, cf. Nino 1996, Weithman 1995, the latter cf. Dryzek 1996).

The impact of deliberation on interest formation rests on assumptions that are presently less plausible at the European level than at the national. The opacity of European institutions, the present lack of a well-developed European public space, and the relative 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 done in deliberating bodies, or that more deliberation among more individuals is always better – since a group may collude against others by what may appear to

be deliberation. Nor does the need for preference modification require that we rank deliberation over preference aggregation by votes: 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 Union bodies should be democratized. The slow increase of powers to the European Parliament from Maastricht onwards in the Amsterdam Treaty and in the Constitutional Treaty serves by many counts to reduce the democratic deficit, especially insofar as it allows directly elected representatives to co-determine legislation and to hold the Commission accountable. (cf. recommendations in Lodge 1994, Wessels and Diedrichs 1999, Lodge 1996). However, even such measures are contested. Some authors argue that the main mode of democratizing the Union must be to empower local democratic governance (Landy and Teles 2001). Others even argue that the Union should maintain its democratic deficit (Gustavsson 1997).

It is not obvious that majoritarian decision-making is appropriate when segments of the population risk being 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 multi-level orders for 'plural' societies have received scrutiny (Lijphart 1999, Barry 1991, Follesdal 1997). The heated discussions concerning the construction of Qualified Majority Vote in the Constitutional Treaty underscores how important it is that the voting rules both allow effective decision making and protect minorities against being regularly overruled.

Some have argued that the EU must go beyond democratic institutions and instead rely more on informal, non-hierarchical networks or independent bodies. There are many good reasons for including affected parties in deliberations or decisions, including Republican ideals stressing the need to prevent domination; considerations of autonomy and socialisation, or due to discursive theories of validity being constituted by agreement among all affected [29]. Yet there are important and interesting differences among scholars about which arenas are best suited for participation.

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[29] Pateman 1970 is a classic source.

Some scholars claim that comitology and networks, suitably modified, would enhance the legitimacy of EU decision-making. Christian Joerges reports on comitology that it can be a forum for 'deliberative politics' (Joerges 1999, 311), and this finding might diminish worries often raised against comitology as illegitimate (Vos 1999, Abromeit 1998) .

It remains to be determined when observed preference shifts are due to shifting expected payoffs, or shifts in ultimate objectives generally. We must also determine the risks involved, e.g. of collusion. Such risks – but perhaps also the benefits – may be greatly reduced by constraining comitology within other institutions such as the European Parliament, and otherwise ensuring that "the necessary preconditions of deliberation can be realised." (Neyer 1999, Offe 1997).

Others hold that institutionalised networks provide good opportunities for participation that enhances legitimacy (Héritier 1999). They may be among the many sites where private and public bodies can meet to deliberate about solutions to conflicts (Bellamy 1999). However, the institutionalist issues concerning trustworthiness reappear: 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 (Abromeit 1998, 83-84; Smismans 2004)?

Yet others hold that associations in civil society play important roles in correcting skewed representation, providing information and socializing citizens. (Cohen and Rogers 1995; Hirst 1994). It seems that many such suggestions are best seen as supplements or corrections to representative democratic channels; for instance because they seem to require public power as a mediator to correct skewed composition of associations.

Some authors criticise hierarchical structures that "inevitably fosters distorted communication and communicative rationality" (Dryzek 1990, 141). Instead of traditional democratic institutions, they favour civil society arrangements beyond public power such as informal mass movements, avoiding political influence and cooptation (Dryzek 1990, Dryzek 1996). To some extent these efforts at "democratization in civil society beyond the state" are thought as alternatives to representative democracy, whose current instantiations might hardly merit the name "democratic".

There is good reason to promote a civil society where policies and preferences can be openly debated and modified toward fair solutions consonant with the common good, minimizing the skewing effects of formal power. Such reasons include preference formation, autonomy,

learning, and fostering a sense of inclusion, as argued by a broad range of democratic theorists, none of whom have been solely concerned with democracy as interest aggregation (Mill [1861] 1958, Schattschneider 1960, Schumpeter 1976), Key Jr. 1961, 449, Riker 2003, 172). The innovators hold that democratic arrangements should be replaced (Dryzek 1990, Eriksen 2000, 44). Other more cautiously explore how these networks may supplement competitive elections and other traditional institutional staples of democracy (Cohen 2003; Smismans 2003), and how to maintain the undistorted arenas over time (Femia 1996; Goodin 1992).

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

Conclusion

The diagnosis of 'legitimacy deficit' covers a broad range of symptoms and prescriptions. While both pessimism and optimism may be premature, there seems 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 be justified toward all citizens and other affected persons on a footing of equality. The Constitutional Treaty provides much by way of constructive suggestions in these regards (Dobson and Follesdal 2004, Sieberson 2004).

The legitimacy deficits are not only a matter of present public opinion registering low levels of political support for institutions, policies and authorities. Legitimacy is centrally a matter of whether citizens have trust in the future compliance of other citizens and authorities with institutions they believe to be normatively deserving of obedience. Such trustworthiness in institutions and fellow citizens seems necessary for the long term support for the multi-level

political order, and for authorities' ability to govern. Normative political theory may thus contribute decisively in promoting long term stability.

> [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 fails to secure these objectives and values to a reasonable extent, what diffuse support there was may corrode further. The regime may then not have the moral right to 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.

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