Towards a stable finalité with federal features? The balancing acts of the Constitutional Treaty for Europe

Andreas Follesdal

ABSTRACT The Constitutional Treaty for Europe (CTE) strengthens federal features of the future European political order, and makes the federal tradition of political thought more salient. Stable and legitimate federal political orders require multiple forms of balancing, and many of the changes in the CTE are improvements on the Nice Treaty in these aspects. The CTE goes some way toward creating a European political order with federal features more likely to both merit and facilitate trust and trustworthiness among Europeans. Central features are the increased role of human rights, national parliaments, the European Parliament, and political parties, all operating under greater transparency. The gains in trust and trustworthiness may be worth some apparent efficiency losses in promotion of ‘the European interest’. Such trust is crucial if the institutions are to foster willing support and ‘dual loyalty’ toward the individual’s member state and toward the union as a whole among the citizenry and officials.

KEY WORDS Constitutional Treaty; human rights; democracy; federalism; legitimacy; political parties; political theory; socialization.

INTRODUCTION

The ‘institutional balance’ of the European Union has been a recurrent concern among politicians and scholars. The federal features of the Constitutional Treaty for Europe (CTE) add to the challenges of balancing, but may also contribute to their resolution.

The Union must achieve and maintain four quite different forms of balancing or stability:

- between the member states and the Union institutions;
- among Union institutions;
- among member states within Union institutions;
- institutions must also foster citizens’ and officials’ ‘dual loyalty’ toward their own member state and to the union as a whole.
These balances must themselves be ‘balanced’ against each other, without loss of problem-solving capacity.

The federal features of the CTE also increase the salience of insights and solutions familiar from the political theory of federalism. This old tradition has much to contribute, even though it has received less recent attention than theories of justice for unitary states. For instance, in the liberal, Kantian tradition, John Rawls addressed ‘sovereign states with central administration’. Jürgen Habermas’s contributions understandably focus on the preconditions and possibilities of a common European public sphere and political culture, rather than on the future political role of member states and their governments in an EU with federal features. The federal tradition addresses several of the challenges of stability which the EU must address.

I shall argue that the CTE improves several of the four forms of stability in a legitimate manner. In particular, it bolsters institutional mechanisms that merit and facilitate trust and trustworthiness in institutions and in fellow citizens. This is crucial to citizens’ long-term support for any political order, and for authorities’ ability to govern. The challenges are even greater in federal arrangements in ‘plural societies’, characterized by population groups ‘sharply divided along religious, ideological, linguistic, cultural, ethnic, or racial lines into virtually separate subsocieties’ (Lijphart 1999: 32, 195).

The collapse of the ‘permissive consensus’ toward further European integration may reflect precisely this challenge. Examples of trust-building features of the EU include interlocking federal arrangements, more visible human rights obligations, and added scope for contestation among political parties, aided by increased transparency. These measures may foster preference formation toward an ‘overarching loyalty’ among all Europeans — which may be worth some apparent efficiency losses, or so I shall argue.

Section 1 highlights some relevant elements from federal thought. Section 2 explores the need for a trustworthy political order that promotes compliance by resolving problems of assurance. The next sections address aspects of the CTE’s contribution to the four forms of balance.

1. FEDERALISM

For our purposes, a federation is a political order where competences are constitutionally split between sub-units and central authorities. The CTE enhances these features of the EU. The treaty specifies more carefully the exclusive competences of the Union institutions and of member states. The EU also has features at variance with a ‘confederation’ in the standard senses. Central legislation has direct effect, so the Union’s subjects are not only member states but also citizens. Decisions by qualified majority voting (QMV) in central bodies can be binding over the objections and votes of some member states.

This does not mean that the EU’s finalité is or should be a centralized federation, nor that its confederal elements will or should wither away. Many competences remain shared between sub-units and central authorities, and the
EU remains decentralized, and should perhaps remain so. The federal features will coexist with several confederal elements for the foreseeable future (Meehan 2001): treaty changes must still be unanimous (Art IV-443), and the CTE confirms states’ right to withdraw (Art I-60).

The federal features of the European political order mean that at least four ‘balances’ must be achieved and maintained. Each raises important normative issues, as does the second-order balancing between them.

**Between the member states and the Union institutions**

Central to federations is the split of authority between sub-units and central authorities. The distribution and redistribution of competences is likely to remain a contested issue where normative arguments are commonplace. James Madison eloquently observed about the US Constitution: ‘The federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes’ (Madison 1961). Madison’s plausible normative description has important implications for framing the debates. In particular, when EU member states refuse to pool sovereignty, or when they vote against Commission proposals, critics cannot plausibly use this as the sole basis to accuse them of ‘egoism’ in pursuit of their ‘national interests’. The question is rather whether common or member state action in one particular issue-area best secures and promotes the important interests of individual Europeans. Arenas and institutions must facilitate deliberations and negotiations on how member states and Union institutions, acting separately and jointly, best pursue and protect these interests (McKay 2005).

**2.2 Among Union institutions**

The second form of balance concerns how to allocate and exercise powers and checks among Union institutions, including the powers of member state representatives to nominate and select office holders. This institutional balance is familiar to scholars of federalism and harkens back to the ratification debates of the US Constitution. The challenge was clearly stated regarding the EU: ‘the treaties set up a system for the distribution of powers among the different European Community institutions, assigning to each institution its own role. Observance of institutional balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions.’

**Among member states within the Union institutions**

The third need for balance occurs when federal political orders have sub-units with different population size. Small populations typically enjoy more powers than warranted by the principle of ‘one person one vote’ when sovereign states bargain to become a ‘coming together’ federation (Stepan 1999). Small
units want overrepresentation in common decisions to avoid domination by more populous sub-units. In hindsight such safeguards are often challenged on empirical or normative grounds (Dahl 2001). Lines of political contestation may seldom follow territorial borders. Ideals of political equality may come to replace mistrust. The CTE reflects this bias in two ways. Unanimity continues to be required for future revisions of the Constitutional Treaty (Art IV-443). Qualified majority is defined by the CTE so as to favour small member states. Several governments objected to the formula, both during the Convention and afterwards (Art I-24).

**Fostering dual assurance and loyalty**

Scholars at least since James Madison insist that federal institutions must address the peculiar assurance problems among sub-units and citizens in these circumstances of complex mutual dependence.\(^\text{10}\) If mutually beneficial and just arrangements are not to unravel, citizens and officials must have the ‘confidence of the future regularity of their conduct’.\(^\text{11}\) Union citizens and officials must create and maintain political loyalty to the complex regime. They must be officials and citizens both of their own member state and of the EU at large.\(^\text{12}\) The task is certainly not to create ‘post-national’ citizens without particularist ties or special duties to compatriots, but rather to fashion institutions that maintain dual loyalties.

Such trustworthiness is especially hard in federations, for at least two reasons. They tend to have a higher level of ongoing constitutional contestation than unitary states concerning the interpretation of the constitution, its objectives, and the allocation and reallocation of competences (Linz 1999). Yet citizens’ mutual trust and support for the polity are weaker in many federations than in unitary states. After all, politicians often created federal arrangements explicitly to accommodate territorially based cultural or economic tensions.

Federal institutions have sometimes emerged explicitly to reduce mistrust among ‘contingent compliers’, who will not comply in fair arrangements unless assured that others do likewise. Institutions play crucial roles to create and maintain this form of self-sustaining stability (Filippov et al. 2004).

**2. TRUST AMONG CONTINGENT COMPLIERS**

With increased interdependence, the need for trust and trustworthiness increases among Europeans. Consider the shift to QMV, wrought by a shared sense that too many veto points had proved collectively irrational. Under QMV governments can no longer protect their citizens against disadvantageous arrangements. Stable popular support for QMV requires well-developed trust among Europeans and their officials (Nicolaides 2001). Politicians and their voters must adjust or even sacrifice for the sake of other Europeans, while trusting others to do likewise. No wonder that QMV does not apply in areas where national differences and identity seem at stake.
A central challenge is what we now label the assurance problem among contingent compliers. Arguing for federal solutions rather than confederal arrangements, James Madison noted that a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all . . . If the laws of the States were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution?

Madison (1787)

A contingent complier\(^{13}\) decides to co-operate 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.

To illustrate, one motivation may be what John Rawls called a *duty of justice*,\(^ {14}\) a commitment

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.

Compliance among contingent compliers raises challenges of assurance long recognized by political theorists, now informed by game theory.\(^ {15}\) Institutions can provide crucial assurance through positive laws, transparency, shared practices, and socialization.\(^ {16}\) Institutions thereby reduce the risks or suspicion of others’ defection, and socialize citizens to certain preferences. The CTE provides several institutional mechanisms that should promote trustworthiness among such contingent compliers.

Consider the conditions for when I will comply with rules, institutions and officials’ decisions:

(a) I must believe that they are normatively legitimate

In situations of doubt this requires public knowledge of several kinds:

1 of a plausible *public political theory* regarding democracy, solidarity, and the other objectives of the political order. The European political order seems to lack this, as evidenced by the heated debates in the Convention on the Future of Europe on the grounds, objectives and means of the EU (Olsen 2004).
2 that the institutions are *simple and transparent* so that citizens can comprehend and assess them. Public media may assist citizens and authorities to determine sufficient match between institutions and decisions and such normative requirements. Federations are more difficult to assess because of the complexity of constitutional rules that establish, check, divide and disperse...
authority. The CTE improves the situation: it simplifies the institutions and processes, and provides public access to legislative processes in the Council of Ministers and elsewhere – possibly with some efficiency loss (Naurin 2004).

3 a general, public knowledge that institutions are sufficiently effective and efficient: when generally complied with, they actually achieve their objectives without much waste. The CTE may contribute to such knowledge since it increases transparency, the salience of human rights and the domain of majority rule. Yet it is insufficient. Whether the efficiency gains are an overall improvement depends on a normative assessment of the objectives of the Union. But the wide-ranging objectives of Art. I-3 are vague and unranked. Free and undistorted competition, full employment, social inclusion and solidarity between generations and member states must be specified and weighed, and the roles of the EU and of member states in these aspects must be resolved. Democracies address these vexing challenges by deliberation and decision by accountable politicians, but the EU has yet to develop these mechanisms.

(b) I believe that most other actors will comply

In addition to the belief that the system is normatively legitimate, contingent compliers must also believe that other citizens and officials comply with the practices.

The contributions of institutions: pay-offs and preference formation

Institutions create and maintain such confidence in the compliance of others in at least three interacting ways.

They can monitor compliance, or provide transparency and access to information for monitoring agents such as the media and the political opposition.17 The CTE facilitates monitoring: it increases opportunities for public scrutiny and political contestation at European and national levels, for both member state governments and national parliaments (e.g. Art. I-50, Art. III-163).

Institutions can also affect agents’ pay-offs by adjusting sanctions and rewards (cf. Papadopoulos 2005). Trustworthy centralized sanctioning authority can boost trust in general compliance.18 An authority can even establish sanctions to enhance its own trustworthiness, to convince citizens that its self-interested option also provides collective benefits (Levi 1998b). This may explain why political élites have sought to democratize EU institutions. The CTE adjusts such pay-offs when it increases the powers of the European Parliament, highlights human rights, and increases transparency of the legislative process. A trustworthy European Court of Justice seems essential for the trustworthiness of other authorities, to reduce suspicion that powerful states do as they will while weak member states do as they must. Two important test cases were the ‘Reactions against Austria’ when the Freedom Party was put in government. Some thought the protests exposed the vulnerability of smaller member states. Such suspicions are at
stake in EU treatment of the German and French unilateral rejections of the Stability and Growth Pact (McKay 2005). The CTE could have further reduced fears of others’ non-compliance, by taking over implementation and enforcement of Union decisions which largely remain member state responsibility.

To modify pay-offs by sanctions is insufficient to secure long-term stable support. Institutions may also socialize citizens, ‘transform obedience into duty’ – for instance, into a sense of justice. To trust a majoritarian system, the minority must be assured that the majority will consider their plight. Authors differ in their views about the necessity of such socialization – whether incentives for self-interested actors are likely to engender sufficient trustworthiness that citizens generally comply with legitimate rules. Institutions may facilitate endogenous preference formation in the public political forum (Rawls 1999: 134) and the broader public sphere (Habermas 1994). The CTE enhances such mechanisms by increasing the scope and arenas of political contestation at the Union and national levels.

3. BALANCE BETWEEN MEMBER STATES AND UNION INSTITUTIONS

All federations suffer pressures toward centralization and decentralization. These drifts must be checked whilst securing effectiveness, efficiency, and flexible reassigned competences.

The CTE allocates competences in different forms – exclusive, shared, complementary or with Union co-ordination – leaving the authority distribution clearer but not lucid (Christin et al. 2005). These measures may reduce unintended drifts. Yet this fixed distribution of competences requires a strong judiciary, possibly at odds with norms of accountability. On the other hand, centralization is more likely if competences are not constitutionally embedded in a competence catalogue but can be reassigned democratically. This is a risk with a stronger European Parliament. There still remain two ways to stem centralization: to leave the burden of argument with those who wish to centralize in the form of a principle of subsidiarity variously specified; or to give member states permanent powers to check Union authorities. The CTE pursues both of these options, and grants democratic legitimacy for competing views on the issues (von Beyme 2005).

Other institutionalized ‘centrifugal’ forces may also prevent a transformation into a ‘post-national’ political order with no constitutional role for sub-units. The CTE provides the member states with several such mechanisms. In particular, treaty changes must be unanimous. Some might cite this and the explicit right to secede as evidence that the constitutionalization process came too early, before sufficient trust had emerged. The European Council remains powerful. Its power to nominate the Commission President for European Parliament approval will check the European Parliament’s inclination to centralize. Thirdly, the CTE grants national parliaments access and power to appeal legislative proposals and suggested Treaty reforms (Art. I-18(2), Art. IV-443,
Protocols 1 and 2). National parliaments shall monitor the application of subsidiarity and may give ‘yellow cards’ for suspected violations (Protocol 2). This mechanism has two important limitations. It only concerns shared competences, not the exclusive competence of the Union (Art. I-11(3)). And the appeals only go to the legislative institutions rather than to the European Court of Justice – whose willingness to prevent centralization has been doubted.25

4. BALANCE AMONG UNION INSTITUTIONS

The second form of balancing concerns the allocation of powers and immunities among central institutions. The CTE acknowledges the need to ‘enhance the role of each of the Union’s three institutions’ (Preamble). This configuration of authority requires careful craftsmanship. The framework must be ‘demos-constraining’ so as to prevent usurpation and abuse of power and domination.26 Yet it must also be ‘demos-enabling’ to achieve its legitimate objectives.27 These important issues of balance among Union institutions must be settled partly based on a normatively acceptable account of the objectives of the Union. The proper roles of the Commission and of political parties in furthering ‘the European interest’ illustrate the challenges.

The case of the Commission and political contestation

The Commission has near monopoly on legislative proposals, presumably owing to its mandate to ‘promote the general European interest and take appropriate initiatives to that end’ (Art. I-26).

The CTE holds that the European Parliament must endorse the European Council’s proposed Commission President, who will in turn formulate and pursue ‘the European interest’. Some worry that this form of parliamentarism politicizes the Commission. Its credibility is at stake.28 What are we to make of such worries?

The CTE skirts crucial issues. Union institutions shall ‘serve its interests, those of its citizens and those of the Member States’ (Art. I-19); many of the Commission’s initiatives in the ‘European interest’ enjoy legal supremacy: they override Member State legislation in furtherance of the ‘national interest’. Yet it is not obvious that the Commission’s sense of European interest should always have such a priority.

Some Union regulations concern the need for concerted action, for reasons of scale, such as the need to have a unified voice as a world actor in global regime building. These gains may surely sometimes be less important than gains wrought by national policies, in which case the Union should respect national preferences. Other Union policies may be required to avoid co-operation traps such as prisoners’ dilemmas. These collective action preferences should surely trump the ‘egoistic’ member state preferences – but it is not obvious that the Union institutions are best situated to discern when they should override national decisions for the sake of ‘the European interest’.

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Moreover, the CTE does not detail the nature of this political project. Art. I-3 provides a list of laudable objectives: peace, the well-being of its peoples, freedom, security, a single market, sustainable development, a social market economy, aimed at full employment, combating social exclusion, promoting solidarity and respecting cultural diversity, contributing to international free and fair trade, and so on.29

The all-important details, weights and limits remain obscure, and are contested among parties and ideologies within member states, in the Council of Ministers and in the European Parliament. Moreover, the appropriate weighting is likely to differ among member states, as well as between these sub-units and the Commission institutions.

Yet Art. I-26 lays down that ‘The European Commission shall promote the general European interest and take appropriate initiatives to that end.’ How should the Commission handle disagreements? The White Paper on Governance assumed that disagreements were due to the sectoral interests inappropriately pursued by the Council of Ministers (p. 30). Inappropriate deadlocks over treaty reforms may also occur if citizens can use referendums to protest against other domestic policies (Trechsel 2005). However, other reasons for deadlock may be far more legitimate; for instance, if citizens of one member state have very much at stake. There seems no reason to assume that the Commission is best suited to make these judgements. National protests and appeals to national interest, e.g. in legally binding national referendums, cannot always be regarded as illegitimate. Procedures should therefore not always allow an unchallenged conception of ‘the European interest’ to overrule such protests. That the Commission becomes ‘politicized’ to reflect such contested views does not seem to threaten its credibility. To the contrary, such contestation seems crucial to maintain its trustworthiness. Consider the European Parliament’s rejection of Barroso’s first slate of Commissioners. The political contestation showed that the rules provide a degree of responsiveness to elected representatives, and did not tarnish but bolstered the institution of the Commission.

This event showed some of the roles of political parties and of human rights standards. They are important agents for citizens’ preference formation, especially to promote other-regarding perspectives and consistency. Political contestation increases the political salience of issues; the parties create policy platforms, specify policy objectives, make complex policy trade-offs, and scrutinize competitors’ attempts at these tasks (Linz 1999). In particular, federation-wide political parties seem crucial to develop cross-border concern and respect when they co-operate and compete within sub-units and in central institutions. Referendums and other instruments of direct democracy also enhance broader support and a common identity, even when they also create conflict (Papadopoulos 2005).

Parties do not currently serve these functions in the EU institutions. But the CTE acknowledges political parties (Art. I-46(4)), increases transparency about the legislative process (Art. I-50), and increases European Parliament powers...
The result may well be that elections to the EP stop being ‘second order’ and become contested among European-level parties. Optimists may hope that the institutional changes will stimulate parties to further shape Europeans’ political preferences toward the requisite overarching loyalty over time. This is more likely to occur under the interlocking arrangements of the EU, where national institutions take part in Union governance. The CTE also promotes public negotiations and preference modification by requiring public proceedings and copies of legislative proposals and Commission consultation documents. Transparency is not always as beneficial as proponents claim: it may reduce the quality of agreements and hinder fair outcomes (Naurin 2004). However, public reasoning about common interests is important for preference formation in the general public. And transparency seems necessary for trustworthy institutions, since it facilitates accountability of politicians. Such long-term benefits in trustworthiness seem worth the possible costs in effectiveness and efficiency.

Pessimists will suspect that EU lack of taxing and spending powers will limit public interest, and that the confederal style of European parties reduces their integrative role. The upshot here is that the proper balance among Union institutions also requires great attention to the roles both of member states and of political parties. ‘The European interest’ is contested, especially in so far as it overrides all other legitimate political objectives in a political order with federal features. Political contestation is crucial in order to address these topics in ways that maintain trust.

5. BALANCE AMONG MEMBER STATES: VOTING WEIGHTS

EU member states with small populations enjoy powers beyond what the principle of ‘one person one vote’ seems to warrant. This conflict between the ideals of equality of states and of persons is not only one of theoretical relevance, but also a source of political conflict. Overrepresentation of small states is a typical concession when they join a ‘coming-together’ federation among sovereign states (Stepan 1999). Yet these concessions are often questioned by citizens of populous sub-units when the federations come of age (Pinder 1993: 101). The EU is no exception. Indeed, the skewed voting weights caused the CTE to fail at the Intergovernmental Conference (IGC), where the populous countries Spain and Poland objected to the distribution of votes.

Whether overrepresentation of small states can be defended remains contested in normative political theory. Some arguments appear to be based on ‘communitarian’ normative theories that take communities rather than individuals as their fundamental objects of concern. This fits poorly with liberal egalitarian thought, which holds that it is only the interests of individuals that should be of ultimate and equal concern.

Other defences of disproportionate voting say that majority rule is inappropriate for populations divided along cultural, ethnic or other deep cleavages. In these societies individuals of large and small groups face different risks of
being in the minority.\textsuperscript{34} Skewed voting weight may be important to secure equal non-interference, non-domination, enhanced capability sets or a combination of these (Dobson 2004). Overrepresentation of small states in coming-together federations may also be justified based on citizens’ interests in fulfilling their established, legitimate expectations, which requires representation in common decision-making bodies.\textsuperscript{35}

To conclude, it seems premature to criticize Spain and Poland for their refusal to back down from the voting weight agreement of the Treaty of Nice which granted them ‘disproportionate’ voting weight. ‘Proportional’ voting is not simply a matter of finding the obvious mathematical solution, but a choice among mathematical formulae from normative premises addressing issues such as trust and risks. For instance, what matters for individuals may be a weighing of the opportunity to be part of a ‘winning’ coalition, against the opportunity to be part of a ‘blocking’ coalition to prevent severe harm. A decision rule may therefore seek to combine the two, and, for instance, equalize citizens’ net opportunity expressed as the probability of ending up in a winning coalition minus the (weighted) probability of ending up in a losing coalition.\textsuperscript{36} This explication of ‘proportional’ voting weight should underscore the need for careful normative reflection concerning the objectives of democratic decision-making and institutions’ roles in facilitating sufficient trust among citizens marked by different cleavages and institutional bonds.

\textbf{CONCLUSION}

The federal tradition of political thought sheds some light on the various challenges of balance and stability needed in a stable and legitimate EU, and the solutions offered by the CTE. Many of the changes in the CTE improve the present balances between the member states and the Union institutions, among the Union institutions, and among member states within the Union institutions. The document confirms and strengthens four mechanisms and opportunity structures that may build support for the institutions and facilitate trust and trustworthiness among Europeans: the increased visibility of human rights, the role of national parliaments, European Parliament control over the Commission, and political parties. All of these will operate under greater transparency. The gains in trust and trustworthiness may be worth some apparent efficiency losses in promotion of ‘the European interest’, for several reasons. ‘The European interest’ is contested and can most legitimately be tracked, specified and pursued by democratically accountable officials against a background of political and public scrutiny. Effectiveness and efficiency can only be assessed according to specified objectives that are complex mixes of legitimate ‘European’ as well as ‘national’ interests. Furthermore, these mechanisms foster a reliable pursuit of these objectives, and a general trust in officials in this regard.

The challenge of creeping centralization could have been addressed even more fully if national parliaments were given broader and stronger power to halt what they would regard as Union violations of the principle of subsidiarity.
This could hamper the Union’s ability to reach optimal common decisions, and such arrangements could fuel undue decentralization. But we must remember that blocking certain common decisions need not be ineffective. Appeals to ‘national interests’ may be normatively legitimate, and they should not always be overruled by ‘the European interest’.

The CTE changes the balance among Union institutions, partly by the method for selecting the Commission President. The greater role of the European Parliament enhances the opportunities for political contestation. Such parliamentarism threatens the conception of the Commission as an unbiased and effective guarantor of an uncontroversial ‘European interest’, but I have argued that this conception is flawed and unlikely to engender the requisite trust.

The balance among member states within Union institutions raises unresolved fundamental normative issues concerning the best distribution of voting weights on which issues. The IGC made clear that the CTE did not succeed in bringing closure to this important topic. Some progress toward reasoned agreement may be gained by considering the reasons for the various interests at stake – non-interference, non-domination or enhanced capability sets.

The CTE also confirms and strengthens several mechanisms that may induce citizens’ willing compliance and support for the institutions. These mechanisms include the somewhat public nature of the Convention debates themselves and their aftermath, ‘interlocking’ federal arrangements, more salient human rights standards, and the increased opportunities for contestation among political parties of issues concerning European level policies.

All in all, these changes indicate that the CTE goes some way toward creating a federal European political order more likely to facilitate trust and trustworthiness among Europeans with a sense of justice. This is good news for contingent compliers prepared to comply with institutions that are normatively and socially legitimate. Importantly, the federal tradition of political thought also suggests that such a revised European political order may also merit such increased trust.

Address for correspondence: Andreas Follesdal, Norwegian Centre for Human Rights, University of Oslo, PO Box 6706, St Olavs plass, N-0130 Oslo, Norway. email: andreas.follesdal@nchr.uio.no

NOTES

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2 Nentwich and Falkner 1997; Sbragia and Cram 2002.


6 This is not the only useful definition. Cf. others, who seem to regard federal structures as fully centralized (Moravcsik 1998: 6). This definition allows that sub-unit governments participate in central institutions (pace King 1982). See McKay 2005; Auer 2005; Sbragia 1992; Follesdal 2003.


10 Madison 1787.

11 Hume 1960 [1739]: 490.


13 I here modify Margaret Levi’s model of ‘conditional consent’ (Levi 1998a: ch. 2).


15 Before Madison, Rousseau 1978 [1762]: 2.4.5.


18 Cf. Mendez 2005 on the weak federal powers in Switzerland.

19 Rousseau 1978 [1762]: Book 1, ch 3; cf. Rothstein 1998; Rawls 1971; Bellamy and Warleigh 1999, etc.


24 Nicolaidis 2001; Craig 2003.


26 Stepan 1999; Pettit 1997; Bellamy 1999.

27 The legitimacy of institutionalized vetoes or checks on majorities is contested: some are sceptical (Goodin 1996; Waldron 2000; Cohen 1997: 79), others hold it to be an open question, partly for reasons of balance, trust and trustworthiness (Scharpf 1999: 20–2; Shapiro 1996: 231; v. Sunstein 2001: 9). Others argue that non-elected or non-majoritarian institutions best secure the legitimate interests of citizens (Majone 1998; Moravcsik 2002).

28 Majone 2001: 261–2; Craig 2003: 3; Follesdal and Hix 2005.


31 McKay 2000; Simeon and Conway 2001; McKay 2004.

32 Art. 50, Protocols 1 and 2.

33 Thorlaksson 2005.
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