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EUROPEAN INTEGRATION AS COMPROMISE:

CONCESSIONS, RECOGNITION AND THE LIMITS OF COOPERATION

by

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Abstract

The role of "compromise" in European integration has been widely recognised by EU scholars and practitioners alike. At the same time, the systematic conceptual, analytical and normative study of compromise remains an exception. This is surprising, given that the study of compromise can be linked to three broader questions: 1) How does the EU accommodate diversity? 2) What makes supranational rule normatively justifiable? 3) Who or what defines the limits of cooperation? Against this backdrop, I attempt to shed light on the concept of compromise, on the role of compromise in legitimising supranational governance, and on the limits to compromise in the European polity. I argue that the EU—a divided, multilevel and restricted polity—is highly dependent on the legitimising force of "inclusive compromise", which works through mutual concessions and the recognition of difference. This is true for vertical or macro-level relations between systems of governance (where compromise works through "constitutional compatibility"), and for horizontal or micro-level relations between political actors (where compromise works through "procedural accommodation"). Given the legitimising force of inclusive compromise, the paper subsequently identifies the limits to such agreements and, thus, to supranational cooperation; I argue that these limits are issue-specific and depend on where the costs of cooperation are borne. The paper concludes by outlining routes for follow-up empirical research.

Very first draft—please do not quote without permission. Comments welcome!

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Introduction

The role played by compromise in European integration has been widely recognised and commented upon. European Union (EU) scholars and practitioners have analysed the predominant "consensus reflex" or "culture of compromise" at the heart of Community decision-making (Heisenberg 2005; Lewis 1998); the EU's constitutional settlement, combining functional market integration with a high level of institutionalisation and the co-existence of disparate domestic constitutions, has been described as a "constitutional compromise" and an example of "constitutional tolerance" (Moravcsik 2005; Weiler 2003); and, most generally, negotiation theorists point to the key role of integrative bargaining in EU decision-making (Elgström/Jönsson 2000; Dür/Mateo 2010). In short, reference to compromise has come from the different sub-fields of European Politics and from across the meta-theoretical spectrum.

At the same time, the systematic conceptual, analytical or normative study of compromise has remained an exception (Bellamy/Schönlau 2004; Reh 2010). Conceptually, scholars have told us little about what defines a compromise, about what distinguishes a compromise from other negotiated agreements, or about how types of compromise differ from one another; what more, they tend to use the terms "compromise" and "consensus" interchangeably. Analytically, there are few systematic studies of the social and institutional context conditions that facilitate compromise, or of how a negotiated agreement becomes an accepted and, hence, effective instrument of supranational governance. This is even more surprising when considering the wealth of studies on deliberation and persuasion and, thus, on the conditions that facilitate the search for consensus (see e.g. Neyer 2004; Panke 2006; Risse/Kleine 2010). Finally, in spite of the burgeoning literature on EU legitimacy, spanning the discussion of pre-political community, procedural democracy, citizenship and systemic output (see e.g., Scharpf 1999; Beetham/Lord 1998; Lord/Beetham 2001), the legitimating force of compromise—an "essential element" in relieving the tension between cooperation and competition (Margalit 2010, 38)—has remained strangely absent from the debate.

In short, while the existence of compromise has been widely recognised by EU scholars and practitioners alike, the concept and function of compromise have remained under-reflected in the literature on European integration. This is surprising, given that the question of compromise can be linked to three issues at the heart of the debate: 1) How

does the EU accommodate diversity? 2) What makes supranational rule normatively justifiable? 3) Who or what defines the limits of European cooperation?

This paper attempts to get a little closer to the concept of compromise and to the role that compromise can play in legitimating supranational governance. In a nutshell, the paper argues that the EU—a divided, multilevel and functionally restricted polity—is highly dependent on the legitimising force of compromise and of "inclusive" compromise more specifically. This is true for vertical or macro-level relations between systems of governance (where compromise works through "constitutional compatibility"), and for horizontal or micro-level relations between political actors (where compromise works through "procedural accommodation"). The legitimating potential of inclusive compromise stems from its two defining features: the need of mutual concessions and the premium placed on recognition. Mutual concessions operate at the opposing end of coercion and can establish long-term trust in diffuse reciprocity; recognition is based on the logic of non-domination, that is "thinner" than persuasion but "thicker" than exchange, and that works as a pre-condition for the willingness to concede. Given the legitimating force of compromise in supranational cooperation, the paper, finally, investigates the limits to the possibility for inclusive compromise. The paper suggests that these limits are issue-specific and linked to the question of where the costs of cooperation are borne, pertaining either to further integration (at the macro-level) or to accommodation (at the micro-level).

The paper proceeds in the following steps. Section 1 introduces the EU as a divided, multilevel and functionally restricted polity and identifies a number of challenges that this characterisation raises for any attempt to legitimise supranational governance. Section 2 defines the concept of compromise and introduces the distinction between "bartered" and "inclusive" compromise. Section 3 analyses the legitimising force of mutual concessions and recognition, at both the vertical and horizontal level of integration. Section 4 attempts to identify the issue-specific limits to compromise and, thus, to supranational cooperation more generally. The final section concludes by outlining routes for follow-up empirical research.

1. The European Union: Divided, Multilevel and Functionally Restricted

The EU is, first and foremost, an arena to produce and enforce binding decisions beyond the nation state. For scholars of global governance and comparative politics, it constitutes an interesting but idiosyncratic case: the EU's system of decision-making and enforcement is highly institutionalised; the EU covers a broad policy-remit, touching upon core areas of national sovereignty such as monetary policy or border control; and the EU is exceptionally intrusive and effective, producing binding laws that are widely complied with in its member states (Scharpf 2007). At the same time, the nature of the Union—famously described almost three decades ago as "less than a federation, more than a regime" (Wallace 1983)—remains open and undefined.

For scholars of negotiation, the EU should be equally interesting. No matter at which level of decision-making, actors predominantly rely on negotiation to resolve conflict and to reach agreement (Wallace 1996, 32; Dür/Mateo 2010). Negotiation is one possible form of finding a solution "[w]hen a group of equal individuals are to make a decision on a matter that concerns them all and the initial distribution of opinion falls short of consensus" (Elster 1998, 5). Negotiation resolves conflict through communication; as such it differs from numerical aggregation (conflict resolution through voting), adjudication (conflict resolution through hierarchical judicial choice), and force (conflict resolution through physical coercion) (Jönsson 2002: 217II).[1] In the EU, the reliance on negotiation often holds even where voting is *per se* possible. So far, the EU has mainly attracted scholars of argumentation, deliberation and persuasion (Neyer 2006). The EU's deliberative decision-style has been used to explain compliance with EU law (Neyer 2004), and the supranational decision-process has served as testing ground for theories of deliberation (Eriksen/Fossum 2000; Joerges/Neyer 1997 a, b; Risse/Kleine 2010), argumentation (Naurin 2010), problem-solving (Elgström/Jönsson 2000) and rhetorical action (Schimmelfennig 2001).

In this paper I will, instead, focus on the EU's constant search for and reliance on compromise. More specifically, I will explore how one type of compromise—inclusive agreement—and the process through which it is reached—a combination of "thin" arguing and integrative bargaining—can respond to some of the challenges raised by the

[1] Throughout this paper negotiation is used in a generic way—as one possible mode of peaceful conflict

EU's defining systemic features, in particular its divided, multilevel and functionally restricted nature. In doing so, I will not discuss institutional mechanisms of accommodation as set up in the EU's political system. Such mechanisms, including constitutional rigidity, over-sized majorities, subsidiarity and proportional institutional composition have been amply described by theorists of consociational and consensus democracy (Andeweg 2000, 515; Lijphart 1999, 42ff.). Instead, I will look at the processes through which diversity can be accommodated at the micro-level of interaction (between political negotiators) and at the macro-level of governance (between constitutional systems). In short, I will discuss how the search for compromise should be constructed—and what needs to be "off limits" in this search—so as to contribute to legitimating supranational governance.

This discussion develops against the backdrop of three defining features of the EU polity: division, multiple levels and functional restriction.

First, the European Union can be characterised as a "deeply divided, plural societ[y]" (Lijphart 1999, 46). As a polity it is, indeed, segmented by multiple social, cultural and economic cleavages, but, first and foremost, by the national cleavages that result from its composition of 27 member states. These 27 member states have continued to be the prime arenas for both democratic contestation and social solidarity; by contrast, scholars and constitutional judges have repeatedly pointed to the lacking pre-conditions for fully-fledged supranational democracy (see e.g., Weiler 1991; Grimm 1995; Kielmansegg 1996; Bundesverfassungsgericht 2009). The ensuing challenges for the possibility to legitimise the Union have been debated extensively (see e.g., Weiler 1991; Hix 1998; Scharpf 1999). In a nutshell, the continued existence (and pre-dominance) of national arenas for political contestation and social solidarity calls for non-majoritarianism at the supranational level. Absent a "demos to legitimize majority rule" (Hix 1998, 51), and given the risk of congruence between political and national minorities, basic trust in the alternation between government and opposition is lacking. As Weiler put it shortly after the Maastricht Treated created the European Union as we know it today: "[d]enying sufficient voice of the constituent polities (allowing the minority to be overridden by the majority) may bring about a decline in the social legitimacy of the polity with consequent dysfunctions and even disintegration" (1991, 419).

Second, the European Union is a multilevel polity, where political authority is allocated across supranational, national and sub-national levels, and where EU decisions depend upon domestic implementation (Scharpf 2007, 2009; Schmidt 2007). Throughout the history of European integration, the need of domestic compliance (and, thus, of domestic legitimacy) has shielded the EU from a fully-fledged acceptance crisis (Scharpf 2007, 8). The EU's multilevel nature therefore contributes to stability. Yet, in combination with the above-defined challenge—the absence of pre-political community, democratic space and social solidarity—the EU's multilevel nature also generates a unique challenge to political subjectivity. In classic liberal thought, the individual citizen is the normative reference point when it comes to democratic rule. In the EU, however, states carry some rights that are individual at the national level: absent the pre-conditions for EU-wide political participation, the state acts as a political subject "on behalf of" its domestic political community (Weiler 2003, 8). In so doing, the state protects both, the realisation of rights at the national level and compliance with EU rule. Yet, at the supranational level, the individual citizen and the constituent government unit compete as normative reference points (Bolleyer/Reh forthcoming; Ferry 2000).

Third, although the European Union is a polity, it is a polity with the functionally restricted purpose of economic integration. In particular, the EU's "market constitution" (Maduro 1998) does not include a competence for taxation and for redistributive social policies. This has two repercussions for the attempt to legitimise the Union. First, given that the EU lacks a competence in redistributive welfare policies as the one issue-area of continued salience for national electorates, and given that European elections do not translate into clear choices between welfare agendas, the potential for competitive democracy at the EU level is limited (Bartolini 2006; Moravcsik 2002; see Føllesdal/Hix 2005 for the counter-argument). At the same time, the EU lacks both the competence and the resources to keep potentially outvoted minorities committed to the supranational polity by offering generous welfare payments. What more, absent a constitutionally defined hierarchy of levels and competences, the supranational constitutional configuration risks to undermine core national welfare choice—a functional market constitution may, in fact, make such a challenge both necessary and unavoidable (Bellamy 2009; Scharpf 2007, 2009).

In sum, given that the European Union lacks both, a traditional political subject and a traditional policy-remit, it cannot rely on the procedural and substantive measures that

contribute to legitimating political rule at the national level—first and foremost, pre-political solidarity, majoritarianism and redistribution. This well-known diagnosis has been followed by a plethora of suggestions for strengthening EU legitimacy, including the empowerment of the citizen as the political subject in supranational parliamentary democracy (see e.g., Lord/Beetham 2001), the systematic involvement of civil society as an alternative form of democratic input (see e.g., Kohler-Koch 2010), and a focus on deliberative democracy (see e.g., Eriksen/Fossum 2000). In the following, I will suggest that the concept of inclusive compromise, and the mechanism through which it is reached, can do some legitimating work through two of its defining features: the need of mutual concessions and the premium placed on recognition.

2. Two Types of Compromise

In section 3, I will argue why, at what level and through which processes compromise can legitimate the generation of binding rules beyond the nation state. Before doing so, however, I need to clarify what I mean by "compromise".

Although compromises can come in different varieties, I suggest that they all share three defining features: 1) concessions, 2) non-coercion, 3) continued controversy.

First, for an outcome to qualify as a compromise, all parties to an agreement have to make concessions (Margalit 2010, 20). Such concessions can be of different kinds, including split differences in a bargaining range, convergence on a "second best", or issue-linkages in a package deal (Bellamy 1999, 103ff.). Second, concessions made for the sake of a compromise must be voluntary rather than extracted by coercion as a "condition in which, being left with no reasonable alternatives, we do, against our better judgment, what others want us to do" (Margalit 2010, 91). Third, compromise, in whichever variety, will not do away with underlying controversy. This distinguishes a compromise from a consensus as "the result of a process during which the members have reasoned through their disagreements to such a degree that at least one party has *changed* her initial position" (Eriksen 2006, 21; italics in the original). Compromise requires a willingness to concede, but the *grounds for* the conflict (if not the *conflict itself*) persist (Bellamy/Hollis 1999, 64; Golding 1979, 13; Hirschman 1994, 214).

Yet, in spite of sharing these three core features, compromises differ in the mix and quality of these features—more specifically, they differ in how mutual concessions are, in whether all forms of coercion are absent, and in whether and how the grounds for conflict are transformed, albeit persistent. Against this backdrop, I will distinguish two types of compromise, one "bartered", the other "inclusive". In doing so, I will draw extensively on Bellamy and Hollis (1999), Margalit (2010, chapter 2) and Reh (2010).

A *bartered compromise* is "any agreement within a bargaining range" (Margalit 2010, 39); Margalit calls such a compromise "anemic". To reach a bartered compromise, all parties concede, but the concessions need not be mutual; a bartered compromise does not coerce, but actors follow a volitive rather than an epistemic or normative logic, and they will employ their asymmetrical bargaining resources accordingly; and the agreement is reached through a process with little transformative potential.

First, concessions leading to a bartered compromise are made in a strategic process of distributive (or competitive) bargaining rather than through the integrative (or cooperative) variant of negotiation (Lax/Sebenius 1986, 112ff.; Naurin 2007b; Walton/McKersie 1965, 144ff.). The two modes of bargaining share a key feature: aimed at maximising wants, actors follow a volitive rather than an epistemic or normative logic (Holzinger 2001a, 268). Indeed, where actors bargain—no matter in which way—they do not strive to convince their fellow negotiators, to converge on a single viewpoint, or to empathise with the reasons behind a negotiator's preferred course of action. Bargaining intends to change behaviour and positions, not preferences or attitudes (Müller 2004, 397), and it makes "no efforts at changing the minds of the others about what they want or what they perceive to be right" (Naurin 2007b, 561).

Second, although the concessions behind a bartered compromise do not result from coercion, in such an agreement "more for one means less for the other" (Lax/Sebenius 1986, 119). Hence, distributive bargaining is played out as a competitive game, where players attempt to extract concessions rather than try to find mutually beneficial and inclusive solutions (Naurin 2007b, 563). The success of actors in this game hinges upon their asymmetrical bargaining power, grounded either in material capabilities (de Mesquita et al. 1997) or in different preference intensities, exit options and alternatives to negotiated agreement (Moravcsik 1997). The difference will only be split equally where bargaining resources are distributed equally; as Margalit puts it "[m]eeting

halfway may [...] be the result of an anemic compromise, but only if the two sides are comparable in their bargaining strength" (2010, 48).

Third, the process of distributive bargaining can solve a conflict, but it has little potential to elucidate or transform the grounds underlying this conflict. A bartered compromise is the terrain of the "trader" (Bellamy 1999, chapter 1); people "bring something to a market and take something away, after exchanging freely with others to mutual advantage" (Bellamy 1999, 96). In short, mutual advantage—rather than mutual concessions—is at the core of a bartered agreement. If compromise, indeed, mediates the tension between cooperation and competition (Margalit 2010, 37f.), then a bartered compromise tilts heavily towards the latter.

In the study of European politics, bartered compromises are analysed by rational choice theorists with an interest in EU decision-making (see e.g., Thomson et al. 2007). This group of scholars is interested in explaining the *substantive outcome*—rather than the *process*—of negotiation, with outcomes analysed as functions of preference intensities—often mapped on a scale running from "more" to "less integration"—and formal institutional rules. Bartered compromises are struck in well-defined policy-spaces, and they are legitimated "through the procedures that set the terms of a fair contest" (Eriksen 2006, 21). As substantive agreements, they will be honoured because at least one actor entered the negotiation with intense preferences and with few or no exit options or alternatives to a negotiated agreement. This actor knows that a more favourable deal is unlikely to be struck short term, or, alternatively, expects the sizeable concessions made in a current deal to generate future pay-offs.

In spite of sharing the three defining features with a bartered compromise, an *inclusive compromise* differs with regard to types of concessions made, the manifestation of non-coercion and the mode of interaction through which the agreement is reached. Such a "sanguine" agreement, as Margalit calls it, can be described as "an anemic compromise with additional features, the most important being recognition" (2010, 40). To reach an inclusive compromise, actors make concessions that are mutual and generous; actors combine a logic of volition with a strong motivation for cooperation; and the process of integrative bargaining through which an inclusive compromise is reached has the potential to both elucidate and transform the divergent positions held on the conflict.

First, the concessions leading to inclusive compromise are made in a process of integrative rather than distributive bargaining. Integrative bargaining shares one key characteristic with its competitive variant: actors do not aim to converge on a "synthesis" (Bellamy/Hollis 1999, 64) about the "right course of action" (Naurin 2007b, 563); like competitive negotiators, they follow an essentially volitive logic. In integrative bargaining, volition is, however, coupled with a fundamentally cooperative motivation. Concessions made for an inclusive compromise therefore serve a "thicker" function than those made for a barter: concessions will not only be made by all, they will also be mutual; concessions will not necessarily reflect actors' resources but a willingness to "confer recognition on one's rival" (Margalit 2010, 41); and concessions can be generous and social rather than minimal and strategic, because other actors' interests and values are considered as "matters to be met rather than constraints to be overcome" (Bellamy 1999, 101).

Second, as is the case with bartered compromise, the concessions behind an inclusive agreement are extracted non-coercively. Yet, the mutual and generous concessions described above serve the wider social function of constructing a "shareable good" (Bellamy 1999, 101) and of re-describing "what is in dispute" (Margalit 2010, 50). Indeed, the main goal of integrative bargaining is to maximise wants in such a way that the preferences of all parties around the table are accommodated (Naurin 2007b, 562). In defining such a goal, actors are strategic but cooperative, and to realise their aim they recur to bargaining speech acts such as suggesting, offering, promising, conceding, up-holding and retreating concessions, linking issues, trading compensations, and agreeing on a second best (Bellamy 1999, 104; Holzinger 2001b, 428). Where actors bargain in an integrative way, communication "is characterized by a cooperative attitude, brainstorming, rich information-sharing and participants candidly speaking their minds about what they want" (Naurin 2007b, 563). Agreement will thus be built through the furthest possible accommodation of concerns.

Third, hinging on communication but not on deliberation, integrative bargaining is not geared towards changing actors' deep-seated interests, values and beliefs. Yet, the granting of mutual and generous concessions requires that these interests, values and beliefs are exchanged, explained and understood, and that actors trust each other's willingness to concede reciprocally. To successfully settle a conflict short-term, integrative bargaining must therefore be preceded by a communicative process that

elucidates (and potentially transforms the perception of) the reasons underlying the conflict. This process, which I shall call "thin arguing", is described in more detail below. Overall, mutual accommodation—rather than mutual advantage—is at the heart of an inclusive compromise, and on the spectrum between competition and cooperation, such an agreement tilts towards the latter.

In sum, both bartered and inclusive compromises can be *legitimate* agreements; both can offer short-term solutions for a conflict which actors agree to settle by way of negotiation or majority decision. Yet, the potential to *legitimise* a polity in need of normative justifiability differs starkly between the two types of agreement. This is due to their different purposes—mutual advantage as opposed to mutual concession—as well as the different pre-conditions for distributive and integrative bargaining. In the following section, I will argue that only inclusive compromise has the potential to legitimise the European Union as a divided multilevel polity.

3. The Legitimising Potential of Inclusive Compromise

As argued in section 2 above, bartered compromises are, essentially, struck by traders in markets. Based on a logic of competitive exchange, their purpose is mutual advantage. Bartered compromises are reached through a process of distributive bargaining, and their pre-condition are actors who are willing to trade concessions, who are equipped with the resources necessary to bring trade-offs about, and who believe each other's threats and promises to be credible (Panke 2006). A bartered agreement will be stable as long as 1) the advantages gained last in their agreed form, 2) no party to the agreement acquires resources that allow her to change the deal in her favour, and 3) the package deal remains intact (where the agreement is composite); condition 3) is, in turn, dependent on the continued existence of conditions 1) and 2) (Reh 2010, 188f.). All parties to a bartered agreement know that they are "temporary, are fixed to the particular circumstances in which they are made, and can be reopened at the next opportunity" (Hirschman 1994, 214). The legitimising potential of a bartered compromise is thus limited to the substantive outcome reached; the agreement has no independent procedural compliance pull.

Inclusive compromises, by contrast, are based on the furthest possible inclusion of parties' interests, values and beliefs. Based on a logic of cooperation, their purpose is

mutual accommodation. An inclusive compromise is reached through an integrative process, where the concessions made not only depend on advantages gained and resources held; they are also driven by group goals and by a valuation of the interaction process itself. The legitimising force of an inclusive compromise is therefore procedural as well as substantive (Bellamy 1999, 102; Reh 2010, 188ff.). This legitimising potential is a function of the demanding pre-conditions for integrative bargaining, namely actors with a motivation to cooperate and a willingness to concede equally; both, in turn, require trust in diffuse reciprocity. For Margalit, a sanguine compromise is an anemic compromise "plus", and he singles out recognition of and empathy for other actors' positions as the additional features (2010, 41ff.). Signalling non-domination and understanding, Margalit argues that it is the point of "sacrifice" in a negotiation "to confer recognition on one's rival and to dispel an image of domination" (2010, 41). I would argue, instead, that recognising a "rival" and her reasons for the conflict precedes the willingness to make "sacrifices". Recognition is closely related to empathy as a second pre-condition for the willingness to concede. In contrast to sympathy, which requires identification with a rival's concerns, empathy is the "attentive effort to understand the enemy's concerns from the enemy's point of view" (Margalit 2010, 42).

In sum, the willingness to cooperate and to concede needs to be built up before integrative bargaining can begin. It is this "build-up" through the process of "thin arguing" that gives an inclusive compromise its procedural legitimising potential.

International negotiations can be played out in either arguing or bargaining mode or in a combination of the two. As demonstrated in the discussion of distributive and integrative bargaining in section 2, each mode can be further sub-divided according to underlying motivation, procedural characteristics and substantive effects. Arguing in international negotiations can come in a "thin" and a "thick" variant. The two are identical in procedural terms: negotiators who argue try to solve conflicts by giving reasons and by justifying their preferred course of action (Deitelhoff/Müller 2005, 172). They do so by recurring to a set of distinct speech acts such as stating, asking, explaining, justifying, contradicting, agreeing, up-holding or retreating arguments (Holzinger 2001b, 428). Yet, depending on whether negotiators argue in a "thin" or a "thick" sense, the underlying motivations and justifications will differ.

The goal of "thick" arguing is to reach consensus on the right course of action (Naurin 2007b, 563). "Thick" arguing can—under certain conditions—translate into substantive persuasion and preference change and, thus, lead to reasoned consensus. This mode of interaction has been covered extensively by the deliberative strand in European Studies and International Relations (IR), and given my interest in compromise rather than consensus, "thick" arguing is of less relevance here.

When arguing "thinly", actors try to reach agreement by convincing co-negotiators to take a particular course of action, but they do not necessarily target their preferences as the "ordered and weighted set of values placed on future substantive outcomes" (Moravcsik 1998, 24). Thus, "thin" arguing does not imply speakers changing their minds and adopting altruistic positions. "It only supposes that they adopt a particular reasoning style, in which actors abstain from using threats and promises, and try to make their proposals plausible by referring to general principles and norms" (Neyer 2004, 28). These can be substantive norms, on which claims of "factual truth or normative validity" are based (Müller 2004, 397). But they can also be procedural principles, such as equal treatment, fairness or the right to be heard and accommodated. To achieve their goals, actors who argue "thinly" will mix other- or public-regarding arguments with self-regarding justifications; the latter will, first and foremost, explain a particular position taken. The definition of "thin" arguing proposed here diverges from a core proposition made about arguing in IR and European Studies. While scholars have, increasingly, de-coupled arguing as a mode of interaction from communicative rationality (Deitelhoff/Müller 2005, 172; most prominently Schimmelfennig 2001), they have insisted on a triadic communication structure and on the pre-dominance of other- or public-regarding arguments, even if these are used purely strategically (Naurin 2007a, b; Saretzki 1996). "Thin" arguing as defined here thus fills a functional gap as the "pre-stage" to actual negotiation. Characterised by justification (not by claims), diadic and dominated by self-regarding arguments, it is a process during which actors give reasons to elicit empathy, talk and listen to build up a cooperative atmosphere, and check (and potentially) moderate their initially held position (Reh 2010, 183f.).

In sum, I have made the following argument so far. An inclusive compromise is struck in a process of integrative bargaining. This process relies on mutual and generous concessions, which, in turn, require a cooperative logic and trust in the diffuse reciprocity of "sacrifice". The pre-conditions for an inclusive compromise are therefore

more demanding than those for a bartered agreement. The latter requires actors willing to trade concessions and equipped with resources enabling exchange; the former requires recognition (as the expression of non-domination may build the trust necessary for mutual concessions) and empathy (as understanding other actors' reasons for conflict from their points of view may increase the willingness to accommodate concerns). Recognition and empathy are generated in a process of "thin arguing" which precedes the actual search for compromise through integrative bargaining. In combination, "thin arguing" and integrative bargaining form a two-step interaction process. This process is socially thicker than the logic of mutual exchange behind a bartered agreement; yet, it is less demanding than the deliberation behind a consensus.

In the literature on EU legitimacy, it is deliberation—not accommodation—that has been discussed extensively as an alternative for established forms of competitive democracy (see Neyer 2006 for an overview of the debate). By contrast, I suggest that the process of "thin arguing", operating as a pre-condition for agreements reached through integrative bargaining, is not only less demanding on actors than fully-fledged deliberation; the requirements for mutual concessions—recognition and empathy, demonstrated in a long-term communication process—can also work towards alleviating some of the legitimacy challenges identified above.

As argued in section 1, the EU lacks the pre-conditions for fully-fledged competitive parliamentary democracy, in particular a pre-political community, an effective political space and social solidarity across national boundaries. This lack makes the majority principle unacceptable at the supranational level, a) because majoritarianism would risk to create a systemic overlap between outvoted minorities and national borders, and b) because majoritarianism would require trust in the regular alternation between government and opposition. Yet, the EU not only lacks the pre-conditions for majority rule; it also lacks the legal competence and financial resources to tie minorities in through financial compensation. The EU's political institutions are therefore modelled on consensual rather than majoritarian principles (Lijphart 1999, 41ff.). Yet, the EU relies on additional accommodating mechanisms to legitimise its decisions. Rather than at the level of the EU's political institutions, these mechanisms operate at the macro-level (between systems) and at the micro-level (between actors), and they are based on principles at the heart of inclusive compromise.

First, at the individual level, the process of reaching inclusive compromise can have a strongly legitimising function. The combination of "thin arguing" and integrative bargaining requires constant communication between actors about their grounds for (in addition to their positions on) the conflict; actors need to justify their demands and give reasons for their claims so as to make their co-negotiators understand these demands and claims from their point of view. Such justifications can be purely self-regarding (e.g., when actors invoke the domestic political repercussions of a particular regulation). Yet, where the process is geared towards increasing all actors' understanding of the collective decision, rather than towards maximising individual gains, even self-regarding arguments must be moderated and presented "at a certain level of generality and in ways that appeal to a shareable norm of justice or interest" (Bellamy 1999, 106).

Second, as argued above, integrative bargaining is based on the willingness to concede mutually, equally and generously. Such mutual concessions make it easier for actors to accept being part of a losing minority; actors know that the losing minority is issue-specific rather than systemic, and they trust in the alternation between issue-specific minorities and majorities. Mutual concessions therefore not only make inclusive compromise possible; they also make the agreement more acceptable.

Third, at the individual level, mutual concessions made in a process of integrative bargaining are based on the recognition of other actors' legitimate concerns. "Thin arguing" and integrative bargaining are not targeted at achieving a synthesis; they are part of a process that signals recognition of continued difference and increases actors' trust in the protection of their core choices. Yet, recognition of diversity not only works at the individual level; it also works across levels of government in the European polity. At the macro-level, the legitimising potential of compromise comes from the recognition that the EU is "a Union among distinct peoples, distinct political identities and distinct political communities" (Weiler 2003, 20), and from the ensuing recognition of member states' core constitutional choice. The underlying principle of "constitutional tolerance" is expressed in a multilevel system that, unlike domestic federations, does not turn a sovereign European people into a constituent power (Weiler 2003, 8). At both the macro- and micro-level the EU is thus built on the recognition of difference, and it is the recognition of difference, combined with a reaching across in the "committed way which membership of the Union entails" that makes "the European post-war experiment

so special and, arguably, worth preserving even if it does not have quite the power and constitutional clarity as a State would" (Weiler 1998).

In sum, the legitimising potential of inclusive compromise is three-fold: first, "thin arguing" improves actors' understanding of the rationale for and the reasons behind the collective decision reached; second, mutual concessions give actors trust in diffuse reciprocity and in the alternation between issue-specific minorities and majorities; third, the recognition of diversity in the micro-level process and the macro-level polity—rather than an attempt of synthesising persuasion or a capital-c Constitution—increases actors' "ontological security" (Mitzen 2006) in their core choices.

4. The Limits of Inclusive Compromise

So far, I have made the following arguments. First, given its divided, multilevel and functionally restricted nature, the EU cannot rely on established mechanisms of legitimation. Second, inclusive compromise differs systematically from bartered agreement with regard to the types of concessions required, and with regard to the process through which agreement is reached. Due to these differences, inclusive compromise has a procedural as well as a substantive compliance pull. Third, the combination of "thin arguing" and integrative bargaining that can lead to inclusive compromise has the potential to legitimise supranational decisions; mutual concessions build long-term trust in diffuse reciprocity, while the recognition of difference at the micro- and macro-level gives actors "ontological security" with regard to their core constitutional choice. Given this legitimising potential of inclusive compromise I will, next, outline limits to reaching such agreement. I will argue that these limits are issue-specific and linked to the two key features of inclusive compromise: 1) accommodation through mutual concessions, and 2) recognition of difference.

First, as argued in section 1, the EU is an arena for the generation of binding rules beyond the nation state. As a multilevel polity, the EU depends on the implementation of these rules at the domestic level. Hence, the acceptance of supranational rules hinges upon the legitimacy of the EU's member states themselves (Scharpf 2007, 2009). Each member state will, in turn, be based on a particular constitutional choice, balancing its citizens' triad of civil, political and social rights (Marshall 1992 [1950]). These rights are closely related to the justifiability of political rule in liberal democracies, where they

bridge institutional structures and societal beliefs in three ways: first, by defining the authoritative source for political power; second, by limiting political power; third, by facilitating "the pursuit of a *general interest*, particularly in respect to those purposes that the state is expected to fulfil" (Beetham 1991, 127; 126ff.; italics in the original). In short, domestic constitutions "encapsulate fundamental values of the polity and this, in turn, is said to be a reflection of [...] [a] collective identity as a people, as a nation, as a state, as a Community, as a Union" (Weiler 2003, 15).

If we argue, in turn, that the recognition of diversity bolsters actors' "ontological security" about the preservation of their core choice, and that such recognition is at the heart of inclusive compromise, then the limits of such an agreement are defined—and constrained—by the EU's multilevel nature: legitimate rule-making *beyond* the state must not undermine legitimate rule-making *within* the state (Bellamy 2009; Scharpf 2007, 2009; Schmidt 2007). Indeed, the transfer of policy competences and individual rights to the supranational level may challenge the basic constitutional compromise at the national level and, by doing so, violate the principle of recognition that is at the heart of inclusive agreement. Any leeway in adding competences and rights at the supranational level thus knows one limit: it must be compatible with national constitutional choice, and such compatibility must be recognisable (Bolleyer/Reh forthcoming). Compatibility can be brought about by realising a specific right or value at only one level, be this national or supranational. Alternatively, the supranational level can configure values and address rights in a way that maintains sufficient normative continuity between levels in terms of substantive values, without aiming to replicate democratic structures on a higher level. I argued in section 1 that the challenge of EU legitimacy roots in its divided, multilevel and functionally restricted nature; following the above discussion, I would, instead, single out functional restriction as a response to, rather than a reason for, the EU's legitimacy puzzle.

Second, as argued in section 2, inclusive compromise relies on accommodation through mutual concessions. Such concessions are, in turn, dependent on actors' cooperative motivation. Yet, even if actors are cooperatively motivated, mutual concessions—including those by the "conventionally strong side" to the "conventionally weak side" (Margalit 2010, 49)—will be granted more easily on some issues than on others. In the EU, the readiness to grant concessions is crucially dependent on who bears the costs of an agreement (at the micro-level) or of further integration (at the macro-level).

More generally, scholars have argued that it is easier to reach a compromise on distributive issues—or on what Hirschman calls "more or less" types of conflict—than on ideological issues—or on what Hirschman calls "either/or" types of conflict (Andeweg 2000, 511, 530; Hirschman 1994); on the former, the difference can be split, while the latter may involve "clashes between incommensurable identities, world views or types of claim" (Bellamy 1999, 103; Margalit 2010, 48ff.). I have already argued that the limit to macro-level recognition lies in constitutional compatibility; where further integration risks to undermine the domestic balance of citizens' civil, political and social rights, the system's normative justifiability will be challenged. Yet, even where constitutional compatibility is preserved, an inclusive compromise struck through integrative bargaining is more likely on some issues than on others.

At the supranational level, mutual concessions are granted more easily under two conditions. First, where actors try to solve distributive or "more or less" conflicts, mutual concessions will be granted more easily and have a stronger legitimising potential where the costs of agreement are a) dispersed rather than concentrated, and where these costs are b) dispersed across rather than within national boundaries; bearing such dispersed costs signals mutual concessions by the greatest possible number of actors. Second, where actors try to solve ideological or "either/or" conflicts, mutual concessions will be more difficult to grant. However, recognition and accommodation will be more likely where the costs of agreement can be borne by the supranational system rather than by one or several member states or by a group of actors within a member state. Examples for the systemic accommodation of ideological differences are opt-outs for individual member states, or protocols hedging the domestic application of norms or rules; such systemic compensation signals the recognition of actors' concerns in case of ideological difference without up-setting domestic constitutional choice and without burdening individual states with the costs of agreement.

In sum, the limits to inclusive compromise and its legitimising potential are grounded in the two defining features of inclusive compromise: the need of mutual concessions and the recognition of differences. At the macro-level, the limits of cooperation lie in the constitutional compatibility between the supranational and diverse national configurations of citizens' civil, political and social rights. At the micro-level, issue-specific limits are grounded in the dispersal of costs across rather than within national

boundaries (where conflict is distributive), and in the possibility of systemic accommodation (where conflict is ideological).

Conclusion

This paper started from the observation that compromise is a ubiquitous yet under-theorised and under-studied feature of European integration, and attempted to shed some light on the concept of compromise, on the role that compromise can play in legitimising supranational decisions, and on the macro- and micro-level limits to reaching compromise in the European polity. The paper argued that given its divided and multilevel nature, the Union depends on the legitimising potential of compromise and of inclusive compromise in particular. Two features distinguish inclusive compromise from a bartered agreement: 1) mutual, equal and generous concessions, and 2) the recognition of difference. The paper argued that the legitimising potential of inclusive compromise at both the macro-level (between systems of governance) and at the micro-level (between member state representatives) works through those two defining features. Mutual concessions can establish long-term trust in diffuse reciprocity and, thus, foster an acceptance of being part of an issue-specific minority; recognition of difference is based on the logic of non-domination that works as a pre-condition for the willingness to concede. Given the legitimising potential of inclusive compromise, the paper concluded by identifying some limits to reaching such agreements; these are "constitutional compatibility" at the macro- or vertical level of governance, and the possibility for "procedural accommodation" at the micro- or horizontal level of governance. The issue-specific limits for further integration and individual agreements depend on 1) whether core constitutional choice is left intact at the national level; 2) whether the costs of supranational agreement are dispersed across as well as within member states; and 3) whether ideological conflict can be accommodated by systemic compensation rather than by individual concessions.

This paper is a very preliminary attempt to get a little closer to the under-studied concept of compromise and to its neglected legitimising potential for supranational rule. Two follow-up steps are required to put the argument on firmer ground. First, the concepts of empathy and recognition not only need more systematic conceptual fleshing out; to back the argument more effectively, it would be crucial to trace their role in micro-level negotiations empirically and to assess whether these mechanisms are,

indeed, at work, whether they legitimise collective choice at the micro-level, and whether this legitimising potential can translate into greater systemic stability. Second, different issue-areas or types of conflict not only need more systematic conceptualisation and categorisation; to address the limits of compromise more convincingly, one would also need to establish an empirical link between the development of EU competences and the ensuing challenges to domestic constitutional compromise on the one hand, and between issue-specific inclusive compromise and the long-term procedural compliance pull of agreement on the other hand.

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