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Legitimacy, metacoordination and context-dependence

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Abstract

This paper argues that the process of deriving legitimacy criteria for political institutions ought to be sensitive to features of the political context in which that process is to occur. The paper builds on Allen Buchanan's 'Metacoordination View' of legitimacy, which we explicate in the first section. While sympathetic to Buchanan's practical approach, we believe the idea of a metacoordination process to be underspecified across two dimensions, which we explain in the second section: (i) constituency and (ii) normativity. Both dimensions admit of differing specifications. In the third section, we suggest that how best to fill in these dimensions in any one instance depends upon the political context in which the metacoordination process is to occur. We highlight three relevant elements of a political decision context – criticality, institutional time point, and motivational landscape – and illustrate their significance by way of reference, respectively, to the World Health Organization, the European Economic and Monetary Union, and the Bank of International Settlements. The 'context-dependence' of the metacoordination process, and therefore of legitimacy, entails the possibility that institutions that are similar, even identical, in terms of their nature and function may nevertheless be held to differing legitimacy criteria in differing political contexts.

Keywords: legitimacy; metacoordination; context-dependence; practice-dependence; Allen Buchanan

When is a political institution legitimate? Political philosophers and social scientists tend to approach that question differently. Philosophers typically appeal to the normative properties of the institution in question. They may claim that an institution is legitimate when it is instrumental to the realization of some substantive end¹; or they may claim that legitimacy is a procedural matter, being solely dependent upon, for instance, democratic procedures of some variety²; or procedural and substantive concerns may be combined, as when it is supposed that legitimacy requires democracy and – or indeed, because – the latter produces the best or correct results³; or legitimacy might be said to depend on an institution meeting

¹Raz 1986.

²Christiano 1996; Peter 2008.

³Estlund 2008.

a wider range of prerequisites, such as, for instance, the provision of basic human rights internally, and a ‘minimal external justice requirement’ with respect to interaction with other institutions.⁴

By contrast, social scientists typically understand legitimacy descriptively. Here, an institution’s (il)legitimacy is determined by the attitudes and beliefs that persons *actually have* with respect to it.⁵ Legitimacy so understood is of interest due to its practical import for the stable functioning of an institution: if people believe that, for example, their state is legitimate, then that state will be able to function more easily than if no such belief exists. Descriptive legitimacy can therefore be conceived dispassionately as an alternative to (for example) bare coercion, or alignment with persons’ self-interest, as an enabler of the coordination of political action; various ‘legitimation narratives’ might produce such legitimacy beliefs in the relevant population.⁶

This paper, while a work of normative political philosophy, takes seriously legitimacy’s sociological dimension and practical import.⁷ It endeavours to bridge the gap between a purely descriptive view of agents’ beliefs concerning legitimacy and the simple application of the philosopher’s own normative criteria, offering an account of how the legitimacy criteria that are to apply to a given institution can both normatively regulate it and, at the same time, practically support the institution’s functioning. This paper does so by way of critical engagement with Allen Buchanan’s recent work, proceeding from which we set out a new view of how the derivation of legitimacy criteria ought to be sensitive to existing political circumstances; we call this ‘context-dependence’. The context in question is the *political decision context*, that is, the political context from within which a social process of convergence upon legitimacy criteria is to occur.

In what follows, we first explicate and broadly endorse Buchanan’s ‘Meta-coordination View’ of institutional legitimacy. In this view, the political philosopher’s role is not unilaterally to settle the question of when an institution ought to be considered legitimate, but is instead to provide guidance for how a social process of seeking agreement on legitimacy criteria should proceed. Social convergence upon legitimacy criteria is what Buchanan calls metacoordination, and we will correspondingly refer to the practice of seeking convergence as the

⁴Buchanan 2004.

⁵Legitimacy understood in this sense can then be ‘measured’. See, for example, Levi, Sacks and Tyler 2009; Weatherford 1992.

⁶Matheson 1987.

⁷It is of course not the first to do this in some way. For one prominent example, Jürgen Habermas’s work has emphasized the role of both normative standards and historical actualization in a proper understanding of legitimacy (and justice). More recently, Thomas Fossen has articulated a pragmatic approach which understands legitimacy as ‘a piece of practical, political vocabulary that enables subjects to articulate and dispute their political stances with others’ (2013, 446). Rejecting a ‘normativist’ view in which legitimacy criteria can be established objectively and in abstraction, Fossen understands the distinction between what is legitimate and what is merely taken to be legitimate to be a matter of individual perspective. As will be seen, the approach we endorse here similarly eschews the possibility of the abstract philosophical discovery of legitimacy criteria and also emphasizes the role of social practice. However, we make no appeal to a philosophy of pragmatism, and nor do we take a *necessarily* agonistic view of things. Finally, some theorists, like Raz (1986), suggest that *de facto* authority is a necessary condition (one among several) of an authority being legitimate in practice. But Raz does not say that varying empirical realities ought to condition the way in which normative legitimacy criteria are derived, as we do here.

metacoordination process, and the convergence itself as the *metacoordination outcome*. Our primary concern in this paper is with the metacoordination process. We understand that process to be underspecified in two ways, as we set out in the second section: (i) which agents are to be involved in the pursuit of legitimacy criteria for a given institution (*constituency*) and (ii) within which normative bounds (*normativity*).

Both dimensions of the metacoordination process admit of differing potential specifications along an ordinal scale of demandingness. For metacoordination constituency, this is a scale of demandingness of inclusion: how many agents, of what type, ought to be party to the metacoordination process? For normativity, it is a scale of normative demandingness: how rigorous ought the normative constraints on the metacoordination process to be? Our main claim and intellectual contribution, in the third section of this paper, is that these dimensions of the metacoordination process ought in any one instance to be sensitive to the political decision context from within which the process is to occur. We highlight three relevant contextual elements (without supposing that these will be the only three of relevance): *criticality*, *institutional time point* and the *motivational landscape*. For each element, we offer an illustrative real-world example, focused on a specific international or global governance institution, and show how that element might rightly condition one or both dimensions of the metacoordination process.

The fact that we use international and global governance institutions as the main examples to elucidate context-dependence is no accident. Doing so throws into relief the fact that the state is just one peculiar kind of political institution among others, not a master institution in the image of which all conceptions of legitimacy ought to be built. The political decision contexts from within which legitimacy criteria for international institutions have to be socially derived will often be different from that of states. To illustrate, the level of public interest in international institutions is often far lower than citizens' interest in their own states. International institutions are also often *sui generis* in character, with a clear recent genesis, allowing us to reflect upon the time before (and after) they existed. Both of these things, as we will argue, are relevant to how legitimacy criteria ought to be derived. This is not, however, to say that context-dependence is relevant only to the legitimacy of international institutions; on the contrary, context-dependence is part of a general theory of institutional legitimacy.

To be entirely clear at the outset, this paper is not addressing the first-order question 'What are the appropriate legitimacy criteria for a specific institution?' Rather, it argues that there are different ways in which the political decision context can affect how the metacoordination process (which *does* answer the first-order question) should be conducted. Developing the idea of metacoordination by way of context-dependence has the implication that differing approaches to deriving legitimacy criteria (i.e. differently shaped processes of metacoordination) might be appropriate for two institutions that are very similar – even identical – in terms of their institutional capacities and function, depending on the political decision context that pertains when legitimacy criteria are being sought.

The 'Metacoordination View' of legitimacy

According to Allen Buchanan, theories of legitimacy to date have 'been chiefly preoccupied with the legitimacy of only one kind of institution – and quite a

peculiar one at that – the state’.⁸ Indeed, philosophers have been so preoccupied that they have often been minded to define legitimacy as ‘the right to rule’, even though defining legitimacy in this way overlooks the fact that other political institutions either do not rule in the same coercive, exclusionary way as states, or indeed do not *rule* at all, but rather, for instance, only make recommendations. Buchanan therefore claims that ‘theorists have not squarely addressed the task of developing a *general* account of institutional legitimacy’.⁹

Buchanan’s ‘Metacoordination View’ of legitimacy is his contribution to this task. He contends that ‘there is a general concept of institutional legitimacy that applies across a wide range of cases and provides significant guidance for developing more specific conceptions of legitimacy’.¹⁰ That general concept

includes two key ideas. First, the distinct practical role of legitimacy judgments is that they serve to solve a metacoordination problem: How to converge on public standards that institutions are to meet if we are to accord them the peculiar standing that they must have if they are to supply the coordination needed to achieve important benefits or avoid serious costs, and accomplish this without excessive costs. Second, this problem is to be solved in circumstances in which we should expect more of institutions than that they provide some benefits relative to the noninstitutional alternative but in which it would be unreasonable to expect them to be either fully just or optimally efficacious in producing the benefits they are designed to deliver.¹¹

By ‘peculiar standing’, Buchanan means ‘being recognised, in a social practice, as commanding certain forms of respect’.¹² Being afforded this social respect offers a crucial practical benefit: it allows the institution in question to carry out its particular function without excessive costs, moral or practical.

The Metacoordination View understands the process of arriving at criteria of legitimacy to be a necessarily *social* practice; metacoordination refers to *public convergence* on standards of legitimacy that can ground *social* respect for an institution.¹³ The determination of legitimacy criteria (the metacoordination outcome) arises from this social practice (the metacoordination process). Thus, we can say that in the Metacoordination View not only is there no uniform conception of legitimacy discoverable in abstraction that applies across institutional contexts, there is in fact no determinate conception of legitimacy that applies to any given institution prior to this social practice occurring and terminating in convergence on such a conception.¹⁴

⁸Buchanan 2013, 174.

⁹*Ibid.*, 174–6. See also Adams 2018.

¹⁰Buchanan 2013, 176.

¹¹*Ibid.*, 178.

¹²*Ibid.*, 180.

¹³*Ibid.*

¹⁴Buchanan offers a list of ‘counting principles’ for the legitimacy of any institution. Yet the criteria are not determinate in two ways: (i) they are not necessary conditions and (ii) which criteria are more relevant for which kind of institution is left open. The counting principles are, in our view, best understood as principles for metacoordination constituents themselves potentially to consider and to reject or endorse as they see fit in specific instances (within normative constraints, to be explained below).

Legitimacy thus understood is, however, not simply equivalent to a ‘sociological’, descriptive understanding – it is not the case that just any social convergence will do. Here the philosopher enters:

On this understanding of what legitimacy is about, the goal for the philosopher, after an initial clarification of the social role of legitimacy assessments, is to contribute to the development or maintenance of morally defensible social practices of assessing legitimacy for various types of important institutions.¹⁵

The role of the philosopher, then, is not to offer a unilateral account of when a given institution is or isn’t legitimate but is rather to provide a framework for metacoordination processes of assessing legitimacy.¹⁶

This framework for morally defensible practices of metacoordination is however underspecified in Buchanan’s account in two main ways, which we explicate in the next section. Before moving on to that task, we should underline what we understand to be motivating the Metacoordination View – a motivation that we share ourselves – namely, a commitment to the practical import of concepts and conceptions in political morality. From this perspective, normative political concepts are understood to have practical political functions; where a definition of a political concept does not fulfil this practical function, it is not an appropriate definition of that concept. Similarly, particular conceptions ought to be consistent with the concept fulfilling that function if they are to be appropriate conceptions of that concept. As an example of what this means, we can refer first to ‘practice-dependent’ theories of justice which, we suggest, take this kind of practical view.¹⁷ Practice-dependent theorists emphasize that their approach is enjoined in order to develop principles of justice that are ‘normative for *us*, in our current world historical situation’.¹⁸ In other words, the *concept* of justice includes the practical function of offering plausible ‘action-guidance’ for existing political agents; given this, *conceptions* of justice ought then to be practice-dependent, concentrating on the political practices that actually exist, the functions they perform, and the way they are actually understood by their participants. Aaron James’s practice-dependent approach, for example, is explicitly motivated by a concern with such ‘credibility of address’: where the concept of justice is understood as having a practical function, one will be open, in the development of specific conceptions, to

¹⁵Buchanan 2013, 180.

¹⁶A question then arises about quite how to understand this role. Is the philosopher now simply settling the metacoordination question unilaterally, rather than the first-order legitimacy question? That would seemingly be at odds with the practical perspective that the Metacoordination View adopts (and which we articulate imminently). The alternative – which we prefer – is that to reflect upon the practice of metacoordination is to contribute to a ‘meta-metacoordination’ process. Such a process, occurring among an inevitably limited constituency, is of course itself highly unlikely to impact upon the way metacoordination occurs in practice. This is a reality that confronts all theories that aspire to be ‘action-guiding’, however, rather than a problem unique to the Metacoordination View. We thank an anonymous reviewer for raising this issue.

¹⁷For the debate on practice-dependence about justice, see, for example: James 2005; Sangiovanni 2008, 2016; Ronzoni 2009; Valentini 2011; Meckled-Garcia 2013; Jubb 2016; Erman and Müller 2016. Erman and Müller forthcoming.

¹⁸James 2013, 48. See also Benai, Schemmel and Ronzoni 2011.

limiting the ‘critical depth’ of those conceptions (by, for example, taking as axiomatic the existence of certain practices) in order to optimize that credibility.¹⁹

This practical attitude, we suggest, also characterizes the Metacoordination View of legitimacy and will inform the idea of context-dependence (importantly different from practice-dependence) to be explicated in this paper. Legitimacy judgements have a ‘distinct practical role’²⁰ – that is, the provision to institutions of the social respect necessary for them to function effectively – and express ‘a compromise between the need to have a functioning institution and the desire to impose normative requirements on it’.²¹ The emphasis upon the *social* process of meta-coordination is born of this practical concern: an offering of respect to an institution will after all only play its practical role where that offering is widely enough endorsed. It is for this reason that ‘[t]he primary question when legitimacy judgements are at stake is not whether I (or you) should take a certain stance toward an institution; it is whether *we* ought to regard the institution as having a certain standing’.²²

We can describe this practical function of legitimacy as that of an ‘enabling constraint’. Legitimacy constrains institutions by setting out normative criteria that must be met before institutions are offered social respect; and legitimacy also plays an enabling role, because when institutions *are* offered that social respect, they can likely function more efficiently than with recourse only to bare coercion or appeal to self-interest. Taking sufficiently seriously the enabling dimension of legitimacy entails that legitimacy criteria for varying institutions ought to be realized by social meta-coordination processes, and moreover, so we will argue, entails paying attention to the varying ‘political decision contexts’ within which such social practices are to occur.

Disagreements about the defensibility of the practical perspective on political normativity we endorse here will continue; we cannot hope to defend it in this paper.²³ The rest of the paper discusses the tools required by this practical approach to legitimacy, not its deeper justification.

Two underspecified dimensions of metacoordination

We can understand the Metacoordination View of legitimacy in terms of three ‘levels’:

1. The coordinating function a political institution performs – for example, one might understand one of the state’s functions to be to coordinate the behaviour of citizens in order to deliver social order.
2. The social practice of converging upon agreed legitimacy criteria to which the institution is to be held, which offers the social respect the institution requires to carry out its first-order coordinating function effectively. This social practice is the metacoordination process. (The ‘coordination’ is ‘meta’ because it is social

¹⁹James 2014, 289.

²⁰Buchanan 2013, 178.

²¹Ibid., 195.

²²Ibid., 180.

²³In the justice literature, for example, and as is well known, some theorists contend that practical concerns are not part of the proper purview of the concept of justice. See for instance, Cohen 2008.

coordination that adjudges institutions (il)legitimate in carrying out their own first-order coordinating functions).

3. Normative judgements about how the metacoordination process should be undertaken. This (and not the direct postulation of legitimacy criteria) is the philosopher's primary task; the rest of this paper is devoted to contributing to this issue.

Although the role of the philosopher in the Metacoordination View is to offer guidance on practices of metacoordination, it is not guidance that has in fact yet been offered by the theory. In the first place, we understand two dimensions of the metacoordination process to require additional specification. These are the relevant constituents to a process of metacoordination (*constituency*) and how that process is to be normatively structured (*normativity*). Both of these dimensions admit of a range of possible specifications on an ordinal scale of demandingness: demandingness of inclusion with respect to constituency and deliberative demandingness with respect to normativity. These two dimensions are independent of each other, in the sense that the level of demandingness on one dimension need not necessarily imply anything about demandingness on the other.²⁴ We explicate these dimensions in the rest of this section of the paper before, in the next section, offering a novel, flexible way to specify the dimensions in specific circumstances, which we call 'context-dependence'.

Constituency

Who are the appropriate participants in a social process of metacoordination on standards of legitimacy for a given institution? In the case with which we are most familiar when we talk about legitimacy – the state – many of us will presumably answer that the relevant participants are, in principle, all adult persons. Note though that there are those who would say, were they minded to talk in the language of metacoordination, that the relevant constituency is not formed of individuals but rather of groups (family units, for instance), or that the relevant constituency is individuals, but not *all* individuals (a ruling class, for example), or that the relevant constituency is made up of only one entity (namely, God). To suppose that the constituents relevant to a process of metacoordination are all individuals, even at state level, is already to take a particular theoretical perspective.

Even if individuals are the relevant constituents at state level, however, it does not automatically follow that they are the relevant agents when we come to talk about metacoordination regarding legitimacy standards for international institutions. Of course, one might wish to maintain that individuals remain the sole relevant constituents globally: someone of that persuasion would be taking a strongly cosmopolitan view. But one alternative is that the constituents relevant to a process of metacoordination become state representatives. On this view, once states have reached convergence about the standards of legitimacy for a given international institution, metacoordination has been realized. This may often be the more pragmatic view, but it is not an uncontroversial one: while it has been argued that state consent (at least when states are internally democratic) is

²⁴We would like to thank an anonymous referee for suggesting this characterization.

sufficient for the legitimacy of international institutions,²⁵ the link between decisions made by state governments and the citizens who will be affected, directly or indirectly, by the operation of the institution in question has been thought by some to be insufficiently democratically robust.²⁶

States and individuals are not mutually exclusive as potential metacoordination constituents. In theorizing about justice, Rainer Forst supposes that at transnational levels, the 'essential players' in a discursive process of justification 'are, in the first instance, states'. But states are not the *only* players: 'affected parties below the state simultaneously have the right to demand participation in such discourses' if states would otherwise fail properly to represent the views of those parties.²⁷ Metacoordination might similarly involve this kind of multi-agent, multi-layered constituency. Moreover, individuals and states are not the only potentially relevant agents: NGOs, activist movements and various other non-state groups might also be involved.²⁸

We can conceive of a kind of scale of demandingness of inclusion, therefore, when thinking about metacoordination constituency and with respect to international institutions in particular. In fact, the scale will comprise a number of separate sub-scales, relating to the level of inclusion of different kinds of agents. Are all state governments constituents or none? Are all individual persons globally constituents or none? These are the possible upper and lower ends of two inclusion sub-scales. With respect to non-state groups, the upper end of the sub-scale will be less clear, given the indeterminate number of such groups that exist (or may come to exist specifically in response to the question of a given institution's legitimacy).²⁹

Normativity

To achieve metacoordination is to reach social convergence over standards of legitimacy for a given institution. But how should that process of reaching convergence be normatively structured? For instance, must the pursuit of convergence proceed exclusively via the exchange of moral reasons? Or alternatively, can agents

²⁵Christiano 2010, 2011, 2012. For an excellent discussion of the importance of the consent of democratic states in international law see Besson 2016.

²⁶Buchanan and Keohane 2006.

²⁷Forst 2013, 52.

²⁸NGOs are at the same time themselves also international institutions whose own legitimacy may be at stake. See Collingwood and Logister 2005.

²⁹The existence of these two sub-scales presents an analytical difficulty, in that it complicates pairwise comparisons of overall levels of inclusivity between differing metacoordination processes. Some simple cases are easy to settle: a metacoordination process M1 with greater inclusivity on all scales compared to a different metacoordination process M2, for instance, is a more inclusive one and sits further towards the upper end of the master scale of demandingness of inclusion. But beyond these simple cases, there is the difficulty of determining how to compare the overall demandingness of inclusion between metacoordination processes M1 and M2, when metacoordination process M1 features greater inclusivity on one sub-scale, but lesser inclusivity on another sub-scale, than process M2. In order to preserve the notion that the scale of overall demandingness of inclusion is an ordinal one in which pairwise comparisons are always possible and their outcomes transitive, there is required a method for calculating an overall level of inclusion by way of amalgamation of the sub-scales. For the purposes of this paper we can leave this issue aside, however, as our aim here is not to engage in comparisons between differing metacoordination processes, but rather only to vindicate the idea that the demandingness of inclusion for the metacoordination constituency in any one case ought to be sensitive to the political context.

also act for other types of reasons, such as their own self-interest? Must convergence be achieved only on account of 'the unforced force of the better argument',³⁰ or might part of the reason why convergence is achieved be, for instance, the strategic employment of coercion? Similarly, what exactly does successful metacoordination look like? Does it require *consensus*? Or is the issue rather one of a stable majority of constituents willing to understand an institution as legitimate if it meets certain criteria? Does convergence require explicit and positive affirmation of those standards? Or is metacoordination achieved just assuming an institution is able to operate with the acquiescence of constituents, without significant explicit challenge?

These questions about normative structure admit of more or less demanding answers, which we can characterize respectively as more 'liberal' and more 'realist'.³¹ A more liberal approach can be exemplified by discourse theory. Forst's work on justice, for instance, rests upon the fundamental moral principle of a universal 'right to justification'. For Forst, 'what is at stake in political and social justice is norms of an institutional basic structure which lays claim to reciprocal and general validity'.³² A norm's having reciprocal and general validity means that 'each person should adhere to this norm as an agent and can demand its observance from others'.³³ By extension, a reciprocally and generally valid institutional basic structure is one that no one person has good reasons not to adhere to in its totality, and to which one can demand adherence from others.³⁴ The key to vindicating such validity is a 'discursive justification procedure' in which the reciprocal and general validity claim of given norms can themselves be assessed reciprocally (i.e. without any parties to the discussion 'claiming certain privileges over others and without one's own needs or interests being projected onto others') and generally (i.e. 'without excluding the objections of anyone affected').³⁵ Convergence on standards of justice must be the result of a fully inclusive and explicitly undertaken exchange of exclusively moral reasons between equals that aims at consensus. A metacoordination process that took a similar approach would suppose that legitimacy criteria ought to be arrived at in the same kind of way.

A more realist view of the normative structure of metacoordination would look significantly different. According to Bernard Williams's 'Basic Legitimation Demand', political power must offer a justification of its power to each subject.³⁶ But although Williams endorsed a 'critical theory principle' ('the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified'³⁷), the justificatory relationship is different from that envisaged by Forst: a hierarchical, largely one-directional relationship between power and subject rather than a horizontal, reciprocal one

³⁰Habermas 1996, 306.

³¹By 'realist' we mean to refer in particular to the idea of 'political realism' within contemporary political philosophy. For an overview see Rossi and Sleat 2014.

³²Forst 2014, 21.

³³Ibid., 19.

³⁴See also Rawls 1996.

³⁵Forst 2012, 19–20.

³⁶Williams 2005, 4.

³⁷Ibid., 6.

between equals.³⁸ Moreover, justification need not proceed exclusively via the giving of moral reasons and can instead entail appeal to, for example, historical context, tradition, and so forth. It also explicitly does not matter whether all of those addressed accept the justification given.³⁹ Consensus, even hypothetical consensus, is not necessary to legitimacy. In addition, we take the realist perspective to be theoretically content with the thought that an institution may be considered legitimate just in case sufficient number of people acquiesce to it: if the question of an institution's legitimacy is not being raised in a widespread way, that is indication enough that it implicitly 'makes sense' to those over whom that institution exercises power. In contrast to the liberal vision, then, a realist view of the normative structure of metacoordination does not consist exclusively of moral reason-giving, does not necessarily require the equal justificatory status of constituents, rejects the possibility of and need for consensus, and does not necessarily even need to be explicitly undertaken.

Liberal approaches on the one hand and realist approaches on the other can be understood as two points on a scale of normative demandingness along which any number of intermediate theoretical approaches to normativity in metacoordination might be placed. *Both*, it should be underscored, place normative demands on legitimacy; neither is a simple sociological understanding. Realism, as we are understanding it here, is committed to the 'critical theory principle' and to the provision of a plausible answer to the 'Basic Legitimation Demand'. Institutions that indoctrinate their subjects in their own interests do not respect the former. And we take institutions that systemically violate basic human rights to be unable to offer a plausible answer to the latter.⁴⁰ While indoctrinating, basic-human-rights-violating institutions may successfully obtain some form of stable compliance with their directives, such stable compliance would not be *legitimate*, because the concept of legitimacy involves moving beyond bare coercion and self-interest towards something inherently normative. We return to the idea of 'normative floors' for any account of legitimacy in section 3.

The deliberative normativity of metacoordination has procedural implications. If, for instance, metacoordination is to occur by way of 'reciprocal' and 'general' moral justification, this would also imply, for Forst, a specific 'basic structure of justification'. That is, a basic structure of justification in which a certain minimal standard of social, economic and political rights are respected that allow for the free participation of constituents in discursive practices. It would also imply formal democratic voting procedures necessary to bring a definitive conclusion to deliberation. Here, metacoordination appears almost indistinguishable from first-order democratic functioning: the distinction, however, would be that a process of metacoordination, itself essentially democratic, might potentially converge on non-democratic legitimacy criteria for the institution in question to adhere to thereafter.

³⁸Some realists wish to go even further. For example, Matt Sleat claims, seemingly in rejection of the critical theory principle, that recognition of the legitimacy of a given institution can legitimately be generated via the coercive efforts of the institution in question. See Sleat 2013.

³⁹Hall 2015.

⁴⁰We are glossing over aspects of realist theory here. Not all realists endorse the critical theory principle, and Williams doesn't suppose that meeting the basic legitimation demand has *always* necessitated respect for basic human rights. We note these points, without believing them to be of central importance to our present purposes.

By contrast, where metacoordination involves more ‘realist’ normative constraints, the formal procedural demands will be significantly less onerous. Indeed, there may be little in the way of formalized procedure required at all. If we are in a situation where a political institution can function successfully without serious and sustained challenge to its authority – where things implicitly seem to ‘make sense’ to those subject to the institution – then that might be considered procedurally sufficient. In such a case, metacoordination could in effect be an implicit, internal process carried out reiteratively by each constituent – the lack of sustained, widespread and explicit challenge to the operation of the institution would be taken to imply the achievement of convergence on criteria of legitimacy (namely, the criteria the institution is currently meeting) for that institution.

As with metacoordination constituency, what remains to be seen is how a point on the scale of normativity ought to be selected. Our suggestion, in the next section, is that in answering this question the political context from within which a decision on legitimacy standards is to be made matters.

Context-dependence

The previous section illustrated how the idea of a metacoordination process remains underspecified and admits of differing understandings on two key dimensions. In this section, we develop the idea of ‘context-dependence’: we claim that how those two dimensions of the metacoordination process ought to be specified depends upon aspects of the ‘political decision context’ from within which that metacoordination process it is to occur.

In what follows, we consider three aspects of the ‘political decision context’. Those three aspects we label *criticality*, *institutional time point*, and *motivational landscape*. We do not say that these are the *only* aspects of the political decision context that may be relevant to metacoordination, nor do we offer any account of how an exhaustive list of relevant aspects of the decision context might be derived. Our aims here are more modest and exploratory: we want to demonstrate that the political decision context matters to metacoordination.

The very broad outlines of our theory – all to be illustrated as we proceed – are as follows. For any political institution for which legitimacy criteria are to be sought at any one time there will exist a related political decision context. Each of the three aforementioned aspects of the political decision context can affect the way we ought to specify one or both of the two dimensions of the metacoordination process. The same form of metacoordination process will therefore not be appropriate in all circumstances; it will instead depend on the context. The metacoordination process appropriate to any one political decision context then seeks convergence on a metacoordination outcome (i.e. criteria of legitimacy for the institution in question, along with the particular form of ‘social respect’ that will be offered where those criteria are met).

There are, however, both practical and normative constraints on the extent to which the decision context can and should affect metacoordination. The practical constraint is that the political context must condition metacoordination in a way that is politically feasible in practice (representing one aspect of the ‘enabling’ side of legitimacy as an ‘enabling constraint’). Context-dependence as an idea is supposed to fit within an account of legitimacy as a practical concept: it therefore cannot be the case that context-dependence conditions the metacoordination

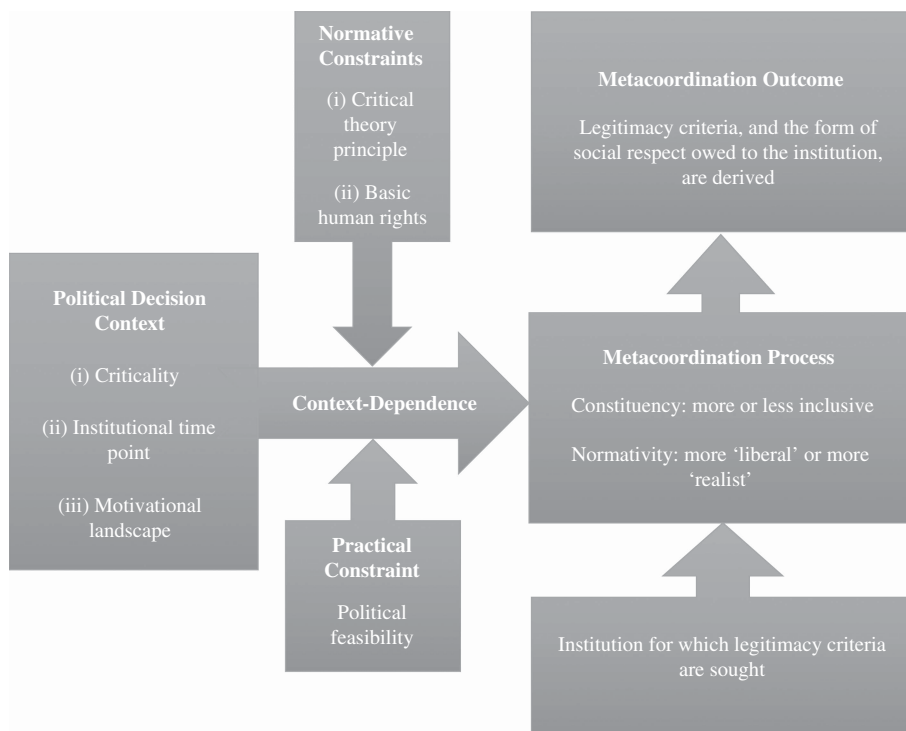


Figure 1.

process in a way likely to be politically infeasible in practice.⁴¹ There are two normative constraints – respect for basic human rights⁴² and a ‘critical theory principle’ – which are context-*independent* ‘normative floors’ for *any* legitimate institution (and represent one important aspect of the ‘constraining’ side of legitimacy as an ‘enabling constraint’). Figure 1 offers a visual representation of all of this.

The distinction between context-dependence and practice-dependence bears emphasizing. Context-dependence is the view that the form of the metacoordination process ought to be sensitive to the political context from within which it is to occur. Practice-dependence about legitimacy is the view that legitimacy criteria for a given institution ought to be dependent upon the nature and function *of* that institution. In our account, practice-dependence as an idea is something for

⁴¹Political feasibility can be understood in terms of a probabilistic standard, with ‘soft constraints’ such as, for instance, existing (potentially malleable) motivations being relevant; or it can be understood as a matter of simple physical or logical (im)possibility, with only these ‘hard constraints’ being at issue (see Gilabert and Lawford-Smith 2012). In our account, the same factor – for instance, existing public beliefs – can be both a soft constraint with respect to a given institution’s viability, and a hard constraint with respect to certain forms of metacoordination *about* that institution. This will be highlighted as we proceed.

⁴²Here, we follow Shue (1996). According to Shue basic rights articulate what he calls the ‘moral minimum’, ‘[t]he lower limits on tolerable conduct, individual and institutional’ (xi). Shue’s understanding of the function of those rights seems to be particularly apt to describe what we have in mind.

metacoordination constituents themselves to consider – for any institution, legitimacy criteria *may* end up being recognizably ‘practice-dependent’, but it is presumptively also possible that metacoordination constituents alight reiteratively on similar legitimacy criteria for institutions that are themselves dissimilar, or indeed different legitimacy criteria for institutions that are very similar, even identical, in nature. Similarly, quite what *kind* of social respect is due to institutions is also, we suggest, a matter for metacoordination constituents themselves to determine, not something that ought to be read from the nature and function of the institution in a practice-dependent manner.

In this we appear to diverge from Buchanan himself who, alongside the Metacoordination View of legitimacy, also seems to want to propose a first-order practice-dependent view about legitimacy criteria when he says that such criteria ought to vary in accordance with the ‘natures and functions’ of differing institutions.⁴³ Buchanan makes similar practice-dependent claims also about the kind of social respect owed to different legitimate institutions.⁴⁴ In our view, making *definitive* and general first-order claims of this type is inconsistent with the logic of the Metacoordination View, which must leave these matters to metacoordination constituents themselves to determine in specific instances.

In what follows in this section, we introduce the three aspects of the political decision context, offer illustrative real-world examples of how metacoordination may be dependent on these aspects, and defend that idea against possible worries and criticisms. Two such worries are that the idea of context-dependence presents a form of moral hazard, and that it represents a status quo bias or collapses into a purely sociological account of legitimacy.

Criticality

The first element of the political decision context we want to highlight – criticality – refers to recognized, impending, severe circumstances. Our thought is that such circumstances can condition the shape of the metacoordination process appropriate for deriving legitimacy criteria for a given institution, specifically in a more normatively realist direction. However, where circumstances are (i) not severe, (ii) not near-term impending, or (iii) not recognized *as* severe and impending, they cannot condition normative standards for metacoordination in this way.⁴⁵ Our particular interest here is in an existing institution *unilaterally extending its competences* into a new area in order to respond to criticality.⁴⁶ We take it to be plausible that in such circumstances it may be unnecessary and indeed counter-productive to undergo a normatively – and in particular procedurally – more liberal metacoordination process in order to establish the legitimacy of such an extension.

⁴³Buchanan 2013, 176.

⁴⁴Buchanan 2018.

⁴⁵As we here understand ‘criticality’, therefore, *recognition* of severe, impending circumstances is necessary. One may of course also define such circumstances themselves as objectively speaking critical, regardless of whether or not this is recognized by anyone. But the recognition of such circumstances as critical is important to the role such circumstances can play in our account of legitimacy.

⁴⁶By contrast, where a critical situation is responded to by an institution working within its existing remit, no new question of the institution’s legitimacy is raised by the criticality itself.

It is likely to be counterproductive because of the time-sensitive nature of critical situations.⁴⁷ Bluntly, in the time it might take to undergo a normatively liberal deliberative procedure on the legitimacy criteria demanded of an institution carrying out some new function, the critical situation at hand may become only more critical, making it more difficult, perhaps impossible, to deal with effectively. That is assuming, in addition, that the appropriate institutional forum already exists that would allow such metacoordination to occur in a timely manner, which of course is not obviously the case, particularly for critical situations extending across state borders. But in any case, we consider that any such liberal metacoordination process may be unnecessary, because the criticality of the situation may encourage *spontaneous* social respect for the institution's actions, either *ex ante*, when it is quickly widely accepted that the institution in question can deal with the critical situation, or *ex post*, where this realization occurs partly after the institution has indeed begun to deal with it. Either way, a liberal metacoordination procedure will not necessarily play any useful function, because metacoordination constituents can plausibly independently and spontaneously reach the conclusion that the institution deserves the respect it requires to function.

As an example, consider the World Health Organization's (WHO) response to the 2003 SARS outbreak.⁴⁸ It has been claimed that the WHO's actions in relation to this outbreak were 'exceptional' (in the Schmittian sense of a 'state of exception'), extending beyond the institution's previously established remit.⁴⁹ Specifically, the WHO

publicly shamed states that did not comply with the recommendations and guidelines prepared by the organization ... This authoritative behaviour broke with WHO's established practice of not publicly criticizing member-states ... Second, WHO issued explicit travel warnings, beginning in April 2003, for the most affected territories in China, Hong Kong and Canada, even though it had never received a mandate to take such measures.⁵⁰

As Tine Hanrieder and Christian Kreuder-Sonnen clarify, since 'SARS was successfully contained by May 2003 and the number of casualties remained below 1000, the crisis was seen as a success story for WHO'.⁵¹

Our suggestion is that the mutually recognized critical nature of the SARS outbreak enjoined and enabled a normatively more 'realist' and, specifically, procedurally less substantive metacoordination process. Despite the unilateral nature of the extension of WHO competences, it seems to have ultimately been implicitly accepted by states – without the need for prior explicit deliberation – that, given the circumstances, WHO pronouncements and epidemiological criteria should be

⁴⁷In crisis management literature, this aspect of crisis has been referred to as 'time compression'. See Boin, 't Hart, Stern and Sundelius 2016.

⁴⁸Here, our specific focus will be on specific *actions* of the WHO rather than the legitimacy of the WHO *tout court*.

⁴⁹Hanrieder and Kreuder-Sonnen 2014; for consideration of exceptional measures with reference instead to the 2009 swine flu outbreak, see Agius 2010.

⁵⁰Hanrieder and Kreuder-Sonnen 2014.

⁵¹*Ibid.*, 337.

understood as authoritative.⁵² This interpretation is given succour by the fact that states subsequently agreed to legally formalize the WHO's emergency powers, in line with what had occurred, in the revised International Health Regulations of 2005.

One might, however, want to claim that it was only at this later stage, where *explicit* state consent to the extension of WHO emergency powers was gathered, that the legitimacy of the extension of those powers was in fact properly established. On this view, circumstances of criticality do not condition the meta-coordination process from which legitimacy judgements are to be derived, but only *defer* that judgement until after the critical situation has passed. It might be thought that this way of looking at things is more sensible, because it allows for a scenario in which, for example, it retrospectively comes to light that an institution, while effectively responding to a critical situation, did so in a manner unreasonably discriminatory against a certain group. Indeed, it allows for a scenario in which that discriminatory activity was common knowledge at the time, and yet the majority of the population nevertheless offered the institution the social respect necessary for it to function, which we in hindsight would want to consider unjustifiable.

This is an important response, which enjoins a qualification of our view. We do not say that in critical circumstances the meta-coordination process will *necessarily*, or even frequently, finally look normatively less liberal and more realist. Where claims of the type mentioned above are levied, then there is reason to engage, retrospectively, in a procedurally more liberal meta-coordination process that may well have the effect of revising and overturning any earlier sense that the institution acted legitimately. This does not mean, however, that this type of retrospective process *must* occur. Suppose, by contrast, that there are no claims raised about discriminatory activity, and no evidence that any occurred. In these circumstances, it is unnecessary to instigate any retrospective liberal and procedurally substantive meta-coordination process: the fact that the emergency agent performed a critical function which delivered spontaneous social respect is process enough to establish the legitimacy of the action. To return to our example, although the extension of WHO emergency powers was only formalized in the subsequently revised 2005 International Health Regulations, this was not a necessary element of establishing the legitimacy of the WHO's earlier extension of competence: if no such *ex post* formalization had occurred, it is still possible to understand that extension as legitimate on the basis of a minimalist, implicit meta-coordination process enjoined by the critical circumstances that pertained. The subsequent formalization of the extension merely plays the role, we suggest, of making that earlier minimalist meta-coordination plain.⁵³

Another type of response to our view might be forthcoming from an opposing direction. A political realist might ask whether criticality is in fact doing much work here. After all, if an institution can operate successfully without widespread

⁵²We are here simply assuming that states are the appropriate constituents in order to focus on drawing a link between criticality and meta-coordination normativity.

⁵³When considering the *ex post* legalization of emergency powers, Oren Gross and Fionnuala Ní Aoláin suggest that this can occur only where such powers are retrospectively formally ratified. Our view differs, not only in concerning legitimacy rather than legality, but also in denying that formal ratification is always necessary. See Gross and Ní Aoláin 2002.

and explicit challenge, and with general acquiescence, then why is that not sufficient to understand the institution as receiving the relevant kind of social respect, and thus as legitimate, *regardless* of whether the institution is dealing with a critical situation? Our answer is the link between criticality and the plausibility of presuming widespread recognition or consensus, among constituents, of institutional purpose and desirability. In the WHO case, there was, we presume, a widely shared recognition of the critical nature of the SARS outbreak, a widely shared interest in its efficient control, and widely shared recognition that the actions of the WHO were intended to serve this shared aim. As a result, we consider it reasonable to interpret adherence to the pronouncements of that institution as spontaneous or implicit metacoordination about the desirability of having that institution perform that function. The fact that we emphasize presumed (near-)consensus indicates that, in this political context, we envisage a metacoordination process more normatively realist in some respects (in particular in its procedure) and more liberal in others (the place of consensus).

But now consider, by contrast, a scenario lacking criticality. Where an institution begins to perform some function not recognized as critical – imagine, for example, that the WHO issued travel warnings and ‘public shamings’ in response not to a SARS outbreak, but to low food hygiene standards – but which was nevertheless met with broad adherence, we do not suppose that that acquiescence can as reasonably be interpreted as akin to spontaneous or implicit metacoordination. Instead, that adherence may more plausibly house attitudes and beliefs ranging from suppressed hostility to disinterest to positive support. In these circumstances, a normatively liberal – and in particular, procedurally substantive – metacoordination process is enjoined to attempt to establish conclusively whether there in fact exists a desire for there to be an institution performing this kind of function. Since the situation is *not* critical, the time pressures that advise a more minimalist metacoordination process do not apply.

By this point readers may be getting frustrated. They will point out that in practice, whether or not we are in circumstances that are severe and impending is frequently politically contested; and even if there is an objective fact of the matter, that fact may nevertheless be rejected by many. In addition, there is a worry that appeal to such circumstances can serve as a pretext for the extension of political power sought for its own reasons, and that such extension may be given the veneer of legitimacy just in case the relevant populace is sufficiently alarmed to acquiesce with it. There can, in other words, be both ‘false negatives’ and ‘false positives’ with respect to criticality.

These worries further condition the import of criticality in two respects. The first, with respect to false negatives, is a matter of political feasibility: even if it is the case that a given circumstance *is* severe and impending objectively speaking, where this is nevertheless a matter of explicit political dispute, then it simply cannot be the case that a metacoordination process and outcome can occur implicitly and spontaneously, because it is a condition of the latter’s possibility that this reality is indeed widely recognized. Contrast the example of SARS with that of climate change. Although there is a scientific fact of the matter about climate change, it is also the case that the facts are *politically* disputed (not just in terms of whether we should concentrate on the reduction of carbon emissions or the production of adaptive technology, but whether we should do much about it at all, or even whether man-made climate change is happening). Given this, criticality *cannot*

currently condition the metacoordination process for climate change institutions in the way we have suggested occurred with respect to the WHO: acquiescence with the extension of power in the latter case was premised upon widespread *recognition* of severe impending circumstances; but the severity of the circumstances remains (politically, if not scientifically) disputed in the case of climate change, meaning that there cannot (yet) possibly be an equivalent process of implicit, spontaneous metacoordination regarding climate change institutions. If a metacoordination outcome is to be realized, it will instead need to be via an explicit process which first addresses the very question of the consequences of climate change. This is a first indication of the way in which context-dependence is itself conditioned by political feasibility, per Figure 1.⁵⁴

The second worry above, however – the false positive worry – was that the prospect of ‘severe and impending circumstances’ might be cynically used as a pretext for the extension of political power, with apparently spontaneous recognition of those circumstances and acceptance of the extension of power in fact deliberately engendered by the same power that stands to benefit from that extension. In the language of securitization theory, there is a worry that political institutions, as powerful ‘securitizing actors’, may seek to socially construct certain issues as critical security threats precisely in order to extend their own powers.⁵⁵ Our response here is to appeal to what can be thought of as a variation on Williams’s ‘critical theory principle’: acquiescence to an extension of powers in the face of apparent severe and impending circumstances does not help legitimize the extension if that sense of criticality has been deliberately socially constructed by the institution whose powers are being extended, merely in order to enable that very extension. In such cases, we should remain unwilling to accept that an appropriate metacoordination process has occurred.

This of course leaves unaddressed the vexed question of how actually to determine when such a critical theory principle has been flouted.⁵⁶ Settling such a question is inevitably beyond the scope of this paper. In any case, we only need it to be possible that there can exist certain political circumstances in which the principle is *not* flouted, and in which criticality can therefore be relevant to metacoordination. The WHO example we give here is, we suggest, a good candidate for such a possibility. There are at least four reasons, we believe, for thinking so. First, while the spread of infectious disease is of course ‘frameable’ in different ways, there is at least some level of scientific objectivity underpinning such a phenomenon that might lead us to suppose that the threat is not merely a construction of political power. Second and relatedly, the WHO as an organization, while it will of course have its own institutional imperatives, is in essence primarily a technical institution. Although contests over political power (which may motivate the construction of threat in order to shore up such power) are inherent in institutions

⁵⁴It is politically infeasible that a new international institution could unilaterally and successfully invest itself with the power to deal with the emergency of climate change – infeasible in a ‘soft’ sense, because it is only very unlikely that it could do so (given the constraint of the lack of widespread recognition of criticality), not literally impossible. But when it comes to the metacoordination, that lack of widespread recognition of criticality is a ‘hard’ feasibility constraint, since without such agreement, there *cannot* be any metacoordination process and outcome premised upon it, as a matter of basic logic.

⁵⁵Buzan, Waever and de Wilde 1997.

⁵⁶Rosen 1996; Geuss 1981.

like the state, this is less obviously the case in organizations like the WHO. Third, the power relationship between the WHO and states is significantly different to that between a state and its citizens. The state pervades the day-to-day experience of its citizens and holds power *over* those citizens, in ways which render the self-serving engendering of belief possible. The same is not obviously true of the WHO with respect to states. Fourth, states, unlike individual citizens, in most cases possess considerable epistemic resources (scientific experts, for instance) which, in the case at hand here, provide some assurance that the circumstances were indeed genuinely critical.

Institutional time point

By ‘institutional time point’ we mean to refer to whether a given institution already exists or is merely proposed to come into existence. Our view is that this can matter to the demands of metacoordination and thus to legitimacy. Specifically, we suggest that, in at least some cases, the transition from pre- to post-institutional existence ought to bring a corresponding transition from a form of metacoordination process that prioritizes robust *procedure* to one that pays greater attention to *consequences* of the metacoordination process.⁵⁷ Metacoordination ‘normativity’ and ‘constituency’ flex according to these changing prioritizations. Before institutional existence there is in certain cases the potential for the metacoordination process to *fail* (i.e. to fail to converge upon a metacoordination outcome) without adverse consequences. In such cases, liberal procedural norms should play a prominent role in determining the metacoordination process. However, post institutional existence, the opportunity for metacoordination to fail without consequence will often disappear; from within a practical approach to legitimacy, it then becomes important to pay attention to those consequences.

When thinking about legitimacy, many philosophers, particularly those working in a ‘social contract’ tradition, are wont to begin by imagining a point zero – a hypothetical foundational moment that can inform us about the proper requirements of legitimacy with respect to institutions, usually states, that in fact already exist. Typical here is the notion that at this hypothetical point zero, the institution could and should be endorsed, following some appropriately normatively structured procedure, by all of those over whom it will thereafter hold authority. In the language of metacoordination dimensions, the relevant constituency is understood to be all state citizens; and there are typically robustly ‘liberal’ (if variable) normative demands placed upon the contracting parties with respect to the procedure that delivers the contract – for instance, an emphasis of consensus.

The closest real-world surrogates here are, we suggest, constitutional conventions: these formal procedures aim at extensive inclusion, and at wide-ranging deliberation with as much eventual consensus as possible. We understand such aspiration to be appropriate to the constitutional political context; if constituents are to be brought under a new political authority, they ought when possible to be given the opportunity to deliberate about what such an authority is to be *for*, and in

⁵⁷To suggest one should pay more attention to consequences is by no means to commit to some form of consequentialism. Following Rawls, we can say that ‘all ethical doctrines worth our attention take consequences into account in judging rightness. One that did not would simply be irrational, crazy’ (Rawls 1971, 30). This applies to how we conceive of context-dependence. Changes in institutional time point, we suggest, can alter the magnitude of the consequences of potential failure of the metacoordination process.

which circumstances, if any, they consent to the creation of an institution performing that function.⁵⁸ Notably, a constitutional convention can fail: if it turns out not to be possible to generate sufficient consensus about (i) what an institution should be for and (ii) what legitimacy criteria it should be held to in the conducting of that function, then the institution may not be created at all.

Of course, if such a convention fails for an institution that already exists, there is no option not to create it. There obviously remains the option to dismantle the institution if, after the fact, a procedure of the ‘constitutional’ form cannot derive settled legitimacy criteria. However, neglecting to create an institution on the one hand, and dismantling it after it already exists on the other, are not equivalents. This is because dismantling an institution that already exists may have significantly worse consequences than not setting up the institution in the first place.

In circumstances in which there is reason to expect that dismantling the institution would bring severe consequences which it is important to avoid, and yet there is seemingly no prospect of a ‘constitutional’ variety of metacoordination yielding sufficient consensus about the function of an institution and the standards of legitimacy to which it should be held, a dilemma is faced: either one concludes that the institution must be illegitimate or else one tempers one’s understanding of what metacoordination can look like in such circumstances. We suggest that where legitimacy is understood as a practical concept, there is reason to favour the second approach. In the political circumstances at hand, maintaining that an institution must successfully undergo a constitutional-style metacoordination procedure or else be considered illegitimate runs the risk of undermining the institution’s ability to continue playing the coordinative function that at this point is presumably important to avoid bad consequences. If the philosopher’s role is to contribute to setting out morally defensible social practices of metacoordination, we argue that it can occasionally be defensible for a metacoordination procedure less concerned with consensus, with full inclusion, or with ‘moralist’ normativity than the constitutional picture to be enjoined, on account of the desire to avoid the negative consequences that now loom.

We can take as an example the Economic and Monetary Union of the European Union (EMU). It is plausible to suggest that EMU came about without any shared understanding among the founding member states of what its purpose was.⁵⁹ Rather, they had various differing motivations, often self-interested. Further to this, the relevant European treaty (Maastricht) was ratified in various states (Greece, Ireland and Italy, for example) by way of simple parliamentary majority – there was, in those instances, no requirement of supermajorities that would have gone some way to mimicking the pursuit of consensus. Moreover, we can say that the constituency of the process was less inclusive than one might hope: there were only a few referendums (one of which failed).

This is all to say that there did not occur, prior to the institution of EMU, metacoordination of the ideal ‘constitutional’ type, with high demandingness of inclusion and normativity. Had such a model of metacoordination occurred, it might have been the case that EMU was designed differently – for instance, providing for mechanisms mandating fiscal transfers necessary to deal with possible

⁵⁸We here assume critical circumstances are not at hand.

⁵⁹Brunnermeir, James and Landau 2016.

external shocks to the Eurozone area that would affect countries unequally.⁶⁰ But more to the point, it might have been concluded that since there was no consensus about the appropriate shape or bare desirability of these mechanisms, or indeed the point of EMU at all, there had not been achieved a form of meta-coordination outcome appropriate to the political context at hand – the constitutional moment – and that therefore EMU should not go ahead. To be clear, this is not to say that there was nothing that could be called a metacoordination outcome that occurred in advance of EMU – the very fact that EMU *could* occur indicates that there existed *some* sufficiently powerful constituency willing to provide the idea of EMU with the social respect that enabled it to come into being. Our claim, rather, is that it was the wrong kind of metacoordination process (and hence metacoordination outcome) for the political context – with too limited a constituency and too lax a normative structure. Were the appropriate form of metacoordination process to have been employed at that time, it is possible that a metacoordination outcome would not have been achieved, and EMU would not have gone ahead.

In the event, of course, EMU did go ahead. The Great Recession of 2008 has put EMU under considerable strain, leading as it did to increased economic divergence between Eurozone countries. In lieu of any mechanism for direct fiscal transfers, increasing deficits have been addressed (most notably in Greece) via ‘financial assistance’ in the form of loans by the IMF and other members of the euro area. Receipt of this assistance was made conditional on increased ‘competitiveness’ to be achieved through structural reforms, including labour market reforms, cuts to the welfare state (e.g. pension entitlements) and public sector wages. The reforms imposed extremely high human costs on recipients and severely restricted their political autonomy.⁶¹ European citizens, and in particular citizens of the so-called peripheral countries, have every reason to be angry about how things stand; they have a good claim to having been treated unjustly.

Nevertheless, and this is our central point here, it does not follow that the form of metacoordination process that should have occurred *before* EMU was institutionalized is the same kind of metacoordination process that should be undertaken *now*, and that (assuming that the related metacoordination outcome could not in fact now be successfully realized) we should therefore consider EMU illegitimate. What must be taken account of now, but not before, is that a failed metacoordination of the constitutional type, and resultant judgement of illegitimacy, may lead to the instability and even disintegration of EMU, bringing potentially disastrous consequences in train.

Denying the legitimacy of EMU impairs its ability to function effectively. Absent the social respect afforded to institutions understood as legitimate, subjects’ compliance with those institutions is contingent upon reasons such as congruence with personal interest, widespread coercion or normative judgements about the content of specific directives issued by the institution. Relying only on such reasons and mechanisms imposes a clear risk of instability: normative judgements about specific institutional directives may not be widely shared, widespread coercion is costly and not a long-term solution, and congruence between what the institution does and what is in particular subjects’ interests will vary over time and among

⁶⁰Per ‘optimal currency area’ theory. For the original statement of the theory see Mundell 1961.

⁶¹Stiglitz 2016.

subjects. This is a particularly poignant concern for a currency union: unless the currency area is economically homogeneous, divergence of economic interests and disagreement about the normative underpinnings of redistributive policies will feature. Without the social respect afforded by legitimacy judgements, EMU is exposed to a substantial risk of collapse.⁶²

The implications of any such collapse could potentially be tragic.⁶³ Assuming the reintroduction of individual currencies in any peripheral country would require an interim period of roughly one year, there could follow huge capital flight, aggressive forms of speculation in the sovereign bond market, the ballooning of the value of public debt still denominated in euros,⁶⁴ and the likely default on such debts. States' banking systems would also be under threat: knowing that the value of one's savings would devalue, savers could decide to withdraw their money from their bank accounts over the course of the interim period.⁶⁵

So, an inclusive, liberal metacoordination process will in all likelihood not succeed in legitimizing EMU today; and yet a widespread sense that this is the form the metacoordination process must take, with resultant judgement of illegitimacy, risks great damage. But these are not the only options. From the perspective of a practical understanding of legitimacy, there is reason to endorse a different way of thinking about metacoordination in the current political decision context. While a restricted metacoordination constituency can be understood as inappropriate *prior* to the institution of EMU, it is more plausibly appropriate *now*: we can think that the Maastricht Treaty should originally have been ratified everywhere via referendum, while thinking referendums on continuing membership of the Eurozone are now inappropriate on account of the risk they pose now to states' economic well-being, a risk not posed originally. Similarly, while we can say that, *prior* to its institution, EMU ought to have been contingent upon a shared understanding of its purpose, and metacoordination ought to have proceeded via the exchange of reasons why, *inter alia*, differing institutionalizations of EMU do or don't best secure that purpose, to suppose that such a shared understanding of purpose and way of proceeding are *now* a necessary requirement of a defensible metacoordination process is to ignore the fact that there are now consequences that follow from a judgement of illegitimacy that did not follow before.

⁶²Aslett and Caporaso 2016.

⁶³Varoufakis 2016.

⁶⁴Assuming that not all debt contracts can be re-denominated in the local currency.

⁶⁵Barry Eichengreen sums up this kind of scenario:

Advance planning will be required for the process to go smoothly, as was the case with the introduction of the physical euro in 2002. Moreover, abandoning the euro will presumably entail lengthy political debate and the passage of a bill by a national parliament or legislature, also over an extended period of time. Meanwhile, there will be an incentive for agents who are anticipating the redenomination of their claims into the national currency, followed by depreciation of the latter, to rush out of domestic banks and financial assets, precipitating a banking and financial collapse. Limiting the negative repercussions would be a major technical and policy challenge for a government contemplating abandonment of the euro. (See Eichengreen 2008, 11–52)

Governments can counteract some of the difficulties. They can impose strong forms of capital controls, they can try to re-write debt contracts in the local currency, and they can prevent savers from withdrawing funds from financial institutions. However, these remedies, in a democracy, are likely to be firmly resisted; and they can only partially address the underlying concerns (governments cannot control, for example, the reactions of foreign investors).

Moreover, while it would presumably not be the case that, *prior* to the existence of EMU, a defensible metacoordination on legitimacy criteria would involve foreseeable unjust treatment, it might nevertheless, post-creation, be the case that the changed political context means that EMU is judged unjust in some of its effects and yet still legitimate. This conclusion is consistent with the practical understanding of legitimacy that understands it as a less demanding concept than justice. In sum, while a metacoordination process on the model of a constitutional convention would have been appropriate prior to the institution of EMU, a more realist vision of the metacoordination process, in which a metacoordination outcome is understood to have been realized just in case there is sufficient tacit consent or acquiescence with the institution for it to continue, can be thought acceptable, given the changed context.

There are caveats to be entered. The first is again to highlight the importance of political feasibility to context-dependence. Given the practical understanding of legitimacy, it cannot be the case that the institutional time point conditions metacoordination in a way that would in practice be politically infeasible. So, with respect to EMU, it would be no good suggesting that a *post hoc* metacoordination process ought to be modelled in the way we have suggested, based on some combination of tacit consent and acquiescence, if, as a matter of fact, reserves of tacit consent and acquiescence were not sufficient to uphold the institution.⁶⁶ If dissatisfaction with the institutions of the European Union continues to grow, there will come a point at which EMU will cease to benefit from even this minimalist understanding of social respect. At that stage, EMU would not be benefiting from *any* kind of metacoordination outcome and would be liable to collapse.

A second worry is that we here introduce a form of moral hazard: powerful political actors have incentive to avoid tricky constitutional procedures when first setting up new institutions, since they can seemingly then help themselves to weaker legitimacy criteria by making the prospect of the subsequent dismantling of the institution too costly.⁶⁷ Part of our answer here must be simply to recognize the hazard which is, to some extent, inherent in the practical approach to legitimacy as an 'enabling constraint' that we take in this paper. In our view, however, the hazard is not such that it outweighs the benefits of taking such an approach to thinking about legitimacy, just as the moral hazard involved in (some) insurance schemes does not, *per se*, outweigh the benefits of having such schemes. Among those benefits is that context-dependence has something to say in (frequent) scenarios in which what should have been done in the past was not done, changing the circumstances that now pertain. We consider this an advantage over inflexible approaches to institutional legitimacy.

A third closely related worry is status quo bias. Is it even possible to criticize existing institutions, given the form of argument we have laid out here? There are two things to

⁶⁶As with criticality, there are both 'soft' and 'hard' feasibility constraints in view here. EMU is unlikely to be able to continue functioning without the continued general acquiescence of the Eurozone population: that acquiescence is a 'soft constraint' with respect to the functioning of the institution. But that same acquiescence is a 'hard' constraint with respect to the feasibility of the more realist metacoordination process: if that acquiescence is not there, then obviously such metacoordination *cannot* occur.

⁶⁷We thank an anonymous reviewer for this challenge.

say. The first is to refer to the two normative floors that are a feature of the context-dependence model: if the reason a given population is acquiescing with the demands of an institution is because that acquiescence has been deliberately inculcated in a population precisely so they will acquiesce – flouting the ‘critical theory principle’ – then there remains a basis for critique, and for declining to accept that a meta-coordination outcome has in fact been achieved at all; the same is the case where an institution is systematically infringing basic human rights. A second response is to underscore the difference between legitimacy and justice. An institution is legitimate when it receives some level of social respect that enables it to function; this is not the same as it is being considered just. In most democracies citizens embark on forms of political protest against perceived injustice on a regular basis; most of them do not intend to question the basic legitimacy of the state against which they are agitating.

Of course, if an institution consistently and doggedly fails to reform in the direction of what is perceived to be just, the effect may be to undermine the social respect offered to that institution, and hence its legitimacy. Here we see another kind of way in which time matters: institutions that prove incapable of reforming themselves over time may eventually imperil even a more realist metacoordination outcome by encouraging more explicit resistance. The European institutions may turn out to be a case in point.

Motivational landscape

By ‘motivational landscape’ we mean to refer to the levels of interest that a population displays in a given institution, and in particular the motivation to be involved in political deliberation about the legitimacy of that institution. Our claim here is that (i) the metacoordination constituency must necessarily be coextensive with the motivational landscape that pertains in a given political context and (ii) this inevitably involves inserting a degree of inequality into the metacoordination process, which has implications for its normativity dimension.

People are, in general, often uninterested in politics. The extent of public interest – the ‘motivational landscape’ – changes, however, according to the institution at hand. If much of the public is politically unengaged in any one state context, this is only truer of transnational institutions like the EU. And when it comes to more obscure international institutions, the relevant public may not only be largely uninterested and correspondingly not very motivated at all to have a say about the criteria according to which that institution should be considered legitimate, but indeed may not even know that the institution exists. For an example of the last type, take the Bank for International Settlements (BIS), the function of which is ‘to serve central banks in their pursuit of monetary and financial stability, to foster international cooperation in those areas and to act as a bank for central banks’. The BIS does this partly via the ‘Basel Process’, which refers to the role of the BIS ‘in hosting and supporting the work of the international secretariats engaged in standard setting and the pursuit of financial stability’. There are nine such secretariats as well as three groups with ‘separate legal personality’ that BIS also hosts as part of the Basel Process.⁶⁸ It will not be controversial to suggest that the workings of the BIS do not exercise the minds of most people, if they have

⁶⁸<https://www.bis.org/about/> (accessed 27 April 2017).

heard of it at all.⁶⁹ Because of this reality, it becomes a practical necessity – a matter of political feasibility⁷⁰ – for the relevant metacoordination constituency to be far less inclusive than, for instance, all individuals worldwide. Instead, the meta-coordination constituency will comprise, for example, some combination of state governments, industry experts, NGOs and engaged international activists. The motivational landscape has clear and direct implications for metacoordination constituency, therefore: the latter will by necessity be limited by the former.

The implications of the motivational landscape for metacoordination normativity are more nuanced. To show this, we can distinguish between the *practical* metacoordination constituency and the *institutional* constituency. The practical constituency is the actual metacoordination constituency which by necessity flexes in line with the motivational landscape. The institutional constituency is the fully inclusive population picked out by an ‘all affected interests’ principle,⁷¹ or an ‘all subjected’ principle,⁷² or similar, with respect to the institution in question.⁷³ It is the practical constituency’s offering or withholding of social respect which matters to the viability of institutional functioning, since by definition the remainder of the institutional constituency is motivated to do neither. The practical constituency, then, inevitably enjoys a kind of normative priority: it is the members of the practical constituency who *count* in determining legitimacy criteria. This is not because other views are actively discounted but is rather by default, because the remainder of the institutional constituency does not offer any views at all.

This, inevitably, entails that the practical constituency will possess significant discretion to settle for itself inherently debatable matters that will arise during the metacoordination process – such as, for example, the relative importance of Buchanan’s ‘counting reasons’, whether and how legitimacy criteria ought to be practice-dependent, and the kind of social respect that ought to be offered to the institution – on which the wider institutional constituency might have taken a different view were it to have been motivated to engage. In that sense, the practical constituency is granted a kind of epistemic guardianship: it is given the role of determining what the legitimacy criteria are for a given institution on behalf of the wider institutional constituency.

In this regard, an interesting feature of the BIS case in particular is that the population motivated to deliberate about its legitimacy appears likely also to be the population that has significant epistemic competence with respect to the BIS’s affairs. Because the BIS does not have an *obvious* direct impact upon people’s lives, and its existence does not typically pervade public spheres, interest in its functioning and legitimacy cannot be stimulated merely by continued recognized exposure to it. Thus, those who come to be interested in the question of the BIS’s legitimacy are instead likely to be those who *first* come to learn about how it operates, either for professional reasons or due to atypical levels of political

⁶⁹Even state-level regulators are often not fully equipped to follow these legal complexities and must rely on private industry experts to some degree. The latter phenomenon is a well-documented feature of both trade negotiations and agreements on banking regulation establishing international equivalents of capital requirements for global banks. See Hoekman and Kostecki 2001.

⁷⁰A soft feasibility constraint, since motivations can change over time.

⁷¹Goodin 2007; Koenig-Archibugi 2017.

⁷²Fraser 2010; Goodin 2016.

⁷³We can make no intervention into that debate here.

engagement generally. Given this confluence of motivation and epistemic competence, the prevalent motivational landscape with respect to the BIS allows the metacoordination constituency potentially to mimic the benefits that those who defend the democratic nature of 'non-majoritarian institutions' emphasize, such as, in particular, a high knowledge base and higher standard of deliberation.⁷⁴

The motivational landscape in this instance, then, inevitably offers the practical constituency a privileged status in the metacoordination process; it receives the 'normative power' to settle upon legitimacy criteria for an institution, a power that the wider institutional constituency does not receive (or rather, does not take up). In that respect, paying attention to the motivational landscape entails accepting a kind of inequality in the process of metacoordination, an inequality which to that extent moves us further towards the 'realist' end of the scale of normative demandingness.

However, this is definitively not to say that the practical constituency is thereby licensed to ignore the interests of the wider institutional constituency in its pursuit of convergence on standards of legitimacy. While the practical constituency must indeed possess the scope to settle certain contestable questions concerning legitimacy criteria, it cannot do so in ways that violate the basic human rights – typically understood to be politically *incontestable* rights – of the wider institutional constituency. In other words, the practical constituency cannot select legitimacy criteria that would impose excessive moral costs on the wider institutional constituency. Here again we see the *constraining* influence of one of the context-independent 'normative floors' that are a feature of the context-dependence model.

The second normative floor – respect for a kind of critical theory principle – further conditions the practical constituency's room for manoeuvre. The lack of interest of a wider institutional constituency, it might be suggested, is not some natural fact, but might be deliberately encouraged and maintained, potentially by those who seek to benefit from the resultant lack of political participation. Issues of economic governance, in particular – the soundness of, say, 'inflation targeting as a policy framework', or 'the best tools to be used to operate counter-cyclical monetary expansions when interest rates are near the zero lower bound' – may be deliberately framed as technocratic questions (and expressed in technocratic language!) in order to 'depoliticize' them. If, however, state governments (for example) are deliberately and consistently maintaining their citizens' ignorance about a given international institution in order to exclude them as practical metacoordination constituents, then that in itself would be a reason to reject the idea that the deliberations of any such practical constituency could lead to legitimate metacoordination outcomes. As it happens, we do not consider that the primary reason for widespread ignorance of the BIS is that such ignorance is deliberately maintained. More likely explanations seem to be the aforementioned lack of pervasiveness within persons' lives and, where persons are aware of the

⁷⁴See, for example, Keohane, Macedo and Moravcsik 2009. The argument we are making here, however, is distinct from an argument for the legitimacy of international institutions as non-majoritarian institutions. To offer an account of the legitimacy of non-majoritarian institutions is to make a first-order claim about institutional legitimacy; we are by contrast making a second-order claim about how legitimacy criteria ought to be derived.

institution's existence but nevertheless remain unmotivated to learn and deliberate about it, a kind of 'rational ignorance'.⁷⁵

This still leaves the possibility that a lack of interest is not deliberately engendered in the wider institutional constituency, the basic human rights of the latter are not infringed, and yet the practical constituency nevertheless skews the metacoordination outcome to its own particular benefit in some way. Here the response is twofold. First, it has to be admitted that this is indeed a possibility – even a probability – from within the practical approach to legitimacy that context-dependence exemplifies. To insist that any metacoordination process that is in any way skewed towards the benefit of the practical constituency cannot derive valid legitimacy criteria is to overlook the point that the concept of legitimacy is supposed in part to be an *enabling* one; requiring the process by which legitimacy criteria are derived to be shorn of all vestiges of self-interest is to take too stringent a line, which ignores this enabling function. Second, we can point out that the practical constituency is not a closed club: its current members cannot determine its future ones. And, bar cases in which the critical theory principle is violated, making choices that persistently favour the practical constituency at the expense of the wider institutional constituency is a good recipe, at least in the long run, for altering the motivational landscape and stimulating the attention of those who are systematically penalized, thereby bringing them into the practical constituency, and reopening the question of the institution's legitimacy.

Conclusion

This paper endorses a practical way of thinking about legitimacy that we understand to be underlying Allen Buchanan's 'Metacoordination View' of that concept. In our assessment, however, the metacoordination process itself is underspecified across two dimensions: constituency and normativity. Each of these dimensions admits of differing possibilities in the way that they are to be substantively understood. We have here argued that consideration of elements of the 'political decision context' from within which the metacoordination process is to occur should condition the way in which these dimensions are operationalized. We have highlighted three such elements of the decision context – criticality; institutional time point; and motivational landscape – and by reference to them have tried to show why the metacoordination process ought to be 'context-dependent'. In order for the idea of context-dependence to fit within a practical approach to legitimacy, it must itself be conditioned by a concern for political feasibility. In order always to be a normative theory of legitimacy, context-dependence must also respect two normative floors.

We do not suppose that all relevant elements of any political decision context have been covered here. Nor have we addressed how the different elements that we have covered here may interact with each other and how this might affect the metacoordination process. For example, while we have suggested that a metacoordination process undertaken in advance of the creation of a given institution points towards the desirability of an inclusive metacoordination constituency, we have also suggested that the motivational landscape may necessarily point in the direction of a more restricted constituency. There is, then, a question about what

⁷⁵Moravcsik 2004.

the implications are for metacoordination when these two factors interact, for instance, in the case where a new international institution, likely to be somewhat obscure to most people, is yet to be created.

Because we have neither claimed to offer a comprehensive account of the individual elements of political decision contexts that may be relevant to the metacoordination process nor addressed the issue of those elements' interaction, we resultantly make here no claim to have offered a model that can tell us how best overall to think about the metacoordination process in any one instance. The aim of the paper has been far more modest, being merely to introduce and make a preliminary exploration of the idea of context-dependence. Nevertheless, the promise of context-dependence is that it presents the possibility of transcending theoretical binaries in thinking about legitimacy, emphasizing instead the importance of plotting out an answer to what legitimacy demands by way of reference to the variable political circumstances in which we may find ourselves.

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