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The European Commission: Plateau? Permanent Decline?¹

John Peterson²

Abstract

The Convention on the Future of Europe marks the fifth round of European Union (EU) Treaty reforms in 18 years. Yet another round of institutional tinkering raises the question of whether the EU's main institutions are chronically ill. This article focuses on the European Commission, which has fallen from a lofty position of leadership to the point where its power and purpose under Romano Prodi are subject to profound new doubts. This article argues that despite very serious problems, the Commission is more powerful than it often appears. It certainly needs reform, but is still likely to enjoy a future that is considerably brighter than its recent past.

1. Introduction³

The Convention on the Future of Europe, and the Intergovernmental Conference that will follow it later this year, together mark the fifth round of European

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- 1 This article is an abridged version of The European Interdependence Research Unit's Discussion Paper EIRU/025 of the same title. The full version is available from Dr Anne Deighton, Wolfson College, Oxford OX2 6UD, UK, tel: +44 1865-284380, email: anne.deighton@wolfson.ox.ac.uk
 - 2 Dr John Peterson is Jean Monnet Professor of European Politics at the University of Glasgow and co-editor of *the Journal of Common Market Studies*.
 - 3 This article began life as a presentation in October 2001 to the European Studies Centre of St. Anthony's College, Oxford. I am grateful to Timothy Garton Ash, Philip Budden, Anne Deighton, David Hine and other attendees who offered useful comments or feedback. Thanks also to Elizabeth Bomberg, Liesbet Hooghe, Giandomenico Majone, and Michael Shackleton for comments on subsequent drafts. Special thanks to three European Commission officials who read the article in draft, and shared their thoughts (anonymously) on it.

Union Treaty reforms in 18 years. Constant tinkering with the EU's architecture lends credence to the claim that all of its main political institutions are 'sick, sick, sick!'⁴ It is widely-held that the most chronically ill EU institution is the European Commission. The Commission clearly has fallen from the lofty position of leadership it enjoyed when all the Treaty tinkering began. Its credibility declined slowly, at first, in the latter half of Jacques Delors' tenure of office as President (1985-95) and then more quickly under his successor, Jacques Santer. It went into free-fall when the entire Santer Commission was forced to resign in 1999. And it seems never really to have recovered.

In particular, the position, power, and prestige of the Commission have become subject to question under the Presidency of Romano Prodi. Passing judgement on Prodi and his Commission before the end of its tenure (1999-2004) may be uncharitable, if not unfair. There is no question that it is 'a difficult time to be Commission president. There is no national leader who is taking a strong visionary role in national politics'.⁵ Put another way, no major European political figure – except perhaps Joschka Fischer – is selling European integration to voters as an important political project. Still, Prodi has often seemed a weak, gaffe-prone, and marginalised figure. As this article's title implies, it has often appeared that only two possible fates could await the Commission under his leadership. Either it will witness a continued, unstoppable decline. Or it will tread water: occasionally influencing European policy debates at the margins without ever regaining anything close to the position of leadership it enjoyed under Delors.

All of that said, the title chosen for this article is, in some ways, a confidence trick. The Commission is in fact quite a lot stronger than it sometimes appears, even under Prodi. In the forthcoming round of Treaty reforms, as in past ones, debates about EU institutional reform will probably find the Commission arguing on the margins of the competencies that it will receive in the future. Its own contributions to the Convention on the Future of Europe have been (arguably)

4 The comment of a senior EU official, quoted in a perceptive recent analysis of the EU: Timothy Garton Ash, 'The European Orchestra', in: *New York Review of Books*, 17 May 2001. The view is not just one shared by practitioners and academics: Digby Jones, director-general of the CBI, recently insisted, 'We don't have a problem with the European project; it is the creaking institutions that are doing so much damage', quoted in: *Financial Times*, 21 June 2002.

5 An official quoted in a useful mid-term evaluation of the Prodi Commission: Stephen Castle, 'Prodi Team Warms Up for the Second Half', in: *E!Sharp*, June 2002, pp. 10-14. For the views of leading MEPs, see Martin Banks, 'Jury Still Out on Prodi at Half-Term', in: *European Voice*, 27 June-3 July 2002, p. 3. See, generally, Anne Stevens and Handley Stevens, *Brussels Bureaucrats? The Administration of the European Union* (Basingstoke and New York: Palgrave, 2001) and Neil Nugent, *The European Commission* (Basingstoke, Palgrave, 2001).

considered and even sensible. Yet, even if the Commission has little actual impact on the Convention's outcome, and even less on whatever is agreed in the 2004 Intergovernmental Conference (IGC), the Commission is unlikely to be an institutional loser from this round of reforms. Meanwhile the sheer weight of the EU's global economic and monetary power, as well as spectacular advances in the EU's Justice and Home Affairs policy agenda, make it difficult to argue that the Commission is becoming less powerful.

This article proceeds in four parts.

- 1 First, it offers some thoughts on the 'true' institutional position of the Commission under Prodi.
- 2 Second, the sources of the Commission's most serious problems are investigated.
- 3 Third, some ideas are mooted on how the Commission's problems might be repaired.
- 4 Fourth, the paper speculates – gamely if tentatively – about the Commission of the future.

2. The Commission Under Prodi

The Commission has always been a strange institution in a strange institutional position. The point is clear from a quick cull of the EU's Treaties, which assign to the Commission three main tasks, each very different from the others:

- overseeing the implementation of policies,
- representing the EU internationally, and
- proposing new policies.

It can be (and has been) argued that *everything* the Commission does is political, in that it in some way determines who gets what, when and how.⁶ But overseeing implementation is mostly an administrative and legal task, requiring the Commission to be an impartial defender of the sanctity of EU rules. Representing the EU internationally, especially in external trade negotiations, is a balancing act: the work is often highly technical but also politically tricky, with

6 See for example John Peterson, 'The College of Commissioners', in: John Peterson and Michael Shackleton (eds.), *The Institutions of the European Union* (Oxford and New York: Oxford University Press, 2002). A sharp, insider's account of how the Commission works is Pascal Lamy, *L'Europe en Première Ligne* (Paris: Editions Seuil, 2002).

the Commission having to conduct two-sided negotiations with both the EU's Member States and its trading partners.⁷ Proposing new EU policies is a fundamentally political job, particularly as the Commission has a monopoly on the right to initiate most European legislation. With such a party bag of powers, the Commission is a unique administration. It has often found it difficult, if not 'impossible to resolve the tension between politics, expertise, and impartiality' which it inevitably must confront.⁸ It is hardly surprising that the position of the Commission has tended to vacillate, between the vanguard and the rearguard of European integration, since its creation. Against this backdrop, three observations about the position of the Prodi Commission should inform any consideration of whether and how the Commission should be reformed.

Prodi's Commission: a 'Normal' Commission?

The institutional position of the Commission under Prodi may seem unusually weak. In fact it is not that far from the norm in the 50-year history of the Commission. The Commission's power and influence has always ebbed and flowed. Arguably, it has been truly powerful as a political agent only twice: first under Walter Hallstein in its earliest days (1958-67) and then under Delors (1985-95).⁹ And even these Presidencies ended in tears. Hallstein and his Commission were politically humiliated by de Gaulle, thus setting the stage for a string of faceless and mostly limp Commission Presidents in the 1970s. Delors played both the negotiations on the Maastricht Treaty and the Danish referendum (which rejected it) quite badly, thus leaving a critical mass of governments wanting a much less visionary successor, who turned out to be Santer.

Some might try to argue that the Commission had both grip and real authority under the presidency of Roy Jenkins (1977-81). Yet, a quick scan of Jenkins' own Brussels diaries exposes the weakness of this argument. About a year after Jenkins' Presidency ended, *The Economist* ran its famous 'tombstone' cover story signalling the death of European integration generally and the European

7 The Commission has quite 'hard' competence in external trade negotiations under Article 133 but it must negotiate on the basis of a mandate given to it by Member States, who keep a very close watch on what the Commission demands and concedes as it negotiates.

8 Liesbet Hooghe, *The European Commission and the Integration of Europe* (Cambridge and New York: Cambridge University Press, 2001), p.7.

9 Wilfried Loth, William Wallace and Wolfgang Wessels (eds.), *Walter Hallstein: the Forgotten European?* (Basingstoke and New York: Macmillan and St Martin's Press, 1998); George Ross, *Jacques Delors and European Integration* (London and New York: Polity Press, 1995) and Charles Grant, *Delors: Inside the House that Jacques Built* (London: Nicholas Brealey Publishing, 1994).

Community specifically.¹⁰ In short, the Prodi era is unlikely to go down in history as a period of renaissance for the Commission, but neither will it mark a nadir.

The Commission's Policy Agenda Has Never Been so Buoyant

There is no doubt that today's Commission has more work to do, and more of far greater importance, than ever before in its history. It has far wider responsibilities than it had during the Jenkins years, not least because globalisation has made its existing economic policy competencies far more formidable. In competition policy, the Commission is now judge and prosecuting attorney – and sometimes jury – in mergers falling within its purview. The Commission's veto in 2001 of the proposed merger between the huge American multinationals, General Electric and Honeywell, marked a rite of passage in the inexorable extension of the Commission's international reach.

Moreover, the creation and maturation of the World Trade Organisation (WTO) has significantly enhanced the Commission's power in external trade policy. While Member States still seek to shape EU trade policy preferences, the Union truly negotiates as one on external trade questions.¹¹ Its global power as a trade bloc is illustrated by the launch at the 2001 Doha WTO summit of something approximating the 'development round' which was originally proposed by the EU. The Commission's own clout is reflected in its 'Everything but Arms' initiative, which – against the strong wishes of France – extended duty-free access to the EU's market on nearly all products to the least-developed countries.¹²

More generally, the Commission has more work than it can handle in a range of policy sectors where transnational pressures are strong, including electronic commerce, enlargement, and Justice and Home Affairs (the latter particularly in the wake of the 11 September 2001). In more traditional economic policy domains and even some non-traditional ones, such as monetary union, there is general agreement in Brussels that the Prodi Commission's economic team – Pascal Lamy, Erkki Liikannen, Frits Bolkestein, Pedro Solbes and Mario Monti – is collectively the best that the Commission has ever had. In many respects, the Prodi Commission is an unusually professional, industrious, dossier-focused Commission, if also one with a relatively low political profile.

10 Roy Jenkins, *European Diary: 1977-81* (London: Collins, 1989); Robert O. Keohane and Stanley Hoffmann (eds.), *The New European Community: Decisionmaking and Institutional Change* (Boulder and Oxford: Westview, 1991).

11 Joseph H.H. Weiler (ed.), *The EU, the WTO and the NAFTA* (Oxford: Oxford University Press, 2000).

12 Remco Vahl, "'Everything but Arms': Free Access for Imports from Least Developed Countries", in: *The Courier ACP-EU*, May-June 2001, pp. 30-1.

Don't Judge Prodi Too Soon

There is little question that Prodi's legacy remains largely unwritten, and will be determined mostly by his Commission's success (or lack of it) in managing two long-term projects. The first is enlargement, which has preoccupied very little time on the part of an astonishingly minimal number of *national* civil servants given how much it will transform the EU. The second is the internal reform of the Commission, which started slowly but was making steady progress by early 2003. As the following section makes clear, the Prodi Commission is not without problems. But it is not without talent, ambitious projects, and past Commissions with whom it compares favourably.

3. Sourcing the Commission's Problems

The Commission's general problem of credibility is the product of a diverse and bedeviling array of troubles that have many sources. But the Commission suffers from three basic problems. First, it has serious problems of communication: often presenting itself to the world as an elitist institution that is intolerant of any dissent from its message of Europhilia. A second problem is a political one: no member government of any large European state is willing to take even the smallest political risk to defend the Commission and its prerogatives. Third and finally, the Commission has administrative or what Chris Patten has called 'plumbing problems': it 'leaks' money and is often inefficient in performing its assigned tasks.

The Communication Problem

Perhaps the Commission's most obvious problem is its problem of political communication. Especially under Prodi, it has been notoriously bad at explaining to ordinary people why it exists, what it is there for, and why it does what it does. Here Prodi himself, a frequently poor and sometimes incomprehensible communicator, is culpable: calling the Commission a kind of 'European government' and referring to himself as a 'European Prime Minister' in his first days in post. Afterwards, the British Commissioner, Neil Kinnock, apparently took Prodi aside and reminded him that, as Kinnock himself had found to his own personal and political cost, it is one of the hallmarks of a government that it – unlike the Commission – is elected.

The first years of the Prodi Commission were marked by a string of communication gaffes. Notable amongst them was the unveiling of the Commission's White

Paper on Governance, when Prodi stated that he was sorry that the paper was so dull and boring, but that it could not be helped because governance was essentially a dull and boring topic.¹³ A chance for the Commission to provoke a genuinely open and participative debate about EU governance was, to say the least, not maximised.

The White Paper is only one yardstick by which to assess the Prodi Commission. However, it is worth examining its content for evidence of how the Commission views its own institutional position, and communicates its view. Predictably, the Commission is almost entirely immune from self-criticism in the White Paper. Again and again, the Member States and the 'intergovernmental' institutions of the EU are criticised for their failings. Nowhere does the paper suggest that the Commission has serious problems of its own. As Daniel Wincott has observed, it gives the impression that the Commission is not reconciled, and never will be, to the possibility that intelligent and knowledgeable people might disagree with the Commission or its actions, or decide that European integration may not necessarily be a 'Good Thing' in all circumstances.¹⁴

In fairness, the White Paper *does* embrace the idea that a wider range of policy instruments should be used in EU policy-making, including:

- tri-partite contracts between the Commission, regional governments, and Member States;
- 'co-regulation', or voluntary regulatory agreements between public authorities and private actors;
- the so-called Open Method of Policy Coordination, which has been employed in a range of policy sectors, including monetary union, employment policy, and many of the areas targeted by the 2000 Lisbon summit for economic policy reform.

Yet, the merits of these new policy instruments are not cast in the White Paper in the context of the need for the Commission to alter its ways. Take, for example, the Open Method, which has become a more frequently used alternative to the traditional Community Method of legislating (that is, the time-honoured process in which the Commission proposes, the European Parliament (EP)

13 See *European Voice*, 25 July-1 August 2002; European Commission, *European Governance: A White Paper*, (COM (2001) 428 final), Brussels, 25 July 2001, available at http://europa.eu.int/comm/governance/index_en.htm.

14 Daniel Wincott, 'The Commission and the Reform of Governance in the EU', in: *Journal of Common Market Studies*, Vol. 39, No. 5, 2001, pp. 897-911. For views (most of them highly critical) of leading academics on the White Paper, visit <http://www.iue.it/RSC/Governance>.

amends, and the Council disposes). The basic goal of the Open Method is to promote the exchange of national experiences and encourage policy learning, and sometimes to try to converge (voluntarily) existing national policies. Generally, the replacement or alteration of national policies via new Community legislation is eschewed.¹⁵ Usually, the role of the Commission is confined to monitoring national performances, constructing league tables, and commenting on the effectiveness (or ineffectiveness) of national policies before national officials meet to review them. When the Open Method is employed, the Commission obviously lacks the trump card that it wields under the Community Method: its monopoly on the right of initiative.

The Open Method has disadvantages, including a lack of legal certainty or transparency.¹⁶ At the same time, it has clear instrumental advantages: including making national officials responsible for implementing policy also partially responsible for formulating it, thus making more uniform and effective implementation more likely. Yet, consistent with the general tone of the Commission's White Paper on European Governance is its insistence that the Open Method should only be used in areas where legislative action under the Community Method is impossible. The Commission's argument – posed in a very stubborn, uncompromising way – is that the real solution to the EU's problems is 'strengthening the Community Method'.¹⁷

In the Commission's defence, expectations of the White Paper were very high and perhaps overdrawn: it is rare that any political institution willingly and enthusiastically promotes its own weakening, which is what many academic observers seemed to expect or want. More importantly, the White Paper certainly did not reflect the views of all, or probably even most, officials in the Commission.¹⁸ In fact, there is good evidence to suggest that most leading Commission bureaucrats are keen to move away from a classical federal prescription for the EU, and hierarchical or formal modes of governance more generally, and instead to experiment with more fluid, less hierarchical, and more

15 Dermot Hodson and Imelda Maher, 'The Open Method as a New Mode of Governance', in: *Journal of Common Market Studies*, Vol. 39, No. 4, 2001, pp. 719-46.

16 John Peterson and Elizabeth Bomberg, *Policy Transfer and Europeanization: Passing the Heineken Test?* Queens' University Belfast Institute of European Studies, September 2002, available from: <http://www.qub.ac.uk/ies/onlinepapers/poe.html>.

17 European Commission 2001, *op. cit.*, p. 8.

18 The White Paper was very much the brainchild of Jérôme Vignon, a close associate of Delors and chief advisor in the Commission's Secretariat-General under Prodi. On one hand, few could deny that Vignon was an immensely talented, even brilliant official. On the other, few considered his communication skills (especially his often abstract, very French writing style) or capacity to think beyond classical models of federalism to be strong points.

inclusive types of network governance (see below).¹⁹

Yet, even a charitable view of the White Paper would have to acknowledge that a golden opportunity was missed to launch a real debate about how best to govern in a system where power is shared between levels of government, as well as the public and private sector, to extents unseen anywhere else. The White Paper also reveals – rather starkly – the Commission’s communication problem.

The Political Problem

Even if the Commission’s most glaring problem is one of communication, its most serious problem is fundamentally political: no government in any large EU Member State is willing to take any political risk to defend the Commission. Following the 2001 election of the Berlusconi government the argument extended even to Prodi’s home state of Italy, if it was counted – as it often was not – as a ‘large state’ in terms of political weight.

In this respect, 1998 was a defining moment in the life of the Commission. In the run-up to a domestic election, the German Chancellor Helmut Kohl abruptly stopped defending the Commission, after years of staunch commitment to the EU generally, and support for Delors’ Commission specifically. Crucial to Kohl’s calculations in 1998 was the presentation to him of a 120-page dossier of alleged Commission infringements of subsidiarity by Edmund Stoiber, the Minister-President of Bavaria and a putative political ally of Kohl’s.

Again, as the autumn 2002 German elections approached, Kohl’s successor, the Social Democrat Chancellor Gerhard Schröder, attacked ‘one-sided Brussels bureaucrats’ and accused the Commission of being biased against German industrial interests. The intent was clearly to ensure that Schröder, always more a domestic political fixer than a European statesman, was not outflanked by the occasionally Eurosceptic Stoiber as the latter made a strong (and unsuccessful) bid to succeed him. More generally, the attitude of any German Chancellor could not fail to be influenced by the fact that amongst European publics, few show lower levels of trust in the Commission than do the Germans.²⁰

19 See the extensive data generated from exhaustive interviewing with top Commission officials in Liesbet Hooghe 2001, *op. cit.*

20 For example, only 37% of Germans in the spring 2001 Eurobarometer poll said they ‘tended to trust’ the Commission, a lower share than even in Sweden or Austria (the UK total was 25%). No less than 62% of Germans reported having a generally favourable impression of the Commission in 1990. Annual Eurobarometer polls are available at: http://europa.eu.int/comm/public_opinion/index.htm.

Germany's traditionally closest EU ally, France, was even less supportive of the Commission after Delors left Brussels. During the first half of the Prodi Commission, the French government was paralysed by *cohabitation*, as it had been for some time, with a Gaullist President confronting a hostile Socialist government but having to share power over EU policy. Clearly, neither Lionel Jospin (Prime Minister from 1999-2002), nor President Jacques Chirac were prepared to give consistent political support to the Commission. Little changed after Jospin was replaced by Jean-Pierre Raffarin following a landslide victory for the right in the 2002 French elections. Indeed, under instruction from Chirac, Raffarin stated during the French legislative election campaign that his government would delay a planned reduction of France's budget deficit, thus contravening the EU's Stability and Growth Pact and landing the Commission with a political headache. More generally, the traditional Franco-German-Commission alignment rarely deserved the label 'alliance' during Prodi's term, in stark contrast to the Kohl-Mitterrand-Delors days.

The British Prime Minister, Tony Blair, generally commanded more respect from his European peers than his predecessors and kept the UK on a broadly pro-EU course. In a speech delivered in Warsaw in 2001, Blair argued that 'we need a strong Commission able to act independently, with its power of initiative: first because that protects smaller states; and also because it allows Europe to overcome purely sectional interests.' However, set piece speeches often give a less accurate reading of a political leader's mind than what they say off the cuff. Meeting the press in the margins of the Nice summit, Blair expressed support for the idea of holding yet another round of Treaty reforms in 2004 because 'there is much for us to gain from a conference that sets out clearly where it is that the Brussels Commission operates and where it doesn't', as if that were *all* that was needed to make the EU work properly.²¹

Meanwhile, Blair's government routinely engaged in Commission-bashing to ward off its critics or satisfy its supporters. For example, the British Finance Minister, Gordon Brown, swatted away the Commission's criticism of his April 2002 budget, which put the UK on track to run a small public budget deficit for several years, by insisting that the budget reflected a 'prudent interpretation of the growth and stability pact not taken by the European Commission but by the European Council'.²² A row over the alleged harassment of 'booze cruisers' by HM Customs officers saw John Healey, the Treasury Minister responsible for

21 Quoted in John Peterson 2002, *op. cit.*

22 Quoted in *Financial Times*, 25 April 2002, p.4.

indirect taxes, attack Frits Bolkestein, the Commissioner for the internal market, with the sardonic observation: 'He is in the position of acting the popular hero, which is rather unusual for a European Commissioner'.²³ Indeed it is hard to imagine that any British government would ever find Commission-bashing to be unpopular domestically. Only about one in four British citizens tell pollsters they 'tend to trust' the Commission – a far lower percentage than in any other EU Member State.²⁴ The broader point is that the European Commission's most serious problem under Prodi was its lack of support in any large state national capital.

The 'Plumbing' Problem

There is no denying that the Commission also suffers from a 'plumbing' problem: a frequent inability to administer effectively and efficiently the spending for which it is responsible. The Commission does *not* spend much money and the vast majority of the EU's budget (about 80 per cent) is spent by the Union's Member States. Fraud is certainly a problem, and as much as 10 per cent of the EU's annual budget of about €98 billion may be wasted.²⁵ Yet, the problem is primarily rooted in lax or off-hand spending controls at the national level, and usually has little or nothing to do with the Commission itself.

There is little evidence to suggest that the Commission is uniquely, among European public administrations, unable to spend money efficiently. And there is little question that spending controls have been tightened considerably: the Commission probably wastes less of what it spends now than ever before. Perhaps most importantly, the Spanish Council Presidency of early 2002 surprised many observers with its success in brokering a unanimous consensus on a new Financial Regulation governing all EU spending.²⁶

23 Quoted in Ed Crooks, 'EU commissioner attacked in Customs seizures row', in: *Financial Times*, 20 September 2002, available from <http://globalarchive.ft.com> (accessed 24 September 2002).

24 It is worth pointing out that levels of trust in the Council of Ministers are even lower (18%) in the UK as well as in most other Member States, *and* that Europeans generally exhibit more trust in the EU than they do in their national governments. See the European Commission's spring 2002 'Eurobarometer' survey (number 57) of public opinion in the EU, available from http://europa.eu.int/comm/dg10/epo/eb/eb57/eb57_en.pdf (accessed 16 September 2002).

25 Dick Ruimschotel, 'The EC Budget: Ten Per Cent Fraud? A Policy Analysis Approach', in: *Journal of Common Market Studies*, Vol. 32, No. 3, 1994, pp. 319-42.

26 It was widely assumed in 2002 that the new Financial Regulation, replacing one that had governed EU spending since 1977, would take several more years to agree. In event, the new Regulation was set to go into effect on 1 January 2003.

Without resorting to clichés about national administrative cultures, the Commission's plumbing problems often look particularly severe to those eyes accustomed to Whitehall-style probity. Commenting on the Commission's spending on development aid, Chris Patten moaned that, metaphorically, every time he opened a cupboard, another skeleton fell out. Serial straight-talker Clare Short, the UK Development Minister, did not flinch from describing the Commission as 'the worst development agency in the world' and slating its methods for distributing aid to the world's poorest countries as 'an outrage and a disgrace'.²⁷ Many in the European development aid communities, including national officials and representatives of non-governmental organisations, did not fundamentally disagree. Despite recent progress, the Commission has a long way to go before it stops leaking money in ways that do not deliver value for money to the European taxpayer.

One example can illustrate how even sensible attempts to fix longstanding plumbing problems can create new problems in complex institutions. In late 1998, the Santer Commission's mishandling of the BSE crisis angered the European Parliament, putting in motion a chain of events which led the EP to order the famous Committee of Independent Experts report into allegations of fraud and mismanagement. The Experts mostly trod over old ground, such as alleging mismanagement during the Delors years, but still concluded with the notorious allegation that 'it becomes increasingly difficult to find anyone with even the slightest sense of responsibility' within the Commission.²⁸ That devastating last line – despite its lack of substantiation in the report – made new financial management and control arrangements within the Commission inevitable.

A new administrative code was subsequently unveiled by Kinnock that was sensibly more decentralised, and made those Commission officials responsible for authorizing projects also more responsible for authorizing expenditure on them. But Commission officials were also made more directly responsible for maladministration or fraud in the programmes they manage. The effect was to give officials incentives to be less concerned about the effectiveness of the programmes they were running than with watching their backs, or taking no risks in authorising expenditure, even if risk-taking was needed to solve a policy problem.

27 Clare Short, 'Aid that doesn't help', in: *Financial Times*, 23 June 2000. See also 'EU aid is a disgrace says Short', *BBC News On-Line* available from: http://news.bbc.co.uk/1/hi/uk_politics/2163865.stm (accessed 27 September 2002).

28 Committee of Independent Experts, *First Report on Allegations Regarding Fraud, Mismanagement and Nepotism*, Brussels: European Parliament, March 1999.

It remains to be seen how much difference the new Financial Regulation will make. But up to now under Prodi, units in the Commission with responsibility for spending programmes have had relatively weak incentives to make them work. Meanwhile, they have had powerful incentives to increase detailed rules designed to eliminate any chance of mis-spending. The result has probably been less leakage.²⁹ But whether Europe has been the recipient of more effective public policies from Brussels in the process is certainly questionable.

4. Repairing the Commission

One important reason why the Commission's vision of European governance, as reflected for example in the White Paper on Governance, so often seems defined by its own institutional self-interest is that there are many officials in the institution who believe that the wagons are now circled around the Commission's holy grail: its monopoly on the right of legislative initiative. Once the Commission loses that prerogative – which many believe is inevitable – it is feared that the Commission will become a cross between a think-tank and a weak quango. Thus, the Commission is inescapably defensive, muscular and combative in all debates about institutional reform. Yet, this line of thinking is blind to the very real possibility that the Commission would be both more effective and even perhaps more powerful if three broad changes were made to its remit and role.

Sharing the Right of Initiative

Battling trenchantly to keep other institutions off its turf, the Commission exacerbates the political problem that stems from its lack of support from any large member government. Moreover, there is something rather phoney about its stubborn defence of its monopoly on the right of initiative. The Commission itself has estimated that only about 10 per cent of its proposals are 'pure, spontaneous' Commission initiatives, as opposed to measures required by the EU's Treaties or its international obligations, or responses to requests for legislation from other EU institutions, member governments, or interest groups.³⁰

29 This claim might seem bold in light of the *cause celebre* in 2002 surrounding the suspension of Marta Andreasen, an official in the Commission's Budget Directorate, after she alleged that the EU budget was vulnerable to fraud and not subject even to the most minimal accounting standards. See interview with Andreasen (and links to related stories) at <http://news.bbc.co.uk/1/hi/business/2165767.stm>.

30 The Commission's own data on the origins of its proposals is reproduced in John Peterson and Elizabeth Bomberg, *Decision-Making in the European Union* (Basingstoke and New York: Palgrave, 1999), p. 40.

A strong case can be made for protecting the Commission's monopoly on the right of initiative on all issues directly related to the Single Market. No other arrangement could give as much credibility to the commitments that Member States have made to each other to pursue economic integration.³¹ However, in all other areas of EU policy the Commission's monopoly on the right of initiative could be gracefully surrendered. Consider how the politics of EU policy-making would change if it were agreed that:

- any proposal not directly related to the internal market could go into the legislative machinery only on the basis of an initiative by the Council Presidency;
- such an initiative would have to be supported by a simple majority of Member States, whether or not that constituted a majority under the Council's rules for qualified majority voting (QMV);
- no proposal could proceed without the agreement of the Commission, which would thus retain a veto and strike down any proposal if it could show that it was contrary to the collective interest of the EU.

Under these arrangements, member governments would naturally take much more responsibility for what they did at the EU level. They could do far more to deploy their own resources – particularly their own national administrations – in the development of EU policies. Above all, more of them would then become allies of the Commission, not rivals, in EU policy debates.

Enhancing the Commission's Legitimacy

A second change would enhance the Commission's democratic legitimacy, and thus, hopefully, give it more autonomy and authority. The convening of the Convention on the Future of Europe in 2002 has generated a rich variety of ideas about how to choose the Commission by means other than the existing method of intergovernmental haggling.³² One obvious way would be to elect directly the Commission President (and possibly the entire College of Commissioners); another would be to have some kind of college of national parliamentarians make the choice.

31 I have profited from an exchange of views with Giandomenico Majone on this point.

32 Simon Hix, *Linking National Politics to Europe* (London: The Foreign Policy Centre and British Council, 2002); Jack Straw, *Reforming Europe: New Era, New Questions* (London: Foreign and Commonwealth Office, 2002; speech delivered on 21 February at The Hague). For an analysis of the current method of choosing the College of Commissioners – whereby each member government in practice simply appoints one (or two) of its nationals – see John Peterson and Elizabeth Bomberg 1999, *op. cit.*, pp. 40-1.

Yet, neither of these methods seems very practical. European citizens are clearly not ready for direct Presidential democracy at the EU level. Electoral contests for the Commission Presidency would suffer the familiar problems of European Parliament elections: low turnouts, a focus on national issues, and no meaningful debate about EU policy. National parliamentarians are not well qualified to choose the Commission President. Most take little interest in the EU or have particular knowledge of how the Commission works. It is increasingly difficult in many Member States to find MPs who are willing to put in the considerable amount of time and effort it takes to serve effectively on parliamentary committees that scrutinise the EU. The job of national parliamentarians is to control national governments, not to choose who heads the EU Commission.

It makes more sense to embrace the proposal put forward in 2002 by 12 former Heads of Government or European Commissioners under the title 'A Wake Up Call for Europe'.³³ Specifically, the EP would be given the right to nominate the President of the Commission, who then would be subject to approval by a qualified majority vote of the European Council. Giving the EP this prerogative would have a number of desirable effects, including giving increased significance to EP elections, which are probably the only democratic elections in the world that do not produce some kind of executive outcome (that is, they do not produce a 'government'). Having the primary responsibility for choosing the Commission President would also encourage the EP's party groups to develop into truly 'European' political parties, thus helping to sharpen voters' choices in EP elections.³⁴

This option also offers a nice blend of change and continuity. On the one hand, letting the EP nominate the Commission President would prompt an unprecedented, open, and public political campaign between rival candidates, who would effectively be indirectly elected by the EP. On the other, it would involve a simple reversal in the order of a process that already exists, whereby the European Council chooses the President who is then subject to formal ratification by the EP.

Crucially, the Treaty of Nice stipulates that QMV will be used in future for nominating and appointing the Commission's President. Thus, the Treaty may well mark a revolutionary change in the way that EU summits make decisions, since

33 The report is available from the web site of *Notre Europe*, a think tank headed by Jacques Delors. See <http://www.notre-europe.asso.fr/pages/Appel-en.htm> (accessed 17 September 2002).

34 Here I draw inspiration from John Palmer's letter to the editor of *EI Sharp*, May 2002, p.9.

the European Council has thus far made its decisions on the basis of consensus. In the particular case of choosing the Commission, the use of QMV will mean that no Member State will be able to veto a strong, competent candidate to be President. Moreover, if prospective Commission Presidents had to campaign for votes in the Parliament to get the nomination, the EU would be far less likely to end up with a poor political communicator such as Prodi.

Of course, residual support for an appointed, unelected, and thus 'independent' Commission is not negligible, particularly in France.³⁵ However, the Commission of the future, like the Commission of the present, is always going to perform tasks that are innately political (see below). Thus, it makes sense to try to give the Commission more democratic legitimacy, while also giving a much-needed boost to the public profile of the EP.

Enhancing the Commission's Credibility

Time and practice are both working against those who argue that the Commission is still a largely technocratic body doing technocratic work, and thus does not need to be reformed. The general long-term trend is clearly towards the increasing politicisation of EU policy-making, with more and more policy tasks involving a shift of political discretion to the European level. As Fritz Scharpf has argued, an important measure of the success of European integration is increasingly urgent demands for market-correcting policies (not market-creating ones) arising from the effects of integrated European markets on policy areas that are not themselves EU-based, such as pensions, health and taxation systems.³⁶ These and other thoroughly nationalised policy areas increasingly experience problems as a direct consequence of European integration, but problems are often manifest in very different ways in different Member States.

One response has been the embrace of the Open Method. Another has been the creation of new European regulatory agencies, such as the European Environment Agency and the European Food Authority. These agencies have been created for good, functional reasons as new, disparate and highly dissimilar policy tasks are gradually being shifted to the European level, but not in a way

35 For example, see Olivier Costa et al., 'L'Union Européenne: Une Démocratie Diffuse?' in: *Special Issue of Revue Française de Science Politique*, Vol. 51, 2001. See also John Temple Lang and Eamonn Gallagher, 'What Sort of European Commission Does the EU Need?', in: *Challenge Europe On-Line Journal* (Brussels: The European Policy Centre, 2002), 14 February, available from: <http://www.theepc.be/challenge>.

36 Fritz Scharpf, *European Governance: Common Concerns vs. The Challenge of Diversity*, Jean Monnet Working Paper No. 6/01, New York 2001, available at <http://www.jeanmonnet-program.org/papers/01/010701.html>.

that does or should automatically lead to an increase in the competence of the EU generally or the Commission specifically. The creation of new European agencies may be taken as proof that, contrary to what we are told by Eurosceptics, the European Union is following a pluralistic trajectory of integration rather than a state-building trajectory. Put another way, the EU is becoming more 'polycentric': it features progressively more and more diverse and independent, centres of power, development and control.³⁷

All of this is very problematic for the Commission, which has remained essentially unchanged for more than 40 years. Meanwhile, it has become an increasingly inadequate manager of the complexity of European regulation. For one thing, it lacks the staff or resources. For another, as Giandomenico Majone insists, even if we could conjure up a less technocratic, more politically accountable Commission which enjoyed greater democratic legitimacy, eventually it would face the same credibility problem faced by all democratic governments, which increasingly find they lack the knowledge or resources to solve the policy problems which matter most to ordinary citizens. However, the Commission is always going to be a comparatively weak defender of its own credibility as long as the foundations of its powers are intergovernmental agreements and a passive respect for Community law. Neither are solid rocks to stand on when EU policies violate intense national preferences, as will occur increasingly frequently after the Union enlarges.

So even if the Commission is somehow given more democratic legitimacy, it also needs to be recast as a manager of networks of national regulatory agencies. Some of these networks would end up being formally organised as single European agencies (such as the European Food Authority), which are both distinct from the Commission itself and endowed with decisional autonomy from the Commission (and member governments). The problem with the current stable of European agencies is that they are in many ways beyond the scope of public scrutiny, without any generalised administrative rules or standards laid down which they must observe. The Commission could usefully take on the job of scrutinising the activities of these agencies and ensuring that they respected their own behavioural standards and working practices.

37 John Peterson and Elizabeth Bomberg, 'The European Union After the 1990s: Explaining Continuity and Change', in: Maria Green Cowles and Michael Smith (eds.), *The State of the European Union, Vol. 5: Risks, Reform, Resistance and Revival* (Oxford and New York: Oxford University Press, 2000).

In this context, Majone has argued tirelessly for the European equivalent of the American Administrative Procedure Act (AAPA), which lays down strict procedural requirements that constrain the discretion of American agencies, requiring them to justify their decisions publicly, make their activities transparent (through so-called 'sunshine laws'), and submit to judicial review.³⁸ US agencies such as the Food and Drug Administration or Federal Communications Commission operate independently and free from political pressures, but are also accountable for what they do.

A European equivalent of the AAPA could be made *de rigeur* for all EU bodies, including the Commission itself and the various EU regulatory agencies. Independence and accountability need not be mutually exclusive values. They can be mutually supporting, and the Commission could play a role in ensuring that European agencies are accountable but also independent.

To be clear: the Commission will always play an overtly political role. It is certainly possible to argue that the Commission is, has been, and always will be thoroughly politicised, from top to bottom. But it is also plausible to think that the Commission could be de-politicised in crucial respects and to good effect. One way to do so would be to transform its role into primarily that of a manager of networks of national regulators.

5. The Commission of the Future

We have seen that the Commission is stronger under Prodi than it often appears. Nevertheless, future historians might well see the Prodi years as a low point (certainly not the *lowest* point) in the life of the Commission: a sort of second period of Eurosclerosis from which the EU – and the Commission – eventually recover. Why might the Commission face a much brighter future than is often assumed?

Reforms of the Commission are Likely to Produce a More Effective Commission

In addition to the commitment to choose future Presidents by QMV, the Treaty of Nice also incorporates into the Treaty what, perhaps ironically, has become known in EU circles as 'Lex Prodi'. Specifically, it reiterates the (existing)

³⁸ Giandomenico Majone, *Regulating Europe* (London and New York: Routledge, 1996).

injunction that the Commission should work under the political guidance of its President, but also provides far more detail than ever before about what that means. Thus, for example, the internal organisation of the Commission, the reshuffling of the College, and the request that a colleague in the College should resign will all in future be clearly within the purview of the President. It is widely acknowledged by both insiders and EU watchers that the single most important factor determining the relative unity and cohesiveness of the College is the strength of Presidential leadership. More authoritative and able future Presidents may make for a more effective Commission.

Despite Claims to the Contrary, There Have Been Significant Advances in the Kinnock Reforms

There is no question that significant costs are involved in trying to systematise the work of the Commission. Many motivated, hard-working Commission officials complain that recent reforms may have made the Commission more accountable and systematic in its work, but also have had negative and demotivating effects. To illustrate the point, Commission officials must now spend several days each year working on their UMP (Unit Management Plan) which is eventually inserted into their Directorate's AMP (Annual Management Plan), which itself forms part of their Directorate's ASP (Annual Strategy Paper). In parallel the UMP elements need to be translated into individual man/months and inserted into the Directorate's activity tree in the IRMS (Integrated Resource Management System), which often seems to be considered at the top of the Commission as the cure for all of its management, budgetary and resource ills. Once all this is done for 2003, each Directorate must generate a 2002 AAR (Annual Activity Report) and prepare for their Director-General's signature a declaration that everything was done correctly in the past year. All the while, the Commission is switching to Activity-Based Budgeting and Activity-Based Management, which involves significant transactions costs for some Directorates. There is a sense on the part of some Commission officials that they are justifying their existence rather than actually doing the job they are paid to do so that Kinnock will be able to produce a list of all the improvements that have been introduced during the Prodi Commission.

Regardless, there is no question that internal Commission selection procedures are undergoing significant change. The role of the staff trades unions, which traditionally have been a major barrier to administrative reforms, is being transformed. A new path for career progression within the Commission – far more sensible and flexible than the one it replaces – is being developed. The credentials of candidates seeking posts are being examined far more thoroughly than

ever before. Despite the pathologies associated with reform, the spirit of reform within the Commission is undeniable.

The Commission Will Inevitably Play a Major Role in the 'Network Europe' That is Gradually But Clearly Emerging

An increasingly large share of governance generally, but especially in the EU, is performed by mostly informal clusters of policy stakeholders in discrete policy sectors, which are bound together by reciprocity and mutual dependency, shared values and some kind of common identity. What Mark Leonard calls 'Network Europe' is not the result of any conscious plan – it is a largely unintended consequence of a truce between competing advocates of a federal Europe on one hand and a loose free trade area on the other. If network governance is what is available to build on, it makes sense to try to bring about a Network Europe that actually works better than the one that exists now.³⁹

One promising method for doing so is to go beyond the Open Method which, as applied to the Lisbon agenda of economic reform, is proving to be slow at delivering results. The Commission could be formally designated as responsible for the management of independent networks of national regulators. As Les Metcalfe has argued, the under management of regulatory networks is a generic problem that arises from the fact that constituent organisations have weak incentives to invest in the management capacities that are needed in the absence of any hierarchy.⁴⁰

There exists no generic model for organising networks in all of the different areas where Europe now regulates or creates pressures for new regulation. The difficulties of imposing formal order on an inherently informal, organic system of networks in different EU policy sectors should not be underestimated. Nevertheless, the new European agencies – provided they are given autonomous powers of decision – offer a basic template. The Commission is a logical manager and scrutineer of Network Europe, but it must be formally given these jobs.

Parts of the Commission (especially its legal service) and some member governments continue to insist that the Commission itself must do a lot of 'rowing' in EU governance instead of shifting more of its attention and energies to 'steering'. The idea of turning the Commission into a sort of coxswain for independent regulatory networks will always face resistance on the grounds that it

39 Mark Leonard, *Network Europe* (London: Foreign Policy Centre, 1999).

40 Les Metcalfe, 'Reforming the Commission: Will Organizational Efficiency Produce Effective Governance?' in: *Journal of Common Market Studies*, Vol. 38, No. 5, 2000, pp. 817-41.

threatens the traditional balance of power between EU institutions. For example, the Governance White Paper expressly states that: 'agencies *cannot* be given responsibilities for which the Treaty has conferred a direct power of decision on the Commission' (emphasis in original). A cheap and disingenuous argument is that any tampering with the Commission's traditional role is somehow 'anti-European'. But there are a lot of reasons to think that Network Europe, featuring far more coordination and cooperation within networks of national agencies, is the future of the EU, and one to which the Commission has a lot to contribute.

The External Policy Role of the EU Will Continue to Expand, With the Commission Often the Logical Candidate to be the External Face of the EU

Let us think back to the time in 1997 when two new institutions were created by the Amsterdam Treaty: a High Representative for the Common Foreign and Security Policy (CFSP), currently Javier Solana, and a Brussels-based Policy Planning and Early Warning Unit. Their creation prompted numerous overexcited suggestions of a European Foreign Minister and Ministry in the making.

Given the constraints facing anyone who holds his job, Solana has done well. It may seem like small beer, but it is an accomplishment that he is now routinely referred to in the media as 'the EU's Foreign Policy chief'. Few, however, would argue that he has made the High Representative's job into the equivalent of a Foreign Minister for Europe.

Meanwhile, the CFSP Directorate in the Council's General Secretariat remains tiny, and the post-Amsterdam Policy Planning Unit has had such a minimal impact that there was actually talk of shutting it down only a few years after its launch. Reflecting on the CFSP's general division of institutional labour, Knud Erik Jørgensen argues that if we ever get something like a European Foreign Ministry, it is far more likely to emerge within the Commission than anywhere else.⁴¹ And, of course, the Commission has cards to play including:

- a large network of delegations that it runs in foreign capitals
- an impressive array of policy tools, including the common commercial policy, sanctions policy, and external aid budget worth about 12 billion a year
- crucially, in the wake of the events of 11 September 2001, responsibility for many of the external policy tasks associated with EU Justice and Home Affairs agreements.

41 Knud E. Jørgensen, 'Making the CFSP Work', in: John Peterson and Michael Shackleton 2002, *op. cit.*

Prodi has argued tirelessly that the High Representative for the CFSP should eventually be incorporated into the Commission because of the 'incomparable role of the Commission in coordinating' various policy instruments and resources. There is a basic wisdom in this idea, even if it would take major shifts in the current positions of large EU states – particularly France and the UK – for it to be agreed. In the long term, it would not be surprising if the Commission eventually had a single senior Vice-President for External Policy who effectively took on the role of the current High Representative. More generally, the Commission's traditional role as the principal external face of the EU is unlikely to be taken away from it, and indeed it may become its most important task.

The Commission Naturally Stands to be Empowered by Enlargement

There are two reasons to think so:

- nearly all of the applicant states are small states (except Poland and arguably Romania). The Commission has traditionally been both the defender of small states and found allies amongst them for much of its policy programme.
- provisions for enhanced cooperation or 'flexibility' will be easier to trigger post-Nice. Logically, they are far more likely to be triggered post-enlargement, particularly as EU decision-making becomes more unwieldy and less efficient with 27 or more Member States. An important institutional effect would be to empower the Commission, since more of its agenda would be accepted by at least a sub-set of Member States. In fact, the new provisions for enhanced cooperation were probably the biggest victory won by the Commission at Nice.⁴²

Conclusion

Predictably, the Convention on the Future of Europe has given rise to many jousts and turf battles between the Commission and other EU institutions. The forthcoming IGC promises still more of the same. The big power struggles will be about executive power, and the Commission will almost certainly remain on the defensive. One reason why is that the Commission seems more or less oblivious to the key normative challenge facing the EU: how to encourage more collective responsibility amongst all the Union's institutions for what the EU does.

42 Richard E. Baldwin et al., *Nice Try: Should the Treaty of Nice Be Ratified?* (London: Centre for Economic Policy Research, 2001).

Yet the extent to which the institutions are already viewed as collectively responsible for EU policy is under-appreciated. However much they bicker with each other and jockey for advantage, nobody remembers at the end which institution was responsible for which policy detail. In the end, 'Brussels' is widely viewed as responsible for what the EU does. As shockingly amateurish as the EP sometimes can be, there is generally far greater appreciation in the Parliament than in the Commission of how interdependent the EU's institutions are.

Mutual dependence is, ultimately, the hallmark of a system that has grown to deserve the label 'Network Europe'. Making the system work better requires reforms that encourage more truly collective action, so that the EU of the future is both more accountable and independent than the EU of the present. That might well mean a more powerful Commission than the one Prodi led after 1999. As the EU enlarges to 25 or more Member States within a few years, it will logically need some kind of honest broker in future policy debates even more than it has needed one in the past. A weak, emaciated Commission would not appear to serve the interests of any European state. Conversely, a dynamic and revitalised Commission would serve the collective interests of the Union as a whole, provided such a thing exists in the EU of the future.

L'Europe doit être gouvernée: Pour une synthèse entre intergouvernementalisme et fédéralisme

Robert Toulemon¹

Condensé

L'opposition traditionnelle entre fédéralistes et tenants de l'Europe des Etats recoupe en partie celle des sensibilités souvent divergentes des « grands » et des « petits » Etats membres. Cette opposition dominera la phase finale des travaux de la Convention. Deux sortes de compromis sont envisageables. Le plus facile, donc le plus probable, consiste à maintenir une séparation entre un domaine communautaire et un domaine intergouvernemental. Le plus innovant, le plus prometteur pour l'avenir de l'Europe et son rôle sur la scène mondiale, tirerait les conséquences de la fusion des piliers de Maastricht, en instituant un mode de gouvernement européen unifié reposant sur une étroite synergie entre Conseil et Commission. L'on oublie souvent que le mode communautaire de gouvernement, qui seul a montré son efficacité, constitue un compromis entre fédéralisme et coopération interétatique et qu'il s'accommode de modes de décision pouvant varier suivant les sujets. Une présidence collégiale commune à la Commission et au Conseil garantirait l'unité de l'administration européenne et la cohérence des politiques de l'Union. Elle aurait, en outre, l'avantage de permettre un équilibre approprié entre Etats de différentes dimensions.

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1. Introduction

De toutes les questions à l'ordre du jour de la Convention sur l'avenir de l'Europe, la principale, celle du gouvernement de l'Union, sera la dernière traitée. Elle fait l'objet de débats confus dans lesquels s'affrontent, à visage plus ou moins découvert, les tenants du fédéralisme et ceux de l'Europe des Etats que la formule delorsienne « fédération d'Etats nations », volontairement ambiguë, ne suffit pas à trancher. Elle s'accompagne de la méfiance récurrente qui oppose « petits » et « grands » Etats membres, les premiers au nom de l'égalité, les seconds au nom du réalisme. Deux sortes de compromis sont envisageables. Le plus facile, et donc le plus probable, consiste à diviser en deux le gouvernement de l'Union. Les affaires intérieures relèveraient de la méthode communautaire, les autres de la méthode intergouvernementale. Encore faudrait-il s'accorder sur la frontière entre ces deux domaines. En effet, où doit-on placer la coordination des politiques économiques, sociales et culturelles, l'action humanitaire, la lutte contre le terrorisme et la criminalité internationale, les politiques d'armement? L'autre compromis serait plus novateur. Il consisterait à combiner ce qu'il y a de plus fort dans les deux méthodes: d'une part, la primauté de l'intérêt commun et la capacité d'agir, d'autre part, la participation des Etats à la conception des politiques et à leur mise en œuvre.

Avant de décrire en quoi pourrait consister une synthèse innovante, il est utile de mettre un peu de clarté dans le débat en rappelant que la méthode communautaire, invention géniale des Pères fondateurs, est elle-même une synthèse entre intergouvernementalisme et fédéralisme qui, sous réserve de quelques adaptations, pourrait s'appliquer à tous les domaines d'intervention de l'Union européenne, sans aucune exception.

2. Qu'est-ce que la Méthode Communautaire?

Beaucoup de politiques ou de commentateurs ont tendance à assimiler méthode communautaire et fédéralisme. M. Giscard d'Estaing lui-même, soucieux sans doute de donner une sorte de « fiche de consolation » aux fédéralistes, use volontiers de la formule « mode de gestion fédéral » qu'il limite d'ailleurs aux questions commerciales et monétaires. En réalité, la méthode communautaire est un mode de gouvernement intermédiaire entre le mode diplomatique et le mode fédéral.

Vont au-delà du mode diplomatique la possibilité de décisions à la majorité sur proposition d'un organe indépendant des Etats membres, bien que désigné par eux, la Commission, et le contrôle en dernier ressort du respect des règles communes (dispositions des traités et décisions ultérieures), par une Cour de Justice. Relève en revanche de l'intergouvernemental la règle suivant laquelle la décision finale appartient aux Etats membres. Le fait que la Commission ne dispose pas de services extérieurs et qu'elle doive faire appel aux administrations nationales pour la mise en œuvre des décisions accentue le caractère interétatique du système communautaire et le distingue profondément du système fédéral.

Ainsi assimiler, comme on le fait trop souvent, la méthode communautaire au fédéralisme est un abus de langage qui obscurcit le débat. Dans les Etats fédéraux, le gouvernement fédéral exerce ses prérogatives indépendamment des Etats fédérés, dispose de sa propre administration et gère un budget considérable couvrant, notamment, la totalité de la défense. L'on objectera qu'une Union européenne gérant certaines compétences sur le mode fédéral n'a pas vocation à devenir un Etat. Encore faut-il préciser que la prétendue gestion fédérale ne mérite ce nom que dans la mesure où des institutions distinctes de celles des Etats membres et disposant d'une légitimité qui leur est propre sont habilitées à prendre des décisions. Or, cette situation n'existe dans l'Union européenne que dans deux domaines, celui de la politique monétaire qui relève de la Banque centrale et celui de la concurrence qui relève, pour partie, de la Commission. Dans tous les autres domaines communautaires, la Commission ne dispose que d'un pouvoir de proposition qui est loin d'être toujours exclusif. Ainsi, la coordination des politiques économiques et budgétaires échappe au monopole de proposition de la Commission, ce qui est, avec les différences d'appréciation et de situation des Etats membres, l'une des raisons de son manque d'efficacité. Même dans ce domaine, cœur de l'union économique et monétaire, on est fort loin, non seulement du mode de gestion fédéral, mais aussi de la méthode communautaire classique.

Faut-il le regretter? Sans doute, car il en résulte une faiblesse congénitale de l'Union. Toutefois, cela démontre que la méthode communautaire autorise des adaptations lorsque les sensibilités nationales l'exigent. Au demeurant, il est permis d'espérer qu'avec le temps et en fonction de l'expérience acquise les Etats membres accepteront ce qu'ils ne semblent pas disposés à admettre aujourd'hui. Mais de là à envisager, comme certains le proposent, de couper l'administration européenne en deux, il y a un pas qu'il serait bien imprudent de franchir.

3. Le succès de l'Europe politique exige une cohérence aujourd'hui en péril

Le découpage entre des politiques d'intégration qui relèveraient de la méthode communautaire et des politiques de relations extérieures et de défense qui relèveraient de l'intergouvernemental ne répond à aucune logique et ne peut conduire, l'élargissement aidant, qu'à un affaiblissement durable de l'Europe. De nombreux exemples le démontrent. La politique étrangère ne saurait ignorer les relations commerciales, la coopération au développement et l'aide humanitaire qui relèvent depuis longtemps de la sphère communautaire. La politique de défense est déjà liée (et elle le sera encore plus dans l'avenir) aux programmes de recherche et d'innovation technologique et devra trouver sa place dans le budget commun. La lutte contre le terrorisme exige une étroite coordination entre actions policières à l'intérieur et démarches diplomatiques, voire militaires, à l'extérieur.

3.1 Politique étrangère et défense

Jacques Delors dénonce, à juste titre, l'abus de langage des rédacteurs du traité de Maastricht annonçant que l'Union conduirait une politique étrangère et de sécurité commune sans que le moindre moyen institutionnel et budgétaire ne soit prévu à cette fin. Sceptique quant aux possibilités d'une politique globale, il se satisferait d'actions limitées mais effectives, visant à pacifier l'environnement de l'Union et à mettre un peu d'ordre dans la mondialisation, ce qui représente déjà un programme ambitieux.

La mise en place de cette politique étrangère et de sécurité commune à laquelle les Etats membres se sont engagés depuis dix ans se heurte plus à des divergences de culture et de mentalités qu'à des oppositions d'intérêt. La France rêve d'une Europe qui relayerait ses ambitions et prétendrait à la puissance, sans pour autant être disposée à consentir les délégations de compétence et les transferts budgétaires qu'exigerait cette ambition. Le Royaume-Uni partage le souhait de conserver un rôle sur la scène mondiale. Toutefois, il considère sa vocation comme celle d'un intercesseur entre l'Europe et les Etats-Unis, plutôt que comme un élément appelé à s'intégrer dans une puissance collective de l'Europe. L'Allemagne sait que l'Europe lui a permis de se réinsérer dans le concert des nations et de faire accepter sa réunification. Elle entend occuper la place qui lui revient, mais la volonté de puissance, fût-elle européenne, ne la tente pas. Qui pourrait s'en étonner? Aussi bien son fédéralisme proclamé ne s'étend-il pas au domaine budgétaire. Les partenaires moins peuplés ont trop souffert des

politiques hégémoniques de leurs grands voisins pour épouser aujourd'hui leurs rêves de grandeur. Quant aux futurs partenaires d'Europe centrale, ils portent un intérêt majeur à leur sécurité, mais ils font davantage confiance dans ce domaine à l'OTAN et à la puissante et lointaine Amérique qu'à une Union européenne faible et velléitaire.

Regarder en face la réalité ne doit pas décourager. Durant les débuts du marché commun, les divergences entre les Six étaient considérables quant à la politique commerciale. Peu à peu, la Commission a réussi à rapprocher les points de vue et à faire entendre une voix unique et puissante de l'Europe au sein de ce qui était alors le GATT.² Il est contraire à l'objectif annoncé, celui d'une politique étrangère commune, de se priver du rôle qui devrait être celui de la Commission d'aider à la définition de l'intérêt commun européen et de contribuer au rapprochement des points de vue nationaux.

Reconnaître une compétence à l'Union en matière de politique étrangère et de défense et reconnaître le rôle irremplaçable de la Commission dans ce domaine, autant et même plus que dans plusieurs autres,³ ne signifie pas que cette compétence doit être exercée suivant les procédures communautaires ordinaires. Le réalisme commande d'admettre la nécessité d'une assez longue période transitoire au cours de laquelle l'Exécutif commun n'aurait pas le monopole de la proposition et durant laquelle aucun Etat ne saurait être contraint par la majorité, sans pour autant pouvoir empêcher une action voulue par la majorité. Cette période devrait marquer un progrès par rapport à la situation présente où l'Union est dépourvue de compétence dans ce domaine ainsi que d'une identité internationale explicite. Elle devrait aussi être mise à profit pour doter l'Union des instruments - diplomatie et forces armées - sans lesquels le concept de politique étrangère et de sécurité commune demeurerait un abus de langage.

Au cours de cette étape transitoire, l'Union aurait pour mission:

- de rapprocher, d'harmoniser et de coordonner la politique extérieure des Etats membres dans la mesure où cela apparaîtrait nécessaire pour remplir les objectifs de l'Union;⁴

2 *General Agreement on Tariffs and Trade* et ancêtre de l'Organisation Mondiale du Commerce.

3 Voir mon article paru au printemps 2002 dans la *Revue du Marché commun et de l'Union européenne* sous le titre « De l'Europe économique à l'Europe politique par la méthode communautaire », avril 2002, N° 457, pp. 216-223.

4 M. Alain Lamassoure a fait une intéressante communication à la Convention à ce sujet.

- de se doter des instruments propres à valoriser l'effort commun en matière de sécurité et de défense: force d'intervention, agence des armements responsable des grands programmes de recherche et d'équipements militaires et dotée d'un budget suffisant par mise en commun d'une part significative des budgets nationaux ou, mieux encore, par inscription d'un chapitre *ad hoc* dans le budget de l'Union, de manière que les pays qui solliciteraient un *opting out* pour la défense ne soient pas exonérés de toute solidarité. L'on observera que l'inscription d'un chapitre « défense et armement » dans le budget commun serait à la fois un instrument de rapprochement des efforts de chacun et un puissant outil de rationalisation, donc d'économies.

A défaut de telles mesures, l'Europe devrait renoncer à toute prétention de peser en tant que telle au sein de l'OTAN ou de jouer un rôle majeur sur la scène mondiale. Elle devrait se résigner, individuellement ou collectivement, à choisir entre la neutralité ou la dépendance.

3.2 Sécurité intérieure

L'importance prise par les diverses formes de criminalité internationale, à commencer par l'organisation de réseaux d'immigration illégale et les divers trafics d'êtres humains, devrait conduire à inclure leur répression dans les compétences de l'Union, ce qui implique une harmonisation des législations visant ce type de crimes, la transformation d'Europol en un organe opérationnel d'enquêtes criminelles et celle d'Eurojust en un procureur européen. L'introduction difficile du mandat d'arrêt européen a consisté à mettre la charrue avant les bœufs et ne va pas sans danger pour les libertés publiques. Il eut été préférable d'adopter d'abord une législation pénale européenne applicable aux crimes et délits à caractère international par leurs lieux ou conditions de préparation et d'exécution, puis de créer un ministère public et un ou plusieurs tribunaux pénaux européens donnant de solides garanties aux justiciables et mettant les Etats membres à l'abri des menaces et du chantage dont sont coutumières les organisations criminelles. Dans ce domaine comme pour celui de la sécurité extérieure, les attentes des citoyens vont bien au-delà de ce à quoi les gouvernements étaient, jusqu'à présent, prêts à consentir. Ne pas y répondre ou y répondre par de faux-semblants, comme on l'a fait jusqu'ici, alimente l'euro-scepticisme.

Le grand élargissement vers l'Est et l'importance prise dans les préoccupations des populations et des gouvernements par l'afflux d'immigrants et de demandeurs d'asile a mis ces questions en tête de l'agenda européen. L'Europe se doit

de définir une politique commune équilibrée tenant compte à la fois de la situation des demandeurs d'asile, des possibilités d'intégration et de l'utilité économique et démographique d'une immigration sélective et maîtrisée. Cela suppose un contrôle beaucoup plus strict de la frontière extérieure de l'Union qui ne peut être laissé à la charge des futurs Etats membres, mais qui doit plutôt relever de la compétence de l'Union au même titre que la lutte contre les organisations criminelles.

3.3 La coordination des politiques économiques et sociales

On estime généralement que l'insuffisance de la coordination des politiques économiques et budgétaires fait perdre à l'Europe près d'un point de croissance chaque année. Il est vrai que le laxisme budgétaire pratiqué par plusieurs pays, la France tout particulièrement, pendant les années de forte croissance, s'ajoutant à l'énorme charge d'une réunification allemande accomplie, pour des raisons politiques compréhensibles, dans les pires conditions économiques et monétaires, prive l'Union de la possibilité de recourir aux déficits keynésiens sans mettre en péril la crédibilité d'un euro encore fragile. Il n'en demeure pas moins que l'avenir de la monnaie unique ne sera pas durablement assuré tant que les Etats membres se refuseront à tirer les conséquences institutionnelles et budgétaires de l'union monétaire. Ce n'est pas un président de l'eurogroupe à mandat prolongé qui sera en mesure de s'opposer à la pratique de l'indulgence réciproque. Ce n'est pas un Conseil des ministres des finances à statut privilégié qui permettra d'organiser la convergence fiscale, sociale et de développement durable qui répondrait aux attentes des populations et conforterait un modèle social aujourd'hui menacé par une mondialisation mal maîtrisée.

Une coordination plus étroite des politiques économiques serait facilitée si les transferts anciens ou nouveaux de compétences à l'Union s'accompagnaient de transferts correspondants de ressources fiscales sous la forme d'impôts européens ne s'ajoutant pas, mais se substituant à des impôts nationaux, par exemple l'impôt sur les bénéfices des entreprises, dont la localisation nationale est souvent arbitraire et prête à contestation. L'on observera que, dans ce domaine, l'intégration a reculé, des contributions nationales ayant peu à peu pris la place des véritables recettes propres que constituaient droits de douane et prélèvements agricoles. En instituant une fiscalité commune, les gouvernements s'épargneraient les querelles récurrentes sur les contributions nationales. L'on en finirait avec le calcul contestable de contributions nettes qui alimente l'euroscpticisme, naguère au Royaume-Uni, aujourd'hui en Allemagne. Enfin, autoriser l'Union à utiliser sa capacité d'emprunt jusqu'à présent inemployée

faciliterait la réalisation des grands réseaux transeuropéens de communication ainsi que la mise à niveau des équipements publics des nouveaux membres. Cette facilité constituerait un accompagnement raisonnable de la discipline budgétaire imposée par le pacte de stabilité et de croissance.

Il n'est malheureusement pas sûr que la Convention ait l'imagination et le courage de donner des solutions à ces problèmes en sortant des sentiers battus. Entre ceux qui veulent préserver une méthode communautaire assimilée au sacro-saint « triangle institutionnel », quitte à limiter son champ d'action, et ceux qui veulent préserver les prés carrés nationaux, se noue l'alliance des conservatismes.

4. Pour une synthèse innovante

Les physiciens sont à la recherche de la grande unification qui leur permettrait d'englober dans une théorie unique les forces fondamentales qui sont à l'œuvre dans l'univers. Les conventionnels devraient s'assigner une tâche analogue en ne confondant pas le respect d'un acquis communautaire infiniment précieux avec le manque d'imagination et d'audace. Près d'un demi-siècle s'est écoulé depuis que Paul-Henri Spaak aidé de Pierre Uri a inventé la méthode communautaire. De six Etats membres à l'origine, la Communauté, devenue l'Union, sans pour autant transférer à celle-ci son existence juridique, est passée à neuf, dix, douze, quinze Etats membres et va bientôt en compter vingt-cinq. Bien surpris seraient les fondateurs si, revenus sur terre, ils apprenaient que le stade fédéral, annoncé dès 1950 dans la déclaration Monnet-Schuman, n'est pas encore venu et, mieux encore, que la méthode communautaire, bien qu'ayant fait merveille, n'est pas jugée applicable à ces domaines nouveaux qu'aborde avec un lourd retard la construction européenne.

4.1 Le paradoxe de l'eurosepticisme

Les opinions publiques, nous dit-on, ne seraient pas prêtes à accepter des décisions majoritaires dans des domaines aussi sensibles que la politique étrangère et, *a fortiori*, la défense. L'ancien ministre des Affaires étrangères Hubert Védrine doute que les Français soient disposés à accepter des arbitrages majoritaires qui iraient à l'encontre des conceptions ou des intérêts hexagonaux. Embarrassé par les sondages de l'eurobaromètre qui, depuis des années, font apparaître un large accord, en France comme dans la plupart des pays de l'Union, en faveur d'un gouvernement supranational responsable de la politique étrangère et de la

défense, il met en doute la capacité qu'aurait ce gouvernement d'emporter l'adhésion quand il serait appelé à prendre des décisions qui ne conviendraient pas à tel ou tel. En effet, la démocratie européenne est un long apprentissage. Le retard pris en politique étrangère et de sécurité ne peut être rattrapé en un jour ni en une année. Trente ans ont été nécessaires pour aller du premier plan Barre à la monnaie unique. Il est raisonnable d'en compter vingt à partir de Maastricht et de fixer aux environs de 2012 le transfert effectif à l'Union de l'essentiel des compétences dans ces deux domaines. Mais gardons-nous d'invoquer les réticences des opinions, très en avance sur les gouvernements. La cause principale de l'euroscpticisme qui, en effet, se développe partout n'est pas l'excès de pouvoir de l'Europe mais le spectacle de son impuissance là où on l'attend, alors qu'elle se manifeste, parfois abusivement, dans des affaires mineures et irritantes telles que l'hygiène des marchés de plein air ou les dates d'ouverture de la chasse.

Une politique étrangère, une politique de défense ont besoin du soutien de l'opinion tout autant qu'une politique de croissance et d'emploi. La grande politique européenne que nos dirigeants prétendent souhaiter devra être portée par des hommes ou des femmes dégagés des intérêts nationaux particuliers, visibles à l'extérieur comme à l'intérieur et disposant d'une forte légitimité collective. C'est à la lumière de ces exigences que doit être recherchée la grande unification de l'Exécutif européen.

4.2 Les périls de la double présidence

La nécessité de donner un visage à l'Europe, celle de mettre fin à la rotation semestrielle des présidences a conduit plusieurs gouvernements à proposer la désignation pour un mandat prolongé d'un président du Conseil européen qui serait déchargé de fonctions nationales et aurait sous son autorité un « ministre des Affaires étrangères » de l'Europe. Cette proposition a un mérite, celui de faire apparaître l'impossibilité du cumul entre fonctions nationales et européennes au plus haut niveau. Cependant, elle n'a que l'apparence d'un progrès. Elle présente de sérieux dangers.

Instituer un président permanent du Conseil européen déchargé de fonctions nationales aboutirait à donner à l'Europe non pas un mais deux présidents, celui du Conseil et celui de la Commission, l'un et l'autre personnalités de premier plan, désignés suivant des procédures semblables pour des mandats de durée analogue. Loin de simplifier le système institutionnel, cette innovation le compliquerait et contribuerait à brouiller son image à l'intérieur et à l'extérieur. Elle

organiserait une rivalité des présidences qui ne favoriserait pas la cohérence des politiques de l'Union. La marginalisation de la Commission, déjà programmée à Nice par la règle d'un commissaire par pays, en serait encore accentuée.

Le choix d'un Président de l'Europe qui serait une personnalité solitaire tenant sa légitimité des seuls chefs d'Etat et de gouvernement, sans intervention directe ou indirecte du suffrage universel, contribuerait à éloigner l'Europe des citoyens. Les petits Etats membres pourraient craindre que la présidence majeure qui serait celle du Conseil européen soit réservée aux grands Etats membres, les petits devant se contenter de celle de la Commission. La récente proposition franco-allemande de donner à l'Union deux présidents de même stature, celui de la Commission étant élu par le Parlement, ne semble pas suffire à désarmer leur méfiance, en même temps qu'elle accroît le risque d'une guerre des présidents qui ridiculiserait l'Europe.

La proposition de rattacher le ministre des affaires étrangères à la fois au Conseil et à la Commission devrait assurer une certaine unité à la représentation extérieure de l'Union, mais n'écarte pas le risque de conflit si ledit ministre reçoit ses directives des deux présidents, de celui du Conseil européen pour la politique étrangère au sens étroit, de celui de la Commission pour la politique commerciale, de développement et pour tous les aspects externes des politiques communautaires. Nul en effet ne propose d'enlever à la Commission son rôle de négociateur unique à l'Organisation Mondiale du Commerce. De même, l'on ne voit pas ce que les gouvernements gagneraient à retirer à la Commission les relations avec les pays candidats à l'adhésion ainsi qu'avec les pays associés d'Afrique, des Caraïbes et du Pacifique. Les perspectives sont moins claires pour ce qui est de la représentation de la zone euro dans les instances financières internationales. Les ministres des finances seront tentés de désigner un « monsieur euro » qui ne dépende que d'eux, ce qui serait un nouveau coup porté à la Commission, mais aussi à la cohérence des politiques. Un conflit entre Parlement et Conseil ne manquerait pas d'éclater car tout ce qui serait enlevé à la Commission dans le domaine des relations extérieures ou de la politique économique le serait *ipso facto* au contrôle parlementaire. La politique d'immigration est appelée à devenir un chapitre important de la politique étrangère européenne de même que l'asile, la défense des droits de l'homme et la lutte contre la criminalité internationale.

La création d'une présidence permanente du Conseil européen et, plus encore, d'un ministre des affaires étrangères extérieur à la Commission ou n'ayant avec

elle qu'un lien symbolique, consacrerait la séparation entre des politiques communautaires essentiellement internes et des politiques intergouvernementales tournées vers l'extérieur. Cette séparation, de plus en plus artificielle, est déjà aujourd'hui une source de faiblesse pour l'Europe. Elle prive le Parlement européen de tout contrôle sur la politique étrangère, alors qu'il s'est acquis une incontestable autorité dans la défense des droits de l'homme partout dans le monde.

La mise en place d'une présidence de l'Europe émanant des seuls chefs de gouvernement convient si l'on veut aller vers une zone d'échanges assortie d'une coopération intergouvernementale sans obligations contraignantes et confiner la méthode communautaire au domaine du commerce et de la concurrence. Elle ne donnerait pas à l'Europe le moyen de jouer le rôle qui devrait être le sien sur la scène internationale pour civiliser la mondialisation et promouvoir un modèle social original. Tenu en lisière par les dirigeants nationaux (dont il tiendrait son mandat) qui ne souhaiteront pas lui voir prendre trop d'autorité, l'existence d'un président permanent et à temps complet du Conseil européen aurait pour principal effet de marginaliser le président d'une Commission réduite à une mission technique de gestion interne.

La méthode communautaire, prétend-on, ne serait pas applicable à la politique étrangère et moins encore à la défense. La présence active d'un organe indépendant de proposition et de représentation est encore plus utile dans les domaines où les sensibilités nationales sont les plus vives et parfois les plus éloignées. On l'a vu lors de l'éclatement de la Yougoslavie. On le voit aujourd'hui à propos de l'Irak. Le recours au vote majoritaire qu'impose l'élargissement suppose que les gouvernements délibèrent sur la base d'une proposition de l'organe en charge de l'intérêt commun et seul habilité à parler au nom de l'Europe. L'application de la méthode communautaire à la politique étrangère ne garantit évidemment pas que les gouvernements s'accorderont aisément, mais, sans elle, ils n'ont aucune chance d'y parvenir dans la continuité. De même, l'Europe n'aura pas la moindre chance de commencer à combler l'écart abyssal qui sépare ses capacités militaires de celles des Etats-Unis tant qu'elle ne se sera pas dotée d'un budget commun de recherche et de programmation de défense et d'une agence d'achats. Dans ce domaine, de tous le plus sensible, il n'est pas nécessaire que tous participent suivant des modalités identiques, notamment pour l'affectation d'hommes ou la participation à des opérations de force, mais tous devraient être fermement invités à participer à l'effort financier commun, prix minimum d'une sécurité solidaire.

4.3 Pour une présidence unique et collégiale

Deux problèmes difficiles se posent à la Convention: mettre fin à la présidence tournante des divers Conseils, éviter que la crédibilité de la Commission ne soit anéantie par la règle « un commissaire par Etat ». L'on peut y ajouter la nécessité de donner une légitimité et une visibilité renforcée à l'Exécutif européen et celle de distinguer les fonctions législatives et exécutives du Conseil. Ces quatre objectifs pourraient être atteints par la création d'une présidence unique et collégiale, proposition que j'ai formulée au début de 2002 dans le cadre de l'Association française d'étude pour l'Union européenne et présentée à Bruxelles devant diverses audiences, celle notamment des anciens élèves du Collège d'Europe le 15 octobre. Ce « projet pour l'Europe » a fait l'objet de plusieurs publications: le 8 juin dans la série *Documents* du Bulletin quotidien *Europe*, en septembre dans la revue *Politique étrangère* de l'Institut français des relations internationales, début décembre dans la Quinzaine européenne, enfin en janvier, dans les revues *Futuribles* et *L'Europe en formation*.

A l'origine du projet se situent les travaux du groupe de réflexion constitué dans le cadre du Commissariat du Plan français sous la présidence du professeur Quermonne. Le rapport⁵ recommandait la recherche d'une synergie entre le Conseil et la Commission, lesquels sont associés dans l'exercice de la fonction exécutive. Dans un ouvrage ultérieur,⁶ le professeur Quermonne devait proposer, à titre personnel, de confier la présidence d'un Conseil rénové des Affaires générales au président de la Commission et celle des Conseils spécialisés aux divers commissaires en fonction de leur compétence. Parallèlement à ces réflexions, les difficultés résultant de la duplication entre les fonctions du secrétaire général du Conseil promu Haut Représentant pour la politique étrangère et celles du commissaire en charge des relations extérieures conduisaient à envisager la désignation d'un commissaire à statut spécial coiffé d'une double casquette, proposition reprise au sein de la Convention ainsi que dans le compromis franco-allemand du 14 janvier 2003.

Il apparaissait alors que la recherche d'une coopération plus étroite et plus confiante entre la Commission et le Conseil n'était pas souhaitable seulement en politique étrangère. Une exigence analogue s'impose pour la coordination des politiques économiques et budgétaires, pour la sécurité intérieure, la lutte contre le terrorisme et les autres formes de criminalité internationale et, *a fortiori*, pour la défense et les programmes de communication et de technologie

5 *Rapport du groupe du Plan sur la réforme des institutions européennes*, novembre 1999.

6 Jean-Louis Quermonne, *L'Europe en quête de légitimité* (Paris: Presses de Sciences Po, 2001).

militaires. De même, les raisons qui avaient conduit le professeur Quermonne à recommander de confier la présidence du Conseil des Affaires générales au président de la Commission paraissent valoir, *mutatis mutandis*, pour le Conseil européen. L'on oublie trop souvent que le seul membre du Conseil européen qui soit en charge de l'intérêt commun de l'Union est le Président de la Commission.

Si l'on ajoute à ces considérations la nécessité de structurer une Commission menacée de devenir une doublure du COREPER,⁷ l'on est conduit à envisager de placer à la tête de la Commission un cabinet politique ou présidium composé d'un président entouré de cinq ou six vice-présidents ayant la confiance des deux sources de légitimité que sont le Conseil européen et le Parlement. Toute décision de la Commission devrait être validée par le présidium. Le président assurerait, sans droit de vote, la présidence du Conseil européen et celle du Conseil des Affaires générales qui devrait retrouver sa fonction nécessaire de coordination d'ensemble. Il pourrait aussi présider, avec l'assistance du vice-président chargé des relations extérieures, le Conseil des ministres des affaires étrangères. Les vice-présidents assureraient la coordination des travaux des commissaires dans leur secteur de compétence (relations extérieures, politique commerciale, coopération au développement, action humanitaire – union sociale, économique et monétaire - recherche, industrie, technologies civiles et militaires, espace, communications - marché intérieur et concurrence - politiques sectorielles et de solidarité - sécurité intérieure, asile, immigration, droits fondamentaux) et présideraient les Conseils correspondants, mais seulement lorsque ceux-ci participent à la fonction exécutive. La fonction législative du Conseil devrait être exercée séparément et publiquement, sous une présidence élue et de préférence, sous une dénomination différente, par exemple « chambre des Etats ».

Les objections à ce schéma viennent à la fois des tenants de l'Europe des Etats et des défenseurs du « triangle institutionnel ». Aux premiers l'on répondra que les gouvernements auraient leur mot à dire non seulement pour la désignation du responsable de la politique étrangère, mais aussi pour celle de chacun des membres du présidium et que ceux-ci seraient conduits à travailler en étroite liaison avec les responsables nationaux. Aux seconds, l'on fera valoir que l'autorité de l'institution en charge de l'intérêt commun serait non seulement préservée, mais renforcée et étendue à des domaines nouveaux. A l'objection commune aux uns et aux autres suivant laquelle, on ne saurait confondre la fonction de proposition et celle de conciliation des points de vue nationaux, l'on répondra

7 Comité des représentants permanents des Etats membres qui préparent les délibérations du Conseil.

que la Commission remplit mieux sa fonction quand elle intègre dans ses propositions la nécessité de rechercher l'accord le plus large possible des Etats. Tout en garantissant la cohérence des politiques, une présidence unique mais collégiale permettrait, mieux qu'une présidence confiée à deux personnalités mises en situation de rivalité, d'assurer un équilibre approprié entre les Etats membres de dimension différente, anciens et nouveaux, du Nord et du Sud, ainsi qu'entre hommes et femmes.

Une dernière considération a trait au caractère parlementaire ou présidentiel du système. Le professeur Quermonne hésite à pousser sa logique de synergie Commission-Conseil jusqu'à envisager une présidence unique du Conseil européen et de la Commission. Il redoute la charge écrasante que représenterait une telle fonction et invoque l'attachement de la plupart des Etats membres au régime parlementaire. En effet nombreuses sont les voix qui plaident en faveur de l'élection du président de la Commission par le Parlement, ce qui aurait l'avantage de donner un véritable enjeu de pouvoir aux élections européennes. Cela dit, le prix à payer serait lourd. Ce serait la coupure en deux de l'administration de l'Europe avec l'inévitable conséquence d'un affaiblissement durable. Le schéma de présidence unique et collégiale demeure plus parlementaire que présidentiel. La désignation du présidium interviendrait après les élections et supposerait l'accord du Parlement qui conserverait le droit de censurer la Commission et son présidium. Dans l'hypothèse d'une censure que désapprouverait le Conseil européen, il serait raisonnable de permettre à ce dernier de répondre à la censure par la dissolution du Parlement.

Les travaux de la Convention ne laissent que peu d'espoir pour des solutions aussi novatrices. L'alliance des conservatismes a de grandes chances de l'emporter. L'idée d'une présidence unique a cependant fait quelques adeptes. Pierre Lequiller nouveau président de la délégation de l'Assemblée nationale pour les Affaires européennes s'en est fait l'avocat mais, en négligeant de lui donner un caractère collégial, a sans doute réduit son attractivité. Robert Badinter, dans son projet de constitution, attribue au président de la Commission devenu Premier ministre la double présidence d'un Conseil des ministres unifié et d'une Commission réduite à 15 membres. La conventionnelle Pervenche Bérès a proposé le projet très proche d'un « Conseil exécutif ». Le Premier ministre belge Verhofstadt a jugé intéressante l'idée d'une présidence unique. Dominique de Villepin a déclaré qu'il pouvait s'agir d'une bonne solution, mais pour plus tard. Le courant dominant dans la Convention partage les réserves explicites du président Giscard d'Estaing. La Commission elle-même approuve la création d'un

présidium en son sein, considéré comme le moyen de pallier les inconvénients d'un effectif élargi qu'elle juge inévitable. Néanmoins, tout en rejetant le projet d'une présidence du Conseil à mandat prolongé, elle n'a pas osé proposer la seule réforme qui permettrait d'éviter, à coup sûr, l'éclatement de l'Exécutif.

La chance que conserve la présidence unique et collégiale serait de fournir un ultime compromis en cas de blocage entre grands et moins grands Etats membres. A défaut d'une réforme aussi ambitieuse, les principaux inconvénients d'une double présidence pourraient être évités à deux conditions, l'une et l'autre de nature à rassurer les « petits » Etats membres. Les deux présidents devraient se distinguer non selon les sujets, mais selon les fonctions. Aucun des deux ne devrait apparaître comme un personnage solitaire. Les considérations qui conduisent à désigner un ministre des Affaires étrangères rattaché à la fois au Conseil et à la Commission valent pour les autres grands domaines politiques. Ce n'est pas d'un seul ministre dont l'Europe a besoin, mais d'une véritable équipe gouvernementale entourant le président de la Commission, travaillant en liaison étroite avec le Conseil et assurant les équilibres sans lesquels l'Europe n'aurait pas accompli tant de progrès et ne pourrait se proposer de grands objectifs. Les partisans d'une Europe capable d'apparaître comme une puissance sur la scène mondiale ne devraient pas s'accommoder d'une forme de dyarchie institutionnelle qui soit source de faiblesse. Ils ne sauraient se résigner à une politique étrangère et de défense privée de tout support communautaire et condamnée, de ce fait, à demeurer dans l'ordre des apparences. Cependant, de même que l'échec de Nice a conduit au sursaut de Laeken et à la Convention, il n'est pas interdit d'espérer qu'un éventuel échec de la Convention dans un contexte de division des Européens à propos de l'Irak conduirait à un nouveau sursaut, tant il est évident que les peuples de notre continent n'ont d'avenir que dans leur union. Encore faudrait-il que les *leaders* d'opinion soient capables de faire entendre ce message aux nouvelles générations.

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Quel rôle pour la Commission dans la future Europe?

Georges Berthu¹

Condensé

Jusqu'ici la Commission a joué un rôle de guide de la construction européenne, armée d'un certain nombre de pouvoirs autonomes prévus dans les traités dès l'origine, parmi lesquels le monopole d'initiative. Cette méthode revient à donner une « prime » aux positions supranationales lors des prises de décision, grâce à des « biais institutionnels » incorporés dans les traités.

On peut se demander si de telles méthodes, qui dans un premier temps ont sans aucun doute permis le « décollage » de la Communauté, n'ont pas aujourd'hui pour contrepartie des effets pervers trop lourds, et d'abord le décalage ressenti entre les institutions européennes et les citoyens.

La présente étude propose de revenir au plus près des peuples par la remise en cause des « biais institutionnels » et la réhabilitation du rôle des Parlements nationaux, ce qui conduira inévitablement à une Europe à géométrie variable. En même temps, le rôle de la Commission devra être revu pour se rapprocher d'une coordination-exécution. Le monopole d'initiative devrait être soit supprimé - et le droit partagé avec les Etats membres - soit maintenu mais encadré par un pouvoir plus fort des démocraties nationales - incluant le droit de veto des Parlements nationaux.

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1. Introduction

Le débat sur l'avenir des institutions européennes a pris un tour passionné en abordant les questions de désignation des présidences, pour la Commission et les Conseils. Mais il est dommage qu'on ait commencé à discuter ce point avant d'avoir clarifié le rôle exact des institutions concernées. En particulier, bon nombre de ceux qui demandent « une plus grande stabilité » de la présidence du Conseil européen semblent vouloir, sans le dire ouvertement, contrebalancer la puissance de la Commission, trop grande à leurs yeux.

C'est là une question essentielle. La Commission a-t-elle acquis trop de puissance? Ou, plus exactement, les moyens d'action autonomes qu'elle tient du traité de Rome sont-ils toujours en adéquation avec les compétences de plus en plus importantes qu'elle s'est vu confier par la suite? Quelles sont les conséquences pour la démocratie? L'élargissement change-t-il quelque chose à cet égard? Voilà des questions auxquelles il faut répondre d'urgence.

Selon nous, la nécessité de construire une Europe plus proche des peuples implique l'évolution de la Commission, d'un rôle que l'on appellera pour simplifier de « guide », vers un rôle, toujours pour simplifier, « d'exécutant ». Comment les définir respectivement?

- *Le rôle de guide*: la Commission bénéficie de pouvoirs autonomes. Elle s'insère dans la conception d'une Europe unitaire, construite de manière volontariste par un groupe d'hommes éclairés. C'est ainsi que, dans un premier temps, la Communauté a pu s'implanter. C'est ainsi que, demain, la Commission devrait pouvoir utiliser ses capacités d'action propres pour éviter la dispersion des membres dans une Europe élargie.
- *Le rôle d'exécutant*: la Commission bénéficie certes de pouvoirs, mais moins autonomes, plus soumis aux décisions des démocraties nationales, à travers les Parlements nationaux ou le Conseil. La conception de l'Europe est moins ici une construction impulsée d'en haut, qu'une libre association de démocraties nationales acceptant la géométrie variable.

Pour certains, ces deux rôles ne sont pas exclusifs, mais consécutifs: la Commission-guide pourrait devenir simplement exécutante le jour où existerait une démocratie unitaire au niveau européen. Mais nous n'y sommes pas. En attendant, et pour éviter la fragmentation générale, il faudrait maintenir fermement la conception d'une Commission-guide, dotée de pouvoirs autonomes.

Mais combien de temps va durer la transition? Aura-t-elle même une fin? Cette argumentation ne revient-elle pas à chercher des prétextes pour s'attarder dans une situation où le déficit démocratique s'aggrave, et finalement risque de mettre en danger l'Europe elle-même? Je voudrais ici émettre quelques réponses iconoclastes sur l'Europe en général et la Commission en particulier, avant de passer à des propositions d'un ordre nouveau.

2. *L'illusion institutionnelle*

La fréquentation assidue des institutions européennes montre qu'on y établit le plus souvent une équivalence, implicite ou non, entre le degré de supranationalité des procédures et le degré d'existence de l'Europe. Or à trop sous-entendre cette équivalence, on nourrit une sorte d'« illusion institutionnelle » qui explique bien des problèmes de l'Europe d'aujourd'hui.

L'illusion peut se résumer ainsi: en recherchant prioritairement l'efficacité procédurale, on s'enferme dans des constructions institutionnelles qui perdent de vue la démocratie. Et en perdant la démocratie, on perd la vraie efficacité. Expliquons-nous.

La construction européenne a été conçue dès l'origine pour inciter, voire obliger, des peuples distincts à se rapprocher, puis à s'intégrer. Dans ce but ont été mises en place des institutions, la Commission et la Cour de Justice qui, au nom de la finalité intégratrice des traités, détenaient les moyens d'infléchir peu à peu la coopération européenne dans le sens supranational. Elles ont largement réussi, élargissant leurs compétences au fil des traités ou des arrêts de la Cour, imposant la supériorité du droit communautaire, éliminant la présence directe des Parlements nationaux dans le processus de décision européen, en échange d'une montée en charge, progressive et par nature imparfaite, du Parlement européen.

Cette réussite a pourtant été payée de sérieux effets pervers.

Les pouvoirs autonomes de la Commission (champs de compétences exclusifs, comme la concurrence, ou moyens d'action propres, comme le monopole d'initiative) ou de la Cour de Justice (pouvoir d'interprétation quasi-souverain, exercé le plus souvent à partir de questions préjudicielles), ont complètement changé de signification au fil du temps. Applicables à l'origine à des compétences

techniques et circonscrites, ils se trouvent utilisés aujourd'hui pour le fonctionnement de compétences englobant des matières essentielles à la souveraineté. Or ce n'est pas du tout la même chose que d'admettre le monopole d'initiative de la Commission pour la détermination d'un tarif douanier relatif à des échanges commerciaux, ou de l'admettre pour des sujets tels que la politique d'immigration et d'asile. Le « déficit démocratique » est autrefois apparu tolérable, à tort ou à raison, au motif de la limitation et de la technicité des sujets traités. Mais il n'en va plus de même aujourd'hui. Appliqués à des matières de souveraineté, les moyens d'action autonome font apparaître une évacuation de plus en plus éclatante du contrôle démocratique.

Le moment crucial où cette divergence est devenue sensible peut être précisément daté: c'est l'Acte Unique, le traité qui pour la première fois a décidé une forte extension des compétences communautaires, sans révision parallèle des institutions destinée à renforcer le contrôle démocratique. L'exercice s'est répété plusieurs fois depuis. Certes, des éléments de « démocratie européenne » ont été développés. Mais ils sont restés secondaires, de qualité bien inférieure à ceux d'une démocratie nationale. On observe toujours une immense différence de vitesse entre d'un côté l'extension des compétences et le renforcement des procédures supranationales, et de l'autre la mise en place d'un contrôle effectif par les peuples.

Selon certains, la divergence constatée ne devrait pas nous effrayer, car la formation du peuple européen va suivre, en interaction avec l'Etat européen en croissance, de sorte que la « démocratie européenne » va naturellement s'installer peu à peu. C'est la théorie du « processus circulaire ».

Mais attention! Cette théorie est dangereuse. Une fois de plus, elle conduit à cautionner, au motif qu'elle serait provisoire, une situation de déficit démocratique inacceptable. Il est inutile ici de se perdre dans des discussions historiques pour savoir si, dans le passé, les peuples européens ont façonné leurs Etats, ou l'inverse, ou réciproquement, ou circulairement. Ce qui est certain en revanche, c'est que le processus de constitution des nations et de leurs Etats s'est prolongé pendant un millénaire et demi au bas mot, tandis que la construction européenne n'a que cinquante ans. Ce qui est certain aussi, c'est que les peuples européens, tout en renforçant leurs échanges et leurs coopérations, sont demeurés distincts pendant la période récente, et même résolument attachés à leurs identités comme à leurs nations, auxquelles ils accordent la plus grande légitimité.

Dans ces conditions, les peuples demeurant distincts, et la démocratie européenne secondaire, les procédures supranationales s'étendent et se complexifient dans un certain vide de légitimité.

Aujourd'hui, beaucoup commencent à ressentir cette divergence de manière aiguë, et peut-être la Commission elle-même. Nous avons à plusieurs reprises entendu Romano Prodi ces derniers temps, à l'occasion des travaux de la Convention, lancer des appels en faveur de la constitution d'une « démocratie supranationale » dont l'Union européenne devrait former le noyau fondateur, ou qu'elle doit se fixer comme objectif, ou dont elle présente aujourd'hui déjà un bon modèle (choisissez votre version, elles existent toutes). L'ennui, une fois de plus, c'est que le peuple européen n'est toujours pas là, et que dans ces conditions, la « démocratie supranationale » risque de n'être qu'un produit artificiel de plus, destiné à masquer le décrochage des peuples.

Pourtant, à la Convention, la fabrication de nouvelles procédures supranationales galope. A chaque réunion, comme d'ailleurs pendant la négociation des traités précédents, nous entendons des orateurs exposer que l'efficacité de la prise de décision européenne nécessite, par exemple, la généralisation des votes à la majorité, la fusion des piliers et leur alignement sur le modèle communautaire, ou toute autre réforme de « supranationalisation » des procédures. Nous sommes ici au cœur de « l'illusion institutionnelle », qui naît de la confusion entre deux sortes d'efficacités: l'efficacité au sens étroit, et l'efficacité au sens large.

- L'efficacité au sens étroit pose la question: par quelle procédure pouvons-nous parvenir le plus vite possible à une décision unique applicable à tous?
- L'efficacité au sens large pose une question bien différente: comment pouvons-nous parvenir à une décision qui réponde bien à l'esprit des peuples, dans laquelle ils se reconnaîtront et s'investiront?

Les réponses à ces deux questions ne coïncident pas forcément, loin de là, même quand on se situe au sein d'un seul peuple. Et à plus forte raison quand on veut mettre en commun de vastes compétences pour la gestion d'une pluralité de peuples.

Depuis les origines de la Communauté, on s'est beaucoup attaché à la recherche de l'efficacité procédurale. Dans des domaines techniques et limités, encore une fois, c'était peut-être admissible. Mais il devient clair aujourd'hui que cette

inclination trop exclusive risque de masquer l'essentiel: la nécessité de l'efficacité au sens large, c'est-à-dire de la participation réelle des peuples.

C'est bien dans ce travers que l'Union s'enfoncé aujourd'hui. La lecture des communications de la Commission à la Convention montre en effet, à côté des appels de Romano Prodi à une démocratie supranationale encore virtuelle, une crispation sur des procédures centralisées censées parer au risque de dispersion, une crispation sur la conception étroite.

Valéry Giscard d'Estaing a raison de dire que la Convention est « la dernière chance de l'Europe unie ». Mais sauvera-t-on l'Europe unie par davantage de centralisation et de supranationalité, ou bien par davantage d'ancrage sur les peuples? Par davantage de rigidité des institutions au nom de l'unité, ou par davantage de flexibilité au nom de la proximité? Aujourd'hui, il faut donner priorité à la seconde option, et avec elle à l'efficacité au sens large.

3. L'exemple du monopole d'initiative

Le monopole d'initiative de la Commission constitue, depuis les origines de la Communauté, une pierre angulaire de la méthode communautaire. Il confère un avantage décisif aux positions définies par la Commission, puisque le Conseil ne peut discuter que les textes qu'elle dépose sur la table. Ainsi, le Conseil, formé des représentants de gouvernements responsables, n'a pas le droit, en règle générale, pour ce qui concerne les domaines communautaires, de prendre l'initiative d'un texte, de le faire rédiger par son secrétariat, et de le discuter.

L'effet du monopole d'initiative est renforcé par plusieurs autres règles, qu'il faut prendre en compte si l'on veut porter un jugement global: d'abord l'article 250 TCE, selon lequel le Conseil ne peut modifier les propositions de la Commission qu'à l'unanimité; le droit pour la Commission de modifier sa proposition à tous les stades de la procédure; ou encore le vote à la majorité qualifiée au Conseil qui, lorsqu'il existe, élargit la marge de manœuvre de la Commission.

Le monopole d'initiative et ses compléments instituent donc une véritable relation inégale dans la procédure. Certains préciseront peut-être, pour atténuer cet argument, que souvent la Commission ne se décide à intervenir que sur la demande d'autres institutions. Mais cette circonstance, quand elle existe, ne modifie guère l'analyse: c'est bien toujours la Commission qui sélectionne les sollicitations, et qui décide d'agir.

Cette relation inégale a été voulue pour accorder un avantage au collège, conçu comme défenseur de l'intérêt général européen, face à un Conseil que l'on suppose morcelé en une pluralité d'intérêts particuliers nationaux. Et en effet, on peut citer des cas où le monopole d'initiative a pu contribuer à débloquent des situations, par exemple le règlement communautaire sur les faillites.

Mais il ne faut pas s'arrêter là. Il faut pousser l'analyse en posant une autre question: n'y a-t-il pas aussi des effets pervers? Les avantages de procédure accordés à la Commission introduisent en effet un biais dans la prise de décision, un biais voulu, un biais honorable, peut-être, mais un biais quand même. Ils aboutissent à des décisions systématiquement plus supranationales que la moyenne des opinions des peuples, et même du Conseil. C'est le résultat qui était recherché, répondra-t-on sans doute. Mais la médaille a un revers: l'accroissement de l'écart entre les décisions européennes et les peuples qui ne s'y reconnaissent pas.

On ne peut pas tout avoir à la fois, et la construction supranationale, et le contact étroit avec les peuples, du moins dans la situation actuelle de l'Europe. En privilégiant la supranationalité, les biais institutionnels, tels que le monopole d'initiative, combinés avec le décrochage des Parlements nationaux entraîné par le vote à la majorité au Conseil, peuvent expliquer pourquoi les peuples ressentent trop souvent la construction européenne comme étrangère.

D'ailleurs, qu'est-ce qui fait accepter comme une évidence que la Commission défendrait l'intérêt général européen, tandis que le Conseil défendrait des intérêts nationaux particuliers? D'un côté nous avons un collège indépendant de 20 personnes supposées éclairées, indépendantes et désintéressées, de l'autre des représentants de gouvernements nationaux qui confrontent leurs intérêts et leurs visions d'avenir. Pourquoi faudrait-il que les premiers déterminent mieux l'intérêt général que les seconds?

C'est comme si l'on disait que, sur le marché, il ne faut pas laisser la décision aux consommateurs, parce qu'ils sont guidés par des intérêts égoïstes, et qu'il est préférable de la confier à un planificateur central indépendant. Nous savons que ce système ne fonctionne pas, et même qu'il tue la démocratie. Pourquoi? Parce que l'intérêt général ne se décrète pas d'en haut, il résulte de la conjonction de multiples décisions, des décisions politiques et administratives, mais aussi une multitude de décisions intéressées des acteurs du marché.

En ce qui concerne les relations Commission/Conseil, nous sommes bien dans ce cas de figure: lorsqu'elle croit définir l'intérêt général, la Commission se trouve

dans la position d'un planificateur qui prétendrait connaître le juste prix mieux que le marché. Nous sommes ici au cœur de nos divergences sur la construction européenne, et au cœur des raisons du déficit démocratique.

Selon nous, il faut admettre qu'il n'existe pas d'autre intérêt général européen que celui déterminé par les peuples eux-mêmes, dans la confusion et les contradictions, peut-être, mais à leur rythme et selon les besoins qu'ils ressentent. Ce n'est pas une méthode parfaite, certes, mais toutes les autres sont plus mauvaises.

La théorie de l'intérêt général soi-disant déterminé par des administrations omniscientes a été tolérable, supposons-le, aux origines de la construction européenne, quand celle-ci s'occupait de domaines techniques bien circonscrits, entre des pays de niveaux à peu près semblables. Ce n'est plus le cas aujourd'hui. Il faut tourner la page, et dépasser les biais institutionnels qui ont peut-être eu leur utilité à une époque - on peut en discuter - mais qui maintenant se retournent contre la démocratie, et peuvent largement expliquer le peu d'affection des citoyens pour les institutions européennes.

4. L'Europe en réseaux

Quel projet faut-il donc proposer à la Convention? Il se résume en une phrase: faire confiance aux peuples (au pluriel), faire confiance aux démocraties nationales.

La démocratie européenne en effet ne peut jouer qu'un rôle complémentaire. Elle n'a pas les qualités des démocraties nationales qui, malgré leur affaiblissement constant, conservent encore des avantages décisifs: d'une part la plus forte densité des conditions d'un espace démocratique - langue, échanges, solidarité, médias, corps intermédiaires, scène politique, etc. - d'autre part la légitimité principale que leur accordent les citoyens.

Il faut donc ancrer beaucoup plus solidement l'Europe sur ses démocraties nationales, en admettant une fois pour toutes que leur libre et pacifique confrontation n'est pas opposée à l'intérêt général européen, mais au contraire qu'elle le produit et l'exprime.

C'est ce que nous appelons l'Europe en réseaux - les différents pôles étant constitués par les démocraties nationales - pour insister sur l'idée de relations horizontales entre des acteurs souverains, prévalant sur les relations verticales.

L'Europe en réseaux nécessite d'abord deux réformes:

1. *Replacer les Parlements nationaux au centre du processus de décision européen.* Contrairement à ce que l'on prétend souvent, les Parlements nationaux dans la future Europe ne doivent pas être cantonnés dans le contrôle de leurs gouvernements respectifs. C'est une mission importante, évidemment. Mais leur tâche principale est de faire la loi, la «loi retenue» comme la «loi déléguée». Et pour les peuples des pays membres aujourd'hui, le fait que certaines parties du législatif soient déléguées au niveau européen n'abolit pas la tâche première des Parlements nationaux: ils font eux-mêmes la « loi retenue », et conservent le contrôle éminent sur la « loi déléguée ».

Il y a là un immense malentendu entre les institutions de Bruxelles (qui croient avoir acquis le pouvoir définitif de faire la loi, ou au moins certaines lois), et l'esprit des peuples (qui croient fermement que leurs Parlements nationaux détiennent toujours le pouvoir final de faire la loi).

Il faut maintenant lever ce malentendu. Soit on fait le saut dans la démocratie supranationale, soit on réintroduit les Parlements nationaux dans le processus de décision européen. La première hypothèse est illusoire. Regardons par conséquent la situation en face, et choisissons la seconde. L'ensemble des réformes nécessaires sont détaillées dans le rapport de l'intergroupe SOS Démocratie: « Les Parlements nationaux, piliers de la démocratie en Europe ». Notre idéal serait que les Parlements nationaux, délibérant chacun dans sa capitale, puissent prendre ensemble des décisions européennes. Il faudrait aussi créer des assemblées sectorielles de parlementaires nationaux, parallèles à chaque Conseil des ministres, et chargées de leur suivi pour le compte des assemblées nationales. Ces réformes pourraient aller jusqu'à la création d'un véritable *pilier interparlementaire* au sein du futur traité, à côté du communautaire et de l'intergouvernemental.

2. *Officialiser le compromis de Luxembourg.* Celui-ci s'avèrera plus indispensable que jamais dans une Europe élargie à vingt-cinq membres et davantage. Le Parlement européen va devenir une enceinte multinationale très large et diversifiée, où chaque peuple pris « individuellement » risque de se sentir noyé et impuissant. Beaucoup d'assistants au débat extraordinaire de novembre 2002 au Parlement européen, auquel participaient des délégations de pays candidats en nombre égal à leur représentation future, ont ressenti très vivement cette impression.

Pour corriger, ou annuler, ce sentiment de dilution, nous pensons qu'il faut parallèlement retrouver l'esprit du compromis de Luxembourg, le droit pour un peuple de dire « non » à un texte européen. Mais il faut en profiter pour améliorer la formule sur deux points:

- Le « droit de dire non » ne doit pas signifier uniquement droit de blocage ou de report d'un texte (compromis de Luxembourg au sens strict); il doit inclure aussi le droit de non-participation (le texte, dans ce cas, n'étant pas imposé aux pays qui le refusent, mais pouvant être appliqué par les autres).
- Il faut réintroduire les Parlements nationaux dans le jeu. Le « droit de dire non » pourrait ne pas être laissé aux seules relations intergouvernementales, trop étroites et trop peu participatives. Il faudrait l'ouvrir, et faire en sorte qu'il ne soit utilisé que pour des causes réelles, après un débat public, national et européen, et une claire expression du Parlement national concerné. Le droit ainsi officialisé serait non pas la négation, mais le complément et le régulateur du système européen, comme nous avons souvent eu l'occasion de l'expliquer.² Ce serait la vraie réforme du rôle des Parlements nationaux que nous attendons tous, capable enfin de faire vivre l'Union au rythme de ses démocraties nationales.

Ces deux réformes, revalorisation des Parlements nationaux et rénovation du compromis de Luxembourg, vont logiquement conduire à une *Europe à géométrie variable*. Il ne faut pas se voiler la face: c'est une conséquence de l'idée d'Europe en réseau, où chaque pôle est souverain.

Certains se désoleront peut-être en voyant se dessiner une Europe où tout le monde ne fera plus forcément la même chose en même temps. Mais comme nous l'avons largement développé dans *Démocratie ou Super-Etat*³, cette Europe sera plus proche des peuples, elle s'adaptera mieux à leurs besoins ressentis, elle utilisera mieux les énergies, elle préservera mieux la liberté de choix des démocraties nationales, donc la participation des citoyens. Certes, elle ne traduira pas nécessairement la cohérence telle que définie d'en haut par les administrations de la Commission. Elle traduira une autre cohérence, celle des volontés des peuples, plus interactive, plus participative, et l'Europe ne s'en portera pas plus mal.

2 Cf. Georges Berthu, *Démocratie ou Super-Etat* (Paris: Editions F.-X. de Guibert, 2000).

3 Cf. *op. cit.*

Concrètement, la géométrie variable nécessite-t-elle un tronc commun de compétences de l'Union, partagé par tous les membres de la très grande Europe? Nous pensons que oui. Quelles missions doit-il englober? On peut en discuter. Par exemple, il pourrait s'agir du traité sur l'Union tel qu'il existe aujourd'hui (intergouvernemental). C'est pourquoi la Convention commettrait une faute, à notre avis, si elle fermait trop vite cette porte en proposant de fusionner le TUE et le TCE en un traité unique.

5. Le repositionnement de la Commission

Quelles seront les influences de la géométrie variable sur les institutions?

Clairement, la géométrie variable déplacera leur centre de gravité vers le Conseil, et la Commission devra s'y adapter. Il n'est pas exclu notamment qu'elle soit amenée à jouer des rôles différents selon les cercles de coopération concernés, qui pourront lui laisser plus ou moins de pouvoirs autonomes, mais qui, en tout cas, ne répondront plus à la conception d'un rôle de guide dans une Europe complètement unitaire.

Dans sa communication du 22 mai 2002 à la Convention, la Commission défend, comme on pouvait s'y attendre, la conception d'une Europe et d'un traité unitaires, demandant même l'abrogation des dérogations actuellement existantes. Elle défend aussi son monopole d'initiative (rebaptisé « unicité d'initiative »). Elle pousse même le raisonnement très loin puisqu'elle déclare que « la majorité qualifiée doit devenir l'unique règle de procédure », tout en demandant une page plus loin le maintien de l'obligation d'unanimité lorsque le Conseil veut amender ses propositions.

Pourtant, le collège semble avoir perçu les difficultés de cette démarche absolue, et la limite fortement dans sa deuxième communication (4 décembre 2002): on y découvre que le monopole d'initiative pourrait être inséré dans une « programmation interinstitutionnelle » (page 6), ou encore que la Commission devrait être responsable aussi devant le Conseil européen (page 18). On ne peut qu'applaudir. Au passage, cette évolution n'en rend que plus paradoxales des positions comme celle du gouvernement français dans sa contribution à la Convention sur la simplification, qui s'arc-boute sur la conception la plus absolue du monopole d'initiative, refusant même les propositions d'amendements les plus évidentes.⁴

4 Par exemple: prévoir un délai au terme duquel les propositions législatives adoptées deviendraient automatiquement caduques; obliger la Commission à apporter une réponse

Les nouvelles propositions de la Commission montrent une prise de conscience intéressante, mais qui arrive bien tard, et risque d'être insuffisante. L'aspiration à une plus grande ouverture, à moins de centralisation, est aujourd'hui très forte. Dans ce contexte, le monopole d'initiative - du moins tel que nous l'avons connu jusqu'ici - doit être remis en cause, et avec lui les autres « biais institutionnels » contenus dans les traités, qui comportent trop d'effets pervers.

Certains contre-attaquent en expliquant que l'initiative partagée des textes existe déjà aujourd'hui (provisoirement) dans l'ex-3ème pilier communautarisé, pour les questions d'immigration notamment, et qu'elle ne marcherait pas. Il nous semble au contraire que les initiatives des Etats membres à ce titre ont été intéressantes. Mais le problème de fond, qu'il faut bien voir en l'espèce, c'est que la Commission a une vision de la politique d'immigration européenne bien différente de celle du Conseil.⁵ Et qu'elle voudrait bien détenir l'initiative unique pour faire prévaloir plus facilement sa politique. Nous retombons exactement ici dans les biais institutionnels déjà dénoncés. Ils ne sont pas acceptables d'un point de vue démocratique.

On peut dès lors envisager deux solutions:

1. *Supprimer purement et simplement le principe du monopole d'initiative, donc partager le droit, par exemple entre la Commission, le Parlement européen et les Etats membres individuellement (gouvernements et Parlements nationaux).* Nous pensons qu'il en naîtrait une confrontation des propositions très fructueuse, dont nul ne devrait avoir peur.
2. *Maintenir le principe du monopole, mais l'encadrer par trois catégories de réformes destinées à conserver l'idée d'un « lieu de fabrication unique » des textes, tout en établissant mieux le libre choix des membres:*

motivée au Parlement ou au Conseil lorsque l'une des deux institutions lui a demandé de proposer un acte; possibilité pour le Conseil, dans le cadre de la procédure de conciliation, de reprendre à la majorité qualifiée les amendements du Parlement qui ont fait l'objet d'un avis négatif de la Commission.

5 La Commission préfère des projets plus « intégrateurs », tandis que le Conseil paraît plus attaché à sauvegarder les droits des Etats. De plus, les propositions de la Commission, dans les années passées, ont été plus « libertaires » (en ce sens qu'elles ont placé la liberté de circulation à un haut niveau de priorité), alors que le Conseil se montrait relativement plus restrictif. On en trouvera une illustration dans le net « coup de barre » donné aux propositions « immigration » par le Conseil européen de Séville (21-22 juin 2002). Voir à ce sujet l'intervention de l'auteur de ces lignes au Parlement européen, dans le débat relatif au bilan de la présidence espagnole (2 juillet 2002).

- des réformes de procédures techniques: les trois amendements cités plus haut (caducité automatique, réponse motivée, ajustement de la conciliation), auxquels il faut ajouter la suppression de l'article 250 TCE qui impose l'unanimité au Conseil pour rejeter les propositions de la Commission;
- les deux réformes de fond proposées par la Commission elle-même: programmation pluriannuelle des textes, et responsabilité devant le Conseil européen;
- enfin, la réforme qui nous paraît la plus importante, parce qu'elle permet de tout concilier avec l'élargissement de l'Union: le droit de dire « non » qu'il faut reconnaître aux Parlements nationaux.

Depuis 1989, nous demandons cette révolution intellectuelle. Pour éviter que le système européen ne devienne un super-Etat centralisé et uniformisateur, dont je crois personne ne veut, il faut faire ce choix de la coopération dans la liberté.

From Governing the EU to Guarding the Governors? Some Reflections on Mechanisms of Accountability and Executive Power in the EU

Deirdre Curtin¹

Abstract

The approach taken in the work of the Convention on the Future of Europe cuts across many of the tired categories of federalism versus intergovernmentalism and attempts to tailor a Constitution to fit the unique institutional configuration of the European Union (EU). A central issue is the separation of executive power from that of legislative power and the recognition that such power is exercised not only by the Commission and the Member States, but by the Council and its various 'satellites'. In this context, one of the key challenges is to ensure that mechanisms of accountability are developed which ensure that the exercise of executive power is subject to adequate and appropriate scrutiny and control. The problem in this regard is a fundamental under-recognition of the power and role acquired quietly and incrementally by the Council as an institution, particularly the General Secretariat and more specifically the High Representative for the Common Foreign and Security Policy (CFSP). In the context of ensuring the accountability of such power, the discussion on a possible double-hatted President of the EU takes on a different dimension and presents a clear challenge when compared to the (politically opportunistic) prospect of dual and competing Presidencies.

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1. Introduction

One of the innovative features in the substantive work of the Convention thus far is the fact that it takes a relatively horizontal perspective on certain constitutional issues. A rather novel approach to the EU system seems to be emerging given that it was never renowned for a clear-cut separation between executive and legislative powers. This is, in my view, refreshing in a context where broad generalisations have not only run out of steam - not to mention broad appeal - but are too simplistic to capture the complex and multi-faceted reality of how power is actually exercised in the interstices of the European Union. In a sense, some of the work being undertaken in the Convention in its various compositions can be regarded as a clear attempt to bring the representation of power and its exercise within the EU 'back to basics'. As such this is very welcome, not only to constitutional lawyers and political scientists grappling with these highly variegated issues, but also, more significantly and indeed hopefully, to the 'ordinary citizen' trying to make sense of European integration – not to mention globalisation – and the problematic interplay between the exercise and control of power at the European and national level.

At the same time there is still a marked tendency by many participants in the debate on the future Constitution for Europe to squarely place themselves in the 'federalist' or the 'intergovernmental' camp and to view their take on future institutional configurations through their chosen conceptual spectacles. Thus, even within the framework of this issue of *Collegium*, we have a contribution by Georges Berthu, MEP, which can in many senses be considered as reflecting a rather far-reaching intergovernmental perspective. He not only advocates a dismantling of the core of the 'Community Method', which is to say the exclusive right of policy initiative of the Commission, but also favours giving national parliaments the right of legislative decision at the European level. In other words, the putatively centralist Commission would find its powers and remit radically reduced with the role of those purely national institutions being validated and enhanced. This would include the far-reaching right of respective national parliaments to veto a proposed European measure.

Robert Toulemon's contribution on the other hand is unquestionably permeated by a considerably more federalist vision and is unashamedly centred around a sophisticated understanding of the role and significance of the Community Method in the future construction of the European Union. His ideas on a 'dual-hat' President of the EU based within the Commission provide his readers with

an admirably succinct and visionary sketch of an ideal-case scenario at a time when the spectre of *cohabitation* between a (newly created) President of the European Council and (the existing) President of the Commission provides an unattractive alternative favoured by many politicians.

I personally am convinced that it is not helpful to get bogged down in an at times relatively abstract debate about whether we are moving towards a federal super-state² or whether we must preserve intergovernmental methods of decision-taking, nor even too much about the need to conserve the hallowed Community Method right across the spectrum of EU policy-making. Quite simply, none of these three (sacred-cow) options in my view further the debate in a manner likely to lead to a genuine break-through tailored to the nature of the challenges currently facing the EU. Moreover, they have all been – in different ways – belied and disproved by the recent history and practices of the EU. This does not mean of course that terms such as ‘federal’ or ‘intergovernmental’ cannot, as such, have a descriptive-analytical as opposed to a normative-ideological value, in the sense of projecting a multi-layered model in which power can be exercised in a co-operative fashion and actors on both the sub-national and supra-national level can be embraced. The purpose of my essay is thus to reinforce and develop some reflections on the horizontal nature of executive power as it has developed at the level of the EU in all its various manifestations, and the task of tailoring mechanisms of accountability to that reality.

2. The Evolving Governance of the EU

The history of the EU since the negotiation of the Treaty of Maastricht has been one of change and consolidation in the sense that the hallowed intergovernmental ‘pillars of co-operation’ have gradually, first in the legal practices of various institutions and then normatively in successive Treaty changes, been taken over and to some extent ‘colonised’ by non-intergovernmental practices and rules: they have become ‘communitarised’. In other words, the forces for institutional unity and for more involvement by the institutional actors across the spectrum of EU activities have, in an incremental fashion not foreseen by the drafters of the Treaty of Maastricht, made considerable head-way.³ In fact, this

2 See e.g. G. Federico Mancini, ‘Europe: The Case For Statehood’, in: G. Federico Mancini, *Democracy and Constitutionalism in the European Union: Collected Essays* (Oxford: Hart, 2000), pp.51-66, and Jean-Luc Mathieu, *La Communauté Européenne: Marché ou Etat?* (Paris: Nathan, 1990).

3 See further, Deirdre M. Curtin and Ige F. Dekker, ‘The EU as a “Layered” International

has occurred to such an extent that the resolution of controversial issues that some years ago appeared inconceivable, now seems rather obvious and uncontroversial in the lead-up to the next Intergovernmental Conference (IGC). In particular, one might mention in this context the putative conferral of explicit legal personality on the EU as such, the suggested abolition of the pillar structure and the proposal to radically simplify and streamline the types of decision-making instruments and procedures right across the spectrum of EU activities.⁴

To those who insist that the preservation and extension of the Community Method is the (only) way forward⁵, I would also sound a cautionary note. Blinkered reliance on the Community Method will not take our thinking much further in terms of increasing substantive and procedural legitimacy of processes of decision-making within the EU. Moreover, even within the core of the European Community (EC), this hallowed mode of governance is not as 'pure' or as 'untainted' as some would have us believe. First, if we look to the power of initiative of the Commission, not only has it in practice been progressively diluted, but also arguably overstated: purely autonomous initiatives amount to only 10 percent of all Commission proposals.⁶ Second, if we look to the jurisdiction of the European Court of Justice (ECJ) we note that it too has been diluted and fragmented in recent years, for example in the manner it has acquired partial (or no) jurisdiction over new policy areas. Third, even where the European Parliament (EP) has actually acquired co-decision powers (the *summum* in a sense of the Community method) it has allowed that procedure to be 'tainted' by intergovernmentalism and the influence of the Council at critical moments of decision-making, e.g. through the 'secret' triologue meetings which take place

Organization: Institutional Unity in Disguise', in: Paul Craig and Gráinne de Búrca (eds.), *The Evolution of EU Law* (Oxford: Oxford University Press, 1999), pp.83-136, and Deirdre M. Curtin and Ige F. Dekker, 'The Constitutional Structure of the European Union: Some Reflections on Vertical Unity-In-Diversity', in: Neil Walker et al. (eds.), *Convergence and Divergence in European Public Law* (Oxford: Hart, 2002), pp. 59-78.

- 4 European Convention, *Final Report of Working Group 3 on Legal Personality (CONV 305/02, WG III 16)*, Brussels, 1 October 2002, available at: <http://register.consilium.eu.int/pdf/en/02/cv00/00305en2.pdf>; European Convention, *Final Report of Working Group 9 on Simplification (CONV 424/02, WG IX 13)*, Brussels, 29 November 2002, available at: <http://register.consilium.eu.int/pdf/en/02/cv00/00424en2.pdf> and European Convention, *Final Report of Working Group 10 on Freedom, Security and Justice (CONV 426/02, WG X 14)*, Brussels, 2 December 2002, available at: <http://register.consilium.eu.int/pdf/en/02/cv00/00426en2.pdf>.
- 5 European Commission, *Report from the Commission on European Governance: Follow-Up of the White Paper*, (COM (2002) 705 final), Brussels, 11 December 2002, available at http://www.europa.eu.int/comm/governance/suivi_lb_en.htm.
- 6 Giandomenico Majone, 'The European Commission: The Limits of Centralization and the Perils of Parliamentarization', in: *Governance*, No. 15, 2002, pp. 376-77.

prior, at times, even to the first reading of Parliament.⁷ Fourth, the Community Method, relying as it does on 'comitology' for the execution of Community acts, is regarded by many as singularly problematic from a democratic perspective.⁸

3. Who Exercises Executive Power in the EU?

It is necessary as a preliminary matter to acquire some deeper understanding of the manner in which executive power is currently exercised in the European Union. Traditionally, acquired wisdom would have us believe that the European Community did not have its own executive power, rather its decisions were, in the vast majority of cases, executed (which is to say implemented) by the Member States and their national executive authorities on its behalf, subject of course to the over-riding duty of loyalty copper-fastened in Article 10 TEC. Rather, it was only in relatively exceptional cases (competition policy for example) that the Commission could be regarded as performing functions which could be considered as innately executive in nature. Of course, even that residual narrative was a little more dense given the fact that such executive power as it did indeed enjoy had been delegated to it by the Council, the original executive power according to the Treaty (Article 202 TEC). Furthermore, in delegating power formally to the Commission, the Council reined it back in via an elaborate committee system composed of national experts, known as 'comitology'. This is a key aspect of the Community Method which in addition includes the aforementioned role of the Commission as policy initiator and guardian of the Treaties. As time went by, the Commission as the (residual) executive power was, in a nutshell, unable to cope with the increase in its tasks over a range of policy areas, and outsourcing or contracting-out to private third parties became the manner of performing some of its (executive) functions, something in common with public administrations around the world.⁹

7 Adrienne Héritier, 'The White Paper on European Governance: A Response to Shifting Weights in Interinstitutional Decision-Making', *Jean Monnet Working Paper No. 6/01*, 2001, available at: <http://www.jeanmonnetprogram.org/papers/01/011301.rtf>

8 Rainer Schmalz-Bruns, 'The Normative Desirability of Participatory Governance', in: Hubert Heinelt (ed.), *The Normative Participatory Governance in Multi-Level Context* (Opladen: Leske&Budrich, 2002), pp. 59-74. For a different view see Christian Joerges, 'Good Governance Through Comitology?', in: Christian Joerges and Ellen Vos (eds.), *EU Committees: Social Regulation, Law and Politics* (Oxford: Hart, 1999), pp. 311-339.

9 Committee of Independent Experts, *Second Report on Reform of the Commission: Analysis of Current Practice and Proposals for Tackling Mismanagement, Irregularities and Fraud*, Brussels, 10 September 1999, available at <http://www.europarl.eu.int/experts/pdf/rep2-2en.pdf>.

At the same time, the Commission set about creating a series of 'independent' Community bodies with clearly defined executive-type tasks, such as information collecting¹⁰, and more recently trumpeted the creation of a series of much more far-reaching American-style 'regulatory agencies'.¹¹ This independent 'fourth branch of government', as it is often referred to,¹² is justified on grounds of efficiency, technical expertise and the legitimacy of non-majoritarian institutions.¹³

This is one strand of the executive 'story' within the EU as it is evolving in practice. It can be understood as, or placed within the framework of, a more federal understanding of the evolving EU and at the same time has contributed to the evolution of the Community Method itself. With regard to this Commission-centred strand, there is increasing recognition of the accountability problems and concrete attempts to deal with them. Thus, the idea of electing the Commission President can from this perspective be understood as a genuine attempt to imbue more democratic legitimacy in the institution as a whole, especially if he or she were elected directly or by colleges of national parliamentarians.¹⁴ Moreover, not only is the Commission itself grappling with attempts to give notions of participatory democracy some genuine content with regard to the formulation and implementation of policies¹⁵, it is also rather actively exploring ways of reining-in so-called 'independent' Community and Union bodies and thereby changing notions of responsibility in this wider context.

At the same time, a parallel executive power has developed somewhat by stealth since the advent of the Treaty of Maastricht. This stems basically from the fact that this Treaty and its successors set up and gave substance to the European Union as a novel international organisation.¹⁶ The so-called 'intergovernmental' pillars provided for executive power to be exercised in practice by the Council,

10 Edoardo Chiti, 'The Emergence of a Community Administration: the Case of European Agencies', in: *Common Market, Law Review*, Vol. 37, No. 2, 2000, pp. 309-343.

11 European Commission, *European Governance: A White Paper*, (COM(2001) 428 final), Brussels, 25 July 2001, available at http://europa.eu.int/comm/governance/index_en.htm.

12 Martin Shapiro, *Who Guards the Guardians? Judicial Control of Administration* (Athens: University of Georgia Press, 1988) and Giandomenico Majone 2002, *op. cit.*

13 Renaud Dehousse, 'Institutional Reform in the European Community: Are There Alternatives to the Majoritarian Avenue?', in: *West European Politics*, Vol. 20, 1997, pp. 118-136.

14 Simon Hix, *Why the EU Should Have a Single President and How She Should Be Elected*, Paper for the Working Group on Democracy in the EU for the UK Cabinet Office, London, October 2002, available at: <http://personal.lse.ac.uk/HIX/Working%20Papers/Why%20the%20EU%20Should%20Have%20a%20Single%20President.pdf>.

15 European Commission, Report 2002, *op. cit.*

16 Deirdre M. Curtin and Ige F. Dekker 1999, *op. cit.*

especially through the Presidency, the Secretariat General and 'Mr CFSP' without the power of implementation necessarily being delegated to the Commission (and thus to the 'comitology' system). As a consequence, over the past 10 years, the Council has not only developed its legislative power resulting from its interaction with the European Parliament in co-decision and its independent legislative and policy-making power in the new policy areas, particularly with regard to Justice and Home Affairs (JHA). Indeed, it has also substantially developed its own executive power in several areas. In other words, the Council as an EU institution has acquired and is exercising a series of executive tasks which would normally have been entrusted to the Commission under the Community system.

Accordingly, the Council Presidency, aided by the Secretariat General, is responsible for representing the Union in CFSP matters, implementing common measures and expressing the Union's position in international organisations and at international conferences. The Amsterdam Treaty strengthened this role by enabling the Council to instruct the Presidency to negotiate an international agreement on behalf of the Union, and by entrusting the Presidency with the same tasks in JHA policy areas as in CFSP. The Presidency likes to be perceived as the Council's political 'motor': it drives things forward and has a policy planning role in setting the direction of the Council's work and ensuring that it is completed within reasonable deadlines, often coinciding with the end of a particular Presidency.¹⁷ On the other hand, what is often under-estimated in this explanation is the driving role played by the 'Brussels bureaucracy' and by the national civil servants who sit permanently in the Council's under-belly of working parties and co-ordinating committees in driving forward specific measures, yet always within the broad parameters of policy set by the Member State holding the Presidency at the time.

The General Secretariat of the Council has evolved from having a passive notary/registrar role to a much more active role in assisting the Presidency

'not only in the application of procedures, but also in preparing for substantive negotiations; at the same time, the role of the Legal Service has become established and has developed to encompass intergovernmental conferences; in general, the six-monthly rotating Presidency with its increased role has made it more and more necessary to call upon the General Secretariat's assistance in ensuring continuity and efficiency of work by giving successive Presidencies the benefit of the experience it has accumulated over the years'.¹⁸

17 Council of the European Union, *Operation of the Council with an Enlarged Union in Prospect*, Report by the Working Party set up by the Secretary-General of the Council (Trumpf/Piris Report), Brussels, 10 March 1999, available at: <http://ue.eu.int/newsroom/LoadDoc.asp?MAX=341&BID=75&DID=58068&LANG=1> .

18 *Ibid.*

But it was with the advent of the European Union as such that the role of the General Secretariat changed quite dramatically, a point that is often not fully appreciated. It is in this post-Maastricht context that it has acquired tasks that in the first pillar would normally have been carried out by the Commission.¹⁹ The appointment of a High Representative for the CFSP, at the same time Secretary General of the Council, as provided for in the Treaty of Amsterdam, made this point particularly clear, with tasks including the framing, preparation and implementation of the Union's foreign policy decisions. In addition to the normal resources of the General Secretariat he or she has at his or her disposal a 'Policy Planning and Early Warning Unit' (PPEWU). In other words, the High Representative was conceived as a means of providing a parallel in CFSP to the driving role played by the Commission in external economic relations. But this has grown over time to include responsibility over an entire *military* structure, currently under construction, as well as a category of 'non-military crisis management', in other words, policing, law and administration.

At the same time, the Council has, in recent years, set up a number of free-standing, independent organs with far-reaching, incrementally acquired powers. Thus Europol - established by multilateral Convention at Maastricht - is in the process of acquiring operational powers, despite denials at the time it was set up and the original Convention ratified. Eurojust was created more recently by a Council decision not requiring Member State ratification precisely so that its powers and tasks could be amended more easily. These Union bodies acquire powers and executive tasks in a stealthy and incremental fashion. Thus, in December 2002, the Council authorised the Director of Europol to proceed with the signing an agreement he had negotiated with the United States - in complete secrecy - which included far-reaching measures on the exchange of personal information on individuals.²⁰

Such action constitutes in my view the tip of the iceberg in terms of the external relations activities of such organs, which appear to take place in a type of 'constitutional no-mans land' with no public or parliamentary debate (either European or national) on the issues involved, nor any possible scrutiny of the measure prior to its formal adoption. This also illustrates my point, namely that any attempt to place what has been incrementally happening in practice within

19 See further Deirdre M. Curtin and Ige F. Dekker 1999, *op. cit.*

20 Council of the European Union, 'IIA' Note from the Presidency to COREPER/ Council (14237/02), Brussels, November 2002, available at <http://www.statewatch.org/news/2002/nov/6euus14237en2.pdf> and Council of the European Union, *Corrigendum to 'IIA' Item Note from the Presidency to COREPER/ Council (14237/02 COR1)*, Brussels, November 2002, available at <http://www.statewatch.org/news/2002/nov/7euus14237-c1en2.pdf>.

the frame of a purely intergovernmental or purely federal understanding of the nature of the EU will be futile. On the one hand, more executive power for the Council, composed as it is of Member State representatives, can be taken to be an increase in the intergovernmental strand of EU decision-making. On the other hand, a similar practice would arguably be more difficult to sustain when the evolving – and relatively independent - role of the institution itself is taken into account. Moreover, whereas some might see the evolution in the role and powers of organs such as Europol as an intergovernmental trend, especially given their (intergovernmental) composition, the federal features of such organs are difficult to ignore when one considers some of their activities and powers (witness, for example, recent external relations agreements with third countries).

With regard to the Council-centred executive strand, it can only be said that there is less overt recognition of the manner in which the powers and tasks of the Council in certain policy areas are both executive in nature and parallel to those exercised by the Commission in the classic Community fields. In other words, what has been happening in an incremental fashion over the course of the past ten years within the EU has been the development of two parallel administrations, each with their own (quasi-)independent ‘satellites’. In terms of accountability, there are problems with both strands but I would argue that those regarding the Council and its bodies are more acute.²¹ For example, whereas the Commission is ultimately accountable to the European Parliament, the Council is only indirectly accountable to the individual national electorates. At an advanced stage in the political integration process it seems unacceptable to many observers that the Council as a (co-) legislator and as an autonomous executive over a variety of complex and sensitive policy areas, is not accountable as an institution to anybody for its decisions - including those taken by qualified majority voting. With regard to the indirect mechanism of accountability I would conclude as follows: Those (few) national parliaments with advanced scrutiny mechanisms may indeed, as a measure of last resort, decide to impose a so-called ‘national scrutiny reserve’ over their governments. If the measure is to be adopted unanimously there is nothing as a matter of Union law to stop the national Minister concerned to simply waive the scrutiny reserve and agree to the measure.²² However even if the national Minister is not prepared to overrule

21 See in general Carol Harlow, *Accountability in the European Union* (Oxford: Oxford University Press, 2002).

22 Deirdre Curtin and Steve Peers (eds.), *Joint Submissions by the Standing Committee of Experts on International Immigration, Refugee and Criminal law, The Immigration Law Practitioners Organization, Statewatch and The European Council of Refugees and Exiles to Working Group on Freedom, Security and Justice to the Convention on the Future of Europe*, Utrecht and London, 14 November 2002, available at http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0329_c_en.pdf .

the scrutiny reserve if the measure in question is to be adopted by *qualified majority* then the parliaments' wishes can simply be *de facto* overruled once the necessary majority has been reached. As Georges Berthu pertinently describes it, the need for a reassessment of the role of national parliaments in the EU decision-making process is indeed acute. However, before addressing such accountability 'blind spots' more specifically, I wish to explore a little more how the discussions in the Convention on executive power and its place within the institutional and constitutional system as a whole have evolved so far.

4. Formalising 'Operational Collaboration' Within the Treaty Framework?

A general line that has emerged in the Convention debates is the need to move from the current muddle of multifarious legal instruments to three broad categories which would more or less resemble a separation of powers: a legislative instrument 'proper' (European laws and European framework laws containing the essential elements), a new category of delegated acts which supplement or amend certain non-essential elements of legislative acts adopted by the Commission under authorisation of the legislator and a category of executive acts *stricto sensu* (implementing acts). In any event there is an obvious attempt to separate more clearly the legislative and executive instruments and institutional functions than is presently the case.²³ This has been endorsed in the draft Articles 24 to 33 of the Constitutional Treaty.²⁴

At the same time it is noteworthy that the discussion on a similar separation of powers has been taken furthest in the context of the Working Group on Justice and Home Affairs²⁵ where the idea has been rather vigorously defended that a sharp distinction needs to be made between legislation and what is termed 'operational collaboration' at Union level. With regard to the former, this recognises and develops the approach already reflected in the Treaty on the European Union as amended and would enable not only overt recognition that the Union adopts binding legislation in areas such as criminal law, policing or asylum but also that the comitology procedure would fully apply to implementing measures in these domains. With regard to the latter 'operational collaboration' it recog-

23 See in particular European Convention, *Final Report of Working Group 9 2002*, *op. cit.*

24 The European Convention Secretariat, Draft of Articles 24 to 33 of the Constitutional Treaty (CONV 571/03), Brussels, February 2003, <http://register.consilium.eu.int/pdf/en/03/cv00/cv00571en03.pdf>.

25 See European Convention, *Final Report of Working Group 10 2002*, *op. cit.*

nises and applies existing realities and attempts to ring-fence them from interference in the future. These include the planned creation of a common European border guard unit (including a legal basis allowing its gradual development); the placing of Europol within the new Treaty framework, thereby giving the legislator a greater margin to develop its tasks and powers (without requiring national ratification procedures as is currently the case); and, with regard to Eurojust, the explicit conferral of more operational powers and a greater margin for the legislator to develop its tasks and powers in future. Towards the edge of the spectrum lies the putative creation of a European Public Prosecutor or a Public Prosecutor's Office, responsible for detecting, prosecuting and bringing to judgement in the national courts the perpetrators of crimes prejudicial to the Union's financial interests.

The final report of the Working Party on Justice and Home Affairs underscores the need for a clearer distinction between the Council acting in its legislative capacity and the Council exercising specific executive functions which specifically seem to turn on the operational kind outlined above and would require the creation of a more efficient structure to co-ordinate operational co-operation at *high technical level* within the Council. This would consist of the merging of various existing groups and the redefining of the current mission of the 'Article 36 Committee' in the new Treaty, which would in the future focus on co-ordinating operational co-operation rather than becoming involved in the Council's legislative work. It is, however, not excluded that the Chiefs of Police Task Force could have a role in this context. The idea is that this reformed structure would focus on the co-ordination and oversight of the entire spectrum of operational activity in police and security matters, including, *inter alia*, police co-operation, fact-finding missions, facilitation of co-operation between Europol and Eurojust, peer review and civil protection.

In other words what appears to be happening is the streamlining and expansion of the executive activity of the Council and Union bodies. At this point the question of the role of such 'turbo-committees' as the Article 36 Committee and the Police Chiefs Operational Task Force arises, both in terms of their relationship with the Committee of Permanent Representatives (COREPER) as such, and as regards the independence with which it is envisaged they will perform their tasks of 'operational coordination' in the future. The conclusions of the Working Party in this regard underline the fact yet again that certain high-level specialised and Council-based committees are becoming increasingly powerful and are undermining the co-ordinating role to be played by COREPER in advance of Council

meetings. Moreover the question arises as to the framework of accountability within which they will perform their tasks. Do we not run a risk that the term 'operational' is being used deliberately in order to further remove the activities of such committees and organs from any control by (wrongly) raising the spectre of genuinely 'operational' activity in police and security fields?

5. A Relationship With the Presidency Issue?

What has emerged as one of the 'hot potatoes' of the Convention is the issue of the Presidency. Those who strongly advocate a pivotal role for the (European) Council, and for replacing the rotating six-month Presidency by a President of the European Council, elected among Member States, base their claim on the role of the Council in CFSP and in representing the Union externally as well as on current dissatisfaction with the rotation system, which will only be considerably exacerbated with the coming round of enlargement.²⁶ Robert Badinter vividly describes the dangers of the resulting model of two Presidencies existing side-by-side.²⁷ However the issue is also how a system of 'co-habitation' of the (reformed) Council Presidency with the Commission President will exacerbate, rather than diminish, the existing lack of transparency of structures and responsibilities. Moreover there is no issue of increasing democratic accountability behind this model: it is a purely pragmatic reinforcement of the power of the executive arms of the Member States acting in both the European Council and the Council of the EU at the expense of any direct input by the citizen or indirectly via their parliaments, European or national. Those on the other hand who insist on retaining the centrality of the Commission and its President²⁸ do so as a means of bringing 'Europe' closer to the 'citizen' and enabling them either directly or indirectly to participate in the election process.

At the end of the day, the contested issue of infusing greater accountability into the EU system of governance might be summarised as follows: is it preferable that the core executive of the EU, namely the Commission, be reinforced in its political accountability, via an elected President, to the European Parliament, to

26 See *Contribution franco-allemande à la Convention européenne sur l'architecture institutionnelle de l'Union* (CONV. 489/03), Brussels, 16 January 2003, available at <http://registar.consilium.eu.int/pdf/en/03/cv00/cv00489en03.pdf>.

27 Robert Badinter, 'La présidence à deux têtes', in : *Le Monde*, 11 February 2003.

28 See John Temple Lang, *Electing the Commission President*, Institute of European Affairs, Dublin, 1999; Simon Hix 2002, *op. cit.* and Peter Sutherland, *Why Europe Does Not Need a New President*, Centre for European Reform, London, December 2002/ January 2003, available at http://www.cer.org.uk/articles/27_sutherland.html.

the national parliaments and to the citizen or should the 'fringe' executive of the EU - largely in the field of CFSP and at the (so-called) 'operational' level in 'internal security' - be reinforced in an accountability blind spot?

In this latter perspective I find the suggestion made by Robert Toulemon intriguing, introducing as it does a genuinely innovative element into the debate: that of constructing a single 'collegiate' Presidency. The idea is basically to stimulate a synergy between the Commission and the Council in the exercise of executive power at the level of the EU, not only in the field of external relations (both economic and political) but also more generally.

Within the Commission, and after the election of the President has taken place, a Presidium of five to six Vice-Presidents would be established. These Vice-Presidents would co-ordinate the work of the Commissioners under their remit as well as preside (yet without vote) the corresponding Councils when they carry out executive, as opposed to legislative, tasks. At the same time, the Commission President would (again without voting rights) 'preside' over both the European Council and the General Affairs Council, the idea being that the latter would re-focus on its general tasks of co-ordinating the work of the Council in its many different compositions. In this manner, a permanent Presidency of the EU could be assured where the back-up administration exists to support it. The alternative being mooted at present²⁹ raises at the very least the spectre of the role of unaccountable bureaucracy (especially in the Council and its satellite bodies) being further expanded and reinforced.

6. *Concluding Remarks*

In conclusion, the efforts being made by the Convention to introduce a genuine separation of powers at the level of the EU can be welcomed. The recognition that the executive power of the EU is exercised both by the Commission and by the Council and its various satellite bodies must also be applauded. Up to now, systems of accountability applying both to the Council and the Commission as executive powers remain under-developed. In this sense one is left with the feeling that Georges Berthu's ultimate faith in an accrued role for national parliaments in this context is simply not in tune with the way in which power is exercised at the EU level. The merit of Robert Toulemon's double-hatted President is that it attempts to avoid creating new (and unaccountable) bureau-

29 See *Contribution franco-allemande 2003, op. cit.*

cratic structures within the European Council and Council configurations and places the President where a system of accountability is in place and can be further strengthened. At the same time it indicates that we may be moving towards a 'split Council' in terms of legislative and executive (and even operational) tasks and the full implications of this will need in-depth consideration in due course.

At the moment of the construction of a 'political' Constitution for Europe a bold and imaginative approach is called for capable of igniting some enthusiasm among an already distrustful populace in the various Member States. As the President of the Convention, Valéry Giscard d'Estaing put it in a recent speech in Washington: 'Europe's answer to the "federation" or "confederation" question is the acknowledgement that the Union is a unique construct, which borrows from both models. The Convention will not change that answer: rather it will formalise it in Constitutional provisions'.³⁰ At the end of the day what matters is that the EU as an 'unidentified political object' as Jacques Delors' famously called it, does not spin out of orbit and out of control, in the process destroying stellar political values and constellations of existing, relatively long-standing, political systems.

30 Valéry Giscard-d'Estaing, *The Henry Kissinger Lecture*, Washington, February 2003, available at <http://european-convention.eu.int/dynadoc.asp?lang=EN&Content=DOCSPEE> .

Bridging the Legitimacy Gap in the EU: Can Civil Society Help to Bring the Union Closer to Its Citizens?

Imogen Sudbery¹

Abstract

As the European Union (EU) has evolved to take on state-like attributes, its legitimacy has come to depend not only on the achievement of effective results (outputs), but also on the provision of adequate opportunities for citizens to help shape these results (inputs). However, the attainment of this dual democratic requirement has proved elusive, given that the supranational system lacks many of the structural features which facilitate participation in national democracy. This paper explores the hypothesis that civil society could provide one mechanism to bridge the resulting gap between the 'governors' and the 'governed'. The findings of a case study on the role of NGOs in the development of the EU's White Paper on Governance suggest, however, that this hypothesis is optimistic, or at least premature. Given an acute lack of resources, the non-governmental organisations (NGOs) interviewed tended to prioritise effectiveness over citizen participation, thereby strengthening the EU's output - as opposed to input - legitimacy.

1. Introduction

'How democratic is the European Union? This question is asked with increasing frequency in a Union that touches ordinary lives, demands sacrifices, allocates values and struggles for legitimation'.²

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- 1 Imogen Sudbery is an assistant in the European Parliament in Brussels and an *ancienne* of the College of Europe (Promotion Simon Stevin). This article is based on her MA Thesis written in the Department of European Political and Administrative Studies.
 - 2 Christopher Lord, 'Assessing Democracy in a Contested Polity', in: *Journal of Common Market Studies*, Vol. 39, No. 4, 2001, p. 641.

The European Commission's White Paper on Governance sums up the paradoxical situation in which the European Union finds itself. The integration process has guaranteed 50 years of stability, peace and economic prosperity, yet public support for the Union is in crisis: citizens feel alienated from a system which is seen as complex and remote, but nonetheless intrusive. On the one hand, the European project has reached the height of its success. Not only has the Single Market programme been completed, but a single currency operates successfully in twelve of its Member States. The Union's competencies extend to areas once considered to be at the core of national sovereignty: justice and home affairs, foreign policy, security and defence. In short, 'it is beyond dispute that the Union has acquired for itself at least the policy-making attributes of a modern state'.³

Yet it is this very achievement which has raised concerns about the European Union's legitimacy. Despite its competences, the EU is clearly not a state, nor does it fulfil all the criteria we associate with democratic governance in nation states. At the national level, democratic 'inputs' and effective 'outputs' are seen as two sides of the same coin: both are essential in order to guarantee that authority will be recognised as legitimate by its citizens (social legitimacy). The partial integration of nation states within the European polity has secured policy outputs which could not be achieved in isolation yet, to a certain degree at least, it has diminished the ability of the citizen to participate and influence the system by which they are governed. As the European Union penetrates ever deeper into the domestic sphere, its social legitimacy is increasingly seen to depend on its capacity to involve citizens in decisions which shape their lives.

In this context, the rhetoric of the European institutions since the crisis over the ratification of the Maastricht Treaty in 1992 has focused on 'bringing the EU closer to its citizens'. The nature of the EU, however, presents numerous structural impediments to the achievement of this goal, and in the past ten years the sense of popular alienation from and incomprehension of the system has, if anything, deepened. As the Union prepares to embark on a new phase of deeper and wider political integration, the key challenge of the Convention on the Future of Europe must be to find a means of improving the opportunities for democratic 'inputs' in order to complement the legitimising force of efficient policy 'outputs'.

3 Jeremy Richardson, quoted in Simon Hix, 'The Study of the European Union II: the "New Governance" Agenda and Its Rival', in: *Journal of European Public Policy*, Vol. 5, No. 1, 1998, p. 42.

This paper looks at the potential role that civil society could play in addressing this challenge. In recent years both scholars and the European institutions themselves have shown an increasing interest in civil society as a mechanism for strengthening the link between the EU polity and its citizens.⁴ The hypothesis explored here is that civil society could provide one means of reducing the structural barriers to citizen involvement in the EU by encouraging debate as well as strengthening influence on decision-making and, ultimately, achieving identification with policy outcomes.

The participation of civil society in the development of the White Paper on Governance shall serve as a case study to test this hypothesis. This context seems particularly fruitful given that it was a declared aim of the Commission's exercise to explore the role civil society could play in decision-making. Empirical material was collected through interviews with representatives of four 'families' of NGOs active at European level⁵, in order to gauge the extent to which the NGOs were able to raise awareness among their supporters of the issues at stake in this process and involve them in the formation of policy positions. Since the research touches only one section of civil society – namely NGOs – in one particular instance of policy-making, the findings are illuminating yet invariably incomplete and cannot necessarily be taken to apply to all groups of civil society. Nonetheless, the four umbrella families provide a useful test-case for my assumptions, on the basis of which a tentative evaluation can be made.

1. *Integration and Democracy: Weighing Up 'Inputs' and 'Outputs'*

As a unique hybrid between state and international organisation, the EU has proved a puzzle for those attempting to assess its democratic legitimacy. Literally, the Greek work 'democracy' describes 'a system of government in which the

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- 4 See, for example Alex Warleigh, "'Europeanizing" Civil Society: NGOs as Agents of Political Socialization", in: *Journal of Common Market Studies*, Vol. 39, No. 4, 2001, pp. 619-39; Kenneth A. Armstrong, 'Civil Society and The White Paper', in: Christian Joerges, Yves Mény and Joseph H.H. Weiler (eds), *Mountain or Molehill? A Critical Reappraisal of the Commission's White Paper on Governance*, Jean Monnet Working Paper 6/01, Florence 2001, available at <http://www.jeanmonnetprogram.org/papers/01/011601.html>; *European Commission, European Governance: A White Paper*, (COM (2001) 428 final), Brussels, 25 July 2001, available at http://europa.eu.int/comm/governance/index_en.htm.
 - 5 In order to facilitate coordination and visibility, a number of NGOs active at European level have begun to present themselves in four 'family' groupings: Human Rights, Environmental, Social and Development NGOs.
 - 6 Brigitte Boyce, 'The Democratic Deficit of the European Community', in: *Parliamentary Affairs*, Vol. 46, 1993, p. 459.

people are to rule themselves'.⁶ However, the meaning of this term has been interpreted in different ways according to time and context. In the Greek city-state, the development of democracies entitled every citizen to participate in and vote directly on the formulation of the rules by which they were to be governed. The transformation of city-states into nation states engendered a shift in the concept of democracy from direct participation to representation. Contemporary democratic theory centres on the role of democratically elected parliaments, which 'provide clear institutional channels for the participation of citizens and the representation of their interests, and also clear lines of accountability for executive action'.⁹ It further holds that, 'every citizen should have the ability to participate in, or at least attend to, public discourses'.¹⁰

However, participation in itself is not sufficient to guarantee democracy, for, as Fritz Scharpf points out: 'democracy would be an empty ritual if the political choices of governments were not able to achieve a high degree of effectiveness in achieving the goals, and avoiding the dangers, that citizens collectively care about'.¹¹ A political system can therefore only be understood as democratic if it can both provide a channel for citizens to make known their views *and* realise policies that respond to the expression of collective interests: 'On the input side, self-determination requires that political choices should be derived, directly or indirectly, from the *authentic preferences of citizens*. On the "output" side, however, self-determination implies *effective fate control*'.¹² Simon Hix traces this two-dimensional conception back to Abraham Lincoln's famous Gettysburg address, which defines democracy as 'government by the people' as much as 'government for the people'.¹³

This notion is central to the discussion on the legitimacy of the European Union. Governments of EU Member States have accepted a certain pooling of their sovereignty in order to be able to respond more effectively to the needs of their citizens in an increasingly interdependent world. However, it is hard to dispute

7 It should be noted, however, as Boyce points out that the term 'citizen' itself is also open to interpretation: even in very recent history, for example, women were excluded from this category.

8 Robert Dahl, 'A Democratic Dilemma: System Effectiveness versus Citizen Participation', in: *Political Science Quarterly*, Vol. 109, No. 1, 1994, pp. 23-34.

9 Paul Hirst, 'Democracy and Governance: Authority, Steering and Democracy', in: Jon Pierre (ed.), *Debating Governance* (Oxford: Oxford University Press, 2000), p. 14.

10 Fritz W. Scharpf, 'Economic Integration, Democracy and the Welfare State', in: *Journal of European Public Policy*, Vol. 4, No. 1, 1997, p. 29.

11 *Ibid.*, p. 19.

12 *Ibid.*

13 Simon Hix 1998, *op. cit.*, p. 51.

Robert Dahl's argument that 'whereas very large political systems may be able to cope with problems that matter more to a citizen, the opportunities for the citizen to participate in and greatly influence decisions are vastly reduced'.¹⁴ Dahl therefore presents European integration in the context of an inevitable trade-off between the 'ability of citizens to exercise democratic control over the decisions of the polity versus the capacity of the system to respond satisfactorily to the collective preferences of citizens'.¹⁵ Following this argument, governance at EU level entails a partial decoupling of the 'input' and 'output' dimensions which democratic theory deems necessary in order to ensure the legitimacy of a political system.

The conclusion reached time after time by scholars, journalists and politicians alike, is that European integration inevitably results in a certain loss of democracy for its citizens. A deeper exploration of the issues reveals that this well-rehearsed argument is over-simplistic. We have already noted that the concept of democracy has changed according to the changing reality of our societies; many scholars have taken this further to suggest that the model developed in the context of nation states presupposes 'a very normative yardstick with which to measure the democratic quality of European policy-making processes'.¹⁶ Adrienne Héritier points out, for example, that employing criteria derived from the nation state implies either that the European Union has already taken on all the characteristics of a state, or that this is a commonly agreed end point of European integration, which is not in fact the case.¹⁷

Moreover, it could be argued that Member States themselves are no longer able to meet both the 'input' and 'output' criteria of democracy, given that their capacity for self-determination is limited by the increasing political and economic interdependence of the modern world. Thus, Paul Hirst contends that processes of globalisation are threatening democracy at the national level, where governments are no longer effective in controlling the full agenda of issues that ought to be within the scope of democratic decision.¹⁸

Rather than conclude that the democratisation¹⁹ of governance beyond the state

14 Robert Dahl 1994, p. 28.

15 *Ibid.*

16 Adrienne Héritier, 'Elements of Democratic Legitimation in Europe: An Alternative Perspective', in: *Journal of European Public Policy*, Vol. 6, No. 2, 1999, p. 269.

17 *Ibid.*

18 Paul Hirst 2000, *op. cit.*

19 The term democratisation of EU governance is used here to mean increasing citizen inputs into the system. This assumption follows from the assessment that European integration has led to a certain loss of democracy by limiting the opportunities for citizen participation in determining the rules of the system by which they are governed.

is impossible, this paper argues that the challenge must be to consider what structures and processes could enhance public engagement with the EU, and provide new channels of citizen input. It will be useful to begin with an overview of the barriers that currently hinder citizen participation in the Union.

2. Barriers to Input Legitimacy at the European Level

2.1 The Lack of a Public Space for Deliberation

In large nation states, intermediary structures provide the necessary preconditions for an active exercise of citizenship by bridging the gap between the 'governors' and the 'governed'. Institutions such as the media and political parties translate the complexity of political systems at the domestic level into simplified discourses, through what Paul Magnette terms a 'pedagogic dramatisation of politics' which provides spatial, temporal and ideological points of reference enabling citizens to grasp what is at stake, even if they may not understand the subtleties of the system.²⁰ These bodies therefore create a space for public debate, clarifying issues and channelling public responses back to policy makers.

In a similar vein, Jürgen Habermas views the development of a corresponding European public space, 'a network that gives citizens of all Member States an equal opportunity to take part in an encompassing process of political communication'²¹, as a necessary condition for any substantive move towards the legitimisation of the European polity. However, the lack of a European public sphere for deliberation has been widely documented. European news and information is currently filtered via national channels of communication so that European issues tend to be skewed by the interests of national politics while truly European political parties are still a distant prospect as 'their organisational and electoral bases remain within the Member States'.²²

20 Paul Magnette, 'European Governance and Civic Participation: Can the European Union Be Politicised?', in: Christian Joerges, Yves Mény and Joseph H.H. Weiler (eds), *Mountain or Molehill? A Critical Reappraisal of the Commission's White Paper on Governance*, Jean Monnet Working Paper 6/01, Florence 2001, available at <http://www.jeanmonnetprogram.org/papers/01/010901.html>, p. 8.

21 Habermas, quoted in Dimitris Chrysochoou, *Democratising the Political Constitution of Europe*, Hellenic Centre for European Studies, Athens 2002, p.11, available at http://www.ekem.gr/190202_en.html.

22 Marcus Höreth, 'No Way Out for the Beast? The Unsolved Legitimacy Problem of European Governance', in: *Journal of European Public Policy*, Vol. 6, No. 2, 1999, p. 257.

2.2 Inadequate Channels of Representation

The difficulties in promoting public debate on EU issues are compounded by the consensual nature of the EU system and the complexity of its institutional arrangement, both of which tend to fragment deliberation. As Magnette explains,

‘the polarity of the party system (at the national level) seems to be an important factor of mobilisation: first, because it simplifies the electoral choice; second, because clear ideological conflicts socialise citizens, who understand political issues through simplified and normatively coherent discourses. In sharp contrast, the Community method hides political conflicts’.²³

The Commission’s role in seeking optimal, consensual outcomes means that long, informal discussions are held with a large number of actors before proposals are made public. By the time policies are open for public deliberation, there is a sense that the outcome is already a foregone conclusion, as the Commission’s proposals are often presented as the only viable option. The democratic representation of citizens at the point of formal decision-making could thus be perceived as inadequate, given that there is a lack of open deliberation at earlier stages in the process, which are understood to be determinant of outcomes.²⁴ Magnette concludes that ‘citizens who do not understand what the issues are at stake, and what the choices that could be made actually are, and who also fail to see what the impact of their participation could achieve, are not likely to be active’.²⁵

2.3 Lack of a European Demos

According to Hix, democracy depends upon ‘participation in and partisan competition over inputs: the ability of citizens to choose between rival elites and political agendas’.²⁶ The successive increases in the European Parliament’s powers have stemmed from an agenda designed to establish these norms of liberal democratic government at the European level. Joseph Weiler has argued persuasively, however, that the legitimate use of the majority principle on which these liberal democratic criteria are based depends on the existence of a demos, the constituents of which must be able to recognise each other as members of the same polity.²⁷

23 Paul Magnette 2001, *op. cit.*, p. 7.

24 Notis Lebessis and John Paterson, ‘Developing New Modes of Governance’, in: Olivier De Schutter, Notis Lebessis and John Paterson (eds.), *Cahiers of the Forward Studies Unit, European Commission: Governance in the European Union* (Luxembourg: European Communities, 2001), available online at http://europa.eu.int/comm/cdp/working-paper/nouveaux_modes_gouvernance_en.pdf.

25 Paul Magnette 2001, *op. cit.*, p. 8.

26 Simon Hix 1998, *op. cit.*, p. 51.

27 Joseph Weiler, ‘Problems of Legitimacy in Post 1992 Europe’, in: *Aussenwirtschaft*, Vol. 46, Nr. 3/4, 1991, pp. 411-437.

Democracy is possible at the nation state level due to the existence of a 'thick identity', the cumulative effect of 'long term, very long term, factors such as political continuity, social, cultural and linguistic affinity and a shared history'.²⁸ The feeling of essential 'sameness', of solidarity and of mutual trust which exists between the members of a national demos ensures that the minority will accept the legitimacy of a majority decision.

Despite the fact that European elections have existed since 1979, the EU still is very far from having achieved the kind of solidarity and mutual trust necessary to ensure societal acceptance for majoritarian democracy. Weiler maintains that by extension there is no difference in terms of social legitimacy between a decision taken in the Council and a decision taken in the European Parliament: in both cases the view of a majority of citizens from a particular Member State could become a minority view in the larger polity. This helps to explain why the increase in the powers of the European Parliament has done little to strengthen perceptions of the Union's democratic legitimacy.

Similarly, Fritz Scharpf concludes that

'[i]t remains indeed correct to point out that the majority principle by itself cannot convey democratic legitimacy, and that even if the European Parliament had all the usual powers of national parliaments, its vote could not legitimate policy choices that run counter to the interests or the deeply held preferences of citizens in some of the Member States'.²⁹

Many scholars that form part of the so-called 'New Governance school' argue that, since there is no European demos, EU decision-making can only be legitimate if it is 'non-majoritarian'.³⁰ Giandomenico Majone, for example, puts forward a vision of the EU as a 'regulatory state'. The EU, he argues, should concentrate on efficiency-oriented regulatory policies which do not require democratic legitimation through citizen inputs because they aim at pareto-efficient solutions that are in the collective interest.³¹ This normative prescription for governance at the EU level therefore tends to minimise the importance of individual citizen inputs into EU decision-making in favour of an 'output'-oriented approach.

28 *Ibid.*, p. 417.

29 Fritz W. Scharpf 1997, *op. cit.*, p. 20.

30 Simon Hix 1998, *op. cit.*

31 Giandomenico Majone, *Regulating Europe* (London and New York: Routledge, 1996).

This design, however, does not reflect the reality of the EU as it operates today. The EU is a political entity, in which 'the unity and the sovereignty of the Member States are not left intact'.³² Even if the Union were to concentrate on technocratic, regulatory issues, decision-making would still be based on underlying choices of ideology which favour the interests and beliefs of certain groups over others. In fact, the Union takes highly political decisions on a daily basis which alter the allocation of resources and values, and as such require democratic legitimation: 'European governance is the exercise of power. Power is exercised in a different way and sometimes with different means than in member states, but it still is taking arbitrary decisions that affect peoples' lives'.³³

3. *Civil Society as a Means of 'Bringing the Union Closer to Its Citizens'?*

The problem facing the EU could be summarised as follows: in certain areas, the EU has acquired power over highly political issues which affect peoples day-to-day lives. In order for power over such important issues to be perceived as legitimate, citizens must feel able to influence the choices made by decision-makers. However, as discussed above, the Union lacks the three fundamental features of nation states which enable citizens to become actively involved in governance: a public space for debate, channels of representation and a demos. Institutional changes designed to replicate the functioning of national democracy at the European level cannot therefore provide an easy solution to the EU's lack of 'input' legitimacy.

In response to this situation, scholars are increasingly turning their attention to the role that could be played by organised civil society in providing alternative structures and processes to facilitate citizen participation. Civil society, Alex Warleigh explains, 'has long been viewed by liberal political theorists as the means to elaborate a legitimate state (or governance) structure by limiting its

32 Erik O. Eriksen, 'Governance and Democracy? The White Paper on European Governance', in: Christian Joerges, Yves Mény and Joseph H.H. Weiler (eds), *Mountain or Molehill? A Critical Reappraisal of the Commission's White Paper on Governance*, Jean Monnet Working Paper 6/01, Florence 2001, p. 9, available at <http://www.jeanmonnetprogram.org/papers/01/011201.html>.

33 Beate Kohler-Koch, 'The Commission White Paper and the Improvement of European Governance', in: Christian Joerges, Yves Mény and Joseph H.H. Weiler (eds), *Mountain or Molehill? A Critical Reappraisal of the Commission's White Paper on Governance*, Jean Monnet Working Paper 6/01, Florence 2001, available at <http://www.jeanmonnetprogram.org/papers/01/012101.html>.

scope and by encouraging or facilitating political engagement by, and mutual solidarity between, otherwise alienated individuals'.³⁴ The term civil society is open to a bewildering array of interpretations. Often used to refer to any organisation which represents a counterweight to the State, especially in countries where governments are not seen as representative of the people, civil society in the European context is increasingly conceived as a social organisation situated between the State and the individual in which citizens participate in order to achieve shared goals.³⁵ For the purposes of this study, therefore, the definition given by the European Economic and Social Committee (ECOSOC) is most pertinent: 'the sum of all organisational structures whose members have objectives and responsibilities and who also act as mediators between the public and citizens'.³⁶ This inclusive definition enables us to conceive of civil society's participation in European governance as a means of 'bringing the citizen back in'.³⁷

Certain scholars have begun to explore the idea that citizen participation through these organisations could contribute to the development of a European citizenship based not on common history and culture, but on newly founded shared values and interests which transcend the borders of nation states. The implication is that while there can be no European demos in the ethnic-cultural sense, civil society could help to develop post-national democracy around emerging transnational structures of identification which would constitute a 'civic demos'. Weiler argues that by decoupling citizenship from nationality in this way, it is possible to imagine individuals belonging simultaneously to two 'demoi' based on different subjective feelings of belonging.

The model of deliberative democracy associated with Habermas also disconnects the notion of collective will formation from the notion of a pre-existing system of common values and identification.³⁸ According to this perception, a post-national form of solidarity and mutual trust can be constructed through mem-

34 Alex Warleigh 2001, *op. cit.*, p. 620.

35 Nonetheless, a division remains between those who tend to conceive of a tri-partite relationship between the State, the economy and civil society - such as Habermas - and the 'social scientific' definition offered here which includes both 'voluntary organisations and the market sphere ... private firms and unions' such as Janoski, quoted in Warleigh 2001a, *op. cit.*, p. 620.

36 Economic and Social Committee, *Opinion on the Role and Contribution of Civil Society Organisation in the Building of Europe*, Brussels, September 1999, available at http://www.esc.eu.int/pages/en/acs/SCO/docs/ces851-1999_ac_en.PDF.

37 Keane, quoted in Alex Warleigh 2001, *op. cit.*, p. 620.

38 Erik O. Eriksen and John E. Fossum, 'Post National Integration', in: Erik O. Eriksen and John E. Fossum (eds.), *Democracy in the European Union: Integration Through Deliberation?* (London and New York: Routledge, 2000).

bership of, and participation in, formal and informal structures that provide an opportunity for deliberation on collective goals. This deliberative process 'shapes the identity and interests of citizens in ways that contribute to the formation of a public conception of the common good'.³⁹ Participation in civil society is therefore conceived as a key means of promoting political socialisation, which is to say 'learning to adapt to the political system in which one lives'.⁴⁰

On the one hand, then, civil society could be seen as a means of fostering the development of civic solidarity and political socialisation beyond the ethnic-cultural national demos through deliberating and identifying shared goals. However, by extension, it could also be posited as a mechanism through which society could be more closely connected to structures of governance, since engagement with policy-makers is necessary for the attainment of these goals. Accordingly, Kenneth Armstrong notes that 'the appeal of European Civil Society lies in the hope that as a differentiated sphere of the demos it can provide an intermediating civic sphere to connect society to transnational governance'.⁴¹ Similarly, Deirdre Curtin envisages the development of 'a political public sphere that hosts Europe-wide public communication, and the emergence of a European civil society "interconnected with but with some separate existence from the national public spheres"'.⁴² The two will constitute a non-governmental civic space aiming to 'establish a viable political arena at the level where decisions are actually taken'.⁴³

The final section of this paper seeks to explore the hypothesis that the evolving role of civil society in EU governance could provide one means of enhancing the EU's 'input' legitimacy. This hypothesis is based on three assumptions that posit civil society as a means of overcoming the three structural weaknesses in supranational democracy identified above:

- *Assumption 1*: that by raising awareness about the relevance of EU issues, civil society groups will contribute to the development of a *public space for deliberation*, encouraging their supporters to actively engage in EU decision-making.

39 Cohen, quoted in *ibid.*, p.18.

40 Alex Warleigh 2001, *op. cit.*, p. 621.

41 Kenneth A. Armstrong 2001, *op. cit.*, p. 2.

42 Deirdre Curtin quoted in Nikos Prentoulis 'On the Technology of Collective Identity: Normative Reconstructions of the Concept of EU Citizenship', in: *European Law Journal*, Vol. 7, No. 2, June 2001, p. 205.

43 *Ibid.*

- *Assumption 2*: that the groups themselves will serve as *channels of representation*, through which citizens can influence policy-making.
- *Assumption 3*: that participation in such groups could contribute to the development of a ‘civic demos’ based not on shared history and culture, but on transnational identification around issues that transcend the borders of the Member States.

4. *Criteria for the Assessment of Civil Society’s Potential to Enhance ‘Input’ Legitimacy*

The task of assessing the potential for civil society to enhance input legitimacy is complicated by the fact that we cannot take ‘civil society’ to be one single unit, nor should we have any normative assumptions that each organisation which falls under this banner *should* play such a role in enhancing citizen participation. Indeed, many would argue that this is not their aim. Notwithstanding these observations, there are certain basic criteria to analyse in studying the role civil society can play in developing ‘input’ legitimacy, defined above as the requirement that political choices should be derived from the ‘authentic preferences of citizens’.⁴⁴ The criteria set out below, which build on Alex Warleigh’s article on the ‘Europeanisation of Civil Society’, will serve as a frame of reference for the following case study.

The first of these criteria is a willingness and capacity on the part of civil society organisations to bring the relevance of EU decision-making to the attention of supporters. If citizens are to perceive the value of engaging with the European Union, they must first and foremost be informed about what issues are actually at stake and understand how they can make their views heard in the decision-making process. Civil society organisations are only likely to contribute to the fulfilment of this condition if, firstly, they conceive this to be part of their role, and secondly, they have the time and resources to devote to this process. As Warleigh points out, if civil society organisations are to play this role as ‘agents of political socialisation’ they must not only seek to influence EU policy outcomes, but also ‘educate their supporters about EU policies and structures’.⁴⁵

44 Fritz Scharpf 1997, *op. cit.*, p. 19.

45 Alex Warleigh 2001, *op. cit.*, p. 623.

The second is the involvement of members/supporters in the formulation of policy positions. Raising awareness about the issues to be addressed at EU level is only the first step towards increasing citizens' engagement with the system, for they must also have the opportunity to take part in open debate on these issues, and have access to channels of representation through which they can make their opinions heard. In order to contribute to enhanced 'input' legitimacy in the EU, the internal governance of civil society organisations must therefore be conducive to regular and effective communication, in which officers treat supporters, or members, 'as real interlocutors rather than consumers'.⁴⁶ This is crucial if civil society input into decision-making is indeed to reflect the 'authentic preferences of citizens'.⁴⁷

The third criterion is that civil society organisations must have access to and influence over decision-making. Clearly, the potential for civil society organisations to act as channels of citizen input depends on the degree to which they are able to influence the policies under discussion. Involving supporters/members in the formulation of policy positions will do little to enhance 'input' legitimacy if civil society organisations are not in a position to ensure that their preferences are reflected in eventual policy outcomes.

The final criterion, that of the impact on supporters/members' sense of identification with the EU, relates to the assumption of my hypothesis that membership of civil society organisations could help to foster the emergence of a 'civic demos'. The development of a greater sense of identification with the EU could in fact be seen as the end goal of increased information, deliberation, and involvement. The extent to which the three criteria above are met in our case study should therefore give us an indication of whether or not the assumptions underlying my hypothesis are justified.

5. Case Study: The Involvement of Four NGO 'Families' in the Preparation of the White Paper on Governance

The case study focuses on the participation of one particular sector of civil society - NGOs - in the development and consultation phase of the European Commission's 2001 White Paper on Governance. Like the Convention on the Future of Europe, the White Paper on Governance has at its heart the goal of addressing the perceived shortcomings in the EU's legitimacy. However, while

⁴⁶ *Ibid.*, p. 629.

⁴⁷ Fritz Scharpf 1997, *op.cit.*, p. 19.

the Convention aims to achieve this through *institutional reform*, the White Paper on Governance sought to instigate changes to *internal processes* which could be made within the existing treaties in advance of the 2004 IGC to 'counter the loss of credibility in the eyes of the public'.⁴⁸

A strengthened role for civil society in the policy process was perceived as crucial in the achievement of this goal. Civil Society, states the Commission, 'plays an important role in giving voice to the concerns of citizens'⁴⁹, and is 'a chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest'.⁵⁰ If the outcome of the White Paper was to be taken seriously, it was therefore imperative that such organisations should play an integral part in its development.

The preparation stage was organised into six work areas and twelve interdepartmental working parties⁵¹, each of which were charged with formulating recommendations for the White Paper following wide-ranging external consultations with stakeholders. The consultation process took place over a period of four months, from December 2000 to April 2001, after which the Commission's Governance Team had the task of making the final decisions on what should be included in the White Paper. Throughout the process, reports of the meetings of the working parties, consultations and written positions submitted were made available on the Governance website⁵², to which civil society organisations were encouraged to contribute.

The primary subjects chosen for the case study were four NGO 'families' working at European level: Environmental NGOs, Social NGOs, Development NGOs and Human Rights NGOs. One organisation was interviewed from each of the four NGO families: the European Environmental Bureau (EEB), The Platform of European Social NGOs, the Liaison Committee of Development NGOs and

48 Olivier De Schutter, Notis Lebessis and John Paterson (eds.): *Cahiers of the Forward Studies Unit, European Commission: Governance in the European Union* (Luxembourg: European Communities, 2001).

49 *White Paper 2001, op. cit.*, p. 14.

50 *Ibid.*, p. 15.

51 The subjects investigated by the twelve working groups are as follows: 1a. European Public Space; 1b. European scientific references; 2a. Participation of civil society; 2b. Evaluation and transparency; 2c. Better regulation; 3a. Decentralisation through agencies; 3b. Vertical decentralisation; 4a. convergence of national policies; 4b. TransEuropean networks; 4c. Multi-level governance; 5. EU and world governance; 6. Future of EU policies. Given the limited scope of this paper, our case study focuses on the participation of civil society actors in the context of working group 2a.

52 Available at http://europa.eu.int/comm/governance/index_en.htm.

Amnesty EU Association. In order to ensure a more balanced picture in this discussion, the study also draws on interviews conducted both with members of the Commission's Governance Team and with NGOs which do not form part of the four umbrella families mentioned.

Criterion 1: A willingness and capacity on the part of civil society organisations to bring the relevance of EU decision-making to the attention of their supporters

In terms of internal communication, each of the organisations interviewed had highly developed processes which aimed to keep members up to date with the issues of relevance under discussion in Brussels. However, in all cases information produced in Brussels was targeted at policy officers dealing with EU matters within member organisations, rather than individual supporters, and had a practical rather than pedagogical focus. A typical comment was that 'we do not have direct contact with supporters, but rely on member organisations to bring the issues to their attention'.⁵³ Interviewees stated that it was difficult to assess the extent to which member organisations carried out this task, which varied depending on the country in question.⁵⁴ A further difficulty raised in this context was that the information produced by the NGOs on the White Paper was generally in English, which meant that member organisations would need to translate them before they could be circulated.⁵⁵

Several interviewees cited the lack of interest and understanding of EU affairs on the part of colleagues in member organisations as a barrier to effective communication. While it was not seen as impossible to find a way of communicating the relevance of the issues under discussion, the ability of the organisations to do so effectively was hampered by a lack of time and resources. 'Understaffing,' stated one interviewee, 'limits the time for simplification and communication. Resources are a big problem: UNICE (Union of Industrial Employers in Europe) has a whole desk of people working on social policy, we have one policy officer for the whole office.'⁵⁶

This situation is reflected in the fact that the organisations tended to prioritise the achievement of effective results over the need to raise awareness among

53 Interview with a Senior Policy Officer, European Platform of Social NGOs, on 22 April 2002 in Brussels.

54 Interview with a Senior Policy Officer, Liaison Committee of Development NGOs, on 22 April 2002 in Brussels.

55 Interview European Platform of Social NGOs.

56 *Ibid.*

supporters of the issues at stake. 'While ideally it would be good to get people involved', one officer affirmed, 'time pressures mean that the most effective use of my time is to get on with advocacy. In the end, my role is not to encourage the most participatory governance, but to ensure the best results for the environment'.⁵⁷ Other interviewees took a similar line: 'we are naturally results-oriented, and while supporter input is something we would like to give more attention to, we have little time to do so.'⁵⁸

Criterion 2: Involvement of supporters in the formulation of policy positions

The priority accorded by these organisations to the achievement of effective results is reflected in the formulation of their policy positions. In all the NGOs interviewed, the position papers on the White Paper on Governance were drafted either by individual policy officers or by small working groups in Brussels and circulated to member organisations for comment. The degree of input from member organisations varied according to the specific structure of each NGO. The members of the Social Platform, for instance, are all European NGOs who can contribute a lot of 'in house' expertise to the development of policy.⁵⁹ The members of the EEB, on the other hand, are national organisations who rely on the Brussels secretariat to formulate positions.

In general, however, interviewees repeatedly stressed that the high level of expertise and experience of EU policy processes held by key officers in Brussels means that they are accorded a large degree of independence and are 'more or less left to get on with the job'.⁶⁰ 'EU work', stated one interviewee, 'is largely seen as work for specialists'.⁶¹ Actively seeking to involve supporters in the formulation of policy was generally viewed by interviewees as time-consuming and rather unrealistic, given the degree of knowledge necessary to make an effective contribution.

This is not to say that the policy processes of these organisations are not transparent, nor that they do not welcome input. On the contrary, the adoption of policy positions in all the NGOs interviewed was subject to a highly structured

57 Interview with a Senior Representative of the EBB, on 28 March, 2002 in Brussels.

58 Interview with a Senior Representative of Amnesty EU Association, on 3 April, 2002 in Brussels.

59 Interview European Platform of Social NGOs.

60 It is interesting to note in this context that the Amnesty EU office was even set up as an autonomous office, which does not form part of the 'Amnesty International Secretariat'.

61 Interview Amnesty.

process of approval, with draft positions sent first to member organisations and then generally put to a vote in an elected management committee, or board. The empirical material of this study does seem to suggest, however, that member organisations, not to mention supporters, are happy to leave European policy to the 'Brussels insiders', provided this results in desirable policy outcomes.

The process followed by the EEB in the adoption of its response to the White Paper illustrates this phenomenon. A draft position paper was produced in September 2001 and circulated to all members for comments. In October 2001, a two-day conference on governance was held to provide a forum for discussion. Despite these activities, however, no changes were proposed by member organisations, and the draft was adopted in December with no amendments.⁶²

Criterion 3: Access to and influence over policy-making

In terms of access to policy-makers, all the NGOs interviewed felt that they had been given every opportunity to input into the preparation and consultation stages of the White Paper. The opinions of many of the NGOs involved were explicitly sought by the Commission in the early phases of the White Paper's preparation; the Social Platform, for instance, was invited to meet with the Head of the Governance Team, Jérôme Vignon, on several occasions.⁶³

However, these are all pan-European NGOs who enjoy a well-established relationship with the Commission. Two organisations interviewed which do not form part of the four NGO 'families', the European Citizens' Action Service (ECAS), and Oxfam International, both expressed fears that by focusing on the 'Brussels establishment', the Commission had effectively squeezed out from the direct consultation process many national and local organisations, which tend to be those which provide the closest link with the citizen.⁶⁴

These concerns appear to be indicative of a wider inclination on the part of the Commission to prioritise efficiency over citizen participation. This tendency is illustrated by the comment made by one member of the Governance Team that 'the Commission fears what it would mean to have a more proactive policy of involvement. We simply do not have the resources to deal with all civil society

62 Interview EEB. See also European Environmental Bureau, *A First Response to the Commission's White Paper on Governance*, Brussels 2001, available at http://europa.eu.int/comm/governance/contributions/contrib_eeb_en.pdf.

63 Interview European Platform of Social NGOs.

64 Interview with Oxfam International Brussels Office, on 28 March, 2002 in Brussels and Interview with European Citizen Action Service, on 22 April 2002 in Brussels.

organisations. European level representatives are the only solution - not the best, but the only solution'.⁶⁵

Interviews held with Commission officials in the context of this study suggest that despite the White Paper's rhetoric focusing on *input*-legitimacy, the general perception within the Commission still holds that the way to enhance citizens' support for the EU is by providing policy *outputs* that better meet their needs. 'Perhaps the most effective way to link with the citizen,' stated one member of the Governance Team, 'is by more effective results'.⁶⁶ Another confirmed this perception: 'the issue about bringing in the citizen is for speeches, for the rhetoric. This organisation will never touch the citizen directly'.⁶⁷ Furthermore, it should be noted that although the large NGO 'families' enjoyed close access to the Commission in the preparation of the White Paper, the weight carried by their input in terms of influencing policy is less clear. It is significant that the one key demand of a number of the NGOs in their input to the White Paper, the establishment of a legal basis for the consultation of NGOs, was dismissed out of hand by the Commission, because, 'the political will of the other institutions was not there'.⁶⁸ European NGOs, particularly the Social Platform and the Liaison Committee of Development NGOs, have been lobbying the institutions for a number of years on this issue, with the aim of establishing either a Treaty article or a Council regulation providing a legal base for structured 'civil dialogue'. The fact that these organised, well established European NGOs have been unable to secure backing for this long-held objective is perhaps indicative of the obstacles that stand in the way of civil society organisations becoming a key channel of 'input' legitimacy: since they have no elected authority, they depend on the backing of the institutions in order to push through their demands. Where the preferences of the institutions and the NGOs do not coincide, results are more difficult to achieve.

Criterion 4: Impact on supporters/members' sense of identification with the EU

This question is perhaps the most difficult to assess, and cannot be judged with any degree of certainty on the basis of interviews with NGO officers alone.

65 Interview with a Member of the European Commission Governance Team, on 26 March, 2002 in Brussels.

66 *Ibid.*

67 *Ibid.*

68 Interview with a Representative of the European Commission Working Group on the Consultation and Participation of Civil Society, on 3 April 2002 in Brussels.

Nonetheless, there are certain observations that can be made from the assessment of the three criteria above. If, as was stated in the previous section, a stronger sense of identification with the EU depends in the first instance on greater awareness of and involvement in policy processes, then, judging on the limited basis of this case study alone, it seems unlikely that membership of an NGO would have a significant impact on an individual's sense of identification with the EU. Although it is certainly conceivable that commitment to a range of issues and causes which go way beyond the boundaries of the nation states could lead to new structures of belonging, it involves quite a jump from this recognition to an assertion that such transnational affiliations will evolve towards a *European* civic demos, for what is there to suggest that the boundaries of belonging will stop at the borders of the EU? A commitment to improving the environment, or to Human Rights is arguably more an international than an exclusively European concern.

In order for citizens to relate their sense of affiliation with these concerns to Europe, it would be necessary for them to conceive of the European Union as the arena within which they could actively engage to achieve these concerns. However, the interviews conducted for this study suggest, on the contrary, that the sense of engrained alienation from the European system among citizens currently prevents that from being the case. For example, one interviewee explained that it is very difficult to persuade colleagues in the Member States to take an interest in the work of the Brussels office because the EU is seen as 'far away and fuzzy', and, more worryingly, as having 'negative overtones'.⁶⁹

Conclusion

The findings of this study suggest that it would be optimistic to view civil society as a panacea for the alienation of citizens from EU governance. The empirical material presented here highlights the limitations to the role that the NGOs studied were able to play in this regard. All the NGOs interviewed stated that their primary role was to influence policy by the most effective means possible, which implies a prioritisation of outputs over supporter input. While the involvement of supporters was seen as desirable, the capacity of the NGOs to encourage participation in policy formulation was limited by several factors. Firstly, communication was mediated through national member organisations, whose ability and willingness to bring EU issues to the attention of their supporters is

69 Interview Amnesty.

variable and difficult to measure. Secondly, it appears that neither members nor supporters see themselves as having a role to play in policy formulation: this is considered to be a matter for the specialists in Brussels. Finally, a severe lack of resources hampered the ability of European policy officers to devote the time and effort that would be necessary to enhance the capacity of their supporters to participate effectively in EU policy development. The White Paper on Governance was seen as a particularly difficult subject to raise with supporters.

Although these organisations enjoy close cooperation with EU policy-makers due to their established presence in Brussels, their European offices are distanced from supporters due to the added level of governance. Communication with supporters is therefore mediated through national member organisations, whose ability and willingness to bring EU issues to the attention of their supporters is variable and difficult to measure. This points to an intriguing parallel with the trade-off between citizen participation and system effectiveness identified by Robert Dahl in the first chapter of this article: organisations operating on the European level can achieve policy outcomes beyond the reach of smaller organisations, but to a certain degree at least, will find it more difficult to facilitate individual participation in their activities.

This is not, of course, to suggest that these NGOs do not have a legitimate role to play in European governance. On the contrary, their expertise, competence and representativeness means that they are valued interlocutors with the European Commission, and play an essential role in ensuring that policy outputs reflect the needs of their constituencies. By extension, and contrary to the assumptions of this paper's hypothesis, the case study suggests that these well-established, highly structured organisations contribute rather more to the EU's 'output' than 'input' legitimacy.

It should be noted, however, that this research focused on one section of civil society in one particular instance of policy-making, which cannot be taken as representative of the vast spectrum of organisations grouped together under this heading. Furthermore, if the case study had focused on a different policy area of more direct relevance to supporters, we might expect that the results would have demonstrated a higher level of supporter involvement and interest.

In this context, the participation of the NGO families in the ongoing work of the Convention on the Future of Europe provides an interesting point of comparison. In early 2002, the four NGO families, together with the European Trade

Union Confederation (ETUC), established the 'Civil Society Contact Group', which aimed to ensure that the opportunities for the participation of civil society could be maximised. At the time when the empirical research for this paper was carried out - before the Convention had begun its work - the interviewees expressed confidence that the process offered an ideal opportunity to create a space for debate among supporters around fundamental and constitutional questions of European integration. As one interviewee stated: 'the issues for consideration in the Convention have a potentially enormous impact on people and their basic rights. Our members and supporters are not generally inclined to look at the EU as something they should be involved in, but this is our chance to bring them in, to mobilise them towards a broader focus'.⁷⁰

To a certain extent, the results produced during the first phase of the Convention do bear out this optimism. Civil society actors played a key role in the last-minute addition of a Working Group on 'Social Europe', whose final report recommends that 'the treaty should recognise a certain consultative role for the relevant stakeholders and the civil society'.⁷¹ The outcome of this advocacy could lead to political structures which are more conducive to participatory democracy, providing access to decision-making for grass roots organisations.

However, once again the EU's focus on outcomes must not eclipse the need to include citizens in the deliberative process, to listen and take account of their views. Given that the long-term stability of any political system depends on public support, the fundamental aim of the reform process must be for European citizens to gain a sense of ownership over the resulting polity. Citizens invariably expect that EU governance should adhere to the same principles of democracy that operate at the national level; that is, it must provide an opportunity for citizen inputs, as well as effective policy outputs. Although the nature of the EU presents numerous obstacles to this goal, it is clear that until they are overcome the system will continue to suffer from a critical lack of popular support. The right to participate in the elaboration of decisions, at whatever level this might take place, is still regarded by citizens as a precondition for legitimacy.

⁷⁰ *Ibid.*

⁷¹ Although it has to be noted that the Contact Group did not succeed in inserting a reference to its long-held aim of establishing a treaty article on civil dialogue.

Book Reviews

Jan-Werner Müller (ed.), *Memory and Power in Post-War Europe: Studies in the Presence of the Past*, Cambridge: Cambridge University Press, 2002, 288 pp., £16.95.

It is an obvious but often forgotten truth that identity, understood as the view of oneself and the values and beliefs one cherishes, shapes both domestic politics and foreign policy at least as much as interests. Or more precisely: identity sets the framework in which interests are defined and determines the manner in which they are pursued. A crucial component of identity is history: historical experience and, more importantly, the memory of – or what memory makes of – this experience.

Although it is true, as Jan-Werner Müller remarks in his introduction, that recent years have seen a multitude of studies on history and memory, this book attempts to go beyond conventional accounts of how memories are shaped and reshaped in political communities. Its objective is ‘to examine carefully the role of memory in past and present politics’ (p. 25), to discover the ‘nexus between memory and power’:

‘The essays collected here investigate how memory is personally reworked, officially recast and often violently re-instilled, especially after wars. They examine the ways in which memory shapes present power constellations, in particular the way in which collective memory constrains, but also enables policies’ (p. 2).

The question thus is how political communities, nations or groups, deal with their past. Obviously, this is of greatest interest when dealing with a ‘difficult’

past, as is usually the case after a war, a revolution or a dictatorship. The immediate period afterwards is marked by purposeful forgetfulness, by 'instant amnesia' and 'selective memory'. Both 'collective memory' and personal memories are 'reconfigured', some things are forgotten and new memories are invoked.

The volume concentrates on two periods, both 'post-war', as it were: the period after the Second World War and the period after the end of the Cold War. While after 1945 the situation both in Western and in Eastern Europe was characterised by large-scale amnesia, the building of the myth of resistance and the convenience of blaming everything on the Germans, the situation after 1989 was more complex. Not only was it more difficult to blame everything on the Soviets, but there were multiple memories – 1918-1921, 1938, 1939, 1941, 1945, 1953, 1956, 1968 – and different groups had different sets of memories. Nevertheless, here too there was a tendency to forget the Cold War quickly.

Although the book is divided into two parts, one dealing with 'memory and power in domestic affairs', the other with 'myth, memory and analogy in foreign policy', it is in fact difficult to make such a clear distinction. Domestic and foreign policy, especially as regards memory, are inextricably intertwined. References to historical experience can be used to shore up social cohesion, by forgetting or creating myths. Wherever national identity was in question in Eastern Europe after 1989, memory, 'through reconfiguring the past' (p. 18), became the key to national recovery. Indeed, in many cases the search for a 'usable past' as a 'founding myth' for nation-building is still going on. On the other hand, recalling a more glorious past may have both domestic and foreign policy purposes. In the case of France, "'self-commemorative" history has ... often been instrumentalised to legitimate the national state and its glory' (p. 17). Russia today tends to refer to its previous status as something to be soon regained and to claim better treatment. Memory referring to previous injustices can be utilised to legitimate present claims. A widely found practice is the presentation of a 'narrative of victimisation, which then becomes an incentive for aggression' (most recently Slobodan Milosevic's Kosovo Polye speech in 1987, p. 21). Most frequent, however, is the use of historical analogy by groups and more often by individuals, correctly or incorrectly, and Müller critically points out that it may be 'a resort to analogy instead of argument as a default for legitimating policies' (p. 8). Finally, there is the 'policy of regret' which influences foreign (and domestic) behaviour, most clearly characterised by Germany after 1945.

Collective memory is an ongoing process and consequently can be influenced by political leaders, journalists or historians. This is done, and while it often has negative consequences this need not be so. Forgetting can ensure social peace and help in building a liberal order, and it can make way for new and more positive developments (such as European integration). A worthwhile question is what effect different and divided memories will have on the present-day growing together of Europe. Ultimately, of course, 'forgetting' and 'reconfiguring' will not do. Confrontation with historical truths cannot be avoided in an open society, for 'without facing the past, there can be no civic trust' (p. 34) nor, for that matter, can the lessons of history be learned.

All of these issues are carefully traced: in comparative chapters (Tony Judt and Timothy Garton Ash) and in individual chapters dealing with Germany (Thomas Berger, Jeffrey Herf, Daniel Levy, Julian Dierkes), Italy (Ilaria Poggiolini) and former Yugoslavia (Ilana Bet-El), with Poland, Lithuania and Ukraine (Timothy Snyder), France (Robert Gildea), Britain (Anne Deighton), Bosnia (Monroe Price) and with Europe's post-Cold War remembrance of Russia (Iver Neumann). While not every chapter examines the relationship between memory and power in detail, every one of them makes for fascinating reading. The excellent introduction by the editor gives an overall evaluation and pulls together the various strains of analysis. This book is essential reading for any student of Europe's present and future development.

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Mireille Delmas-Marty, *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism*, Cambridge: Cambridge University Press, 2002, 243 pp., £40 (traduit du français par Naomi Norberg).

Towards a Truly Common Law part du constat selon lequel la profusion de normes juridiques et le manque de précision de leurs limites a bouleversé notre perception d'un « ordre juridique » à proprement parler. En outre, cette profusion a rendu claire la nécessité d'avoir un droit commun dans tous les sens du terme, c'est-à-dire accessible à tous, construit sur la base d'une vérité commune, etc. Dans cette veine, Mireille Delmas-Marty souligne l'importance d'unifier,

sinon d'harmoniser, les différents systèmes juridiques et d'identifier un « langage commun de l'Humanité ».

Mentionnons que ce livre est une traduction de l'ouvrage *Vers un droit commun*, publié en 1994 aux Editions du Seuil à Paris. Cela dit, même si l'œuvre n'est pas nouvelle en soi, elle est toujours pertinente. En effet, le constat qu'elle dresse des systèmes juridiques actuels et les critiques qu'elle leur adresse sont toujours fondés. De surcroît, l'« appel » lancé par l'auteur n'a rien perdu de son sens.

La préface du livre a deux mérites. Elle évite, d'une part, cette impression de « déjà vu » reliée à la relecture d'un livre ou à la lecture de sa traduction. D'autre part, l'on constate clairement, tout au long de celle-ci, que, neuf ans plus tard, le thème de cet ouvrage et les idées qui y sont véhiculées sont toujours d'actualité et percutants. Dans cette préface, l'auteur effectue un « état des lieux », en expliquant que, depuis la parution de la version francophone de ce livre, le mouvement d'extension du droit hors des frontières nationales s'est confirmé et est devenu plus spécifique. Mireille Delmas-Marty appuie ses propos en citant, avec raison, les répercussions de l'affaire *Pinochet*, la reprise d'un *jus commune* en Europe (illustrée, entre autres, par l'idée d'un code pénal européen, par l'initiative du *Corpus juris*, etc.), l'émergence graduelle d'un droit commun du commerce international et d'une justice pénale internationale, etc.

Afin de démontrer l'importance d'un droit commun, l'auteur divise son analyse en trois parties. Elle souligne d'abord la nécessité de reconstruire le paysage juridique. Elle énonce ensuite l'importance de construire ce nouveau paysage sur la base de la multiplicité. Elle en vient, enfin, au cœur de ce livre: utiliser le pluralisme et construire sur la base de celui-ci ainsi que sur la complexité des différents systèmes juridiques pour réinventer un droit réellement commun. Chacune de ces parties est truffée d'exemples tirés, entre autres, du droit français, européen, et du système de la Convention européenne des droits de l'homme.

Dans la première partie du livre, l'auteur fait état, avec raison, des transformations que les droits nationaux ont subies. Elle indique que les « points de repère » de plusieurs normes juridiques semblent avoir disparu car, malgré une augmentation du nombre de textes juridiques ou à cause de ce phénomène, le contenu, les limites et/ou la fonction intrinsèque de ces normes sont devenus moins précis (l'auteur analyse, par exemple, le contenu réel des concepts de culpabilité et de responsabilité). Dans ce paysage normatif désormais confus, les règles juridiques émanent de différentes sources, s'orientent dans n'importe quelle

direction et surgissent à n'importe quel moment, d'où la nécessité de redessiner les contours de ce paysage pour que la communication d'un système juridique à un autre soit possible. Ceci peut être réalisé en construisant sur la base de la multiplicité.

Dans la seconde partie de cet ouvrage, Mireille Delmas-Marty recherche une logique qui permette de bâtir sur la base de la multiplicité. D'après elle, ceci ne requiert pas l'abandon des méthodes légales traditionnelles, mais plutôt leur combinaison avec d'autres méthodes, afin de mieux maîtriser la réalité diverse et changeante. L'auteur explique, à travers les sous-chapitres « prescrire », « interpréter » et « légitimer », le besoin de règles juridiques non ambiguës, d'une entente sur les termes utilisés afin d'éviter le risque d'arbitraire, de localiser des principes-guides pour réconcilier les différents systèmes juridiques, etc. L'auteur souligne en outre la nécessité de trouver une « nouvelle » logique (sans toutefois accroître l'état de confusion actuel), d'identifier des lois d'interprétation pour le raisonnement juridique et de déterminer les critères d'interprétation. Selon Mireille Delmas-Marty, il faut rechercher les points de compatibilité entre les différents systèmes juridiques. Elle mentionne, à ce propos, que les droits de l'homme pourraient lancer un processus de restructuration car, malgré leur hétérogénéité, ils proposent les premiers jalons d'un cadre juridique commun à différentes catégories et systèmes juridiques.

La troisième et dernière partie de ce livre porte sur la construction, sur la base d'un pluralisme ordonné et sur la complexité des systèmes légaux, d'un droit commun réinventé. L'auteur montre, à travers le « défi pour les sociétés spécialistes », « l'Europe comme laboratoire » (l'Europe constitue un tel laboratoire car elle est confrontée à des normes tant nationales que supranationales et parce que l'esprit mercantile y côtoie les droits de l'homme en émergence) et les « enjeux mondiaux », que nous sommes en train de réinventer un « droit commun de l'Humanité ».

Towards a Truly Common Law est un constat critique du monde juridique actuel et de la nécessité urgente de reconstruire, dans ce contexte, les paysages légaux nationaux et internationaux. L'auteur nous y invite à repenser le droit afin de nous diriger vers une communauté juridique davantage globale, vers un droit dit « commun ». Si cette nécessité n'est pas nouvelle, nous dit-on (l'auteur fait référence à l'appel en Europe pour un *jus commune* des 12^e au 16^e siècles, au droit romain, aux diverses codifications continentales, etc.), le besoin d'un tel droit commun se fait désormais des plus pressant.

Si le livre contient, par moments, beaucoup d'exemples et que certaines idées qui y sont développées sont parfois théoriques, il sait néanmoins et sans conteste conserver l'attention du lecteur jusqu'à la fin. Ce livre est passionnant et rafraîchissant. Il invite à une profonde réflexion sur la nature et la fonction du droit. Il témoigne de l'important mouvement, déjà amorcé, de se diriger vers un droit commun, lequel se concrétise graduellement depuis quelques années. Déjà avant-gardiste en 1994, ce livre le demeure en 2003. En effet, bâtir un droit commun constitue un défi constant pour la pensée juridique. Sa construction doit être accompagnée d'une réelle volonté humaine. En ce sens, malgré des indices témoignant d'une prise de conscience et des « progrès » réalisés depuis une décennie, il reste encore beaucoup à faire pour atteindre l'objectif – crucial – d'un droit réellement commun.

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Tanja Börzel, *States and Regions in the European Union: Institutional Adaptation in Germany and Spain*, Cambridge: Cambridge University Press, 2002, 284 pp., £15.95.

The first task when reading any work on Europeanisation is to find the author's definition of that key term itself. 'Europeanisation' is a term that has the knack of meaning all things to all people. For Tanja Börzel, Europeanisation is quite emphatically the 'process by which domestic policy areas become increasingly subject to European policy-making' (p. 6) rather than the latter's effect on the domestic arena, as it is for some scholars. Therefore, hers is less a study of Europeanisation, than of the *effects* of Europeanisation.

This apparent nicety of definition is actually a judicious choice on the author's part. It makes clear to the reader, as Börzel intends, that hers is a top-down study: once competencies have been brought upward to the European level, the question arises of what pressures for change are mirrored back down on the national actors. This is what the author sets out to examine, her particular concern being the impact of Europeanisation in Member States with competency-strong regional governments. Germany and Spain are chosen as the objects of

her study, the one state being a model of federalism, and the other having a more asymmetrical and conflictual model of centre-region relations. Evaluating the effects of Europeanisation in the two will thus provide revelatory contrasts in the course of the study.

First, however, Börzel develops the theoretical framework for her study, which can be considered the book's most significant asset. She presents two traditional approaches: 'resource dependency', and 'institutional adaptation'. Resource dependency is linked to Rational Choice Institutionalism, while institutional adaptation theory is linked to Sociological Institutionalism. Both are theories which explain how institutions affect an actor's behaviour, but they involve distinct causal explanations. Börzel, however, chooses to combine these two theories rather than test them one against the other. She takes theoretical assumptions from each and melds them into what she chooses to term a 'historical institutionalist approach' to evaluating the domestic impact of Europeanisation, arguing that 'both the instrumental and the cultural dimension of institutions have to be taken into account in order to understand Europeanisation and its domestic impact' (p. 13).

One can applaud the author's choice in this respect, considering that the doctrinal quarrels between the various branches of New Institutionalism are largely counterproductive. Mixing and matching the pertinent elements of each branch of institutionalist theory to better examine the particular matter at hand, as Börzel does, seems to be the course of action capable of making the most out of research and producing more multi-faceted conclusions. Purists who prefer to see the various branches of institutionalism and their underlying assumptions kept separate may, however, disagree.

Having picked from various theories and approaches the tools most adapted to examining domestic institutional adaptation in the context of Europeanisation, Börzel presents the series of propositions which will be empirically tested in the book's subsequent parts. Together, these form this work's contribution to the academic study of Europeanisation: the newly-minted 'Institutional Dependency Model', or IDM. This model consists of a series of theoretical proposals which cover the questions of why, when and how Europeanisation affects domestic institutions. Börzel's IDM is presented as a coherent whole, meaning that it can easily be applied in subsequent studies by other scholars. Indeed, drawing as it does on such a wide range of theoretical approaches, it is an extremely complete model. Inevitably, it is also very complex and lacks the immediate appeal of the more straightforward approaches which were pieced together to build it.

This set of theoretical proposals is empirically tested through the examples of institutional adaptation in Germany and Spain. These two case studies present a good contrast which ably tests the range of the IDM, evaluating contrasting strategies by regional governments for recovering competencies lost to the European level. The study answers questions ranging from why certain strategies were chosen, to what effects they had.

It could have stopped there: a theoretical model was proposed, then tested. However, Börzel chooses to go deeper into empirically testing her proposals, and presents two further case studies. Once again, the scene is first Germany, then Spain, and this time the author presents a policy study (to wit: of environmental policy-making) which serves to complete the picture painted in the more general chapters on institutional adaptation to Europeanisation in each country.

Like most studies of the multi-headed hydra which is 'Europeanisation', this book adds a new theoretical dimension to that particular academic field. The complete and rather complex theoretical framework developed and tested by the author in this book means that *States and Regions in the European Union* is recommended to those interested in the growing body of academic literature on Europeanisation, and also to researchers keen to grasp – and perhaps themselves employ – a multifaceted theoretical tool for evaluating institutional adaptation to Europeanisation in multi-level polities.

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Martin Kohli and Mojca Novak (eds.), *Will Europe Work? Integration, Employment and the Social Order*, London and New York: Routledge, 2001, 201 pp., £65.

This book is the result of the 4th European Sociological Association Conference in Amsterdam in August 1999. All but one of the chapters are revised contributions to this conference, the editors aiming 'to touch upon the critical points for establishing whether Europe will work' (p. 10). The book is organised in three parts, focused on what the editors call the three dimensions of the central question, 'Will Europe work?'

The first part concerns the future of European work and welfare societies. The question is asked how current developments have changed the conditions on which the old European model of employment and social protection was based? What, furthermore, is the outline of a possible new European social model? Wolfgang Streeck states that European integration has vastly increased the competitiveness of the economy (p. 21). Social solidarity will, he claims:

‘remain embedded primarily in national institutions, of social policy and of industrial relations, which are in turn embedded in a competitive international market and constrained by supranational institutions devoted to safeguarding that market’ (p. 23).

He goes on to outline the main contours of an emerging new ‘European social model’. In his analysis of challenges to the European welfare states, Joakim Palme points to the ‘paradox of redistribution: the more the benefits are targeted to the poor in a country the smaller the reduction in inequality achieved by the welfare state’ (p. 45). Palme concludes that ‘Social Europe’ will only work if we are capable of designing the programmes and policies properly (p. 50). Walter Korpi attempts to integrate gender and class into an analysis of different dimensions of inequality in different types of welfare states, while Maria Petmesidou analyses employment and labour market policies in Southern Europe.

The second part focuses on questions of *identity, citizenship and borders* in Europe. Liam O’Dowd argues that ‘sociology has generally tended to either ‘normalize’ or discount state borders’ (p. 95). Historically, the construction of borders in Europe relied heavily on wars and other forms of coercion, whereas current candidate states vote to join the EU and are neither coerced nor invaded. Risto Heiskala discusses the question of whether a unified Europe exists in terms of culture, politics and economy. He describes factors bringing forth both European integration and fragmentation at the same time, and goes on to discuss the relationship between Europe and the rest of the world. In her contribution entitled ‘Contradictory Trends in Constructing European Citizenship’, Chiara Saraceno examines the topic from a gender perspective.

The third part of the book addresses institutions at the European level such as language (Abram de Swaan) and a European public sphere (Jürgen Gerhards), and reflections on the capacity of sociology to conceptualise developments in Europe. Gerhards argues that the economic and the political systems both show transnationalisation processes that are primarily Europeanisation processes,

whereas the public sphere has developed in a different way and remains nationally bound. De Swaan argues that despite there being eleven official languages of the European Union, Europeans will gravitate towards English. Gösta Esping-Anderson advocates 'an empiricism based on weak theory or, better, loose hypotheses' (p. 166). He proposes empirical research on a well-known and fundamental sociological institution like the family. The last chapter of the book by Dominique Schnapper is titled 'European Sociology or a Sociology of Europeans' (p. 182). Schnapper sees a tension in sociological research between the national dimension (research on social problems in a particular society) and sociology's aspiration towards rational universal knowledge (pp.184-185). The example of inter-ethnic relations is illustrating this tension. Each national intellectual tradition has its own concept of the 'Other'.

'Since all sociology has national characteristics, it should come as no surprise that a European Association of Sociology has formed at the same time as the European Union is being built. The same issues that are confronted in the political construction of Europe are to be found within European sociology: the link with the United States and the safeguarding of national traditions' (p. 191).

'Recognizing the diversity of intellectual traditions is also to address the issue of the universality of sociological understanding. The European Association of Sociology can be more and something better than simply a regional coming together of sociologists. It can become a place where the fundamental issues of our discipline are discussed and where we can examine its roots in our respective national societies and its universality. It is the national intellectual traditions which give meaning and value to comparative studies' (p. 193).

Several authors indicate that the contribution of sociology to the conceptualisation and analysis of processes of European integration has so far been rather limited and of recent date.

'Will Europe Work?' offers the interested reader a view on the aspirations of sociologists in this respect. Most chapters deal with a rather abstract level. I would have preferred more contributions dealing with particular policy fields and empirical research in order to connect abstract theoretical concepts with concrete empirical data.

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Liesbet Hooghe, *The European Commission and the Integration of Europe: Images of Governance*, Cambridge: Cambridge University Press, 2001, 279 pp., £15.95.

In this book, Liesbet Hooghe contradicts the conventional assumption of many scholars that the European Commission is a unitary actor, in the sense that it and its employees are united in favour of deeper European integration. Based on 137 in-depth interviews and 106 closed-ended questionnaires with top officials of the Commission, the author tries to both determine and explain their preferences. She covers in great detail all the different aspects of the methodology used in her research and the different steps leading towards the final conclusion. Hooghe demonstrates that the leadership of the Commission holds diverse, and not unitary, views on what kind of European Union it wants. On a more abstract level, she tries to comprehend the forces that shape human preferences by testing the explanatory power of experiences outside and inside the Commission and both the sociological paradigm (that stresses how values shape preferences) and the 'economic paradigm' (that emphasises self-interested utility).

The first section of the book introduces the theoretical framework, investigating preference formation and deriving testable hypotheses. The political discussion about the development of the Commission in the EU is summarized in four enduring questions, which are the main focus of the research. Thus the aim is to find the Commission's top officials' opinions on the following questions: How should authority be structured across territorial layers of government (intergovernmentalism versus supranationalism)? What should the scope of public authority in the economy be (liberal market model versus regulated capitalism)? Should the European Commission be an administrative-managerial body or an executive-initiating one? And finally there is the question as to whether promotions in the Commission should accommodate national diversity or purely meritocratic principles.

The second chapter is more methodological in nature as it introduces the political context of the research, the sampling, the different bureaucratic cultures within the Commission, the interviewing techniques and the people at the centre of this inquiry. The third chapter examines where the Commission officials stand on the basic issues of European governance. Hooghe seeks to validate her understanding of the officials' preferences with the help of a factor analysis. The analysis clearly shows that the officials' preferences are very divergent for each of the four dimensions investigated. The following chapters then try to explain

this divergence of preferences for each individual dimension of EU governance and to determine which variables are the most explanatory.

Clear patterns emerge from this analysis. First, contexts *external* to the Commission are a more decisive factor for preference-formation than those *within* the Commission. Political party, country of origin and prior work environment in particular leave a deeper imprint on the Commission officials' basic preferences than their location in a particular directorate-general or *cabinet*. Second, top officials are neither purely utility-maximizing calculators nor products of socialisation, but are in fact characterised by both. However, the causal weight of socialisation and utility vary markedly depending on the issue. Third, there is a difference between the preferences concerning general EU governance as oppose to those regarding more institutional and organisational issues. The more encompassing and basic an issue is for the EU polity, the more likely it is that officials' preferences are consistent with their internal values (with party identification and territorial identities or practices as their strongest predictors). However, the more specific and delineated an issue for the EU polity, the more utility maximisation prevails. This is obviously the case when the official's position or future career is connected with a fundamental choice on EU governance.

This study was conducted by the author in 1998 when she was a researcher at the European University Institute in Florence. The book basically goes over the same research by adding extensive explanations about the concepts, theories and methodology used. Unfortunately, the reader of the book may not always experience this additional information as very relevant for this particular research. As related to the topic as these additions may be, they do not always contribute to a better understanding of the different steps of the research and may make the reader lose focus. This obviously does not question the relevance of the research findings as such. For this reason this book can be recommended to the reader who has been intrigued by the research findings as described in the 1998 working paper and who would like to follow the different theoretical and methodological steps taken in this book-length study.

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News from the College of Europe

New Rector

Following the decision of the Administrative Council on 22 November 2002, **Professor Paul Demaret** has been appointed as the new Rector of the College of Europe, with effect from 1 February 2003. This date marked the end of Robert Picht's tenure as Rector *ad interim*, following the sad death of Rector Piet Akkermans in June 2002.

Paul Demaret is Professor of Law at the University of Liège, where he holds the Jean Monnet Chair in European Economic Law, and has been the Director of Legal Studies at the College of Europe, Bruges, since 1981 as well as a visiting professor at numerous institutions, including the University of Peking, China. He holds a 'Docteur en droit' from the University of Liège, an LL.M. from Columbia University, and a J.S.D. from U.C. Berkeley. Professor Demaret's academic interests are principally in the field of European Community law and international trade law, and he served on two WTO panels between 1998 and 2000. In his spare time, Professor Demaret is a passionate ornithologist.

Keynote Speeches

- **Mr Erhard BUSEK**

Special Coordinator of the EU Stability Pact for South Eastern Europe
Opening Ceremony of the 11th Academic Year,
College of Europe, Warsaw
9 September 2002, Warsaw

- **M. Valéry GISCARD D'ESTAING**

Président de la Convention européenne et ancien Président de la République française
La cérémonie d'ouverture de la 53ième année académique du
Collège d'Europe, Bruges
2 octobre 2002, Bruges
<http://www.coleurop.be/pdf/OpenSpeechValeryGis.pdf>

- **S.E. M. Carlo Azeglio CIAMPI**
 Président de la République d'Italie
L'identité et l'unité de l'Europe
 16 octobre 2002, Bruges
<http://www.coleurop.be/pdf/SpeechItalianPres.pdf>
- **M. Guy VERHOFSTADT**
 Premier Ministre de la Belgique
Montesquieu et l'Union européenne
 18 novembre 2002, Bruges
<http://www.coleurop.be/pdf/VerhofstadtEuropacollege18112002Eng.pdf>
<http://www.coleurop.be/pdf/VerhofstadtEuropacollege18112002Fr.pdf>
- **Dr. Bronislaw GEREMEK**
 Academic Chair of European Civilisation at the College of Europe
 Warsaw, Former Minister of Foreign Affairs of the Republic of Poland
 The first 'Piet Akkermans Memorial Lecture':
Perspectives de l'Union élargie: dimensions sociales et culturelles
 22 November 2002, Bruges
- **Dr. Janez POTOČNIK**
 Slovenian Minister of EU Affairs
On the Road to the European Union: After the Conclusion of Negotiations
 7 February 2003, Bruges
- **Mr Franci BUT**
 Slovenian Minister of Agriculture, Forestry and Food
Slovenian Agriculture and European Integration
 7 February 2003, Bruges
- **Mr Tonino PICULA**
 Croatian Minister of Foreign Affairs
Croatia and EU Enlargement
 27 February 2003, Bruges
- **Mr Anders Fogh RASMUSSEN**
 Prime Minister of Denmark
The Danish View-Point on the Future of Europe
 28 February 2003, Warsaw

Conferences

- **September 11th – One Year After**
With H.E. Christopher HILL, US Ambassador to Poland, and Professor Daniel ROTFIELD, Deputy Foreign Minister of Poland
12 September 2002, Warsaw
- **L'Europe pénale: réelle progression ou stagnation?**
Conférence-débat organisée par l'Association des anciens du Collège d'Europe. Orateurs invités: M. Gilles DE KERCHOVE, M. Jules MESSINNE, Mme. Christine VAN DEN WYNGAERT et M. Martin WASMEIER, sous la présidence de M. Serge BRAMMERTZ
30 septembre 2002, Bruxelles
- **Conférence des anciens du Collège d'Europe: Le futur de la Commission européenne**
Discours de présentation par M. Neil KINNOCK, membre de la Commission européenne.
Parmi les orateurs: M. Georges BERTHU, M. Andrea BONETTI, M. Jean-Luc DEHAENE, Mme. Odile QUINTIN, M. Jo LEINEN, M. Robert TOULEMON et M. Raymond VAN ERMEN
15 octobre 2002, Bruxelles
- **The EU Northern Dimension: Challenges of Enlargement**
Conference organised by the Scandinavian students of the College of Europe, with speakers including:
Mr Jaroslaw PIETRAS, Dr. Boleslaw KOSCIUKIEWICZ, H.E. Thomas PALME, Mr Tomasz PIEKAREC and Mr John O'ROURKE
10 January 2003, Warsaw
- **Accountancy and Europe**
Organised in cooperation with the Institute of Chartered Accountants in England and Wales
26 February 2003, Bruges
- **Panel Discussion on the Convention**
With Heather GRABBE, John HONTELEZ, François LAMOUREUX and Joachim FRITZ-VANHAMME
1 April 2003, Bruges

- ***The Iraqi Crisis: What Consequences for CFSP?***
Organised by students of the Geopolitical Society of the College of Europe, with speakers including Mr Bruce BACH, Dr. Simon DUKE, Dr. Christoph HEUSGEN and Dr. Peter VAN HAM
2 April 2003, Bruges
 - ***La Pologne vers une Europe unique 1989-2003***
Conférence organisée en collaboration avec l'Université Catholique de Louvain-la-Neuve
11-12 avril 2003, Varsovie
 - ***The Legitimacy of the Political Dimension of the European Integration Process: à la lumière des travaux de la Convention et des projets du traité constitutionnel pour l'UE***
Conference and debate with Prof. Bronislaw GEREMEK, Prof. Gilles ANDRÉANI and Dr. Simon HIX
16 April 2003, Warsaw
 - ***Série de conférences sur les dix pays candidats et l'élargissement de l'Union Européenne***
En coopération avec l'Office de l'harmonisation dans le marché intérieur à Alicante
14 janvier – 9 décembre 2003, Alicante
 - ***L'avenir de l'Europe entre le national et l'europpéen***
Conférence internationale de la Chaire de civilisation européenne
Parmi les orateurs: M. le Président Aleksander KWASNIEWSKI, Timothy GARTON ASH, Bronislaw GEREMEK et Elemer HANKISS
11-12 mai 2003, Varsovie
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Seminars

- ***Seminar for Officials of the Polish Office for Competition and Consumer Protection (OCCP)***
2 – 13 December 2002 and 9-17 January 2003, Bruges

- ***Federalism and Relations between Europe, Mexico and Latin America***
 In co-operation with the Mexican Mission to the European Union
 17 January 2003, Bruges
<http://www.coleurop.be/seminars/Programme%20Federalism.%20English.15jan03.pdf>
- ***The EU and the World Bank: a Strategic Partnership in the Fight Against Poverty***
 In co-operation with the World Bank
 24-25 January 2003, Bruges
- ***Training Programme on EU Affairs***
 For students of the Graduate School for Political Management (GSPM), George Washington University
 29 June -12 July 2003, Bruges
- ***Annual Postgraduate Course for Railway Staff***
 Competitiveness of the European Railways
 30 June - 11 July 2003, Bruges
- ***10th Annual Intensive Seminar on the European Union***
 30 June -18 July 2003, Bruges
- ***9th Summer Academy of European Business Law***
 In co-operation with the European Association of Lawyers and the Madariaga Foundation
 6-9 July 2003
www.aea-eal.org and www.madariaga.coleurop.be
- ***Sankt-Gallen University Master's Programme of European and International Business Law***
 In co-operation with the Universität St. Gallen – Hochschule für Wirtschafts-, Rechts- und Sozialwissenschaften (HSG), Switzerland
 7–13 July 2003
<http://www.weiterbildung.unisg.ch>

- **Bruges Colloquim 2003**

In co-operation with the International Committee of the Red Cross (ICRC, Brussels)

25-26 October 2003, Bruges

Guest Lectures

- ***From Trade-Led to Monetary-Led Regionalism: Why Asia in the 21st Century will be Different to Western Europe in the 20th Century***

Dr. Richard HIGGOTT,

Director and Professor of International Political Economy, Centre for the Study of Globalisation and Regionalisation, University of Warwick
The First UNU/CRIS Annual Lecture

14 October 2002, Bruges

- ***Comprendre la Belgique: dimensions politiques, institutionnelles et sociétales***

M. Pierre-Yves MONETTE,

Médiateur fédéral belge

30 octobre 2002, Bruges

- ***Droit d'ingérence: un enjeu pour l'Europe***

M. Bernard KOUCHNER,

Fondateur et Président de *Médecins Sans Frontières* et ancien représentant spécial de l'ONU au Kosovo

14 novembre 2002, Varsovie

- ***The Convention on the Future of Europe***

Mr Klaus HÄNSCH, MEP

Member of the European Convention

14 November 2002, Warsaw

- ***Polish-German Reconciliation as a Factor Shaping Post-Copenhagen Europe***
Rev. Markus MECKEL,
Member of the German Bundestag Committee for Foreign Relations
9 January 2003, Warsaw
- ***Economic Governance in the Enlarged Europe***
Prof. André SAPIR,
Professor of Economics, Université Libre de Bruxelles
20 January 2003, Bruges
- ***L'évaluation de Bruges: ville européenne de la culture***
M. Hugo DE GREEF,
Coordinateur de Bruges 2002
11 février 2003, Bruges
- ***Convention européenne: l'heure des décisions***
M. Alain LAMASSOURE,
Ancien ministre délégué aux affaires européennes;
Député au Parlement européen; Membre de la Convention européenne
25 février 2003, Bruges
- ***Bouddhisme, hindouisme et les civilisations asiatiques***
Prof. Krzysztof BYRSKI,
Université de Varsovie
3 mars 2003, Varsovie
- ***The Role and Place of Ukraine in European Construction***
Mr Borys TARASYUK,
Chairman of the Parliamentary Committee on European Integration,
Kiev; former Minister of Foreign Affairs of Ukraine
10 March 2003, Warsaw
- ***Les Juifs dans la culture européenne***
Prof. Hanna ZAREMSKA,
Université de Varsovie
13 mars 2003, Varsovie

Workshops

- **International Negotiation**

Scott Ratzan, Vice President Government Affairs, Europe,
Johnson & Johnson and Angela O'Neill, Director of Communications,
College of Europe
28-29 September 2002, Bruges

- **Demystifying the Reality; Demonstrating the Democratic Necessity**

Seminar on lobbying held in association with Hill and Knowlton,
Brussels
7-8 February 2003, Bruges

Staff News

The College of Europe is pleased to welcome the following new members of staff:

- **Robert DRESEN**

Promotion Simon Stévin
Project Manager
Development Office

- **Anja FIEDLER**

Promotion Simon Stévin
Teaching Assistant
Department of European Political and Administrative Studies

- **Yifat PUD**

Research Assistant
Department of European Economic Studies

- **Eva Maria TROYA BLANCO**

Promotion Simon Stévin
Project Manager
Development Office

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A Newsletter for a dynamic
College community

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- ✓ Featuring articles and letters from the College of Europe's campuses in Bruges and Warsaw, the Alumni Association and the Madariaga Foundation
- ✓ Intended for the extended community of the College and all those interested in the work and mission of the College of Europe; the Alumni Association; the Madariaga Foundation

✉ Contact: College of Europe - hherpoel@coleurop.be
Alumni Association - adraime@coleurop.be



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