

From the Chair

Liesbet Hooghe

EUSA Conference: Can big be beautiful?

IT IS AN HONOR TO SERVE as Chair of the European Union Studies Association for the next two years. I am very much aware that my predecessor, John Keeler has strengthened the association over the past two years. He steered EUSA through successful negotiations with the University of Pittsburgh. Pittsburgh houses our administrative office, and co-pays the salary of EUSA's executive director, Joe Figliulo.

Joe's multifaceted talents came into their own at the Montreal conference which he organized with humor, grace and promptness. EUSA is also grateful to the European Commission, which provided financial support for the conference.

Thanks also to the three members of the executive committee whose terms have just ended: Sophie Meunier, Virginie Giraudon, and Grainne de Burca. Each brought considerable wit and conviction to the excom. Amy Verdun, Frank Schimmelfennig, and I are now joined by Neil Fligstein (vice-Chair), Erik Jones, Dan Kelemen, and Craig Parsons. Craig has agreed to become editor of the EUSA Newsletter Forum Section from this Winter issue onward. Amy Verdun takes over as Secretary, and Frank Schimmelfennig as Treasurer. Andy Smith continues as the book reviews editor of the EUSA Newsletter.

I am writing this letter when the tenth conference in Montreal—the first one outside the United States—is still fresh in memory. I would like to draw some (personal) lessons as well as look ahead to our next conference in 2009.

The Montreal conference was the largest ever. Six hundred fifty individuals attended 120 panels with 500 papers. The conference was one third larger than Austin in 2005. This was driven by a steep increase in applications: 400 paper proposals compared to 250, and 105 panel proposals compared to 55 for Austin—about a doubling. To meet this demand, the program committee guided by its chair, Wade Jacoby, increased the number of simultaneous panels from eight to ten, and placed at least four papers in each panel. The ac-

ceptance rate for papers was 57 percent, and for panels 71 percent.

More panels gave the conference greater depth and breadth. I think it is fair to say that EUSA is the most diverse, multidisciplinary intellectual gathering on EU studies. One can get an idea of this by looking at the diversity of panels at the conference across twelve themes (these are from the list that EUSA uses to ask you to describe your intellectual interests when you sign up as member).

EUSA Montreal – panel distribution by topic

Democracy	7
Economics, political economy	13
Enlargement	11
Europeanization	6
External Relations	20
Governance	15
Institutions	12
Law, courts	3
Parties, interest groups, lobbying	7
Public policy	13
Theories of Integration	8
Voting, public opinion	3

*two unclassified teaching panels

This was the first conference where we asked you to submit your paper online. This will cost our association \$2000 in lost paper room sales, but makes access to the conference open to (younger) scholars who could not come to the meeting. We are grateful to the Network of European Union Centers of Excellence (EUCE), based at the University of North Carolina in Chapel Hill, for financing, uploading and maintaining the website: <http://www.unc.edu/euce>. The papers will remain accessible there until six months before the next conference, at which point they will be transferred to the web archive at the University of Pittsburgh. At the beginning of July, there were 268 papers online.

It is still possible to upload the paper you presented if you have not done so already or send a revised version. Please send it to montrealpapers@unc.edu, and make sure to mention number and title of the panel. The program is accessible on the EUCE website.

In the remainder of this letter, I would like to initiate a conversation on the shape of future conferences.

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EUSA Review

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EUSA Review Forum

Fritz Scharpf: 2007 Award for Lifetime Contribution to the Field of EU Studies

FROM HIS EARLY WORK through his most recent articles (e.g., "The European Social Model: Coping with the Challenges of Diversity" (JCMS, 2002), Scharpf has arguably done more than any other scholar of his generation to illuminate the implications of European integration for both democracy and social welfare. And given that he has produced one book and eleven articles since his "retirement" in 2003, scholars in our field can no doubt look forward to continued groundbreaking work from Professor Scharpf. Below we have reproduced the text of a lecture delivered at the EUSA Tenth Biennial International Conference in Montreal, Canada (May 17-May 19, 2007).

Reflections on Multilevel Legitimacy *Fritz W. Scharpf*

THIS AWARD CAME as a totally unexpected surprise. But since the news came a year and a half ago, I mercifully had a bit of time to recover from the shock. I am of course overawed by the honor of having been chosen, and I still have not been able to convince myself that I deserve it. But then, I am also humble enough to ask - who am I to say that this illustrious body has chosen wrong?

In any case, I am immensely grateful for the honor - and even more for its official designation. Getting a lifetime achievement award, whether justified or not, conveys a clear message: It says, your work is over. Your achievements or failures have been recorded. You may now go playing - with your grandson, with your photography, or anything else. But as far as serious scholarly work goes, you are done. As you may imagine, I find this message enormously liberating. And I try to guard as best as I can against the temptation to continue in the old tracks - to do what I did before, just less and less, from one year to the next.

Democracy and Multilevel Politics

Nevertheless, there is also this nagging sense of some unfinished business, or the unrealistic hope that some issues with which I have struggled so long

might still be clarified a bit more by some kind of “concluding remarks”. Among these is the relationship between democratic legitimacy and multilevel government. I have worked on both, off and on, ever since I started out as a political scientist in the late 1960s. But I never did focus systematically on the relationship between the two.

In my work on multilevel policy making in German federalism, that relationship played only a marginal role - and I think for good reasons. In Germany, parliamentary democracy is institutionalized at both levels, national and regional. But German politics is so much focused on the national arena that Länder elections (which directly shape the party-political profile of the federal second chamber) have mostly become “second order national elections” - with the consequence of increasing the pressures of democratic accountability on the national government. Political scientists, it is true, tend to worry about the lack of political transparency under conditions of the “joint-decision trap”, since the responsibility for national policy choices is shared among the federal majority and Länder prime ministers. But since dissatisfied voters are not obliged to be fair when they punish a government, blame avoidance is not a very promising strategy in German politics. So while I could talk about many things that are wrong with German federalism, a lack of political responsiveness to voter dissatisfaction would not be on my short list.

In my work on Europe, democratic legitimacy does indeed play a role (Scharpf 1999). I have no reason to retract anything that I have written on the subject - and I certainly will not bore you with a restatement. But I acknowledge that readers may have found my normative arguments somewhat inconclusive - and I tend to agree. The reason, I suggest, is that my arguments - in common with most of the literature - were focused on the European level, rather than on the implications of the multilevel characteristics of the European polity.

By focusing exclusively on the legitimacy of governing at the European level, we are tempted to refer to criteria that are also employed in defining the legitimacy of the democratic nation state. And once the issue is framed in these terms, we are inevitably involved in a comparative evaluation - which, depending on our meta-theoretical preferences, can then be conducted in a critical or affirmative spirit.

In the critical mood, we will emphasize everything that European political structures and processes lack in comparison to (usually highly idealized) models of democratic constitutionalism at national levels (e.g., Greven and Pauly 2000; Follesdal and Hix 2006). The arguments, running from the fundamental to the more contingent, are too familiar to require elaboration: The

lack of a European “demos” or of a “thick” collective identity, the lack of a common political space, the lack of a common language and of Europe-wide media of political communication, the lack of a political infrastructure of Europe-wide political parties, the absence of Europe-wide political competition, the low political salience of elections to the European Parliament, the limits of EP competencies, and hence the lack of parliamentary or electoral accountability for European acts of government. In short, the European democratic deficit exists and it cannot be repaired in the foreseeable future.

In the affirmative mood, by contrast, we will emphasize features where the EU compares favorably to a more realistic view of political structures and processes in real-existing member states (e.g., Majone 1998; Moravcsik 2002). Institutional checks and balances at the European level are more elaborate and provide more protection against potential abuses of governing powers than is true in most member states. Moreover, many of the governing functions of the EU belong to a category which, even in the most democratic member states, is exempted from direct political accountability. On the other hand, explicitly political EU policies continue to depend on the agreement of democratically accountable national governments in the Council and on majorities in the increasingly powerful European Parliament. At the same time, EU institutions are likely to provide more open access to a wider plurality of organized interests than is true of most member governments. In short, the alleged deficit of democratic legitimacy exists mainly in the eyes of its academic beholders.

As you may have guessed, in my view, many of the arguments on either side have considerable *prima-facie* support in empirical and normative terms, but most of them are also vulnerable to empirical and normative challenges. Moreover, they are not generally in direct contradiction of each other, but tend to be located on different dimensions of a political property space - so that even in the case of empirical agreement the pluses and minuses could not be aggregated in a single evaluative metric. This may explain the ambivalence of my own arguments, and it surely must also affect the evaluation of EU legitimacy by other authors who are not *ex-ante* committed to either a critical or an affirmative position.

Legitimacy - Functional, Normative and Empirical

What I now want to add to this re-interpretation is the intuition that the ambiguities could be reduced, though not overcome altogether, if discussions of political legitimacy in the European polity were explicitly lo-

cated in a multilevel framework. To make my point however, I also need to distinguish among three perspectives on political legitimacy - the functional, the normative, and the empirical.¹

In my view, the functional perspective is basic in the sense that it must also provide the reference for concepts of normative and empirical legitimacy. It addresses the fundamental problem of political systems - to find acceptance of exercises of governing authority that run against the interests or preferences of the governed (Luhmann 1969, 27-37). Such acceptance may be motivated by an expectation of effective controls and sanctions, or by widely shared (and hence socially stabilized) beliefs that imply a moral obligation to comply. Both motives may or may not coexist. But in political systems that cannot also count on voluntary compliance based on normative legitimating beliefs, effective government would depend entirely on extensive and very expensive behavior controls and sanctions, and perhaps also on the repression of dissent and opposition. In other words, legitimacy is a functional prerequisite of efficient and liberal forms of government.

In the normative perspective, therefore, political philosophy and public discourses will propose and criticize arguments that could support an obligation to obey under conditions where compliance would violate the actor's interests and could be evaded at low costs. In modern, Western polities, such legitimating arguments tend to focus on institutional arrangements ensuring democratic participation, the accountability of governors and safeguards against abuses of governing powers.

From an empirical perspective, finally, what matters is the compliance with exercises governing authority that is based on legitimating beliefs, rather than on threats and sanctions. The focus of empirical research may thus be either on beliefs or directly on compliance behavior. In both cases, however, empirical findings will encounter problems of theoretical validity. In the first case, the notoriously loose coupling between professed beliefs and actual behavior should make us hesitate to put too much weight on Eurobarometer data about general support for, or trust in, EU and national institutions.² By contrast, empirical indicators of actual compliance behavior might be caused by the fear of effective sanctions as well as by string legitimating beliefs. That would be less of a problem with data about non-sanctioned political behavior expressing greater or lesser support for governing authority. Thus falling electoral participation rates, rising electoral volatility, more rapid government turnover, a rise of radical or system-critical political parties, and a growing incidence of violent protest could be taken as valid indicators of declining political legitimacy. But since legitimacy should sustain actual

compliance even in the absence of effective enforcement, one might also interpret increasing tax evasion, corruption and rising crime rates as indicators of declining political legitimacy.

If we now try to make use of these perspectives in evaluating political legitimacy in the multilevel European polity, it is clear that normative criteria can be discussed by reference to either the European or the national level. In the empirical perspective, however, the situation is different. While public-opinion data may include questions referring to both levels, the quality of the responses and their causal significance remain dubious at best. Information on the behavioral indicators, by contrast, which would be of obvious causal relevance, seems to be available only for national polities. Worse yet, it seems practically impossible to define behavioral patterns from which theoretically valid inferences on the greater or lesser acceptance of the Union's governing authority could be derived. Upon reflection, the reason appears clear: The EU does not have to face the empirical tests of political legitimacy because it is shielded against the behavioral responses of the governed by the specific multilevel characteristics of the European polity.

In contrast to federalism in the United States (where the national government has its own administrative and judicial infrastructure at regional and local levels), practically all EU policies must be implemented by the member states. Yet in contrast to German federalism (where most national legislation is implemented by the *Länder* and communes), political attention and political competition in Europe are not concentrated on the higher (i.e., European) level. European elections are not instrumentalized by political parties to shape European policy choices, and they are not perceived by disaffected voters as an opportunity to punish the EU government. In short, with very few exceptions (mainly where the Commission may prosecute business firms for a violation of competition rules), the EU does not have to confront the subjects of its governing authority, neither directly on the street nor indirectly at the ballot box.

Instead, it is national governments who must enact and enforce European legislation. In the BSE scare that had been badly mishandled by the EU (Vos 2000), it was they who had to slaughter and destroy hundreds of thousands of healthy cows when EU rules did not allow the export of meat from herds that were inoculated against BSE - and of course it was they who had to call out the police when protesters tried to block the massacre. As a consequence, two national ministers had to resign in reaction to rising voter dissatisfaction³ - just as national governments must generally pay the electoral price if voters are frustrated with the effects of

EU rules on food standards, state aids, public procurement, service liberalization, takeover rules or university admissions.

By contrast, the EU is not directly affected either by an erosion of political support or by an erosion of voluntary compliance among the target population of its governing authority. Since that is so, it is essentially correct to say that in relation to private citizens, the empirical legitimacy of the EU's governing authority depends entirely on the legitimacy resources of its member states.

Two Normative Implications

From a normative perspective, this empirical conclusion has two major implications. The first is that the legitimacy of the EU cannot, and need not, be judged by reference to criteria and institutional conditions that are appropriate for judging democratic nation states. It is true, as EU lawyers do not cease to emphasize, that the direct effect of EU law has bestowed directly enforceable *rights* on firms and individuals - first economic rights and now even citizenship rights. Yet if the function of legitimacy is to motivate compliance with *undesired obligations*, what matters for the EU is the compliance of governments, parliaments, administrative agencies and courts within member states - which, incidentally, has always been the focus of empirical compliance research, including the one that just received EUSA's best-book award (Falkner et al. 2005; see also, Börzel et al. 2007).

Empirically, therefore, the EU is best understood as a government of governments, rather than a government of citizens. In that role, moreover, it is extremely dependent on voluntary compliance. Unlike national governments which can and do reinforce normative obligations with the threat of effective and potentially very drastic enforcement measures, the EU has no enforcement machinery which it could employ against member governments: no army, no police force, no jails - even the fines which the Court may impose in Treaty violation proceedings could not be collected against determined opposition.

If that is acknowledged, the normative discussion of EU legitimacy should also focus primarily on the relationship between the Union and its member states and on the normative arguments that could oblige their governments to comply with undesired EU rules. Now if the same question were asked in the German multi-level polity, a sufficient answer would point to the superior input legitimacy of political processes at the national level. Länder governments refusing to comply with federal legislation would thus violate the principles of popu-

lar sovereignty and representative democracy. Since the same answer could not be given for the EU, considerations of output legitimacy would necessarily have greater weight here.⁴

From the perspective of member governments it would thus be relevant to ask in what ways and to what extent membership in the European Union increases or reduces their capacity to ensure peace and security and to improve the welfare of the societies for which they are responsible? If national discourses about European legitimacy were framed in these terms, much of the present sense of malaise might evaporate.⁵

My main concern, however, is with the second implication of the multilevel perspective on political legitimacy. If the Union depends so completely on its member states, then the potential effects of EU membership on their legitimacy should also have a place in normative analyses. These effects may be positive or negative. Most important among the positive effects is surely the maintenance of peaceful relations among European nations which, for centuries, had been mortal enemies. At the same time, European integration helped to stabilize the transition to democracy, first in West Germany and perhaps also in Italy, then in Greece, Portugal and Spain, and then again in the Central and Eastern European accession states (Judit 2005).

More generally, one should think that the EU is strengthening the political legitimacy of its member states because it is dealing with problems that could no longer be resolved at national levels. While this argument has analytical merit, it is surprisingly difficult to substantiate empirically.⁶ In any case, moreover, it would need to be balanced against the possibility that many of the problems with which member states now must cope have been created by European integration in the first place, and that these may weaken political legitimacy at the national level (Bartolini 2005). It is these possibilities to which I will now turn.

European Constraints on the Political Legitimacy of Member States

There is no question that the EU is imposing tight constraints on the capacity for autonomous political action of its member states - in monetary policy, in fiscal policy, in economic policy and in an increasing range of other policy areas. But to think that these constraints could undermine political legitimacy at the national level seems still a surprising proposition. Given the central role of national governments not only as "masters of the treaties" and as unanimous decision-makers in the second and third pillars, but also in legislation by the "Community Method" in the first pillar, in Comitology and

in the Open Method of Coordination, one ought to think that these constraints are mostly self-imposed, and probably for good economic and political reasons (Garrett 1992; Moravcsik 1998; Moravcsik and Sangiovanni 2003); in other words, *volenti non fit iniuria*?

This is a fair argument as far as it goes. But it doesn't go very far for two reasons. First, the argument applies only to the "political modes" of EU policy making in which the governments of member states have a controlling role, but it does not apply to the "non-political modes" in which the Commission, the Court and the European Central Bank are able to impose policy choices without any involvement of member governments or the European Parliament, for that matter (Scharpf 2000). I will return to that in a moment.

Moreover, even for political choices, the argument holds only the first time around, when the EU is writing on a clean slate. In that case, unanimity or very high consensus requirements will indeed prevent the adoption of policies that would violate politically salient interests in member states. And if no agreement is reached, national capabilities - whatever they may amount to - will remain unimpaired. But once the slate is no longer clean, these same consensus requirements will lose their benign character. Now existing EU rules - whether adopted by political or nonpolitical modes - are extremely hard to change in response to changed circumstances or changed political preferences. European law will thus remain in place even if many or most member states and a majority in Parliament would not now adopt it. This constraint may be felt most acutely by recent accession states who had to accept the huge body of existing European law as a condition of their membership, and who have little or no hope of later changing those parts of the *acquis* that do not fit their own conditions or preferences.

What matters even more here, however, is how the high consensus requirements of the political modes increase the autonomy and the power of EU policy making in the non-political modes (Tsebelis 2002, chapter 10). In the case of the European Central Bank, it is true, the impotence of politically accountable actors was brought about intentionally (though perhaps unwisely) by the governments negotiating over the Monetary Union. The same cannot be said, however, for the non-political policy-making powers of the Commission and the Court.

Of course, the Court's responsibility to interpret the law of the Treaty and secondary European law was also established intentionally, and so were the Commission's mandate to prosecute, and the Court's powers to punish Treaty violations. What was not originally foreseen, however, was the boldness with which the Court would

establish the doctrines claiming "direct effect" and "supremacy" for European law (DeWitte 1999; Alter 2001) - and how these would then allow it to enforce its specific interpretation of very general Treaty commitments. What also could not have been known in advance is how the potential range of the Court's powers of interpretation could be strategically exploited by the Commission if and when it would choose to initiate Treaty violation proceedings against a member state - and how successful prosecutions against some governments would then be used to change the political balance in the Council in favor of directives proposed by the Commission which otherwise would not have been supported by a qualified majority (Schmidt 2000).

Moreover, the substantive range of judicial legislation is greatly extended by the fact that its exercise is practically immune to attempts at political correction. If the Court's decision is based on an interpretation of the Treaty, it could only be overturned by an amendment that must be ratified in all twenty-seven member states. Given the extreme heterogeneity of national interests and political preferences, that is not an eventuality that the Commission and the Court need to worry about. Nor is the situation very different for interpretations of secondary EU law. In fact, the inevitable compromises among national interests favor vague and ambivalent formulations in EU regulations and directives that are effectively invitations to judicial specification. Attempts at political correction would then depend upon an initiative of the Commission and the support of qualified majorities in the Council, and if the Council should wish to change the Commission's proposal, it could only do so through a unanimous decision. As a consequence, the potential for judicial legislation is greater in the EU than under any national constitution.

Negative Integration and Empirical Legitimacy?

But why should one think that the non-political powers of the Commission and the Court could interfere with the political legitimacy of EU member states? A general argument might point to the inevitable loss of national autonomy and control and the reduced domain of democratically accountable governing. Instead, I wish to present a narrower argument that focuses on a specific vulnerability of national political legitimacy to the rules of negative integration that are being promoted by judicial legislation.

On the first point, I return to the distinction between normative and empirical perspectives on legitimacy. In normative discourses, the focus is on the vertical relationship between governors and the governed. What matters are institutional arrangements ensuring, on the one hand, responsive government and political account-

ability and preventing, on the other hand, the abuse of governing powers through the protection of human rights and the rule of law. At the empirical level as well, trust in the effectiveness of these vertical safeguards must play a significant role in legitimacy beliefs.

But that is not all. Voluntary compliance also has a horizontal dimension in which individual subjects will respond to perceptions of each others' non-compliance. In game-theoretic terms, this relationship can be modeled as an n-person prisoners' dilemma in which compliance must erode in response to information about unsanctioned noncompliance (Rapoport 1970). This theoretical intuition is confirmed by empirical research on tax evasion (Levi 1988), or on the survival or decline of cooperative institutions (Ostrom 1990), as well as by experimental research (Fehr and Fischbacher 2002) - all of which demonstrate that voluntary compliance with rules, whether imposed or agreed-upon, does indeed erode as a consequence of perceived non-compliance. Why should I remain law-abiding if others are allowed to get away scot-free? Hence we must assume that effective legitimating beliefs will also include expectations of a basic mutuality and fairness among citizens and of a basic reciprocity between the consumption of public goods and the obligation to contribute to their production (Rothstein 1998). It is these expectations which are vulnerable to the removal of national boundaries through negative integration (Scharpf 1999, chapter 2).

Even in the original EEC Treaty, governments had signed sweeping commitments to negative economic integration. Customs duties and quantitative restrictions to free trade and "all measures having equivalent effect" were to be prohibited, obstacles to the free movement of persons, services and capital should be abolished, undistorted competition in the internal market was to be ensured, and any discrimination on grounds of nationality was to be ruled out. In the original understanding, however, these were political commitments whose more precise meaning and reach would in due course be spelled out through further negotiations among governments and through political legislation at the European level - and whose consequences could be controlled through re-regulation at the European level.

Under the unanimity rule, however, political progress toward market integration was slow. Beginning in the early 1970s, therefore, the Court began to give direct effect to these Treaty commitments. But given the intrinsic limitations of judicial power, it could only strike down national regulations that impeded free trade and free movement, but it could not itself re-regulate the underlying problems at the European level. The resulting asymmetry was only somewhat reduced when the Single European Act introduced the possibility of quali-

fied majority voting in the Council for regulations implementing the Internal Market program. Where conflicts of interest among member states are politically salient, European regulations can still be blocked very easily, whereas judicial legislation continues to extend the reach of negative integration (Weiler 1999).

This asymmetry of negative and positive integration has effects that may undermine expectations of reciprocity at the national level. Now capital owners may evade or avoid income and inheritance taxes by moving their assets to Luxembourg; firms may relocate production to low-cost countries without reducing their access to home markets; local service providers may be replaced by competitors producing under the regulations and wages prevailing in their home country; national firms may avoid paying the "tax-price" for their use of public infrastructure by creating financing subsidiaries in member states with the lowest taxes on profits; and by the latest series of ECJ decisions, companies are allowed to evade national rules of corporate governance by creating a letter-box parent company in a low-regulation member state. Many of these examples, and the list could easily be extended, can be interpreted as a consequence of neo-liberal and free-trade economic preferences in the Internal-Market and Competition directories of the Commission and on the Court (Gerber 1994; Höpner and Schäfer 2007).⁷

But this motive alone can no longer explain the full range of Court-imposed rules of negative integration. A dramatic recent example is provided by a decision striking down, as discrimination on accounts of nationality, an Austrian regulation of admissions to medical education that had required applicants from abroad to show that they could also have been admitted in their home country (C-147/03, 01/20/2005). The Austrian rule had tried to deal with the disproportionate inflow of applications from Germany, where admissions are restricted by stringent *numerus-clausus* requirements - and when it was voided by the Court, the proportion of applicants from Germany rose to 60 percent in some Austrian universities. In response, Austria passed a new rule limiting admissions from abroad to 25 percent of the total - against which the Commission again initiated Treaty violation proceedings that are presently on their way to the Court.

As an exercise in legal craftsmanship, the decision seems surprisingly weak: It is based on Article 12 of the EC Treaty - which, however, does not prohibit discrimination on grounds of nationality per se, but only "within the scope of application of this Treaty". Yet, nothing in the present Treaty, (nor even in the draft Constitutional Treaty - Art. III - 282), empowers the Union to regulate university admissions. Instead, Articles 3 and 149, to

which the Court referred, merely authorize the Community to make “a contribution to education” (Art 3, 1 EC) and to “encourage mobility of students and teachers” (Art. 149, 2 EC) - but with the explicit proviso that such actions should be limited to recommendations by the Council and to “incentive measures, excluding any harmonization of the laws and regulations of member states” (Art. 149, 2 and 4 EC). In other words: the “masters of the treaty” have ruled out EU legislation that could regulate admissions to member states’ universities.

Moreover, these restrictions were explicitly introduced in the Maastricht Treaty to limit the expansion of the EU’s role in education. Yet the Court merely cited its own *pre-Maastricht* precedent (193/83, 13/02/1985) that had had no textual basis in the Treaty, to assert that access to vocational education was within the scope of the Treaty. Apart from the arrogance with which political corrections of judicial legislation are ignored here, the decision appears remarkable for its completely one-sided concern with maximizing educational mobility and (in contrast to the legal situation among the American states) in ruling out any preference for residents of the country where the taxes are raised that finance higher education. This is like saying that the EU entitles you to claim access to a dues-financed club even if you (or your family) are not assuming the burdens of membership. Similarly, there is no concern for the structural problems Austrian medical education and medical practice will face, if half or more of the available places will go to students from abroad that are most likely to leave the country after graduation.⁸

This is a remarkable position which, as I said, is not logically connected to the free-market fundamentalism that may explain liberalization decisions in other areas. Instead, it must be seen as the expression of a more general pro-integration bias that treats any progress in mobility, non-discrimination and the removal of national obstacles to integration as an unmitigated good and an end in itself. In this regard, the case is by no means unique. As Dorte Sindbjerg Martinsen has shown in a fascinating series of papers, the same pro-integration bias has also been driving the case law that is progressively removing the boundaries shielding national welfare systems.⁹ Its intensity is revealed by the variety of Treaty bases which the Court invoked to move forward in the same direction from one case to the next - relying sometimes on the protection of migrant workers, sometimes on the freedom of service provision, sometimes on non-discrimination and sometimes on the new chapter on “citizenship of the Union”. Moreover, when governments managed, by unanimous decision in the Council, to force the Court to retreat on one front, the ground was recovered a few years later by decisions

relying on another Treaty base (Martinsen 2003; 2005a; 2005b; 2005c; 2007).

This quasi-unconditional preference for more integration through the removal of national boundaries has consistently characterized the policies proposed by the Commission and enacted by the Court. Their preference is widely shared by academic specialists in European law who not only admire, and contribute to, the evolution of a largely autonomous legal system (Craig and de Búrca 1999), but also praise the functional effectiveness of “integration through law” under conditions where political integration has been weak (Weiler 1982; Cappelletti et al. 1985). Nearly the same admiration is evident in political science studies of the judicial edifice (Alter 2001; Stone Sweet 2004) and, more generally, in the way Europeanists in the social sciences view the “constitutionalization” of the European polity - whether achieved through “stealth” and “subterfuge” or through explicit political action (Héritier 1999; Rittberger and Schimmelfennig 2006).

This pro-integration bias, I hasten to add, is most plausible and respectable, considering the horrors of our nationalistic pasts and the manifold benefits that we derive from the progress toward an “ever closer Union”. But as long as the asymmetry between political immobilism and judicial activism persists, progress is mainly achieved by non-political action, which - since the judicial power to destroy far exceeds its capacity to create - is bound to favor negative integration. The mere removal of national boundaries, however, is likely to deepen the split between the mobile and the immobile classes in our societies, and between the beneficiaries of integration and those who have to pay its costs in terms unemployment, lower wages and higher taxes on the immobile segments of the tax base. If left unchecked, the split is dangerous for member states if it undermines the sense of mutuality and reciprocity at the empirical base of national legitimacy. And it is dangerous for the Union if it weakens the willingness or the ability of member states to maintain the voluntary compliance on which the viability of European integration continues to depend.

So What Could Be Done?

To summarize, a multilevel perspective on legitimacy in the European polity suggests a change of emphasis in current normative and empirical discussions. As long as the EU is able to rely on the voluntary compliance of its member states, the alleged European Democratic Deficit loses much of its salience. Instead, the structural asymmetry between the immobilism of political, and the activism of non-political modes of EU policy-making appears more worrying. Moreover, there is a

danger that the unrestrained pursuit of economic and legal integration may weaken the political legitimacy of member states and endanger the voluntary compliance of governments with EU rules that violate salient national interests.

But it is difficult to see how this danger might be avoided. There is apparently no way of persuading the Commission and the Court to use their non-controllable power in a more balanced way that would give more weight to the national problems that are created by the inexorable progress of negative integration. So if judicial self-restraint cannot be counted upon, one should seek ways to increase the European capacity for political action. Given the high consensus requirements and the heterogeneity of national interests in EU 27, however, that seems a remote possibility. I am also deeply skeptical of proposals to invigorate the political modes of EU policy-making through political mobilization and the politicization of EU policy choices (Follesdal and Hix 2006; Zürn 2006). I agree with Stefano Bartolini (2005) that the most likely outcome, under present institutional rules, would be increased conflict and even less capacity for political action - as well as frustration and increased alienation among disappointed citizens. And, for reasons explained elsewhere (Scharpf 1999) I would be even more skeptical of institutional reforms that would reduce the veto power of the Council in favor of majority rule in the European Parliament.

Instead, one might think of creating a defense for politically salient national concerns that avoids the disruptive consequences of open noncompliance and that does not depend on the good will of the Commission and the Court. A while ago I suggested that this could be achieved through a form of politically controlled opt-outs (Scharpf 2006). Member states could then ask the Council to be exempted, in a specific case, from a particular EU rule which their view would violate highly salient national interests. I still think this would be a good idea: the Council could be counted upon to prevent opt-outs at the expense of other member states, but in the absence of significant externalities it would also have more sympathy with the plight of a fellow government than could be expected from the Commission or the Court. At the same time, the prospect that one could later apply for an opt-out might facilitate agreement in the Council on new EU legislation and thus strengthen the political modes of EU policy-making. As far as I know, however, this idea has not found any takers.

So I must leave it at that. I certainly cannot say that I have a solution. Yet I am persuaded that there is indeed an important problem - on which, as we used to say, much research remains to be done. I look forward to watching it from the sidelines.

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Notes

¹ Hurrelmann (2007) also proposes a multilevel framework, and he also focuses on "normative" and "empirical legitimacy". Since he pays no attention to the functional perspective, however, his operationalization of empirical legitimacy differs from mine.

² Hurrelmann (2007) shares these reservations and relies on comments in the quality press instead. This choice permits more differentiated analyses, but is even further removed from compliance behavior.

³ See Imort (2001). Germany had committed to destroy 400 000 cows, but after violent protests of animal-protection groups (and some recovery of the beef market) only 80000 cows were ultimately killed. A play-by-play chronicle of the

BSE crisis in Germany is provided in

http://www.netdokter.de/feature/bse/creutzfeldt_jakob_chronik.htm.

⁴ Hurrelmann (2007) found that evaluations of the EU in the German and British quality press also emphasized output-oriented criteria.

⁵ On the crucial importance of national discourses about the EU for legitimacy at both levels, see Schmidt (2006, chapter 5).

⁶ There is reason to think that political legitimacy in relatively poor accession states was strengthened by the high rates of economic growth that could be achieved through a combination of European subsidies with unconstrained tax and wage competition. By contrast, the economic benefits of integration for the Union as a whole appear much more doubtful (Ziltener 2002; Bornschieer et al. 2004).

⁷ On the basic affinity between multi-level governance and neoliberal policy preferences, see Harmes (2006).

⁸ Apparently, Austria has a shortage of doctors as well as a perceived general need to expand its university education in spite of tight budget constraints. Having to introduce restrictive admissions examinations, as the court had suggested, in order to contain the flood of German applicants would thus be counterproductive.

⁹ See also the magisterial study by Maurizio Ferrera (2005) which, however, is surprisingly optimistic about the possibility of a re-creation of boundaries at the European level.

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EUSA Executive Committee Election Results

The results of the recent EUSA Executive Committee election are in. Neil Fligstein (University of California, Berkeley), Erik Jones (Johns Hopkins University), R. Daniel Kelemen (Rutgers University), and Craig Parsons (University of Oregon) have been elected to serve on the Executive Committee for four year terms running from 2007 to 2011.

EU as a Global Actor Interest Section Essay

A Review of EU Development Policy *Stephen J. H. Dearden*

The EU's role in the world development debate receives remarkably little academic attention despite the Commission's sole responsibility for trade negotiations and the scale of its aid programme, where it has a shared competence. Currently the EU is a major player in the Doha Round of WTO trade negotiations and is renegotiating its trade concessions with the African, Caribbean and Pacific (ACP) group of developing countries. In terms of aid, by 2005 assistance administered directly by the European Commission (EC) totalled €6.1 bn., making the EC the third largest aid donor after Japan and the US. At the UN the Millennium Review Summit in 2005 the EU committed itself to achieving an Official Development Assistance (ODA) target of 0.56% of Gross National Income by 2010, with the EC's own budget for external actions increasing by 4.5 % per annum over the period 2007-2013.

The framework for EU development policy was restated in the 2005 Policy Statement 'European Consensus on Development' (EC 2005). Three 'policies' are identified – the European Neighbourhood and Partnership, Pre-accession and Development Cooperation - and three 'instruments' - humanitarian, stability and macro economic assistance. Here I am going to concentrate only upon the development dimension. This Statement built upon the initial 'Statement on Development Policy' (EC 2000) and reiterated many of its objectives and commitments, but also reflected the changes that had taken place in the intervening five years. In particular it placed an emphasis upon the Millennium Development Goal and made a qualified commitment toprioritising assistance to low-income developing countries (LICs). The EC had been subject to considerable criticism for its failure to direct a greater percentage of its aid programmes to the LICs. In 2000 EC ODA to the LICs had fallen to only 32% of the total, reflecting the EU's focus upon the 'near-abroad' of the Mediterranean and Central/Eastern Europe. By 2005 the share of the LIC had risen to 46% of EC aid. Administratively it reaffirmed a shift from project aid to general budgetary support to the developing countries and to performance-based assessment. Conditionality was to be expressed in a 'contract' with the partner countries, recognising that aid effectiveness can only be achieved through 'national ownership' of aid programmes by the developing country.

The EC administered aid programme is composed of two parts – the external actions element of the general budget and the European Development Funds (EDF). The Member States contributions to the latter are separate from those to the general budget of the EU despite the Fund being administered by the Commission. The five year EDFs are the mechanism for providing the aid dimension of the Partnership Conventions with the ACP group of developing countries. These Conventions (Yaoundé, Lomé and currently Cotonou) have their origins in the colonial relations of the Member States and now covers 79 developing countries. The Conventions have both an aid and trade dimension and placed an emphasis upon continuous political dialogue with a supporting institutional framework – a unique feature in such international agreements. The administrative innovations in aid delivery under the EDFs have set the pattern for the EC's approach to its relations with the non-ACP developing states under, for example, the Mediterranean Barcelona process or in individual Association Agreements. After the organisational reforms of 2000 (EC 2000) DG Development is responsible for aid policy and programming for the ACP states, while DG Relex covers all other developing countries. EuropeAid is responsible for the implementation of these aid programmes. By 2005 of the •6 bn. of aid payments, •2.5 bn (41%) was under the EDF to the ACPs, 18% to Mediterranean countries, 10% to Asia and 5% to Latin America, with similar shares to the Balkans and the Central/Eastern Europe.

Dissatisfaction with the results of the EU's aid programme and the changing international climate at the end of the cold war led to a major review of the existing Lomé Conventions. The new Cotonou Partnership Agreement, signed in 2000, will run for 20 years, double the length of all previous Conventions (for details see Salama and Dearden 2002). A total of •25 bn. has been made available for the period 2000-2007, EDF 9 providing •13.5 bn. and the European Investment Bank (EIB) •1.7 bn., and will increase to •22.6 bn. under EDF10 for the years 2003-13. One of the major changes under Cotonou has been the radical simplification of aid instruments. These are now provided under two 'envelopes' – grants (•11.3 bn.) and a loan Investment Facility (•2.2 bn.) administered by the EIB. A particular emphasis has now been placed upon the role of the private sector in economic development, hence the creation of the substantial Investment Facility. Grants will continue to be allocated under national and regional Indicative Programmes, based upon the preparation of Country Support Strategies, but the EC will continue to shift its emphasis from funding individual projects to more general sectoral and budget support. For this to

succeed a much closer political dialogue will be required between the EC and the governments of the recipient countries. Cotonou continues the process begun under Lomé IV where the funds allocated to an ACP are subject to a process of rolling review, assessed both for need and performance. This assessment will increasingly fall upon the local Delegations under the process of decentralisation begun in 2000 with the administrative reforms.

The political dialogue with individual ACPs has inevitably become more intense as the EU has placed increasing emphasis upon human rights, democracy and the rule of law. Under Cotonou these are regarded as 'essential elements' whose infringement may lead to the imposition of sanctions including the suspension of aid. In addition Cotonou includes reference to 'good governance', which after opposition from the ACPs was included as a separate 'fundamental element'. Although the sanction procedure is slightly different, failures in the case of good governance can still result in the suspension of the EC's aid programme. To overcome the problems of failing ACP governments Cotonou also placed an emphasis upon the potential role of non-state actors. This includes local government, trade unions, farmers' organisations, local NGOs and the private sector. To support their role in fostering good governance and in service delivery the EC allocated substantial funds to building their capacity. Institution building, gender and environment considerations were all identified in Cotonou as 'cross-cutting' issues to be addressed across all of the EC's development initiatives.

Cotonou also included a significant change in the trade concessions that were to be offered to the ACPs. Under all previous Conventions the ACPs were granted non-reciprocal tariff-free access to the EU market for their manufactured exports and for most of their primary commodities, with the principal exception of a number of CAP products; specific arrangements existed for bananas, run, beef and sugar under the Commodity Protocols. After a successful challenge to its banana regime before the WTO the EU required that the Cotonou Agreement be WTO compatible through adopting the principle of reciprocity. While the WTO allows non-reciprocal trade concessions to be offered to low income developing countries the ACP group includes a number of middle income developing countries who would not qualify for such concessions. Although the EU has obtained a waiver from the WTO this will expire in 2008, by which time the EU is expecting the ACPs to have successfully negotiated Economic Partnership Agreements (EPA)(see ODI June 2006). These are being negotiated in regional groupings of the ACPs and the intension is that these new agreements

will be phased in over a twelve year period. Although the EU committed itself to ensuring that the ACP's position would not be eroded by the move to EPAs this is proving hard to reconcile with its objective of achieving WTO compatibility.

The negotiations are proving difficult with serious doubts as to whether they will be concluded by the end of 2007, the EC's intended deadline (for details of the current state of negotiations see 'Trade Negotiations Insights' on www.acp-eu-trade.org). Problems have arisen with some of the regional groupings that are undertaking the negotiations, especially in Southern Africa where there are existing customs unions. A further difficulty arises from the EU's "Everything-But-Arms" (EBA) initiative which offers non-reciprocal tariff-free access for all 48 low-income developing countries. For the low-income ACPs the EPA will therefore offer little in the way of trade preferences. For all of the ACPs the reductions in tariffs under the successive rounds of the WTO, and its predecessor the General Agreement on Tariffs and Trade (GATT), has gradually eroded the significance of the EU's tariff concessions and reduced the value of any further tariff preferences available under an EPA. For the ACPs the requirement to open up their markets to EU exports represents a considerable challenge. From the perspective of the EU the opening up of their markets is driven by a belief that this will make a major contribution to their economic development rather than offering a significant market opportunity for EU exporters. In most cases the ACPs remain insignificant trading partners for the EU beyond a few commodity producers such as Nigeria for oil. Only South Africa is a major exporter of manufactured goods to the EU and it is currently not eligible for non-reciprocal trade preferences. Integration of the ACP states into the world economy has always remained one of the stated objectives of EU development policy and opening up their markets to international competition is regarded as offering a major contribution to their development.

The negotiations are becoming dominated by a number of detailed issues. Phasing is likely to prove the least contentious, with the ACPs expected to only be required to reduce their tariffs towards the end of the transition period. The 'rules of origin', which define whether goods will qualify for duty free entry and reflect the local value-added of the product, are a more problematic technical issue (see ODI November 2006). There also remain disagreements over the extent of the EPAs, in particular whether they should extend beyond trade in goods to include the trade in services, investment protection, competition policy, public procurement etc. These are often referred to as the 'Singapore issues' in the context of the currently stalled Doha Round of the WTO.

The WTO negotiations and those for the EPA remain interrelated. The WTO provides the legal framework for the EPA and issues such as the requirement that reciprocity must cover 'substantially all trade' is an important area for interpretation. For the EU this has been defined as requiring tariff free access for 80% of trade. Changes in the approach to the developing countries would inevitably have changed the compatibility requirements in an EPA. The WTO negotiations, intended as a 'development round', were expected to pay particular attention to the needs of the developing countries through 'special and differential treatment'. Indeed the Doha Round negotiations are in many ways more significant for the ACPs than the EPA. The opening up of the EU market to their primary products, currently restricted in many cases under the CAP, offers some ACPs significant export potential. However not all ACPs would be beneficiaries as the Commodity Protocols offered a relative preference over other non-EU suppliers at EU guaranteed prices. However the future of the Commodity Protocols has been on question for some time, with only the Sugar Protocol of any significance and this is currently under review. Of more significance has been the undertaking of the EU to phase out its agricultural export subsidies, although the failure of both the EU and US to commit to reducing their domestic agricultural subsidies is the principal cause of the current impasse.

Any EPA, as well as being likely to require significant economic structural adjustment in most ACPs in the face of EU competition, will also erode their tax base, given their financial dependence upon customs duties. The ACPs have therefore attempted to link any EPA to additional EU aid. This the EU has strongly resisted, asserting that the allocations under EDF10 have already been decided. However the EU has shown its willingness to discuss 'Trade Related Assistance' (TRA) to support the adoption of an EPA. In 2005 the EU's Council agreed that the Member States would strive to collectively increase their TRA to •1 bn. per annum by 2010 which, combined with the EC's own allocation, would take TRA to •2 bn. per annum.

Attention has also turned to the alternatives that the EU might offer to the ACPs in the case of the failure of the EPA negotiations. The alternative developing countries trade preference regime is that of the General System of Preferences (GSP). This EU variant of a global concession scheme has proved highly discriminatory over its lifetime, trade concessions being withdrawn from countries and products that have been particularly successful in penetrating the EU market. Indeed the scheme included a 'graduation mechanism' excluding specific country products depending upon the

country's level of industrialisation and 'export specialisation'. The current GSP covers 7,200 products from 179 countries with the major beneficiaries being India, China and Brazil. But, in addition a 'GSP-plus' has been offered to 'dependent and vulnerable' countries. This is of particular interest to the ACPs since this is the most likely alternative trade regime to the EPA for those not qualifying for the EBA. To qualify for GSP-plus countries must ratify 23 international Conventions covering such areas as human rights and labour standards and be particularly export dependent. So far only 15 countries have qualified for GSP-plus.

In the WTO negotiations the EU's position is heavily influenced by its domestic agricultural lobby and hence is very much related to the issue of CAP reform. It must also be recognised that in the EPA negotiations in particular areas, for example fisheries, the EU is pursuing its own economic interests. Nonetheless both at the WTO and in the EPA negotiations there is a genuinely held view that the reciprocal opening up of developing country markets will make a significant contribution to their economic development. The reduction of tariff protection and their integration into the world economy is seen as a driver of the essential structural change necessary for sustained economic growth.

Aside from the issues of broad policy attention also needs to be paid to the administrative and organisational performance of the EC. 'Policy evaporation', the gap between official policy rhetoric and the reality of delivery, can only be understood within the context of the evolving approach to the EC's organisation and administration. This has been subject to considerable change over the last decade (see Dearden 2006), from the creation of EuropeAid to the adoption of a common framework for country assessment and programming through the adoption of Country Strategy Papers (CSP). A number of issues remain unresolved or the outcomes of reform uncertain. 'Deconcentration', combined with the move to general budget support, will place a significant additional burden upon local Delegations and will require them to extend their role beyond 'auditing' to that of policy analysis. Their relationship to Brussels in this process remains uncertain – e.g. how far they will have local discretion in their approach or their influence upon formulating broad Brussels policy through 'feedback'. At the same time the evolution of an EU 'diplomatic service' under the recently proposed 'Treaty Amendments' may provide the necessary enhancement of their role in the developing world for these changes to be successful.

Some elements of the EC's approach to aid administration are simply constrained by the lack of an established robust methodology. Thus problems have continued to be faced in integrating the cross-cutting is-

ssues – gender equality, environment, children's and indigenous peoples' rights and HIV/AIDS - into aid programming. Similarly enhancing the poverty focus of EC aid policy requires not just a reallocation of resources between countries but also adequate poverty impact assessments of individual programmes. This is by no means an easy process to undertake. Similarly enhancing the role of the non-state actors presents challenges in implementation as great, if not greater, than working through established governments, no matter how poor their performance. Ensuring that small local organisations are representative, effective and free of corruption will present a major resource-intensive challenge.

Considerable attention has also been paid to what has become known as the 3 Cs – Coordination, Complementarity and Cohesion (for details on 3 Cs see www.three-cs.net). Ensuring the coordination and complementarity of aid programmes is essential for ensuring their effectiveness. Duplication of programme planning and reporting/monitoring has also placed a substantial burden on the administrations of many developing countries, countries whose public administrations are already recognised as weak. The EC, before its recent reforms, had even recruited local technical assistants in competition with local governments. Coordinating country aid programmes requires not only intra-EU coordination between the EC's and the bi-lateral country programmes of the Member States, but between all donors. This has been recognised internationally as reflected in the recent Paris Declaration on Aid Effectiveness (2005). Within the EU the Action Plan (COM(2006)87) offers a number of elements that will contribute to greater coordination and complementarity. These extend from the establishment of databases on aid and procedural requirements, to harmonisation 'roadmaps' and participation in joint OECD/DAC monitoring. Similarly the EC is proposing extending its common CSP framework for adoption by all Member States and moving towards Joint Multi-annual Programming across EC and bi-lateral aid programmes, with joint disbursement and monitoring. In terms of coordination the EC recognises the need for focus and specialisation. It is proposing a framework for co-financing, with either the EC or specific Member States taking the lead in particular countries.

One of the criticisms of the EC's aid programme has been its lack of focus. In response the original Development Policy Statement had proposed that the EC concentrate upon eight areas in which it was regarded as having a comparative advantage – aid related to trade and development, regional integration, macro-economic support, transport, rural development, health, education and institution building. Unfortunately the 2005 Policy

Statement further extended this list to include water and energy provision, and 'social cohesion and development'.

Coordination also has a wider dimension which offers the EC a potentially unique role in contributing to aid effectiveness through the adoption of elements of the Open Method of Coordination (OMC) (Dearden 2005). The needs of administrative harmonisation and innovations in joint funding are already delivering elements of the OMC. The EC has already been mandated to undertake annual reporting on the Member States implementation of their pledges on aid targets and to propose corrective measures where progress is regarded as insufficient. This process may lead to "opportunities for collective benchmarking" (EC 2004), one of the most significant components of the OMC, opening the door as it does to peer review. In a broader sense this process can contribute to aid effectiveness through the diffusion of best practice in bilateral programmes, as a result of the exchange of information between the Member States, and foster policy convergence through the enhanced dialogue between individual governments.

Policy coherence requires that the EU be consistent across its various policies ensuring, for example, that its trade policies are compatible with its development policy objectives. Trade is a particularly pertinent example since the EU has sole competence, but other areas of EU policy will clearly interact with development policy. Indeed this raises one of the most significant questions for political scientists and development studies academics, the relationship between development policy and other 'foreign policy' objectives, as reflected for example in the Common Foreign and Security Policy. Are the instruments of development policy to be regarded merely as one tool amongst many in the pursuit of the EU's wider external objectives or are they 'ring-fenced' in the realisation of the EU's commitments to international development? These contrasting views are reflected in the debate as to the current organisational structure. The existence of a separate DG Development, responsible only for ACP relations, appears inconsistent with the responsibility of DG Relex for all other developing countries. The approach of DG Relex is far more likely to subsume development policy to wider external relations considerations than DG Development.

The increasing emphasis upon issues such as migration control in the political dialogue with the ACP states and with countries in the "near-abroad" is seen as a reflection of these wider considerations. The consistency and transparency with which the EC assesses 'needs' and 'performance' or applies sanctions in the case of breaches of the fundamental or essential elements of Cotonou may also offer some interesting in-

sights into the nature of EU development policy. For some commentators the abolition of the Development Council of Ministers and its absorption into the General Affairs and External Relations Council reflects the EU's relative priorities. Meanwhile the debate about the 'budgetisation' of the EDF i.e. its amalgamation into the general budget of the EU, favoured by the EC and some member governments, has raised objections from the ACPs who fear the loss of these 'ring-fenced' development funds.

Indeed it is naive not to view development policy in its broader context and to distinguish between the significant European NGO lobby's objectives and the reality of EU development policy formulation in its wider external relations perspective. Considerations of economic interest and security are no less significant in the understanding of the EU's trade and aid relations with the developing world than in any other external relations.

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Book Reviews

Michael E. Smith. *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*. Cambridge, UK: Cambridge University Press, 2004.

THIS IS AN AMBITIOUS BOOK that seeks to explain EU foreign and security policies since their inception in the apparently unpromising guise of European Political Cooperation (EPC) in the early 1970s. Smith puts forward the interesting and ultimately convincing argument that 'institutionalisation' of foreign and security policies within the EU has led to greater cooperation in these areas.

A particular strength of the book is the manner in which the author is careful to specify his terminology as clearly and precisely as possible. The stages of institutionalisation, therefore, are explained as: the establishment of a policy domain as an intergovernmental forum; increased information sharing; norm creation and codification; an increasing role for EU organisations and finally, moves towards what could be termed governance (the authority to make, implement and enforce rules in a specified domain).

Smith convincingly argues that the history of EC/EU foreign and security policies is a history of institutionalisation, with successive periods witnessing a steady move up his continuum. The book is based on an impressive amount of empirical research, including obviously highly productive participant interviews. The author displays a formidable grasp of not only the institutional complexities that characterise EU involvement in these spheres, but also of a wide variety of its foreign and security policy activities.

The book is perhaps somewhat less successful, however, when it comes to illustrating a clear link between the various stages of institutionalisation referred to above, and cooperation defined in empirical terms as 'specific collective actions or outcomes' (p. 50). As the author himself recognises (p. 60), 'correlation does not necessarily mean causation', and I am not really convinced that what follows illustrates anything much more than correlation.

Part of the reason for this concerns the sheer breath of ground the author has set out to cover. The subject is a large one, and Smith is necessarily unable to go into great detail on all aspects of it. Convincingly illustrating a causal link between institutionalisation and cooperation would require at least some consideration of the motivations of the major actors (the member

EUSA members interested in reviewing recent EU-related books, please contact the reviews editor:

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Publishers should send two review copies of books directly to Dr. Smith.

states) in undertaking this cooperation. Indeed, fully understanding EU foreign policy requires a detailed knowledge of these member states. Thus, while Smith refers to the issue of changes within nation states as representing one aspect of institutionalisation, he simply does not have the space to consider this in any detail. He refers at one point (p. 59) to 'sympathetic changes in national bureaucratic structures in order to fulfil the responsibilities of EU foreign policy cooperation' as one aspect of this institutionalisation, yet in some cases such adaptation is defensive rather than 'sympathetic', and only careful empirical investigation can ascertain which.

Similarly, the author raises many fascinating theoretical issues, but is unable to address all of them in the detail they deserve. Notable amongst these is the possibility that preferences are endogenous and themselves altered as function of habits and experience of cooperation in an institutional setting.

None of the above, however, should detract from the fact that Smith has written a clear, theoretically interesting and hugely informative book on EU foreign and security policies. Such shortcomings as there are stem from an excess of ambition rather than any intrinsic intellectual failings. The book is one that promises to remain a, if not the, standard work in the area for some time to come.

Anand Menon
University of Birmingham

Andrew Jordan and Adrian Schout. *The Coordination of the European Union: Exploring the capacities of networked governance*. Oxford, UK: Oxford University Press, 2006.

JORDAN AND SCHOUT HAVE PRODUCED an extremely valuable book on networked governance. It is essentially a case study of environmental policy and specifically its integration across the full portfolio of public policy (Environmental Policy Integration – EPI). However, the study is not simply one for students of EU environmental policy. Rather, it should be of great interest for students of new modes of governance; of the national coordination of EU policy; of the Lisbon Strategy; and of coordination within EU institutions themselves. The reason for this broad impact is that EPI is a policy that needs national governments and EU institutions to coordinate internally *and* with each other if its objectives are to be achieved. As an example of networked governance, the study provides an important detailed test as to whether the hopes that have been set by new modes of governance can be delivered. These hopes are held in particular for the EU's Lisbon Strategy of economic competitiveness because it entails coordination across a range of policy issues as well as ensuring that all 27 member states as well as the EU institutions are tuned into the common objectives.

In undertaking their study Jordan and Schout highlight the multi-level coordination challenges that are posed by networked governance. Drawing upon the management and public administration literatures they devise a framework for evaluating coordination, since traditional toolkits tend to rely on 'command-and-control' patterns of governance. As necessary context they outline the history of EPI, which has gone through several iterations over the period since 1972. Indeed, the EU has also spawned different processes for achieving similar objectives but the authors regard the 'Cardiff Process', initiated under the UK's 1998 presidency, as the most clearly defined of these. Three member states are taken to illustrate performance on EPI at the domestic level: Germany, the Netherlands and the UK. These states have all had aspirations to put EPI into effect at the domestic level, thus raising the question as to how these separate domestic processes enmesh with the EU's endeavours. The latter are explored through exploring the coordination capacities of the Commission and the Parliament.

For those who favour the mainstreaming of environmental policy objectives across the EU and the member states the findings are somewhat depressing. Politicians at national and EU levels have made positive pronouncements. Performance, however, has been

much less satisfactory in general terms, although performance amongst the five governance case studies has been quite varied. The UK is the best placed of the three member governments for achieving coordination, whereas performance in Germany is weakest largely because of its tradition of ministerial autonomy. As these member states are generally regarded to be amongst the policy 'leaders' on the environment, and therefore not exactly typical cases, the reader can only speculate on performance in states with weaker administrative traditions. At supranational level coordination within the Parliament is weak, whilst the Commission has been seeking to improve its performance. However, there is always the problem of trying to maintain EPI as a priority – especially when the Barroso Commission is prioritising a partially conflicting set of objectives in the 'Growth and Jobs Agenda' (the re-launched Lisbon Strategy).

If the empirical findings are somewhat bleak, the authors are to be congratulated on several counts. First, they have written a path breaking book that highlights the coordination problems raised by networked governance. Secondly, they have developed a valuable analytical framework for exploring coordination under such conditions. Thirdly, they have offered some practical proposals for improved coordination. And thirdly, they have revealed how EPI is indeed worthy of their designation of it, namely as a 'wicked' policy problem.

**Simon Bulmer
University of Sheffield**

Christine Ingebritsen. *Scandinavia in World Politics*. Lanham, UK: Rowman & Littlefield, 2006.

OFTEN SELF-DEPICTED - in a typically modest way - as "small and at the periphery", Nordic countries have, however, been trying to play a certain role in the international arena as "moral powers". The basic contribution of this book is to explain how they can exert influence in this respect. There is, obviously, a strong value dimension in the foreign policies of the five states which often aim at advocating measures consistent with their own domestic models. The author refers to Scandinavian activism in the fields of human rights, democratization, gender equality, the environment but she also mentions, unsurprisingly, peace diplomacy (eg. the 1993 Oslo agreement between the Israelis and the Palestinians), the symbolic importance of the Nobel Peace Prize, generous provision of aid or a particularly strong involvement in international organizations (U.N., W.H.O., etc.).

UACES Brussels Seminars

The book contains seven short chapters. Each deals with a different set of issues - such as European integration (mainly seen, characteristically enough, in terms of influence *over* the E.U.), the roots of Scandinavian exceptionalism, how to turn global challenges into opportunities for each of the countries concerned. A chapter is dedicated to the Norwegian case whilst those of Finland et Iceland are jointly examined within another. Sweden and Denmark are not forgotten, but are only discussed when considered to be of particular relevance to a topic (the challenges of immigration and multi-culturalism for instance).

C. Ingebritsen's main thesis is that Scandinavia has become a "norm entrepreneur" with an impact on world affairs that should not be underestimated. Some aspects which might seem to contradict this line of argumentation - Norwegians and Icelanders resisting the International Whaling Convention moratorium for example - are not ignored. However, in my opinion, the point of view defended in this book is often too one-sided and even idealistic. By this I do not mean to say that Scandinavian moral standpoints amount to mere wishful thinking, but when these (small) countries are confronted with the crude realities of International Relations they also have to adapt. For instance, one of the reasons why the European Union has been represented so sceptically in a country like Sweden has much to do with the image of distance and non-transparency which surround international summits. The Swedish presidency of the EU (during the first semester of 2001) certainly tried to present a different picture, but did not really succeed in doing so - mainly for security reasons. In short, research needs to question to which extent Nordic officials can and do systematically stick to their own codes? Are they not sometimes constrained to submit themselves to other ways of behaving - if only for the sake of diplomatic efficiency? Both attitudes currently co-exist and the book ought to have also taken this realistic approach into consideration, alongside the idealistic one.

Jean-Pascal Daloz
(Institute for Political Studies, SPIRIT,
Bordeaux & University of Oslo)

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The German Presidency and Treaty Reform: The European Family in the House without Windows? *Colette Mazzucelli**

Introduction

DURING 2005, WELL IN ADVANCE of its Council Presidency, the Federal Republic of Germany set a political goal to keep the member states of the European Union together in the midst of the crisis that began with the French and Dutch rejections of the European Constitutional Treaty. After two failed referendums, the Heads of State and Government called for a reflection period for the members of the Union to take stock of the situation and decide on next steps to take. Under the leadership of Chancellor Angela Merkel, the German Presidency, which lasted from January through June 2007, established a timetable to reach agreement among the 27 member states as to how to proceed with treaty reform. The Presidency implemented a high-risk strategy within its six months in the Chair. It was able to make the most of the election of Nicholas Sarkozy as French president to work through the difficulties likely to be posed for France as well as the United Kingdom, the Czech Republic, the Netherlands, and Poland in treaty reform. In order to lead the Union out of the crisis that overshadowed other dossiers of common interest and importance to the member states, like climate change, energy security, and economic competitiveness, the German Presidency decided to forego the open process that defined the method of the European Convention. The discussions that led to the decisions taken at the Brussels European Council on 21-22 June were restricted to a limited group of high-level officials from the 27 member states. This essay analyzes the approach of the German Presidency to treaty reform, the results achieved by securing a consensus agreement on a precise 'Draft IGC Mandate,' and the implications of the method of treaty reform discussions the Presidency chose. Each of these points, approach to treaty reform, results achieved, and implications of method, are significant for the next phase in the overall process: the intergovernmental conference to be convened on 23 July under the Portuguese Presidency. The fundamental reason for the rejection of the European Constitutional Treaty, the gap between elites and citizens, remains unaddressed. This fact has implications for a persistent constraint: the fact that treaty reform must be subject to a referendum in Ireland and possibly in more than one other member state.

Germany at the Helm: A Discrete and Direct Approach to Talks on a Draft IGC Mandate

The German Presidency fulfilled the role of mediator in its efforts to facilitate another round of treaty reform negotiations. Its own national interest was to gain an acceptance by a consensus decision among the 27 member states of a precise Draft IGC Mandate that would allow the Portuguese Presidency to open and conclude an intergovernmental conference to reform the Treaty of Nice in a very short period of time. The German Presidency controlled the process by which politicians and high-level civil servants had to solve the problems that resulted from the fact that 18 member states had ratified the European Constitutional Treaty, including Spain and Luxembourg by national referenda, and 5 had outstanding difficulties, including France and the Netherlands. Usually political problems are solved at the end of negotiations on treaty reform. After the reflection period, however, the Presidency had to address the outstanding political problems up front in order to transition from reflection to action.

Three phases can be identified in the German Presidency's approach: conceptual; exploratory; and operative. In the conceptual phase, which dates back to 2005, those responsible in Germany for treaty reform questions had to think about how to move ahead, to narrow the Presidency's options in terms of approach, and to work towards an agreement that every member state could accept. By December 2006, the contours of a deal emerged. Early in the Presidency, Chancellor Merkel set the tone for the months to come in her speech before the European Parliament. The Chancellor's emphasis was on the values with which Europeans could identify.¹ The exploratory phase in January and February involved separate bilateral talks between the Presidency and each member state in which officials from the Council Secretariat also participated. In these bilateral meetings, the main issues of concern were identified with the goal to define those points on which there was flexibility to compromise. During the Presidency, Federal Chancellor Angela Merkel, Foreign Minister Frank-Walter Steinmeier, Minister Director Uwe Corsepius, and State Secretary Reinhard Silberberg met internally to discuss potential compromises. Dr. Corsepius in the Chancellor's Office and Dr. Silberberg in the Foreign Office were the 'focal points' for the German Presidency. Every member state provided focal points as well by giving the German Presidency the names of one or two persons representing their respective leaders in the discussions on treaty reform. A list of the focal points was the means of communication from the Presidency to the other member states.

The operative phase started after 25 March, the date

of the Berlin European Council. This more informal meeting of the Heads of State and Government saw the introduction of the Berlin Declaration, which is significant in that it mentions 2009 as the target date for a new treaty to enter into force. In this way, the new treaty would coincide with the next round of elections to the European Parliament as well as a new European Commission. It is important to recognize the importance of the atmosphere surrounding the Berlin Declaration in the German capital. Chancellor Merkel's engagement was once again clear. The signal to the other member states was one to proceed together in an inclusive way. This was an occasion to celebrate an anniversary, the 50th anniversary of the signing of the Treaties of Rome, as well as a reunion to commit the member states to accomplish treaty reform. Once the French presidential elections were concluded, Mr. Sarkozy's victory in the second round on 6 May opened the possibility of engaged French leadership. President Sarkozy's idea of a mini-treaty gained acceptance. The remaining weeks of the Presidency were filled with intense meetings and conversations to sort out the remaining difficulties, particularly with the British, Dutch, and Polish.

The Brussels European Council: Tough Negotiations to Achieve a Precise Mandate

During very hard negotiations over several days, Chancellor Merkel ably managed to preserve the work of the European Convention while at one point asserting that the Union would move ahead to convene an intergovernmental conference without Poland if this became necessary. Other leaders assisted the Chancellor in a general effort not to isolate the Polish leader. French President Sarkozy demonstrated a will to overcome the crisis in which Poland was the only delegation to call voting rights in the Council openly into question. Its slogan 'Nice or Death' spoke directly to Poland's goal to retain the advantages which the country received in Council voting under the Treaty of Nice.² For the Polish delegation, it was important that its voice be heard by Germany as a partner on the issue of Council voting. For the German Presidency, this dossier was one that, if reopened, threatened to unravel the entire institutional compromise. As a member state, the issue of Council voting was also of considerable importance to the Federal Republic. The Polish delegation brought up this issue repeatedly in bilateral talks. The preoccupation with voting rights led the Polish to fall back on the 'square root' proposal, which suggested that Council voting weights be determined by the square root of each national population.

At the Brussels European Council, President Sarkozy, using corridor diplomacy in an effort to avoid isolating Poland, suggested to his counterpart that a transition period in majority voting could be envisaged.

The Draft IGC Mandate does contain a provision stating that between 2014 and 2017 the majority voting rules established by the Treaty of Nice may be applicable, if requested by a member state. Any development in which another member state besides Poland sought to revisit the majority voting rules was one which Germany, in its role as Chair and as a member state, saw as a potential impediment to achieve consensus among the Union of 27. The German Presidency held a hard line on this issue, which was a high-risk strategy to close a deal under severe time constraints. While there were certainly other national concerns the German Presidency had to address over the course of negotiations, the Polish threat of veto overshadowed the Brussels European Council. In this context, the influence of the Kaczyński brothers, the twins who are respectively the president and prime minister of the country, must be taken into account.³ The Polish people remain largely in favor of European integration, which the German Presidency and other member states understand.

The concrete result the German Presidency had to achieve was a precise Draft IGC Mandate, which the Portuguese government established as a condition for its Presidency to convene an intergovernmental conference. As a follow up to the work of its predecessor, the Portuguese Presidency has established a strict timetable opening the intergovernmental conference on 23 July with technical work continuing through the month of August. During the month of September any political questions that arise are to be addressed in order to prepare the text for signature during the informal Lisbon European Council on 18-19 October. The signed Lisbon Treaty must then be translated into the different official languages of the Union before the ratification period opens late in 2007. The goal is to finish the national ratifications in the 27 member states by early 2009. The German Presidency stayed focused on the goal of trying to preserve as much as possible of the content in the European Constitutional Treaty while working toward a mandate that could result in a new Reform Treaty in several parts. The first part, the Treaty on the European Union (TEU), is meant to contain 40-45 articles, including common provisions, provisions on democratic principles, provisions on institutions, provisions on enhanced cooperation, general provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy, and final provisions.⁴ The German Presidency's hope is that this would be a document which, after consolidation, citizens would want to read. The second part, presently the Treaty Establishing the European Community, is to be called the Treaty on the Functioning of the Union, and will contain most of the technical provisions that were in the European Constitutional Treaty. In fact, 80-85% of the content of the European Constitutional Treaty has been retained

in the Reform Treaty through the efforts of the German Presidency. This fact leads us to raise questions about the choice of method and the implications of the discrete, intergovernmental approach for deliberations concerning the eventual national ratifications in the 27 member states.

The German Presidency's Method of Choice: Considerations for the Future

While the Polish demands were the last to be addressed during the Brussels European Council at 4:30 am on Saturday morning, 23 June, the Dutch posed a number of issues, resolved the week before that meeting, which highlight the prospect of difficulties to overcome in future ratifications. The Netherlands faced a situation in which the distance between its parliament and its population was too wide to ignore in the no vote that was the result of its consultative referendum on the European Constitutional Treaty.⁵ For this reason, it was necessary for the Dutch to secure agreement in the Brussels European Council on a shorter treaty, on the removal of the word 'constitution,' and the exclusion of all references to symbols like a European flag and anthem, in what is named the Reform Treaty in the Draft IGC Mandate. The Dutch rejection, in addition to that of the French, was enough for the German Presidency to conclude that any referendum on a future treaty is one referendum too many. The only country that is committed to hold a referendum on a future treaty that member states sign during the 2007 IGC is Ireland. This is a member state with considerable experience in referendums on treaty reform having rejected the Treaty of Nice and then secured ratification in a second popular vote.

The Irish have established a national forum on Europe to educate the Irish people about the issues at stake.⁶ The motto that inspired the second Nice referendum is one that retains its relevance today: 'If you don't know, vote no'. There is an inherent danger that Ireland's referendum may not be the only one that is called among the 27 member states. A chain reaction may take place if the British prime minister comes under pressure to call a referendum given the argument that has already been made in public: although the word 'constitution' has been removed from the new text, the content of the Reform Treaty is much the same as the European Constitutional Treaty, which two founding member states previously rejected. If the United Kingdom decides to opt for a national referendum before 2009, France could come under pressure to hold one as well, and the Netherlands could likely follow.

The reasons for the German Presidency's method of choice signal a belief that the decision to constitutionalize the European Union went 'too far, too fast' for many of the populations in member states. The Presidency returned to the traditional way of treaty re-

form to avoid the Brussels bubble where the media can seize hold of a topic in treaty reform and open the issue up to popular and public confrontations. Elites have come to perceive the experience of the last two years as illustrative of the fact that citizens are not always prepared to vote on the question being asked in treaty reform, and often cannot make an educated choice given their relative lack of knowledge about the issues at stake. In another sense, however, a popular referendum may foster an important national debate about the European Union, as was the case in France in 1992 and 2005.⁷ In this sense, the decision to call a referendum on treaty reform requires discipline by national leaders not to use the Union as an object of their political manipulations. This is not simply an idealistic wish. It is a political imperative if the Union is to progress as a global actor in this century serving the interests of its states and citizens alike. A referendum exposes the fate of integration to the perils of domestic games. The French case illustrates that in 1992 and 2005 two different presidents of the Fifth Republic were each willing to pose the question of 'Europe' as a way to divide the political opposition using a Machiavellian tactic. The 1992 vote should have indicated to European leaders the extent to which a referendum exposes divisions in French public opinion on the question of integration's future.⁸ In this context, the choice of a behind closed doors classical negotiation method, when followed by a voluntarist desire on the part of certain national leaders to mislead their own populations, is symptomatic of a phenomenon used to describe the French Fourth Republic: the house without windows. Inside the house the member states of the larger European family set their own pace to exit from a treaty reform crisis. The time constraints of the six-month rotating Council Presidency dictate the course of action. This leaves millions of people outside to discover that the integration process, which makes a qualitative difference in their daily lives, has evolved in ways they hardly conceive. This is the real crisis of integration,⁹ which national leaders sooner or later will be called again by popular demand responsibly to confront.

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*The author expresses her appreciation to the German Fulbright Commission for its organization of the 2007 German Studies Seminar in Brussels and Berlin, to colleagues who kindly permitted interviews in the Federal Chancellor's Office and the Federal Foreign Office in Berlin, for discussions at *Notre Europe* in Paris and the Center for Applied Policy Research in Munich, as well as to the Wilton Park staff for the informative program discussions during Conference 862: The European Union's Institutional Future: Prospects for the Inter-Governmental Conference and Beyond at Natolin in Warsaw, Poland.

Notes

¹ Federal Chancellor Angela Merkel, 'Europas Seele ist die Toleranz', 17. Januar 2007, Straâburg, France.

² Krzysztof Bobiński, 'The Constitutional Treaty and Poland – A New Laggard in the EU?', in *Leadership in the big bangs of European integration*, Derek Beach and Colette Mazzucelli, eds. Basingstoke, Palgrave, 2007.

³ Krzysztof Bobiński, 'The Polish confusion', *openDemocracy*, 28-6-2007, <http://www.opendemocracy.net>

⁴ *Presidency Conclusions*, 'Draft IGC Mandate', Annex I, Brussels, 21-22 June 2007.

⁵ Colette Mazzucelli, 'The Road Not Taken Why the Dutch Referendum on the Constitutional Treaty 'Made All the Difference' for Europe', *EIPA Working Paper Series*, 2005, <http://www.eipa.eu>

⁶ *National Forum on Europe*, 'Chairman's Report', Dublin, March 2007.

⁷ Colette Mazzucelli, 'The French Rejection of the Constitutional Treaty: A Two-Level Games Perspective' in *The Rise and Fall of the EU's Constitutional Treaty*, Finn Laursen, ed. (manuscript in progress)

⁸ Colette Mazzucelli, *France and Germany at Maastricht Politics and Negotiations to Create the European Union*, London and New York, Garland, 1997.

⁹ Werner Weidenfeld, *Understanding the European Constitution*, Gütersloh, Verlag Bertelsmann Stiftung, 2007.

From the Chair

(cont. from p. 1)

The strength of the EUSA conference has, in my mind, always been that it fires up intellectual debate. Can we maintain this unique quality even as we grow?

1) *Decentralizing the program committee*

The size of the conference has stretched our program format to the limit. For the past ten conferences, the system was the same: over a fall weekend, a committee of five to seven people met to sift collectively through the applications, select papers, constitute panels, and line them up in a coherent program. With over 900 paper proposals, this has become almost impossible for a single team to handle. The obvious solution is to follow the model used in larger associations, such as the APSA, the ISA or the ECPR, which is to decentralize.

2) *Beyond area studies*

Our conference is first and foremost, and should remain, the home of EU scholars. Yet it should also appeal to scholars with a secondary interest in European integration. In the early 1990s, EU studies became a desirable specialization at the top research schools because it piqued the theoretical interest of top scholars—not all of them self-professed EU specialists. Per-

haps we should think hard about how to become more pro-active in bringing more diverse intellectual energy to EUSA.

3) *Poster sessions?*

Poster sessions have obvious plus points: they privilege dialogue over monologue, reward original presentation, encourage ideas-shopping, facilitate networking, and, not least, accommodate larger numbers of paper givers. Earlier EUSA experiments with poster sessions had mixed success. Perhaps we got the incentives wrong: no senior scholars, posters tucked in the hotel's corner, poor rationale behind grouping posters, competition with high-profile panels. We might change our mind if a) posters of graduates and senior scholars rub shoulders, b) in a central meeting space, c) where poster stands alternate with book and journal stands, d) during fixed time slots privileging posters over panels, e) with an opportunity for poster session participants to nominate up to three papers as best conference poster paper, f) and café latte available!

4) *Working groups?*

The APSA recently introduced working groups. The formula is simple: a small number of participants band together to attend the same posters and panels, and follow this up with group discussion. An expert scholar acts as facilitator. This formula could appeal to researchers/teachers honing a new topic, first-time visitors or graduates desiring intellectual guidance, teachers refreshing their syllabus, or scholars interested in networking. Working groups would, I think, add spice to poster and panel discussions.

5) *Reaching out*

The EUSA conference is the single-most important venue for research on European integration. It has not been particularly welcoming to 'consumers'. Can we do a better job in reaching out to, say, college teachers? We might consider introducing teaching workshops, perhaps in collaboration with the EU Centers of Excellence?

I invite you to share your ideas on these and other ways to improve the EUSA conference. Please send ideas/proposals/comments to Joe Figliuolo at usa@pitt.edu. A selection will appear in subsequent Newsletters.

The next conference will take place in Marriott Marina Del Rey in Los Angeles, April 23-25, 2009. It is a superb setting.

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