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EUSA Review Forum: Deepening v. Broadening: A False Dilemma?

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Book Reviews

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Reviewed by **Neil Cruickshank**

Chalmers, Damian, Davies, Gareth and **Monti, Giorgio**. *European Union Law Second Edition*. Cambridge: Cambridge University Press, 2010.
Reviewed by **Kathryn Breitenborn Kigera**

Daviter, Falk. *Policy Framing in the European Union*. New York: Palgrave Macmillan, 2011.
Reviewed by **Nikolaos Zahariadis**

Wells, Sherrill Brown. *Jean Monnet: Unconventional Statesman*. Boulder (CO): Lynne Rienner, 2011
Reviewed by **Yannis Karagiannis**

Review of Documentary by Don C. Smith, *Jean Monnet, The Father of Europe*, 2011.
Reviewed by **Björn Fleischer**

Kelemen, R. Daniel. *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge: Harvard University Press, 2011.
Reviewed by **Heather A. D. Mbaye**

Falkner, Gerda (ed). *The EU's Decision Traps. Comparing Policies*. Oxford: Oxford University Press, 2011.
Reviewed by **Marzena Kloka**



Deepening v. Broadening: A False Dilemma?

Five years after the last wave of EU enlargement, this EU Forum takes a step back to ponder the consequences of the Europe's integration to an ever-wider circle of member states – from the six founding members to the current 27.

All contributors take issue with the conventional notion that there exists an obvious tradeoff between “deepening” and “widening” the European Union. Based on an empirical dataset of EU treaty law, Frank Schimmelfennig argues that, to the extent that there is a tradeoff, it is not so much between deepening and broadening as between “widening and tightening” – as membership increases, the Union may become temporarily more heterogeneous. In a similar vein, Eva Heidberger's study of the recent enlargement to Central and Eastern Europe highlights a phenomenon of “creeping integration”; in certain areas, the Commission was able to quietly assert the necessity of greater coordination, not only during but also beyond the enlargement process. Jonathan Slapin, Anand Menon and Dan Kelemen's seek to generalize the argument through a quantitative analysis of federations and international organizations; they argue not only that there is “no correlation between size and depth”, but also that “deepening and widening go hand in hand”. Finally, Sara Hobolt's inquiry into citizens' perceptions of the relationship between widening and deepening reveals very divided public opinions: “While a majority of citizens are either supporters or opponents of both processes, over a third perceive a trade-off between deepening and widening, generally favoring deeper integration but opposing further enlargements.”

In sum, the main lesson of this EUSA Forum is loud and clear – there is no automatic tradeoff between widening and broadening. How could conventional wisdom be so wrong? The contributors to this EUSA Forum offer insightful explanations. Perhaps also were member governments so acutely fearful of the risks of enlargement that they took preventative measures to avoid a disintegration of Europe. Whatever the case may be, it does appear as if conventional wisdom became, with each wave of enlargement, a self-defeating prophecy. The question is whether this pattern will continue, i.e. whether the balance of power among member states and social groups will continue to favor those who want to deepen the Union. A serious trade-off between deepening and widening could conceivably arise if this ceased to be the case.

Nicolas Jabko
EUSA Review Editor

Is there a widening-loosening trade-off in European integration?

Frank Schimmelfennig

There is no convincing empirical evidence for the oft-evoked dilemma of widening and deepening in European integration. During its 60-year history, the EU's policy competencies and membership have generally co-evolved. Widening and deepening are, however, not the only large trends in European integration. Since the early 1990s, integration has been accompanied regularly by differentiation: the fact that EU rules and policies are not valid in all member states. The euro zone and the Schengen area are the most prominent examples.

So maybe we do not find a detrimental impact of widening on deepening because the real trade-off is between widening and tightening? This conjecture is based on the argument that enlargement increases heterogeneity. The integration and policy preferences and capacities of new member states often differ from those of the old member states. Differentiation is an effective method to accommodate such heterogeneity. It allows the old member states to exclude new members from individual rules and policies, without denying them membership altogether, if they fear that enlargement will undermine the efficiency of the policy or the utility that they derive from integration. On the other hand, new member states may be exempted from individual obligations of membership, without having to forgo membership entirely, if such obligations are particularly costly or difficult to sell at home. Indeed, each accession treaty contains a list of transitional arrangements consisting of exemptions from rights and obligations of membership for the new member states.

Empirically, however, the impact of enlargement on differentiated integration is limited. Data on differentiated integration in EU treaty law show that the EU's widening has so far not had a lasting effect of “loosening” the Union. The treaty law impact of the early enlargement rounds of the 1970s and 1980s was minor. In Northern enlargement, the new member states produced differentiation for less than one per cent of all treaty articles. Greece started with a share of less than three and Portugal and Spain with less than two per cent. The enlargement rounds of the past two decades, however, produced differentiation in around 15 per cent of all treaty articles.

Yet the differentiation effects of enlargement diminish rapidly and disappear completely after a few years. The average duration of differentiations for each of the Northern and Southern enlargement rounds of the 1970s and 1980s was approximately five years. The value for the EFTA enlargement of 1995 was slightly lower at 4.7 years. It is worth emphasizing that the higher number of differentiations in this enlargement round was not ac-



accompanied by a longer duration. The average duration for differentiations from Eastern enlargement cannot be calculated precisely at this point because of many on-going exemptions. For the moment, however, the average duration is still in line with the earlier pattern. Moreover, those new member states (such as Estonia, Malta, or Slovenia) which have already terminated (almost) all exemptions did not need more than four to five years to do so. This was even faster than in the first period of integration.

In sum, affecting roughly 15 per cent of the treaty base initially and lasting for five years on average and less than 10 years at most, differentiation in the context of enlargement is best seen as a transitional instrument of adaptation that facilitates the accession process but does not produce long-lasting or even permanent discrimination or legal disunity. Even if we include differentiation in the picture, the trade-off between widening and deepening does not resurface.

Frank Schimmelfennig
ETH Zurich

When Widening Makes Deepening

Eva G. Heidbreder

A general trade-off between deepening and widening does not stand the empirical test. Although theoretically compelling, a growing body of analyses refutes the assumption. Enlargements neither increase heterogeneity of positions in everyday EU decision-making across the board, nor per force lower the likelihood for more intense and expansive integration. Debunking the common wisdom as myth implies a new research agenda: how do horizontal and vertical integration actually affect each other? In addition, these findings take us back to a core question of EU research: what are the drivers of integration? Going beyond mere falsification of the assumed deepening-widening tradeoff draws our attention the causal links of territorial expansion and the increased depth and width of joint EU policy-making.

One conceptual angle to investigate whether and how widening is a cause for deepening is to start from the actual enlargement process and to focus on the unintended repercussions of its implementation. In this vein, the strategic approach developed for eastern enlargement raises a simple puzzle. The European Commission was assigned competences vis-à-vis the candidate states that went beyond the powers formally conferred to it in the framework of the EU acquis. During the pre-accession phase, the Commission thus applied double standards that were binding for the candidate states but not the member states. While in some policy areas, as foreseen, these special steering capacities

expired at the moment of accession, the Commission stayed active in others.

Explaining the variance between the cases in which powers were contained to the pre-accession phase (nuclear safety, and anti-corruption policies) and those in which the Commission expanded its capacities beyond the enlargement realm (minority protection, administrative capacity building, and cross-border cooperation), uncovers two conditions under which, indeed, policy making in the pre-accession context caused further deepening. All double standard policies meet a necessary condition: the existence of a strong pressure to coordinate new policy problems at the EU level in face of the prospective enlargement. All policies that entered the agenda as double standards were highly political; they had so far remained outside the EU realm, but they were considered crucial problems in the candidate states. Moreover, the pressure for coordination increased in all five cases during the pre-accession phase because the Commission created policy solutions for problems otherwise not tackled or handled less efficiently in other international forums.

Yet, pressing policy problems and the perceived need for coordination are not sufficient to explain why a specific policy is deepened; widening does not set off a functional automatism for deepening. The sufficient condition concerns the policy type: the specific problem at stake determines which instruments can be feasibly applied to implement a policy. If the utilized instruments do not openly expose the political clout behind the problem and threaten to shift political attention to the EU level, member states let the Commission intervene in basically any area. Therefore, distributive or soft regulative policies are probable candidates for further deepening, whereas the dawning creation of visible political authority will lead to an outsourcing of responsibilities from the EU to other international organizations that offer less efficient but politically less demanding policy solutions.

The findings provide answers to the two questions raised above. First, widening is under certain conditions a driver of integration. Enlargement extended the policy agenda to salient political areas, in which the old member states had no interest whatsoever to confer hard powers to the EU. At the moment of accession, the double standards limited to the candidate states had to be fully integrated, or else they disappeared. As long as the Commission could minimize visibility and political noise around its new powers, the member states accepted continued interference and hence deepening despite the highly political nature of the issues at play. Second, this mode of creeping integration is not necessarily unique to the enlargement context. Therefore, the specific mechanisms observed in the reinforcing widening-deepening linkage reveal information about integration dynamics more generally. That is why it is important to engage



with the research agenda that debunking the deepening-widening trade-off has opened up.

Eva G. Heidbreder, University of Konstanz

Reference

Heidbreder, E. G. (2011) *The Impact of Expansion on EU Institutions* (New York: Palgrave/Macmillan)

Wider and Deeper? Enlargement and Integration in the European Union

*Jonathan Slapin, Anand Menon
and R. Daniel Kelemen*

The potential impact of widening – the enlargement of the EU to include additional member states – on deepening – increasing the scope and strength of the EU’s powers – has been a central concern of many EU scholars and of many public debates about the EU’s future. Yet while the relationship between widening and deepening is recognized as one of the ‘big questions’ in the field of European integration, many academic and policy analyses remain based on the recitation of dubious ‘common wisdoms’ – above all the assumption that widening impedes deepening.

The notion that widening should impede deepening has intuitive appeal and has found resonance in the theoretical literature, particularly in the IR literature on multilateral cooperation and collective action. Yet if we look to the empirical record, it is not clear that such claims are well founded.

Our quantitative analysis of both federations and international organizations (specifically regional trade agreements) reveals no correlation between size and depth. Turning to the EU itself, widening and deepening have often gone hand in hand. Anticipation of the possible consequences of enlargement has frequently led member states to introduce institutional reforms that deepen integration. For instance, concern that the 2004 enlargement could render EU institutions unworkable was a central motivation for holding three Intergovernmental Conferences that reformed, and ultimately deepened, the EU.

We argue that an institutionalist account can explain when and how widening and deepening go hand in hand. The impact of widening on deepening depends on the position of the enlargement state relative to the preference distributions of existing member states across a range of policy areas. Unsurprisingly, widening is more likely to impede deepening with respect to an issue if the enlargement state is a preference outlier with an extreme anti-deepening position. However, the impact of adding a laggard state will differ across issue areas and may still encourage deepening. In policy areas where supranational actors already enjoy powers to act in the

face of legislative gridlock, widening may facilitate deepening. While expansion may create legislative gridlock and impede deepening in the short-term, it may also strengthen the role of supranational actors and provide the impetus for institutional changes that encourage deepening in the long term.

Recent developments within the Union seem to confirm our theoretical expectations. Not only has EU decision making continued to function in a wider Union, but widening has promoted institutional reforms that have accelerated deepening. For example, working styles and rules of procedure have been adapted to cope with enlargement – thus, the European Council in June 2002 adopted ‘Rules for the Organisation of the Proceedings of the European Council’. Amongst other things, this called for some agenda items to be marked as not being for debate, the Presidency was given the authority to limit speaking time, and limits were imposed on the size of delegations. Similar adaptation has been evident in the Council of Ministers and other bodies.

In contrast to many of the claims made in the literature, we argue that the effect of widening on deepening within organizations is highly contingent upon the nature of expansion. Whether widening impedes or fosters deepening depends upon the preferences of the new members and the nature of decision making rules. Moreover, a difference may exist between short and long term effects. Even if enlargement creates the potential for gridlock in the short term, it may create incentives for more reform in the long run.

Jonathan Slapin, University of Houston
Anand Menon, University of Birmingham
Daniel Kelemen, Rutgers University

Ever closer or ever wider? Public attitudes towards further enlargement and integration

Sara B. Hobolt

Do citizens perceive a trade-off between an ever closer European Union and an ever wider EU? The process of ‘widening’ the European Union with more member states has often been seen to go hand in hand with the process of ‘deepening’ integration by transferring more powers to the European Union. Over the past five decades the EU has managed to more than quadruple its membership, while at the same time significantly extending the Union’s authority into new competence areas. However, the current economic crisis in the eurozone has exposed deep divisions within the European Union, between euro insiders and outsiders and within the eurozone between the ‘paymasters’ in the North and the countries in need of financial support in the South. Calls for closer fiscal integration among an inner core of countries cast doubt on the notion that deepening and



widening are complementary, and it has been suggested that such a strategy to “deepen and narrow” is the only way to save the eurozone.

It has become increasingly clear that public support is a necessary requirement for further widening and deepening, but less is known about whether citizens perceive a trade-off between these two integration processes and if so, whether this has become more pronounced in recent years. It is of crucial importance to understand why some citizens see deepening and widening as complementary whereas others perceive them as conflicting. Of particular importance is whether a country’s status as an insider or an outsider in the eurozone and net contributor/ net beneficiary of EU funds shapes the way in which citizens perceive the two processes of integration.

Findings from an analysis of Eurobarometer data from the period since the big expansion of the EU in 2004 show that while support for both deepening and widening have declined slightly since the onset of the eurozone crisis, generally these attitudes have remained remarkably stable over time. I do, however, find significant differences across countries in citizens’ support for deepening versus widening. While a majority of citizens are either supporters or opponents of both processes, over a third perceive a trade-off between deepening and widening, generally favoring deeper integration but opposing further enlargements. More significantly, such attitudes are concentrated within core eurozone member states and among the better-educated, more knowledgeable citizens. These findings, based on multi-level analysis of Eurobarometer data, are consistent with utilitarian explanations of integration: they suggest that the winners of the integration process want to consolidate and strengthen the union, but close the door to additional (poorer) member states. In net contributor countries, such preferences are notably driven by concerns of additional financial burdens for existing members rather than symbolic considerations.

These findings have important implications. First, they suggest that attitudes towards European integration are multidimensional and that some citizens have multifaceted opinions on the integration process. Second, they indicate that a one-size-fits-all model of attitudes towards integration may be inappropriate, since the factors that shape attitudes towards deepening and widening are conditioned by the national economic and political context. Finally, these findings could also imply that we are moving towards a more divided multi-speed Europe, as opinion-leaders in the core eurozone countries are reluctant to foot the bill to expand the Union to include more members (and perhaps even bail out current members), whereas they are keen to support further integration among a core of countries.

Sara B. Hobolt, London School of Economics

EUSA Review

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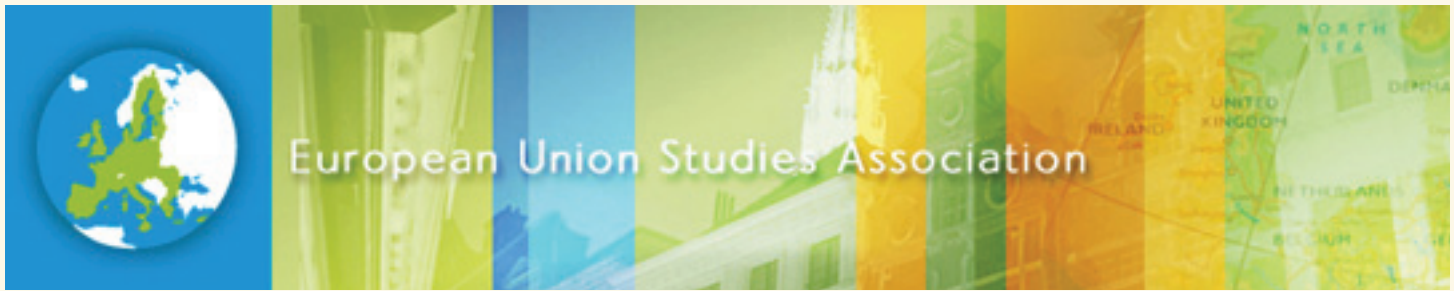
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EUSA BIENNIAL CONFERENCE

Baltimore, May 9-11, 2013

Call for papers and panels

The European Union Studies Association invites scholars and practitioners engaged in the study of Europe and the European Union to submit panel and paper proposals for its 2013 Thirteenth Biennial International Conference, May 9-11, in Baltimore, Maryland. This conference also marks the 24th anniversary of EUSA. The Program Committee plans to promote the broadest possible exchange of theoretical approaches, disciplinary perspectives and research agendas. Please note the following:

1. On the basics of paper and panel proposals:

- * We welcome both paper and panel proposals, particularly those that foster transatlantic dialogue. Panel proposals need to consist of three to four papers.
- * Participants are limited to two appearances on the conference program (two papers or one paper and one discussant role; chair roles do not count toward the appearance limit). Participants should therefore submit no more than two proposals.
- * For organizational reasons, the program is subdivided into seven substantive sections (integration theory in the EU and beyond; history and institutions; economics and political economy; sociology, political behaviour and elections; law, public policy and regulation; external relations, enlargement and security; teaching the EU). Please indicate for which section you would like to be considered. Note that there is no fixed number of panels for each section. Choosing one section rather than another does not enhance or diminish your chances of having your paper or panel accepted.

2. Other conditions:

- * The Program Committee reserves the right to make changes to organized panel proposals, including their composition.
- * You do not need to be an EUSA member to submit a proposal, but all those appearing on the conference program must be current EUSA members.
- * We cannot honor individual scheduling requests; by submitting a proposal you agree to be available from 8:30 a.m. on Thursday, May 9 through 6:00 p.m. on Saturday, May 11.

The 2013 Program Committee is:

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Sections under which proposals should be made:

Law, Public Policy, and Regulation

Tim Bütke (Duke University)

This section welcomes papers focusing on legal integration and the European Court of Justice, issues of rights and equality, and all substantive areas of EU regulation and public policy-making.

History and Institutions

Morten Rasmussen (University of Copenhagen)

This section extends to research on the designing and transformation of European political, administrative and legal institutions and the way they operate and develop over time. How do institutions operate under strong problem pressure? Do they absorb shocks by adjusting incrementally or are they subject to profound changes?

Sociology, Political Behaviour, and Elections

Alexander Trechsel (EUI)

This section raises questions regarding the specific features of European societies and the changes they have been subject to in recent years. How does public opinion react to the transformation of European societies? How do political parties, interest groups and social movements process these changes and influence electoral outcomes and public policies as a response to these transformations?

Economics and Political Economy

Waltraud Schelkle (LSE)

This section focuses on economic policies and dynamics ranging from trade to investment, employment, competition, fiscal and monetary policies, and welfare state reform. The section includes research on critical economic developments such as the financial crisis and shifts in the international distribution of economic power.

External Relations, Enlargement, and Security

Frédéric Mérand (University of Montréal)

This section includes all aspects of EU foreign and security policy; EU engagement in global governance; and EU development, aid and capacity building operations. The section also includes work on past and potential future EU enlargement and EU relations with neighboring regions.

Integration Theory in the EU and Beyond

Walter Mattli (Oxford University)

This section focuses on general questions pertaining to the dynamics of integration such as the factors which drive a deepening or a weakening of European integration, the underlying political processes, structures and modes of governance. It also goes beyond the EU and asks whether similar factors drive regional integration elsewhere (e.g. Mercosur, NAFTA, ASEAN) or whether different factors are at work and produce different outcomes.

Teaching the EU

John Occhipinti (Canisius College)

This section welcomes paper and panel proposals on any and all aspects of teaching the European Union.

The firm deadline for receipt of proposals is September 30, 2012. You will be notified of the Program Committee's decision regarding your proposal by December 17, 2012.

To submit a paper or panel proposal: All proposals must be submitted via our online proposal submission forms, which will be located at www.eustudies.org beginning August 1, 2012. Proposals must be submitted via the website. We do not accept proposals by e-mail, regular mail or via facsimile. Address all questions about the proposal process to eusa@pitt.edu.





EU as a Global Actor Interest Section

The Court of Justice as Global Governance Actor in EU-US Relations

E.L. Fahey

The role of the Court of Justice in foreign policy qua Global Governance is both a legal and political question which has attracted little interest from scholars of political science and international relations studying the Court of Justice, less still lawyers. The Court is regarded as having little influence on EU foreign policy generally, even by those less hostile to this viewpoint, and, at the very least, as having expended little time construing or analysing substantive EU foreign policy.¹ There is little doubt but that the EU increasingly acts externally as a Global Governance actor, both politically and legally, particularly after the implementation of the Treaty of Lisbon, where it emerges with more legal and unitary coherence. However, its “actorness” is assessed unevenly by lawyers and international relations theorists.² Most studies of EU “actorness” focus upon the EU institutions more broadly pre-Lisbon, concluding that the EU is both hardly and highly developed in its foreign policy actions.³ The significance of the actions of the Court qua judicial actor remain very much a political science-like phenomenon- when analysis closely scrutinises what occurs outside the courtroom upon strategic interactions of other institutional actors in response to it unlike legal scholarship, which remains devoted to the study of internal courtroom activities.

Transatlantic relations provide a fertile laboratory for global governance scholarship, but less obviously legal scholarship. Yet despite the waning political importance of the EU to the US, transatlantic relations are rapidly increasing and deepening in number in recent times, particularly in justice cooperation. While more EU institutional actors and agencies, for example Europol or the European Banking Authority, may possibly generate transatlantic relations in law, the Court of Justice has had limited opportunities to review this “high politics” qua “courtroom activities” There is a rising significance of law and legal theory to the Transatlantic Relationship. Transatlantic actors frequently deploy law as a political tool, in one way or another. For example, in 2011, the US House of Representative passed legislation to explicitly prohibit the impact of EU law in the US legal order.⁴ Another example is constituted by EU amicus curiae submissions before the US Supreme Court in death penalty cases.⁵ EU-US policy and law-making is increasingly porous or “outside-in” and “inside-out,” between the two legal orders. Thus, the extent to which EU legal rules are transplanted or replicated in the US

is growing, for example, the transposition of REACH in California. And thus the question remains, how would these developments influence the review of specific transatlantic policy and rules by the Court of Justice?

More specifically, the actual origins for EU-US relations lie mainly in bilateral regulatory cooperation agreements, binding and non-binding rules, between the US and the then EC and now the EU, as well as Protocols, Exchanges of letters. The most “successful” EU-US policy cooperation in Justice and Home Affairs since 9/11 in particular is remark worthy in two other ways- in that it is both recent and prolific, as a field of cooperation in extraordinary times. The extent of these legal obligations and their impact upon individual rights remains far more contentious than merely regulatory cooperation might generate. The US Attorney General, Eric Holder, recently claimed before the European Parliament that no rights violations have ever occurred as a result of any EU-US relations in the context of Justice and Home Affairs, thereby warranting further legal cooperation in these areas and beyond. Whatever about the merits of the substantive content of recent EU-US relations, as a matter of EU law there is a particular novelty to the legal formulation of the agreements entered into, but as a matter of EU law only and no more. For example, the most recent EU-US PNR Agreement expressly states that the Agreement is not a Treaty and is not amenable to review under US law, creating a curious quagmire for EU citizens affected by EU-US measures.

An analysis of the legal effects of Transatlantic measures in the caselaw of the Court of Justice does not reveal much by way of quantity, marginally more than a comparable search of the US Supreme Court.⁶ The Court of Justice has also neglected to avail of opportunities or possibilities in litigation to enlarge institutional powers or competences where possible.⁷ The limited amount of caselaw in this regard is indicative of much about the legal contours of EU-US relations. The Court has not perhaps acted in the interests of a “European” unified approach to EU-US relations, prior to the Treaty of Lisbon at least, however imperfect or challenging such an approach might seem to push for coherence. Nor has the Court acted to strengthen citizens’ rights or the hand of individual institutional actors, particularly in its recent high profile PNR decision, where on the contrary the Court may in fact be interpreted to have “gifted away” the power dynamic. The possibilities for the Court are, however, manifold, where it may act as an agent of change in global governance and also as guardian of individual rights, if it so wishes.

E.L. Fahey

Amsterdam Centre for
European Law and Governance



Notes

1. De Witte, B. (2008) 'Too much constitutional law in the European Union's Foreign Relations?' in B. De Witte and M. Cremona (eds.), *EU Foreign Relations Law: Constitutional Fundamentals* (Hart Publishing, Oxford and Portland Oregon 2008) p. 11.

2. See the analysis of Kaunert, C. (2010) "Europol and EU Counterterrorism: International Security Actorness in the External Dimension" *Studies in Conflict and Terrorism*, 33: 7, pp. 652-671.

3. Manners, I. (2002), *Normative Power Europe: A Contradiction in Terms?* *Journal of Common Market Studies*, 40: pp. 235–258; Nicolaidis, C. & Howse, R. (2003) "This is my EUtopia...narrative as power" in J.H.H. Weiler, I. Begg & J. Peterson (eds). *Integration in an Expanding European Union* (Oxford: Blackwell) pp. 341-366

4. HR 2594 European Union Emissions Trading Scheme Prohibition Act of 2011 was passed by the US House of Representatives in late October 2011 purporting to prohibit the application of EU law to US airline carriers.

5. *Atkins v. Virginia* 536 US 304 (2002); *Roper v. Simmons* 2004 WL 1619203 (US). See the excellent account given Cremona, M. (2011) "Values in EU Foreign Policy" in M. Evans & P. Koutrakos eds., *Beyond the Established Legal Orders Policy interconnections between the EU and the rest of the world* (Oxford: Hart Publishing) pp. 275-317.

6. A search in Curia for "transatlantic"- searching for transatlantic-related documents yields 14 documents (31 January 2012), not all of which relate to substantive law (eg references to a transatlantic flight in a consumer law dispute or a transatlantic law journal). A comparable search in the US Supreme Court yields five results, none of which are substantive results either (2 February 2012).

7. For example: Case C-233/02 *French Republic v. Commission* [2004] ECR I-2759 (EC-US Guidelines on Regulatory Cooperation and Transparency) Case 142/88 *Hoesch AG & Federal Republic of Germany v. Bergrohr GmbH* [1989] ECR I-3413 Arrangement in exchange of letters Case C-327/91 *France v. Commission* [1994] ECR I-3641 1991 (EC-US Competition Cooperation Agreement); the so-called Open Skies caselaw eg; C-467/98 *Commission v Denmark* [2002] ECR I-9519; Case C-523/04 *Commission v. Netherlands* [2007] ECR I-3267; *Passenger Name Records (PNR)- Joined Cases C-317/04 and C-318/04, European Parliament v Council and Commission, Judgement of the Grand Chamber of 30 May 2006, [2006] ECR I-4721.*

The EUSA Executive Committee is pleased to announce the online publication of the first EUSA Biennial Conference Special Issue of the *Journal of European Public Policy* (JEPP). This Special Issue includes seven (revised) papers selected by peer review from amongst those nominated by discussants and chairs as among the best presented at 2011 Biennial EUSA conference. The Special Issue can be found at <http://www.tandfonline.com>. The paper version is now available.

We look forward to continuing this collaboration between JEPP and EUSA in the future and expect that 6-8 papers from the 2013 EUSA Conference, May 9-11, 2013, to be held in the Baltimore/Washington DC metro area, will again be selected for publication in a future special JEPP/EUSA issue.



Opening Pandora's "Toolbox:" The European Union as an Actor of "World Society"

Didem Buhari

Given the recent economic, social, and political crises in Europe, it would be timely to study the EU's global actorness from a global perspective that transcends the dichotomous thinking reinforced by the strategic-normative debate. The "World Society School" led by John W. Meyer (also known as the Stanford School's sociological institutionalism) introduces analytical tools – "world society", "ritualized rationality", and "disinterested actorhood"- to expand our understanding of global politics and society (see Drori and Krücken 2009; Boli, Gallo-Cruz and Mathias 2010; Buhari-Gulmez 2010). To begin with, rather than being insulated or cut off from the external environment, the EU is embedded in a "World society", i.e. a decoupled, centreless, and dynamic global entity that provides universalistic blueprints for how to understand and behave in the world (Meyer 2001). Both the compliance deficit within the EU and the chronic failure to define European cultural identity (Biebuyck and Rumford 2011) reinforce the assumption that the EU's agency is less constituted by intergovernmental bargains or a particular cultural centre than global scripts -termed "global cultural myths" by Meyer and Rowan due to their historicity and bias for liberalism and scientism- actively promoted by epistemic, professional communities and international organizations that cultivate a global mindset. The emphasis on the EU's embeddedness in the global renders the traditional accounts of the EU's global actorness highly problematic.

Rather than embracing the dichotomy of self-interested vs. norm-driven actorhood, the World Society scholars suggest acknowledging "disinterested actorhood" (Meyer and Jepperson 2000). Disinterested actors are those who advise "proper" (or self-interested) actors on how to think and act by providing the latter with not only normative but also cognitive scripts enacted at the global level and thought to be universally applicable. By definition, disinterested actors include international organizations, professional and epistemic communities who are not only problem-solvers but also "trouble-makers" due to their constant efforts to rethink, reframe, and reorganize modern society and politics. Their scripts are followed by modern actors -including nation states, societies, regions, groups, and individuals- who rely on external recognition and legitimation. In this context, due to its active contributions to the enactment and spread of global standards, the EU is a disinterested actor that is a crucial part of global legitimation processes. A recent

study on the disinterested aspect of the EU's global actorness is developed by Joseph Jupille and Brandy Jolliff (2011:9-13). Accordingly, compliance with the EU implies a search for external legitimation: the EU is seen as an authority that provides globally legitimate templates for action. Accordingly, in addition to its "market power" (Damro 2011) and "normative power" (Manners 2008), the EU holds the authority to problematize, transform, and reframe (in line with world society scripts) the taken-for-granted visions of existing problems and available solutions in the national realm. For instance Turkey, an EU candidate country that is infamous for its failure to implement strategic and normative conditionality, has already experienced radical processes of cognitive transformation involving the redefinition and reframing of key political concepts such as national sovereignty, secularism, and minority amongst others. This means that the EU's conditional pressures do not only trigger strategic and normative debates, but also cognitive efforts to embrace globally endorsed definitions, categories, methods, and solutions.

Finally, the World Society School challenges the prevailing dichotomy of optimal vs. bounded rationality -or Calculus vs. Cultural logic (Hall and Taylor 1996) or logic of expected consequences vs. logic of normative appropriateness (March and Olsen 1998)- which respectively inform rationalist and constructivist approaches to the EU's global actorness. The optimal-bounded rationality debate centres on determining whether (i) the EU's actorness follows "utility-maximization" or "satisficing", (ii) the EU's behaviour is instrumental or norm-driven, and (iii) environmental effects on the EU are of strategic or of normative character (See Table 1). While optimal rationality focuses on one's tendency to compute all possible outcomes of an action before acting, bounded rationality highlights the time, normative, and cognitive constraints that lead one to fail in one's search for optimal solution. Alternatively, the World Society School treats rationality as a cultural norm that constitutes legitimate actorhood in the modern world, rather than an inherent 'fact' of social and political life. In this sense, actors resort to post-hoc rationalizations to justify their scripted behaviour. By using the term 'ritualized rationality', the World Society School helps to uncover the general tendency to follow the logic of heuristic decision-making. Such logic involves using mental short cuts to understand complex phenomena (Leading political scientists on heuristics are Herbert Simon, Daniel Kahneman, Alex Mintz). Hence, without knowing anything about the topic at hand, one still finds a short cut to judgment by referring to an abstract principle or an authority that one deems legitimate (Johns 2009:575).



So, unlike optimal and bounded rationality which assume that actors inherently seek to maximize efficiency, ritualized rationality de-emphasizes purposive actorness. It rather draws attention to the ceremonial and post-hoc nature of rationalizations underlying actorness: “ritualized rationals” embrace scripts not solely because they are certain that the latter could solve their particular problems or grant them normative superiority, but also –and most importantly- because the scripts are globally endorsed and have a “taken-for-granted” character. According to such path-breaking perspective, the EU’s frequent reference to scientific and UN- or INGO-promoted “evidence” reinforces the assumption that EU-led reforms are embraced abroad not only because they are “beneficial” or “appropriate” but also because they are globally endorsed/legitimated. This suggests revisiting interest-based accounts of the EU’s effect on domestic politics and society: Compliance with the EU conditionality tends to be ‘ritualized/ceremonial’ rather than a clearly “thought-out” process. As if performing a ritual, national parliaments pass EU-led reforms that have been lumped together without much consideration of their specificities; and no parliamentarian has much idea of how to put these reforms into practice in a specific context. However, under the constitutive effects of global rationalization processes, national decision-makers resort to post hoc instrumental explanations for their scripted behaviour (Meyer 2007:795). Conse-

quently, it is difficult to apprehend the bias introduced by post hoc rationalization, which misleads many to favour strategic accounts of the EU’s global actorness. Nevertheless, serious political research usually reveals confessions made by national political elites that ‘the national interest is something you invent on your way to the airport’ (quoted in Sjursen 2006:99).

In sum, the study of the EU’s global actorness needs a global theory that transcends prevailing dichotomies in political research. The World Society School introduces important “tools” –world society, disinterested actorness, and ritualized rationality- to move beyond a possible theoretical impasse by grasping the cognitive dimension and thus, the “bigger picture” in European studies. It puts a special emphasis on the cognitive transformations the EU is triggering through its conditional stimuli. The World Society School also revolutionizes studies on the relationship between Europe and globalization with its structurationist approach: Instead of being merely a gatekeeper against global flows (as evoked by terms such as Schengenland or Fortress Europe), the EU could also be thought as a gateway to global legitimation processes due to its primary role in enacting and spreading the world society’s scripts (Rumford and Buhari-Gulmez 2011; Rumford and Buhari-Gulmez 2012).

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Table 1. Three types of rationality

<i>Rationality</i>	<i>Optimal</i>	<i>Bounded</i>	<i>Ritualized</i>
Actor-Action Relationship	Actor effectuates and reverses action	Actor effectuates action but is less able to reverse it	Action constitutes actorness
Impact of Environment on Actor	Only limited effect Constraining	Broader effect Both Constraining and Constitutive	Broadest effect Constitutive
Actor’s Relationship to its Environment	Instrumentalization	Both instrumentalization and internalization	Non-problematization (take for granted)
Actor’s Awareness of Environmental Effect	High	Lower	Lowest



References

Biebuyck, William & Chris Rumford (2011), "Many Europes: Rethinking multiplicity", *European Journal of Social Theory* 15(1), 3-20.

Boli, John, Selina Gallo-Cruz, and Matthew D. Mathias (2010) "World society, world-polity theory, and international relations", in *The International Studies Encyclopedia*, ed. Robert Denemark. Malden, MA: Blackwell. <http://www.isacompendium.com/public/>

Boli, J. & Thomas, G. (eds.) (1999) *Constructing World Culture: International Nongovernmental Organizations Since 1875*, Stanford, California: Stanford University Press.

Buhari-Gulmez, Didem (2010) "Stanford school on sociological institutionalism: A global cultural Approach", *International Political Sociology* 4(3): 253–70.

Damro, Chad (2011) "Market Power Europe", *European Union Studies Association Twelfth Biennial International Conference*, Boston (Massachusetts USA), 3-5 March 2011. (reprinted in *JEPP* March 2012).

Drori, Gili S., and George Krücken (2009) "World society: A theory and research program in Context", in *World society: The writings of John W. Meyer*, ed. G. Krucken and G.S. Drori, 1–32. Oxford: Oxford University Press.

Jupille, Joseph and Brandy Jolliff (2011) "Regionalism in the World Polity", *European Union Studies Association Twelfth Biennial International Conference*, Boston (Massachusetts USA), 3-5 March 2011.

Manners, I. 2008, "The Normative Ethics of the European Union", *International Affairs* 84(1): 65-80.

Meyer, John W. (2007) "Reflections on Institutional Theories of Organizations", in *Handbook of Organizational Institutionalism*, edited by R. Greenwood, C. Oliver, R. Suddaby, and K. Sahlin-Andersson. Thousand Oaks: Sage.

Meyer, J. W. 2001, "The European Union and the Globalization of Culture", in *Institutional Approaches to the European Union*, edited by S. S. Andersen,

Arena, Oslo, p. 227-45.

Meyer, John W., and Brian Rowan (1977) "Institutionalized Organizations: Formal Structure as Myth and Ceremony", *American Journal of Sociology* 83 (2): 340–363.

Meyer, John W. and Ronald Jepperson. (2000) "The 'Actors' of Modern Society: The Cultural Construction of Social Agency", *Sociological Theory* 18 (1): 100–120.

Rumford, Chris, and Didem Buhari-Gulmez (2011) "Contradictions in European integration: A global perspective", in *Global trends and regional development*, ed. Nikolai Genov, New York, NY: Routledge.

Rumford, Chris and Didem Buhari-Gulmez (2012) "The European Union", in George Ritzer (ed.) *Encyclopedia of Globalization* (5 volumes), Wiley-Blackwell.

Sjursen, Helen (2006) "Values or Rights? Alternative Conceptions of the EU's 'Normative' Role", in *The EU's Roles in International Politics: Concepts and Analysis*, edited by O. Elgstrom, and M. Smith. London: Routledge.

Soysal, Yasemin (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago: University of Chicago Press.



Commerce, Crisis, and EU Health Policy

Holly Jarman

Reactions to the economic crisis in Europe frequently involve retrenchment of public health care, and in a few countries explicit privatization of health care responsibilities. Moreover, the European Union's existing policy frameworks, and developing agendas as distinct as health care services regulation and peripheral bailouts, are creating an explicitly pro-market framework for health care.

European states are currently maintaining a precarious balance between the old models of health policy decisionmaking in the context of welfare states, and the new realities of global markets. Ongoing trends towards the commercialization and globalization of healthcare pose significant challenges for European policymakers. Legal frameworks governing crossborder healthcare -the movement of patients and medical professionals from one state to another, the commercial presence of foreign health providers, and crossborder health services- have been created which need to be supplemented by stronger policies if they are to fulfill member state promises to promote high quality healthcare that is broadly accessible.

Some Context

Now might not seem like a good time to call for the strengthening of health systems in European Union member states. As I write this, the Eurozone is experiencing yet another wave of political turmoil and economic uncertainty in the ongoing, slow motion car wreck that is the current financial crisis. Strategies to bring back economic growth in ailing EU countries have revolved around debt reduction, to be achieved via public spending cuts, which frequently include cuts to health and social services.

Under great pressure to appease markets and debtors, several member states have dismembered their health systems. Ireland, a historically underfunded health system, saw its health budget cut by 26 per cent in 2009, with a further Eur746 million cut for 2011. In Greece, the health budget decreased by Eur1.4 billion in 2011, with deep and rapid cuts to hospital funding. In the same year, Italy announced extensive budget cuts to health care infrastructure, research funding, and disease prevention, and tight new budget caps on regional pharmaceutical spending (Mladovsky, Srivastava, Cylus, et. al. 2012). Other governments, such as the United Kingdom and Portugal, have radically

reformed their health systems in an attempt to control the rising costs of care.

On top of the current economic instability and pressure for austerity, European governments already face some severe longterm challenges which will impact their health systems in the decades to come. Depending on the state, these challenges can include aging populations which require more care and pay fewer taxes, shortages of healthcare professionals such as doctors and nurses, or rising healthcare costs which challenge public budgets. In trying to tackle these issues over several decades, governments have introduced successive policies aimed at rationing access to treatment and limiting price rises. It can be argued that European welfare states have entered an era of permanent retrenchment, a 'silver' age of more limited state-sponsored health and social services which pales in comparison to earlier models of the welfare state (Ferrera 2008).

Both these short and long term factors have placed considerable pressure on health budgets. But there are other, simultaneous, trends which are just as important in shaping current and future health policy. While member states enact austerity measures, officials at the European level are focussing on making markets. Strategies to bring back economic growth put forward by the Commission focus extensively on negative integration and the liberalization of services throughout the internal market. The proposed Single Market Act, adopted by the Commission but not yet by member states, calls for the standardization of services at the European level via the European Standardization System, liberalization of public procurement policies, simplified procedures for mutual recognition of mobile workers, and the construction of a 'digital single market' which can empower consumers and increase the 'effectiveness' of public services and procurement (European Commission 2011).

Finally, these measures have been put forward in the context of ongoing international trends in healthcare which are promoting the creation of crossborder markets in health. Many states, both within and outside the EU, are interested in promoting themselves as destinations for Europeans seeking to undergo medical treatment. Patients around the world are choosing to travel for various reasons, including to access certain specialist procedures unavailable in their home state, bypass long waiting lists, or to obtain care at a lower cost (Glinos et. al. 2010). As states invest in attracting patients from elsewhere, they are creating strong commercial lobbies which support liberalizing trade in health services at the global level.



What might the EU do? Who has health policy competence?

What explains how the EU can do these things? The adoption of austerity and retrenchment measures, the proposed 'relaunch' of the internal market, and the ongoing globalization of healthcare markets, are part of a new and distinct policy environment for European health systems. This policy environment is more international than in previous decades. It contains weaker proponents of public services, and more officials, managers, cross-national companies and other organizations supporting private ownership, operation, and funding of healthcare services. It is politically conflictual, and legally complex. How well will the EU institutions and member states adapt to this new environment?

Substantial health policy competence at the EU level is relatively new. Although the central EU institutions have had some ability to coordinate elements of health systems and public health policies for decades, passing important legislation in blood and cancer policy, and crossborder emergency care, this authority has not always been explicit in the EU treaties themselves.

In the last few years, this picture has begun to change, with a much broader EU-level health policy realized and implemented through internal market law. This has happened in three ways. First, through a series of European Court of Justice decisions which established *de facto* EU competence in health services by applying the principles of internal market law. Second, by the Directive on the Application of Patients' Rights in Crossborder Healthcare, which translated the ECJ jurisprudence into legislation using the language of human rights and consumer choice. And third, through the Lisbon Treaty, which granted the Union new powers to set public health policies in areas such as health security, alcohol policy and tobacco control.

In contrast with their historically weak powers in health, the EU institutions have long held stronger authority over aspects of the internal market and external trade, meaning that existing EU competences to shape markets have a strong influence over the direction of EU health policy. Internal market law is the most common form of EU law. It is a shared competence, although the Union holds important powers to set some of the laws which shape the internal market, in areas such as competition policy. Although there has been considerable political resistance to the application of internal market law to health among both member states with publicly funded health systems and social policy activists, the ECJ has consistently rejected arguments that health services are 'non-economic' and

that they should be excluded from the internal market (Hervey 2011).

The modern EU was built around a customs union, and the Common Commercial Policy, which applies a common external tariff to goods entering the Union, is one of the oldest EU competences. Until the Treaty of Lisbon, the Commission and the Council dominated trade policymaking among EU member states. The Commission could propose trade policy agenda items to the Council, which would in turn formulate a mandate for the Commission to negotiate on behalf of the EU member states. The TFEU greatly enhanced the role of the European Parliament in this process, with framework legislation in trade and investment, and implementing legislation for the Common Commercial Policy are now decided using the ordinary legislative procedure (Kleimann 2011).

To date, the EU has not made many commitments in international trade negotiations to liberalize external trade in health services, but it has made some qualified commitments in the areas of hospital and social services. The TFEU takes an important step by making trade in services an exclusive Union competence, which potentially reduces the need for mixed agreements requiring national parliamentary ratification (Eeckhout 2011), although this area of EU law still seems untested and susceptible to future member state and Court actions. The scope of the EU's health services commitments may well change in the future, as the increased influence of the Parliament over the trade policy process alters the structure of opportunity for health providers, policy advocates, and other lobbyists.

Finally, it may be the Troika of the European Commission, the European Central Bank, and the International Monetary Fund, and not the EU's legislative process, which has the most significant impact on the future shape of health policy in certain Eurozone states. National bailout packages for Ireland, Greece and Portugal included some very specific directions about the reform of these countries' health systems (Fahy 2011). Some of these reforms may well be appropriate, and some may be sorely needed. But they do not stem from democratic mandates. They are not the directives of health ministries or health policy experts. Nor are they reforms specifically designed to improve or maintain health outcomes.

In short, the pattern of EU authority over health services reflects the tension between health systems, which are largely bound to national territories, and goods and services markets, which cross national borders. Member states have the power to define health policy, and to manage and finance health services and medical care, although the TFEU commits EU



institutions to encourage cooperation between member states on health services in 'cross-border areas'. Where trade and health collide most forcefully, in areas where competences are shared and complex, it is likely that the ECJ will end up redefining the boundaries of these policy issues, while the increased power of the European Parliament may see greater attention paid to 'domestic' policy areas.

If You Build It, They Will Come

To say that this more international policy environment may have lasting effects on health systems in Europe is not too far fetched. In the last 15 years, the EU has moved a long way towards creating a *de jure* internal health market. In other words, the Court has ruled, and the other EU institutions have legislated, to promote an internal market in health services, in a way that is largely independent of the extent of actual crossborder economic activity in health.

First, health has been defined in EU law and policy as a commercial service, and patients as consumers of that service. A series of European Court of Justice decisions, starting with *Kohll* and *Decker* in 1998, applied EU internal market law to health. This critical path of legal decisions confirmed the right of EU citizens, as consumers, to consume health services in states other than their home state. With some limitations, the Court decided that crossborder patients should be reimbursed by their home state for healthcare obtained abroad. This raised substantial questions about the ability of EU member states to manage the capacity of their own health systems, resulting in panic and pushback from national policy-makers.

In response to calls from member states for legal certainty on this issue, the Commission proposed a Directive on crossborder patient mobility in 2008. Despite continued contention among EU interest groups, and delaying tactics from some member states, an amended version of the directive was adopted into EU law in February 2011. The Directive on the Application of Patients' Rights in Crossborder Healthcare followed the Court's jurisprudence by protecting the rights of EU citizens to consume health care in states other than their home state, with the costs paid for by their home state. These legal changes have strengthened the potential ability of EU citizens to demand crossborder healthcare, regardless of the fact that the actual number of people crossing state borders to obtain care remains fairly small.

This may not be the case in the longer term, however, as a constellation of actors recognize the potential of the EU as a health market. With its aging population and publicly funded health services, the

EU is seen by many internal and external actors as a large potential market for the health services that they provide.

Globally, states such as Singapore, Thailand, India, Costa Rica, and even Japan have been promoting medical tourism. Indian health providers, for example, see telemedicine, including teleradiology and remote monitoring, as the set of services they are most likely to sell to Europeans (Smith and Chanda 2009). At the same time, prominent health providers, clinics, and hospital chains have been investing in their global operations, and key private health insurers (such as Blue Cross) have begun to create products that allow, and even incentivize, crossborder patient mobility.

European politicians and EU officials are not immune to this enthusiasm. The health sector forms a huge part of the EU's overall economic activity, and can be seen not just as a drag on public finances, but as a potential contributor to them. If rising global demand for healthcare can be met within Europe, it is argued, the highly skilled EU health workforce and advanced medical technology could potentially contribute to renewed growth in the EU (European Commission 2007, 2010, 2011b). Several European states and the providers which inhabit them, for example Hungary (for dental services) and Germany (for high end cancer care) see health services as a growth sector, and have expressed their interest in increasing the number of foreign patients that they treat.

Conclusions

Political and business elites are coming to care more and more about crossborder trade in services, including health services. In Europe, this interest is a double-edged sword. On the one hand, liberalizing trade in services may provide the economic growth that EU members have been desperately seeking in recent years, allowing those states with highly skilled populations to capitalize on those assets.

On the other, many EU member state governments, activists, and interest groups, are wary of the effect that liberalization could have on their domestic public programs and welfare states. What member states actually want are crossborder spot markets - the ability to contract for occasional, unusual health procedures or workers in a way that supplements, without heavily impacting, domestic health systems (Greer and Jarman 2012).

But this may not be what they get in the long term. Acting on the initiative of the Court, EU has constructed a legal and policy framework which applies internal market law to health, making an internal market in health services more feasible. This is the case whether or not professionals, patients, or provid-



ers move, and regardless of whether online medical services spread and widespread telemedicine use becomes more feasible. What matters is political and economic pressure to create a market. The austerity trend, the Commission's proposals for market making, and the globalization of health markets, show that this pressure is building.

References

Eeckhout, Piet. 2011. *EU External Relations Law*, 2nd Edition. Oxford: Oxford University Press.

European Commission. 2007. *Accelerating the Development of the eHealth Market in Europe*, eHealth Taskforce Report. 2010. *A Strategy for Smart, Sustainable and Inclusive Growth*, COM(2010) 2020 Final, March 3rd. 2011a. *Single Market Act: Twelve Levers to Boost Growth and Strengthen Confidence*, "Working Together to Create New Growth", SEC(2011)467 Final. 2011b. *Establishing a Health for Growth Programme, the Third Multi-Annual Programme of EU Action in the Field of Health for the Period 2014-2020*, COM(2011) 709 Final, November 9th.

Fahy, Nick. 2011. Who is shaping the future of European health systems? *British Medical Journal*, 2012; 344: e1712.

Ferrera, Maurizio. 2008. The European Welfare State: Golden Achievements, Silver Prospects. *West European Politics*, 31:1-2, 82-107.

Glinos, I.A., Baeten, R., Helble, M., and Maarse, H. 2010. *A Typology of Cross-border Patient Mobility, Health & Place*.

Greer, Scott L., and Jarman, H. 2012. 'Spot Markets and Bureaucratic Politics: Promises, Perils, and Policies in EU Healthcare Services', *Journal of European Social Policy*.

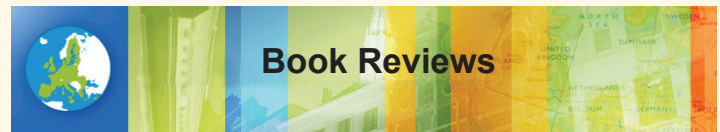
Hervey, Tamara. 2011. If Only It Were So Simple: Public Health Services and EU Law. 179-250 in Marise Cremona, Ed. *Market Integration and Public Services in the European Union*. Oxford: Oxford University Press.

Jarman, Holly. Forthcoming 2012. Trade in Services and the Public's Health: A 'Fortress Europe' for Health? In Scott L. Greer and Paulette Kurzer, *European Union Public Health Policies*, New York: Routledge.

Kleimann, David. 2011. Taking Stock: EU Common Commercial Policy in the Lisbon Era. CEPS Working Document No. 345 (April).

Mladovsky, Filipa Divya Srivastava, Jonathan Cylus, Marina Karanikolos, Tamás Evetovits, Sarah Thomson and Martin McKee. 2012. Health Policy in the Financial Crisis. *Eurohealth Observer* 18(1): 3-6.

Smith, Richard, Rupa Chanda, and Viroj Tangcharoensathien. 2009. Trade in Health-Related Services, *The Lancet*, 373: 593-601.



Koopmans, Ruud and Paul Statham (eds.). *The Making of a European Public Sphere*. New York: Cambridge University Press, 2010.

Timely and topical, *The Making of a European Public Sphere* is a worthwhile read. It does a very good job unpacking, analysing and challenging contemporary Europeanization and pinpointing the various ways in which media discourse and communication networks influence decision-making and contentious politics in Europe. By questioning the existing top-down legitimating ethos favoured by European Union (EU) elites and various policies aimed at legitimating EU governance, the volume contributes to literature and scholarship in the areas of Europeanization, media, identity and political contention. Koopmans and Statham (along with thirteen contributing authors) cover a lot of ground, both theoretically and empirically, and spend considerable time cataloguing and investigating the EU's legitimacy 'problems' and public sphere deficit. The 'claim-making approach' they utilise permits discussion to flow from sources of information, e.g. media, to the 'collective public actors' that utilise it, e.g. social movement organizations.

The book is divided into eleven chapters, not including Statham's very thorough and useful introductory chapter. It would seem the book's singular task is to explain and understand democratic legitimacy in the context of contemporary media discourse, communication networks (i.e. media) and political contention, and by extension, how a more open and participatory Europe can be realised by way of a European public sphere. All the chapters, in one way or another, aim to elucidate the emergence, non-emergence or partial emergence of a European public sphere, and various modes and channels of communication are scrutinised to determine how each contributes to its eventual development. A very competent group of scholars have done well to add an empirical dimension to what has thus far been (and could still easily be) a wholly theoretical debate. Moreover, as with most good books, it does an excellent job orienting the reader to its method, methodology, and conceptual framework. So while it borrows from social movement and political sociological literature, it does chart its own course with respect to theorising about 'the' European public sphere.

The interdisciplinary character of this volume, and of the contributors, is proof positive that Euro-



peanization, as a paradigm or heuristic, continues to advance and mature, zigzagging through disciplines, theoretical approaches, and frameworks. With many (if not most) of the social sciences represented, this volume offers readers an encompassing analysis of 'media discourse and political contention,' and the 'politicization of European policies.' Furthermore, and again owing to its interdisciplinary methodology, it considers the 'impact' and 'influence' of EU politics on Europeans, national states, and mass media, and how integration (and perceptions thereof) frame political mobilization, collective action, and more generally claim-making. Concern for a European public sphere is never far away, and the authors do well to link their findings back to this central consideration.

Their argument is two-fold: (1) for the EU and its institutions (both collectively and discretely) to maintain and/or gain a real sense of democratic legitimacy, as the authors of *The Making of a European Public Sphere* suggest, journalists and lawmakers must act purposefully and forthrightly to supply Europeans with relevant information about EU institutions and European decision-making, and; (2) for this model to work, the EU should endeavour to work 'with' and 'through' national parliamentarians, media and civil society. A top-down approach would further alienate the European public. As Statham argues, "for there to be anything that meaningfully resembles a public sphere at all, European decision making needs to be made visible to citizens" (p. 5). And in the post 'permissive consensus' Europe, a Europe characterised by cross-cutting and overlapping policy spheres, it becomes all the more important for Europeans to engage European lawmakers directly, through mediating institutions.

Koopmans and Statham's volume is useful, and welcome, for two main reasons. First, it does well to push the debate on Europeanization, integration and the European 'public sphere' forward, utilising cases and empirics to ground what has been, up until this point, a predominantly theoretical discussion. Second, it presents theoreticians with an answer to a vitally important question: What should (or could) a European public sphere look like? Stratham suggests "allowing the national politics that people understand to do the job of providing legitimacy to the EU is much more likely to be sustainable, meaningful, and effective" (p. 305). Alas, a European public sphere will develop not top-down, but out of routinized political contention, mobilization and contestation at the national state and local levels. This would be the only way to appropriately empower and animate Europeans and European lawmakers.

Readership: Senior undergraduate and graduate students taking courses on European integration or European media, and practitioners (i.e. policy mak-

ers) concerned with the EU's democratic (and public sphere) deficit.

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Chalmers, Damian, Davies, Gareth and Monti, Giorgio. *European Union Law Second Edition*. Cambridge University Press, 2010.

This volume is the second edition of *European Union Law*, in which the authors give a thorough explanation of the creation of law, as well as the implementation of the law and what such laws mean. This volume explains the impact of European Union law within countries as well as at the supranational government level. The authors indicate the role and strength of individual member states, while emphasizing the European Union (EU) body of governance as a collaborative and influential force that oversees the best interests of individual member states. The implications of EU policy and expectations of member states are outlined in a way that allows the reader to fully grasp the concept of EU law and the EU Court. The reader is pulled in within the first sentence of the preface, which begins by detailing the Myth of Europa and the relation to Europe. The authors explain that the myth has many meanings, including working together collaboratively to establish unified goals and objectives, as well as the negative connotations that the myth holds. It is a truly candid example of the way in which the EU operates and interacts. While there is collaboration, there is also dissent; it is not easy to maintain a balance between a supranational governing power and individual member state sovereignty. The unique and intriguing way in which the authors begin telling the story of the development of the EU, sets the stage for the entire volume. In the same way that this volume begins by describing the cover, the reader moves effortlessly through the evolution of the EU, EU Institutions, law, governance, citizenship, policy, economics and law enforcement. This volume has been edited to include revisions following the Lisbon Treaty, and the implications thereof.

This volume is divided into twenty-four chapters that elaborately detail the inner mechanisms of the EU, beginning with the formulation of the EU and the Treaty on European Union. The first chapter outlines the development of EU law and the treaty that ultimately led to an increased amount of collaboration between EU powerhouse states. While the development of the EU did not occur overnight, the authors give an in depth account of all treaties leading up the formulation of the EU that is known and respected to-



day. Despite bumps and hurdles along the way, this led to the Lisbon Treaty to overcome the fractions within the EU and allowed it to continue as it is known today. The Treaty of Lisbon established asymmetric integration provisions that explain when countries can leave the EU, be removed from the EU, require more cooperation and determine when new legislation is necessary to adopt amongst all governing Member States. The authors go on to describe EU Institutions, Member States, governing bodies and voting rights, leading up to a description of the adoption of EU law, policies and procedures. Throughout each section of the volume, the authors provide various articles, laws and case studies to enhance the reader's understanding of EU protocol and standard operating procedures.

From the establishment of the EU, the authors move to describe the EU judiciary order within the EU, indicating that the judiciary order is tasked with ensuring that EU law is observed, as well as delineating between EU treaties as they are written and the proper implementation of such treaties. Once the Court has made a judgment, it is expected that the national governments adopt the judgment as law as quickly possible. While EU law is expected to be implemented across Member States, national governments remain sovereign powers. For this reason, there is often a lag between the adoption of EU law and the implementation of EU law in individual Member States.

The individual sections of the volume are explained in the table of contents in the front of the volume, and then the contents of each individual chapter are reiterated at the beginning of the chapter and again in the first paragraph of the chapter. Given that the volume is mapped out so well, explaining the contents of each chapter 3 times gives too much repetition. Various excerpts from EU Court cases are expertly placed throughout the volume in a manner which allows for thought provoking reflection as the reader moves from one section to the next. This volume is thorough, in that it explains the foundation of EU law very well, and this is where those who are studying EU law should begin their study.

This volume is thorough and complete and offers the reader an in depth understanding of the foundation on which the EU was build, as well as an understanding of how EU laws and policies move from the EU to individual national governmental systems. Depending on the previous knowledge of the reader, the volume need not be read in entirety, but for those who are unfamiliar with the EU system and governance, it is strongly recommended to do so. This volume is recommended for those who are interested in understanding the foundation and key cases of EU law.

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Daviter, Falk. *Policy Framing in the European Union.* New York: Palgrave Macmillan, 2011.

What impact do issue frames and framing strategies have on the EU policy process? Daviter's book provides an intriguing answer that says issue frames have systematic causal effects on subsequent policy dynamics (p. 20). The point is the Commission, and various interest groups, attempt to activate salient issues of policy frames in ways that promote their interests. In a research agenda that is somewhat akin to constructivism, frames create rather follow interests. As the policy process involves a series of sequential decisions and shopping for favorable venues, opposing and supporting coalitions change over time even though the issue remains the same. Moreover, as policy twists and turns over time, inter-institutional rather than intra-institutional dynamics become more salient. This implies once policy becomes "airborne" framing and reframing strategies privilege conflict (or cooperation) across institutional actors, e.g., the Commission and the Parliament, rather than within them, e.g., across Directorates-General (DG).

Daviter explores the important field of biotechnology policy since its placement on the EU agenda in the late 1980s up to the reforms of the mid-2000s. More specifically, he looks at three Directives and one Regulation, trying to understand why some were adopted and then revised, others adopted and then repealed, and still others vetoed and then adopted. Tracing the issues through the policy process, he explores various outcomes in an effort to assess the ability of the Commission to control and define the issue according to its own priorities and preferences. Astute readers can already guess the outcome. The Commission had considerable clout once the issue of biotechnology was first introduced and defined as mainly an environmental problem that needed to be regulated. But the Commission failed in its subsequent reframing efforts to prevent other groups, the Parliament, environmental, consumer, and business groups to "hijack" the activation process of salient but different dimensions of the issue.

Chapters 3-5 trace the evolution of biotechnology policy from its environmental origins to health and consumer protection via economic competitiveness. In Chapter 3, Daviter discusses the adoption of Directive 90/219 on contained use and Directive 90/220 on deliberate release. They essentially sought to regulate operations in the EU whereby non-naturally occurring organisms were produced, stored, transported, released, or destroyed. The main objective was environmental safety and human protection. The key player was the DG Environment, which authored both



pieces of legislation. The question is why was that DG the main player and not DG Research or DG Industry, both of which had a significant stake in the outcome and obviously saw the same issue from very different perspectives. Daviter claims the answer is framing through the legitimacy afforded by the environmental chapter of the Single European Act. Moreover, the fragmentation and/or disinterest of opposing groups (industry and the Parliament) ensured an intra-institutional turf battle in which DG Environment gained the upper hand. This is an interesting and plausible argument but it is not crystal clear how this explanation differs from traditional power or bureaucratic politics explanations whereby “where you stand depends on where you sit.” If the object of the research question is to understand how preferences are initially constructed, pointing to bureaucratic sources is not particularly novel or different.

Where things become truly interesting is Chapter 4. Here the author traces the revision of the first Directive in 1998 and repeal of the second in 2001. The Commission engaged in a deliberate reframing strategy whereby biotechnology’s focus shifted from a safety and environmental issue to one of economic competitiveness and industrial growth. Spearheaded by DG Industry the attempt was facilitated by the broader focus shift found in the 1993 Delors White Paper on Growth, Competitiveness and Employment. In addition, there was a learning curve on the part of the part of industry, which recognized the need for good old fashioned centralized organization and strong lobbying tactics at the EU level as the recipe for success. This reframing strategy had some initial success in placing revisions on the Commission’s and Council’s agenda, but it hit the flexing muscles of an invigorated Parliament eager to make a difference. Here the author curiously avoids a clear explanation of the sources of Parliament’s newly found interest. He explains in Chapter 6 that the Treaty of Maastricht does not explain the Parliament’s robust opposition in some cases. Rather Daviter calls for an endogenization of the Parliament’s role in the policy process. Reframing by the Commission caused the redefinition of interests and the assembling of different coalitions around different dimensions of the issue. True, “co-decision...was not the problem” (p. 158), but only up to a point. What is true is that Parliamentary groups aided by environmental and consumer protection groups successfully stalled and/or diluted attempts to revise or repeal existing Directives on contained use and deliberate release. However, as the author admits on p. 91 the co-decision procedure complicated the fate of Directive 98/44 on biotechnology patents. Initially put to a vote at the conciliation stage in 1995, Parliament vetoed the text negotiated in the conciliation stage, essentially terminating the legislative process. A brief

counterfactual exercise reveals that co-decision was the only way this could have happened. Would Parliament be able to stall or veto the Commission’s proposal were it not for the newly acquired powers under co-decision? If not, then co-decision was very much “the problem.”

In Chapter 5, the analysis turns to Regulation 258/97 on novel food. Influenced by the prevailing climate of the early to mid-1990s, the Regulation sought to define the threshold above which foods could be labeled as genetically modified. This was an issue of dramatic importance to industry, which felt it was losing ground to Japan and the United States in the important area of research and development of novel, i.e., genetically modified foods. The important aspect here is the inability of the Commission to sustain focus on economic growth and development and the rise of conflict within the Commission between DG Industry and DG Health and Consumer Protection and later DG Agriculture. Daviter argues that public opinion played a minor role because the Regulation was signed ten months after the announcement that the BSE mutation had jumped to humans. Again the argument is fully elaborated in Chapter 6 (pp. 156-57) and not in the empirical Chapter 5. There is merit to this idea but counterfactual analysis reveals the “truth” is more complicated. Would the tightening of rules and broadening of scope regarding food labeling have gained steam were it not for the BSE crisis (and generally the food scares and botched government responses of the 2000s)? No, to an extent; the Regulation was passed, giving significant leeway to industry at a time when the sight of burnt cow carcasses was a daily occurrence in Europe. But it is very difficult to conceive tighter rules not legitimized or supported by public opinion which by early 2000 was scared stiff by food scares linked, rightly or wrongly, to genetically modified organisms. Besides, the ability to reframe biotechnology as an issue of health and consumer protection found an ally in DG Agriculture, which was engaged at the time in wide-ranging reforms. It is quite possible to explain Commissioner Fischler’s support for stricter labeling and traceability rules on his need to achieve support for his own reform agenda regarding agriculture. This is not to say that policy contestation does not follow reframing strategies or that once issues become politicized it is very difficult to control outcomes as Daviter claims. Rather the point is that exogenous factors, perhaps structures of opportunity in the form of what the literature on multiple streams calls policy windows, and logrolling play a decisive exogenous role in shaping frames or at least giving some groups the ability to gain the upper hand in framing struggles.

There is much to recommend about the book. Perhaps the most important benefit is an astute research design. Unlike most case studies of this type,



the author specifies considerable variance in the dependent variable, biotechnology policy, through the incarnations of directives and regulation. This design in effect allows a precise exploration of how framing strategies affect adoption of an issue. Victory at point t then generates conflict, leading to subsequent demise. For example, the ability of DG Environment to monopolize the definition of genetically modified organisms (Directive 90/219) subsequently mobilized a coalition of other groups inside and outside the Commission to relax the applicable rules.

In addition, the author makes a valiant attempt to tie the argument to broader debates in the EU policy process. In Chapter 6, he demolishes the myth of a monolithic, omnipotent Commission. Moreover, policy volatility and contestation give the Parliament a unique feature. Conflict arises not simply by way of ideology, as expected from research in national parliaments, but also by way of inter-institutional contestation mostly against the Commission. In other words, the Parliament's eventual position has less to do with substantive merit and more to do with appointing rapporteurs and stacking votes with an eye toward scoring victories against the Commission and the Council. The complexity of issues and fluid institutional rules facilitate this politically rewarding strategy.

However, the study falls somewhat short of its promise and ambition. First, there is no mention of specific hypotheses tying independent variables to the dependent variable. This is to an extent a function of ambiguous specification of the dependent variable. Yes, policy adoption, veto, repeal, and revision, constitute variance but the absence of conditions and mechanisms that link variance across issues leaves the reader with an ad hoc impression. Indeed, how does the explanation of adopting Directive 90/219 relate to the initial veto of Directive 98/44? Frames do make a difference, but which specific frames increase the likelihood of adoption and which ones do not? The author's argument is the constellation of supporting coalitions at time t is broken and re-assembled differently at time t+1 because of framing strategies. But which strategies are relevant – salami tactics, inter-institutional confrontation, information monopolies, or conflict expansion? We need a clear answer on what works and what does not and under what conditions across issues as well as across time. Unfortunately, the author fails to provide an explicit list of such conditions.

Second, the evidence is not well integrated to the theory. There are of course theoretical and empirical chapters, but the argument does not have continuity and flow. It appears to be a deductive argument with an inductive feel. Theory is elaborated in Chapter 2 where Daviter discusses the origins of the framing approach. He first traces theoretical antecedents to Schattschneider's pioneering work on conflict manage-

ment and agenda-setting. He then suggests how "organizationally entrenched policy frames reduce problem complexity...define actors' stakes...and demarcate a decision's scope and applicability" (p. 40). However, he does not provide a series of explicit hypotheses, which can then be referred and discarded or confirmed during the empirical sections. As a result, the empirical material stands curiously divorced (though organized) by theory. The reader is left to fend for himself until Chapter 6 where the author pulls everything together in an informative and useful theoretical chapter.

Finally, the author misses the opportunity to tell the reader up front why biotechnology is such an important field and how generalizable the results can be from this analysis. Apart from experts in the field, why should the rest of us care? What can we learn from biotechnology that we cannot from other fields and to what extent can the findings be replicated or at least be applicable to other fields? This is done in Chapters 3 and 6, the beginning of the empirical evidence and the final theoretical wrap up, but by that time, the reader and author have missed the boat.

This is a valuable book despite its shortcomings. To the extent that it constitutes the beginning of a productive research agenda on issue frames, the effort succeeds admirably. But more work needs to be done to reach the approach's full potential.

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Wells, Sherrill Brown. *Jean Monnet: Unconventional Statesman*. Boulder (CO): Lynne Rienner, 2011.

Sherrill Brown Wells has produced a compelling and concise new biography of the father of all Fathers of Europe, Jean Monnet. What follows first presents the contents of the book, and then discusses its relevance for political scientists.

Jean Monnet: Unconventional Statesman clearly falls under the category of historical biography. In fact, the book largely follows Monnet's own memoirs and Duchêne's now classic biography, and the story is presented in a strictly chronological order. Chapter 1 is dedicated to Monnet's "formative years", from his upper-middle class childhood in Cognac to his political entrepreneurship during and after World War I (during which he sponsored a buyers' cartel of the French and British governments, and learned a lot from the supranational operations of the Wheat Executive), and on to his private economic activities. Chapter 2 covers the years from 1938 to 1943, and documents not only Monnet's growing influence but also his firm belief in the virtues of international economic planning, particularly between France and the United Kingdom at times of



war. According to Professor Brown Wells, during that period “one of Monnet’s major achievements was to persuade the British to join the French in large joint orders for US aircraft in March 1940” (p. 51). Chapter 3 presents Monnet’s activities during the final years of the war effort, including his think-tank-like efforts to define French (and European) post-war policy. The emergence of Monnet’s idea of a sort of supranational “European entity” around the Rhine industrial basin (p. 85) is nicely depicted and adequately referenced. Chapter 4 then turns to Monnet’s role as head of the ambitious Commissariat Général au Plan. Professor Brown Wells does a particularly good job in depicting Monnet’s influence in defining a down-to-earth, liberal (as opposed to nationalist), pro-Atlantic French policy.

Chapters 5 to 8 are dedicated to Monnet’s leadership first in forging a united Europe, and then in deepening it. Chapter 5 covers the creation of the Coal and Steel Community, which is attributed to “Monnet’s conceptual breakthrough” (at p. 128), namely the idea that European integration could only be achieved if a political structure helped contain German industrial power, thereby calming French fears of German industrial domination. Professor Brown Wells’ account of the Paris negotiations of 1950-51 is particularly instructive, highlighting as it does the twin facts of Pareto-improving cooperation and power-based bargaining, often in the shadow of American preferences. Chapter 6 turns to the failure of the European Defense Community, and subtly attributes it not only to geopolitical factors and Mendès France’s (curiously spelled Mendès-France throughout the book) need for manoeuvre after the French losses in Vietnam, but also, at least in part, to the failures of the ECSC even in core common market policies such as antitrust (p. 173). Chapter 7 covers the years from 1954 to 1958, including the origination, negotiation, and ratification of the EEC and Euratom treaties. Although this is probably the less interesting chapter in this biography, it does include a thought-provoking section on the French preference for monetary and financial integration. Chapters 8 and 9 cover the last two decades of Monnet’s life (as an advocate with declining influence, particularly in his own country), and a critical but ultimately enthusiastic assessment of his contribution to the uniting of Europe.

Turning to the relevance of this book for political scientists, it should be noted from the outset that this is a historical, not a social-scientific, piece of work. The emphasis lies much more on the factual accuracy of detailed information than on theory or method. For example, although much of the text is about Monnet’s ideas, networks, and actions, these are not interpreted in the light of an explicit theoretical framework. Similarly, although the author makes several causal inferences, many of which go beyond the biographer’s natural quest for the reasons why people hold particular

preferences, none of them is supported by any sort of explicit research design, be it a counter-factual or a quest for the coefficient of a causal variable. Similarly, the author’s all-apparent desire to eschew controversy leads her to employ some unclear concepts or characterizations. For example, she writes that “Monnet’s idea was that [the High Authority of the ECSC] would regulate business through competition, pricing and investment pooling, and the supervision of wages but would not replace private enterprise” (at p. 144), but does not elaborate on exactly how competition can thrive in such a tightly regulated political economy.

Still, there is a lot to learn from this book. First, at the level of pure and simple facts, Europeanists get a lot on their plate. Compare, for example, Andrew Moravcsik’s well-known liberal inter-governmentalism to Brown Wells’ insistence that time and again international negotiators in the twentieth century enjoyed enough freedom of action to adopt policies which were not supported by peak business associations or trade unions of their home countries. Similarly, although Moravcsik finds that the first supranational competition policy was established in 1957 at Erhard’s insistence and against French preferences, Brown Wells demonstrates that it was actually invented by Monnet in 1950, against both Germany (including Erhard) and (more surprisingly) French public opinion and business associations. This, I believe, has direct implications for other state-of-the-art works in EU studies, such as Simon Hix’s characterization of competition policy as an essentially Pareto-efficient policy of little political/redistributive relevance (Hix 2008: 92).

At a more theoretical level, Professor Brown Wells has written a biography which challenges the view that all that matters in politics is formal rules and structures. Whereas, for example, Crombez and Hix recently argued that “the power of the Commission following the SEA had less to do with the personality of Jacques Delors or successful policy leadership by the Commission than with the change in the legislative role of the Commission as a result of the shift to QMV” this book serves to remind us that, if Delors (Monnet) had not been president of the Commission (High Authority), then the Commission (High Authority) would not have gotten these powers in the first place. Like Nixon in China, Monnet and Delors may have been given the freedom to do what they did precisely because they were French. The same may possibly be said of Hallstein. And, on the less performing side, of Rey, Thorn, Santer, Prodi, Barroso, and perhaps also Jenkins.

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Documentary by **Smith, Don C.** *Jean Monnet, The Father of Europe*. <http://law.du.edu/index.php/jean-monnet-father-of-europe/documentary>, 2011.

As the European Union (EU) is grappling with the financial crisis, the *raison d'être* of the EU institutions is increasingly cast into doubt. Since EU institutions are becoming ever more politicized and unpopular, distinctly political defenses of the European project no longer seem to carry normative weight. In the last decade or so, it appears, the leitmotif of European integration has largely been reduced to national and individual benefits accruing from economic integration. With the EURO crisis exposing the dangerous structural deficiencies of the common currency, that last point of retreat is, evidently, less and less credible as well. For those interested in the original rationale of the European project and its history, a recent documentary by Don C. Smith entitled *Jean Monnet, The Father of Europe* provides a timely reconsideration of the postwar political justifications of European integration through an investigation of the life and personal motivations of arguably the most influential figure in early European integration history. The project is ambitious since the director, Don C. Smith, is not a professional filmmaker but teaching at the University of Denver Sturm College Of Law. Smith succeeds in producing a documentary that is interesting for teachers and students of European integration alike by combining original footage of Jean Monnet and Robert Schuman with insightful interviews of Monnet's close collaborators such as Max Kohnstamm, Georges Berthoin, and Jacques-René Rabier as well as interviews of historians and experts of Monnet's biography.

The documentary traces Monnet's *vita* by beginning with his upbringing in rural France, his early life as a salesman for his family's cognac business, his career in the international political scene in the interwar period, and his role in the organization of the Allied War effort during the Second World War. The film then turns to Monnet's role in postwar Europe by emphasizing his relationship with Schuman, his influential position in the transgovernmental European space of postwar Europe, and his role in establishing the Action Committee for the United States of Europe after the disappointment over the rejection of the European Defense Community in 1954. Smith shows vividly that in Monnet's and others' normative reasoning the overall justification of political and economic integration is identical: sharing sovereignty provides a way to manage conflict and competition peacefully through law instead of allowing national rivalries to produce violent conflict or even war. The priority of this reasoning is particularly emphasized through the highlights of the documentary including video footage of Robert Schuman announcing the Schuman Plan as well as an audio recording of Monnet's speech at the first session of the Common Assembly of the European

Coal and Steel Community (ECSC). With all the necessary contemporary criticism of the EU's institutional edifice, one does well to remember this foundational rationale of the European project. As Max Kohnstamm puts it, sharing sovereignty implies a degree of shared 'co-responsibility' for the involved partners, a notion that tends to be forgotten in current political debates.

The second main strength of the movie is that it relates the personal memories and experiences of some of Monnet's closest collaborators. These interviews manifestly demonstrate Monnet's qualities as a leader. One is especially struck by the fondness with which Berthoin, Kohnstamm, and Rabier describe Monnet's personality. Their emotional attachment is still plain to see after all those years. More importantly, these interviews give the interested viewer a sense of the sources of influence that Monnet had. Not operating on the stages of 'big politics', his was the politics of personal ties, especially below ministerial level. As political scientists are increasingly appreciating the role of networks and what sociologists refer to as social capital in administrative and transgovernmental relations, the interviews provide a sense of the tactics that Monnet employed to influence the political fortunes of European integration. Georges Berthoin, for example, points out that Monnet always knew "the one who is preparing the paper or sometimes the man who is going to speak on the basis of the paper", and, by thus ensuring that his point of view would be presented to the actors in power without necessarily speaking to them and convincing them himself, he would be able to spread his ideas through the political hierarchy.

However, while the documentary's focus on Monnet as an individual produces interesting insights, there are certain inherent weaknesses. At times, the pathos enacted by the imagery and the narrator appears exaggerated. No doubt, Monnet was an important individual, but the conjunction of narrative and imagery tends to draw a picture of Monnet as a 'hero' of European Integration in which he becomes a figure of almost mystical reverie that is analogous to the quasi-saintly status of the American 'founding fathers'. A balanced picture would have been more appropriate, a picture in which Monnet's contributions are weighted against the contributions of other groups and individuals as much as the economic and geopolitical conditions in postwar Europe that were conducive to the creation of the early institutions such as the ECSC and the Treaties of Rome.

With these caveats in mind, the film is a valuable and timely resource. Smith still succeeds in utilizing the affective potential of the medium to make an important point: the primary justification of European integration does not concern harnessing the economic benefits of a larger market or the efficient orchestration of international cooperation but the responsibility



of guaranteeing peaceful cooperation among European peoples' and governments. Smith combines this message with a wealth of historical insight about Monnet as an individual and the sources of his political influence. Thus, as a reminder as well as a resource, the film is well worth watching for students and teachers of European Integration alike.

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Kelemen, R. Daniel. *Eurolegalism: The Transformation of Law and Regulation in the European Union.* Cambridge: Harvard University Press, 2011.

Eurolegalism, according to Kelemen, is a variant of adversarial legalism that is arising in the European Union as a result of the EU's fragmented institutional structure and drive toward economic liberalization. In this book, Kelemen describes the new adversarial legalism in the EU, examines the causal mechanisms contributing to this phenomenon, and presents case studies of securities, competition, and disability rights to demonstrate the rise of Eurolegalism.

Kelemen asserts that adversarial legalism arose first in America. Its features, which it shares with the European variety, include very specific rules requiring rigorous transparency and disclosure; regulatory enforcement characterized by legal methods; expensive and protracted court cases using "megalawyering techniques"; judicial review and intervention in administration; and increased private litigation concerning regulation of government and private firm practices (Kelemen 2011: 6).

Although the variant of Eurolegalism in Europe is more restrained than that in the US, the basic characteristics remain the same. In the EU, Kelemen claims in chapters 2 and 3, opaque and informal national regulatory styles long predominated. However, these relied on relatively small numbers of players and closed systems. Kelemen states "This informal, self-regulatory approach was underpinned by the one form of regulation that was strictly enforced at the time: restrictions on access to the market" (Kelemen 2011: 94). This, of course, presented a serious barrier to the Single Market. Once national regulatory schemes were dismantled, however, national and EU officials needed to find a way to re-regulate the market in the new environment. In particular, liberalization and deregulation of European financial markets "simultaneously undermined existing national system of securities regulation and created pressures for new forms of reregulation at the EU level" (Kelemen 2011: 95).

And new systems have indeed arisen to fill the gap. In regulating securities, Kelemen suggests, the EU

turned to a largely American system in order to protect investors. While imposing specific, detailed regulation reliant upon disclosure and transparency, the EU tends to emphasize private enforcement. This ensures equal treatment for all member states, foreign actors, and new entrants. In disability rights, the turn to Eurolegalism has manifested in a shift to a rights-based model of disability in the EU, away from the parochial care model of previous years. The fragmented political regime in the EU has contributed to Eurolegalization pressures; policymakers understand that judiciaries are more insulated from political pressures and backlashes than some legislatures and executives. The EU has a very small budget and thus cannot fully realize its administrative capability. In the absence of a fully developed administrative structure in Brussels that would be capable of centralized enforcement of EU law, the courts serve as a proxy administrator.

Examining the impact of EU policy and the shift to Eurolegalism in various EU countries including France, Germany, the Netherlands, it is clear that in some areas these countries were already moving toward a more adversarial legalistic regulatory regime. The EU is not the only cause of this move, but it is certainly, as Kelemen demonstrates, one of the factors that has engendered this shift.

As a result, the EU has produced a large number of specific and legally enforceable norms. These specific rules are being enforced by legal means; private citizens are now being addressed using a "language of rights" that encourages citizens to use the EU and EU legal means as well as national courts to enforce EU regulations as they pertain to individuals. In effect, Kelemen demonstrates that the EU compliance regime "watchdog role" has been shifted to citizens and other entities with legal standing in the EU. It is the legal standing of citizens and private firms that distinguishes the EU legal system. Citizens and firms have perpetrated an explosion of EU regulatory cases. The shifting of this responsibility to private citizens and firms by the Commission has coincided with demands for social and civil rights at the EU level; citizens seem ready and willing to take on this role. All of these processes have converged to create a culture of adversarial legalism, using citizens to enforce EU regulation through the courts.

The book on the whole is well written and engaging. It endeavors to place legal studies at the heart of EU theorizing. Many EU theories place little emphasis on the courts, but it is clear from Kelemen's argument that we cannot ignore the courts and the actions of the courts. It is also clear that this book would be interesting to those who study comparative legal studies, as well as students of EU governance.

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Falkner, Gerda (ed.). *The EU's Decision Traps. Comparing Policies*. Oxford: Oxford University Press, 2011.

The joint decision-trap (JDT) is one of the most powerful analytical concepts in policy-research. Formulated in the 1980s on the example of the German federalism, it analytically captures the dilemma of policy making in large entities: the attractiveness (and sometimes even the necessity) of addressing specific problems at higher levels of the polity and, in the same time, the difficulty of coming to a common decision among diverse and self-interested governments acting unanimously. As a result, regimes meeting the institutional preconditions of JDT tend to underperform as regards effective problem-solving or, eventually, fail to produce policy output at all. The EU with its quasi-federal institutional set-up is such a regime. However, while it certainly witnessed several instances of stalemate and mediocre policies, it has also undergone major changes. The book by Gerda Falkner and collaborators reevaluates the operation of the JDT in European policy-making in the light of these developments.

The objective of the volume is to provide a more “fine-grained judgement of blockage and breakthrough” (p. 2) by reviewing policy by policy. The empirical chapters, written by recognized specialists in their policy areas, start with a (quantitative) summary of the legislative output and complement this overview by selected, case study-based observations. The reader benefits from cumulated expertise, empirical richness and detailed insights in specific legislative negotiations. The fact that the book reassembles the empirical material that is otherwise dispersed across more specialist literature is one of its greatest merits.

The empirical chapters follow the analytical framework outlined in the starting section. Here, Gerda Falkner distinguishes two groups of mechanisms alleviating the EU's decision-traps: consensus-promotion and exit. Consensus-promotion can be found on issue-level (watering down, side-payments, opt-outs) or on the actors-level (socialization, learning, diffuse reciprocity). EU policies, here in particular the environmental policy, offer numerous examples for the issue-redefinition. By contrast, with the exception of the foreign policy, the book does not provide much evidence that the socialization effects can explain the shape of European policies.

Exit mechanisms, on the other hand, all involve the strategic use of institutions, either the legislative setting or Treaty provisions. The former is represented by arena or quorum shifting; the latter typically involves bypassing the Council by the ECJ or the pursuit of policy goals by implementing the competition rules

by the Commission. At the intersection of both logics lies the Commission's strategy of linking up of specific policy issues to the Internal Market provision. This has been effective in social policy, environment, energy and, to a certain extent, in tax policy. The success of this strategy becomes visible especially when a long-term policy development is considered. It seems that the Commission, having a different time-horizon than the national governments, wisely employs the power of endurance. Indeed, if the cross-policy comparison would entail a contest of exit strategies, the Commission and the ECJ would be the indisputable winners. Both actors capitalize on Treaty interpretation and benefit from “unintended consequences” of the EU's constitutional provisions.

This comes as no surprise. If the volume can enhance our knowledge about the engines of European integration it is by explicitly linking the supranational agency to the “policy's quality of specification on the level of EU primary law” (p. 254). The more specific the political goals outlined in the Treaty, the higher the chances for political activism. Anti-discrimination is a nice example of policy innovation developed close to the Treaty text and driven by the Commission and the Court's entrepreneurship. Furthermore, the book offers quite interesting and nuanced perspectives on institutional innovation. The introduction of QMV, for instance, was not sufficient to facilitate policy-making in financial services, whereas an evasion into technical committees turned out as a promising route to take. Moreover, the EP arises as a highly ambiguous player, as it considerably complicated the policy-making in justice and home affairs but facilitated it in agriculture and environment.

The most inspiring findings of the volume touch upon the very nature of member states' (inter)actions. It seems that both the supranational agency and the “rules of the polity” alter the way governments define and pursue their interests. Falkner described this mechanism as “changing the opportunity structures of governments” (p. 243) but, unfortunately, does not offer much of a theoretical refinement. Elaborating on this particular mechanism would probably go beyond the scope of the book. However, it is here, where theoretical innovations can be made.

The empirical contributions of the volume point at three topics which, in my view, demand a theoretical improvement. The first one relates to the domestic and intra-governmental processes of preference formation, which, in the context of EU policy making, need to be complemented by considerations related to legal certainty. Legislative inaction, for example, may result in alternative modes of governance (for instance the ECJ case law) which do not neces-



sarily make member states better off. We still do not know much about how those different kinds of considerations are weighted against each other. A second important question is how and to what extent actors can play with the visibility of the legislative process. The volume clearly shows that “subterfuge” is a viable exit option for the blocked Council and that policy conflicts are often shifted either to lower-level bodies or to the implementation process. It would be interesting to know under which circumstances legislative struggles can systematically be hidden from the critical audiences and what governments’ contribution to arena engineering actually is. Finally, the book might inspire researchers working with ideational approaches as it provides several examples of rich usage of persuasive strategies. What are the mechanisms that make the rhetorical entrapment successful? Is it (only) the informational advantage of the Commission or rather the nature of member states’ commitment to the internal market and other constitutional norms?

Certainly, the edited volume by Gerda Falkner will, both in its content and its approach, inform future cross-policy research related to European integration. It can be highly recommended to students and practitioners of EU policy-making. Transversing the theoretical grand debates on European integration, the book will also be of interest to non-Europeanists working on decision-making in large polities.

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