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## Keynote Article: Federal Ideals and Constitutional Realities in the Treaty of Amsterdam\*

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ANDREW MORAVCSIK

and

KALYPSO NICOLAÏDIS

*Harvard University*

### I. Introduction

The Intergovernmental Conference (IGC) that produced the Treaty of Amsterdam was from the start a negotiation in search of a purpose. Large-scale negotiations in EU history – from the Treaty of Rome to Maastricht – have usually centred on a major substantive agenda, normally either trade liberalization or exchange-rate stabilization, with secondary issues and institutional changes dragged in its wake. In the Amsterdam IGC, by contrast, there was no compelling reason to negotiate these particular issues at this particular time. The Member States considered no major expansions in EU competences and ignored core economic concerns almost entirely. With their primary focus clearly on managing the transition to EMU, they were extremely cautious, seeking above all not to provoke domestic debates that might upset this goal. In contrast to the Maastricht negotiations, where German unification, the Gulf War, and the impending dissolution of Yugoslavia appeared to give some urgency to foreign policy co-operation, no such crisis had such an impact on the Amsterdam discussions.

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The Amsterdam IGC arose instead out of three considerations. First, in the Maastricht Treaty the more federalist governments, notably that of Germany, had been promised rapid reconsideration of the political union issues on which no agreement could be reached. The unfinished business of Maastricht included the need to revisit Pillar II, on Common Foreign and Security Policy and, to a lesser extent, Pillar III on Justice and Home Affairs. Second, the national debates following the Danish and French referendums on the Maastricht Treaty, as well as the accession of Scandinavian countries, led to widespread calls to redress the 'democratic deficit'. Bringing Europe 'closer to its citizens' – increased powers for the European Parliament and a desire to upgrade Community competences from human rights to employment policy – became a core aim of the new Treaty. Third, in 1993 European chief executives officially endorsed negotiations on an EU enlargement to countries in central and eastern Europe. By raising the prospect of eventually doubling EU membership, they called into question existing EU decision-making procedures. It was agreed that decision-making would eventually have to become more efficient. In addition, larger governments sought a series of modest adjustments to institutional structure, notably a reweighting of votes and integration of the Schengen arrangement into the EU, in advance of enlargement. After appearing in successive European Council communiqués, these goals were summarized in the 1995 report of the intergovernmental Reflection Group chaired by Carlos Westendorp enlisted to frame the conference agenda (Ludlow, 1997a).

Given its lack of a single, clear substantive focus, it is no surprise that Amsterdam, more than any Treaty of Rome revision since 1957, became a melting pot of disparate measures lacking coherent vision of either substantive co-operation in a particular area or the future institutional structure of Europe. Given the lack of clear positive-sum gains, institutional reform tended to get bogged down in zero-sum bargaining between large and small states, or more and less federalist ones. Those elements of the agenda above that commanded consensus – such as some institutional reform to facilitate enlargement or perhaps co-operation on immigration and policing – were not very precise and, above all, not pressing, particularly by comparison to EMU. Governments could easily put them off and did so. Hence the Amsterdam Treaty neither introduces major new Community competences (symbolic proposals on employment aside) nor significantly deepens co-operation in existing substantive fields. Its provisions for institutional reform – with the exception of an expansion of parliamentary co-decision – are modest. The division of the EU into three institutional 'pillars', the second and third of which remain mired in the grey area between pure intergovernmental decision-making under unanimity and the distinctive 'Community system' of exclusive Commission initiative, qualified majority voting in the Council of Ministers, amendment by the European Parliament, and

oversight by the European Court of Justice. With the acquiescence, even the advocacy, of even the most federalist governments, the Amsterdam Treaty introduced practices long considered anathema to those who support European integration, such as formal multi-track (nearly '*à la carte*') institutions in which some can move ahead without others, highly differentiated decision-making procedures, and legal versions of the Luxembourg Compromise.

Most assessments of the Treaty tend, therefore, to be highly critical. Lamber-to Dini, Italian Foreign Minister, recalled: 'The long night of Amsterdam closed on a note of bitter disappointment. We would not be honest with ourselves or with the others if we did not admit this' (Dini, 1997, p. xxvii). Press commentators remained resolutely unimpressed by the results, with their assessment 'ranging from muted to sceptic' (Bertram, 1997, p. 64). To be sure, the German Government and the Commission Task Force initially attempted to present results as a success that realized the Commission's expectations in many areas; but insofar as this was correct, it reflected in large part the extent to which the Commission 'expectations' had backed away from its initial proposals for 'drastic institutional reform' (CEC, 1997; Duff, 1997a, p. xxx; Hoyer, 1997). In any case, a pessimistic – or, as one federalist commentator put it, 'realistic' – assessment soon reasserted itself (Duff, 1997, p. xxx). European Parliament reports called elements of the Treaty 'disastrous' and 'missed historical opportunities'; they 'constitute a significant reduction in democratic legitimacy'. In particular the Parliament 'deplores that the CFSP will continue to be the result of the lowest common denominator between Member States, thus largely depending on the political will of each', while 'voicing its dismay at the outcome ... in the area of free movement of peoples and the third pillar'. Provisions for flexibility 'are in blatant contradiction with the Community spirit and constitute a regrettable precedent' (European Parliament, 1997, pp. 15, 23, 38, 8, 74). Subsequently the Vice-President of the Commission criticized the outcome as 'more than disappointing ... disastrous' (van Miert, 1998).

Gloomy scholars and analysts echo dispirited policy-makers and journalists. Three long-time policy analysts speak of a 'comprehensive failure of institutional reform [and] of political leadership' with 'serious political consequences'. 'Heads of government', they conclude, 'have totally failed in their self-appointed task' (Crossick *et al.*, 1997, pp. 1–4). Some political scientists catalogue myriad 'output failures' (Wessels, 1997, pp. 4, 10). (Wessels' language is, it is fair to note, more loaded than his analysis. He rejects any comparisons to an 'optimal model'.) Philip Allot speaks for international lawyers horrified by the legal non-uniformity of the results: 'The Amsterdam Treaty will mean the coexistence of dozens of different legal and economic sub-systems over the next ten years, a sort of nightmare resurrection of the Holy Roman Empire...' (cited

in Shaw, 1998, p. 11; also Walker 1998) A leading French federalist calls the outcome 'miserable' and 'catastrophic' (Bourlanges, 1997).

Were current failures not bad enough, the so-called 'bicycle theory' predicts that failure to restore the momentum quickly will, as one prominent former Commissioner puts it, 'place at serious risk much of what has been achieved in the last 40 years' (Sutherland, 1997, p. 31). Others predict that 'the EU cannot afford the repetition of a protracted process of intergovernmental negotiation followed by the anti-climax of negative political conclusions drawn at the end of the day' without people losing faith in integration (European Policy Centre, 1997, Conclusion; also Jørgensen and Christiansen, 1997). A seasoned scholar of EU politics asserts that 'it is urgent to recreate the global political cohesion of the Union characterized by fragmented sectorial policies, vision, and powers, and by different and even incompatible decision-making processes' (Sidjanski, forthcoming, Chapter VI, p. 11). A British federalist seeks to 'shock the citizen out of complacency about how Europe is governed' so as to assure that 'the Amsterdam IGC will have been the last of its kind' (Duff, 1997a, p. xxxviii).

In this article we seek to draw a more balanced assessment of the significance and success of the Amsterdam Treaty – issues of theory and explanation are dealt with elsewhere (Moravcsik and Nicolaïdis, forthcoming). Our central contention is that the near widespread negative assessment of the outcome is misleading, not because the results have been underestimated, but because the standard against which they are judged is unrealistic. Most criticisms of the Amsterdam Treaty implicitly or explicitly reflect a teleological understanding of European integration as moving inexorably, if at an uneven pace, toward greater substantive scope, universal participation by expanding numbers of participants, and greater uniformity in the application of institutional and legal procedures. This is the only future for Europe and if Europe does not maintain the momentum toward its, so goes the 'bicycle theory', it is doomed to slip back, endangering current achievements.

This view, we argue, is dated. Europe is entering a phase today (perhaps it has been there for some time) where this venerable federalist vision of an expanding, undifferentiated, and uniform Europe – constant increases in the substantive scope of co-operation, adherence to a undifferentiated institutional order across issues, and co-operation only if and where governments can participate uniformly – seems less compelling to Member State leaders, elites and publics. The teleological ideal – a 'United States of Europe' characterized by centralized, uniform, universal and undifferentiated institutions – is no longer an appropriate standard (if it ever was one) by which to judge further steps toward integration. Even a visionary leader like Jacques Delors now renounces such a goal: 'There will never be a United States of Europe', he stated recently, 'I refuse to identify myself with those who promote the disappearance of the nation-state ... I seek

instead a federation among strong nation-states' (Delors, 1996). Governments continue to move forward towards centralized federal institutions in some areas – notably EMU – but seek pragmatic, flexible solutions in areas where the lack of negative externalities renders decentralized policy-making a workable solution.

This more measured attitude is not the result of a lack of 'political will' or 'vision' – vague, analytically unhelpful phrases generally employed to designate a general mood of rising nationalism or public scepticism toward the EU, the domestic political weakness of national leaders, the disappearance of geopolitical threats resulting from German unification and the receding Cold War, or the passing of the wartime generation. It reflects instead the lack of compelling and compatible substantive national interests in deeper, more uniform co-operation in areas like social policy, cultural and education policy, taxation, foreign policy, and even – though here there are somewhat greater incentives – environmental policy, consumer regulation, immigration, asylum, and policing. Moreover, governments now seek to balance decision-making efficiency with greater accountability and expanded membership. The problem in Europe today is not that governments have lost the ability to move forward strongly toward federalism when they acknowledge clear (generally economic) objectives – say, construct a single market, elaborate a common agricultural policy, establish a single currency, or participate in a multilateral trade negotiation. This is clear from recent movement towards EMU. It is instead the absence of clear substantive interests in doing so in new areas sufficient to justify substantial sacrifices of sovereignty. We are witnessing not a resurgence of nationalism but a diminution (or levelling off) of national interest.

Judged by the standards of the politically possible, not the federalist ideal, the Amsterdam Treaty appears instead as a creative adaptation to new, more sophisticated, more differentiated and, in many areas, more modest national demands. The ability of the Amsterdam negotiators to accommodate shifting concerns demonstrates the flexibility and responsiveness of EU institutions. This suggests that in the future European governments will spend less time seeking to expand the traditional institutions to new substantive areas and increasingly focus on determining what type of institutions and what scope of participation are appropriate to particular issues and circumstances. The resulting debates will be less substantive and more constitutional. Governments will ask – and be forced to justify – the precise level of centralization, uniformity, and scope of co-operation in particular issue areas. Such constitutional debates will not be resolved by the application of a single 'Community method', but instead by a balancing of competing philosophical and pragmatic claims for the pre-eminence of democracy, universality, uniformity, and efficiency. Future debates will reflect support for a more pragmatic, balanced evolution. Far from being 'the

last of its kind', the Amsterdam Treaty is the harbinger of a new, more constitutionally self-conscious future for Europe.

## II. General Institutional Reform and New Competences

### *Shifting the Balance between Large and Small:*

#### *A Reweighted Council and a Streamlined Commission*

At Amsterdam, larger Member States called for a re-weighting of national votes in the EU's primary legislative body, the Council of Ministers. With EU enlargements since 1957, the institutional over-representation of smaller countries had grown progressively more pronounced. In an EU of 26, some calculated, a qualified majority could be achieved with the support of government representing only 48 per cent of the EU population; even some smaller states conceded that such an outcome might be viewed as illegitimate. Yet appeals to principle could not hide the essentially distributive nature of the conflict. At the Extraordinary Summit at Noordwijk, two weeks before Amsterdam, negotiations on Council reform had become an exercise in pure distributional bargaining between larger and smaller states. Calculators in hand and tables from the Commission and the Dutch Presidency by their side, negotiators assessed and reassessed the impact of competing formulae on their country's role in potential blocking alliances under different enlargement scenarios.

Two proposals for reweighting Council votes were considered: an increase in the relative weight of the five largest states (Britain, France, Germany, Italy, and Spain) and a 'dual majority' voting system in which decisions must achieve a fixed percentage of weighted votes *and* votes from states representing some percentage (also generally 60 per cent) of EU population. Smaller states supported the dual majority system, which would increase the ability of larger states to block legislation without diluting their own veto, but this was rejected by the French, because it would for the first time grant Germany more votes than France. Germany, seeking not to embarrass itself or France, sat on the fence – a symbolic setback – while other governments advanced special demands. Since smaller states lost out from a reweighting, no matter how it was structured, it was proposed to offset changes in the Council by streamlining the Commission – limiting the number of Commissioners to one per country. This proposal was presented as a means of rendering the Commission more efficient after enlargement, when the number of Commissioners would expand to 30 or more, but in fact was a *quid pro quo* to smaller states. Matters were complicated even further when the Spanish announced that if they lost a second Commissioner, they would no longer be willing to accept fewer Council votes (eight rather than ten) than the other large countries, and the Netherlands, despite its presidential role as an

'honest broker', demanded greater representation than Greece and Belgium, each with a population 50 per cent smaller. A French proposal to streamline the Commission to around a dozen members was a non-starter among the small states – who felt that their Commissioner was an indispensable conduit for information. Many in any case felt that France was either bluffing or sought thereby to reduce the Commission to a conventional secretariat.

Had the large states really wanted an agreement, surely they could have attained one during the last few weeks. Yet Chancellor Kohl, concerned about domestic ratification of EMU, proposed that the status quo be maintained for the time being and, along with President Chirac – one former head of government reports – quietly encouraged the Dutch presidency to postpone agreement. Despite last-minute wrangling, the Treaty postpones reform to a subsequent IGC with two *caveats*: first, a new comprehensive review must take place at least one year before EU membership exceeds 20; and, at Spanish insistence, there would be one Commissioner per country at the date of the first enlargement, if agreement had been reached on the re-weighting of votes in the Council.

The significance of the failure to reach agreement on institutional reform is easy to exaggerate. Internal Commission studies show that results in Council votes of the prior three years would have remained unchanged under any of the reweighting formulae – though this does not take account of the possibility that some decisions are taken 'in the shadow' of the vote. As far as Commission reform is concerned, internal reorganization and consolidation appears to be a much more significant determinant of efficiency than the number of Commissioners *per se*. After all, many national governments (not least the French), function coherently with a larger number of ministers. It is also unlikely – despite Commission efforts to generate a sense of urgency with this claim – that stalemate jeopardizes the timing of enlargement by requiring that yet another IGC would have to be held to settle institutional reform before the EU exceeds 20 members. As one top Commission negotiator remarked afterwards, the outlines of the likely agreement were so clear to the participants that at some future date it could be negotiated 'in 24 hours'; the problem being simply to select the optimal domestic political moment to do so. Finally, while governments were concerned above all to avoid the impression of symbolic failure, they remained concerned to avoid any domestic ratification controversy that might threaten the transition to EMU – a far more important and immediate priority for all member governments, not least that of Germany.

### *'Enhanced Co-operation': How Flexible should the EU be?*

If Maastricht enshrined the notion that reluctant states cannot be forced into action, Amsterdam pursued the allegedly complementary notion: reluctant states cannot stop others from employing EU institutions to pursue actions they favour.

As one participant put it, 'In Maastricht we took care of the rights of the minority – to opt out; in Amsterdam, we took care of the rights of the majority'. In the Reflection Group, all governments accepted some form of 'flexibility' clause permitting a majority of states to move forward without necessarily including all. The motive force behind the shift in European orthodoxy reflected not the opposition of Eurosceptics, but the conversion of relatively federalist states like France and Germany, who sought a means of bypassing reluctant states like Britain or potential laggards in the east and south. This idea was introduced in the CDU/CSU paper prepared by Wolfgang Schäuble and Karl Lamers in September 1994, then taken up in an ambitious Franco-German proposal.

Broadly speaking, the Member States split into two groups – probable members of a federal core and probable candidates for exclusion – each of which sought an arrangement that afforded its members the greatest freedom of manoeuvre while restricting the strategic options of the others. Leaving aside specific provisions for foreign policy, governments considered three aspects of flexibility: the procedure for invoking it, the scope of its application, and provisions for the participation of excluded states. On invoking flexibility, Britain, supported by Greece, Denmark, Sweden and Ireland (and, to a lesser extent Spain and Portugal) insisted on veto rights over any flexible arrangement – a position France and Germany resisted. The resulting compromise, proposed by Britain and closer to its position, permitted a qualified majority to establish flexible arrangements but with a veto possible 'for important ... reasons of national policy' – echoing the terms of the much maligned Luxembourg Compromise. On scope, there was a consensus that the formal flexibility clause ought not to threaten the *acquis communautaire*, with the result it can only be employed, among other conditions, outside areas of exclusive Community competence; where existing programmes are not affected yet within current EU powers, where it does not discriminate among EU nationals, and where trade and competition remained unimpeded. Even on a narrow interpretation, these *caveats* probably preclude much meaningful co-operation outside the third pillar. On the accession of new participants, potential outsiders sought guarantees that they could opt in at any time, provided they undertook the commitments. The last minute replacement of a Council vote by a Commission assessment of the suitability of new members represented a significant victory for the potential 'outs'.

### *Redressing the Democratic Deficit?*

#### *Parliamentary Powers and Unemployment*

Perhaps the most surprising result of the Amsterdam IGC was an increase in parliamentary co-decision. Maastricht had introduced a new EU legislative procedure – 'co-decision' – in which the Parliament and Council negotiated face-

to-face over proposed parliamentary amendments in 15 categories of first pillar legislation. At Amsterdam, Member States expanded and reformed the co-decision process. They replaced references to the other major form of parliamentary involvement, the 'co-operation' procedure, in nearly all Pillar I business, excluding EMU – bringing to 38 (after five years 40) the total number of legal categories subject to co-decision. Areas like fiscal harmonization and CAP reform remained outside; only procedures for consultation applied. The co-decision process was reformed, moreover, to remove the (negative) 'third reading', which had previously given the Council a final opportunity to pass legislation by QMV in the case of a failure to reach an agreement in conciliation between the Council and Parliament, subject only to veto by an absolute majority vote of the Parliament. At the end of the legislative process, the Parliament was now on equal footing with the Council; if agreement is not reached, the legislation is dropped. The Parliament also gained a formal right to approve the new Commission President, though it remains difficult for the Parliament to exploit veto power to compel acceptance of a particular candidate. Finally, with the encouragement of the new British Government, steps were taken towards a uniform proportional representation electoral arrangement for parliamentary elections.

The central issue at stake in the expansion of parliamentary powers, it is important to remember, is not the balance between national and supranational authority but the balance of power among supranational institutions. Leaving aside the surprising decision to eliminate the third reading, the precise implications of which are disputed, the primary formal impact of expanded co-decision is to transfer influence from the Commission to the Parliament. Co-decision erodes the Commission's traditional control over the text of proposals throughout the EU legislative process. (As long as the two institutions agree substantively, there may be a joint gain in influence via increased democratic legitimacy (Noël, 1994, pp. 22–3).) Under co-decision, the Council is able to pass any compromise emerging out of the conciliation procedure with Parliament by a qualified majority, while the Commission could no longer compel a unanimous vote on changes it opposes. Whether the Commission also lost its formal right to withdraw a proposal after the conciliation procedure remains a matter of legal dispute, but exercise of such a prerogative in the face of a united Council and Parliament would surely be politically costly (Nickel, 1998).

The Commission did manage, however, to avoid more extreme curtailment of its powers. The German Government, which had advocated at Maastricht that the Parliament share the Commission's power of initiative, repeatedly proposed at Amsterdam that the Council be permitted to revise Commission proposals by qualified majority vote. This proposal, which would have severely curtailed the latter's agenda control, was acceptable neither to smaller states nor to the Commission, whose representative immediately threatened to recommend its

resignation *en masse* (Nickel, 1998). For its part, the Parliament held back from demanding the power of initiative, knowing that this would trigger similar demands from the Council – perhaps to the disadvantage of supranational institutions as a whole (Petite, 1998). Co-decision aside (and notwithstanding the dispute over trade policy competence), there was greater support among national governments for maintaining traditional Commission prerogatives at Amsterdam than had been the case at Maastricht.

The increase in parliamentary power is particularly striking given the marginal role played by the Parliament in the negotiations (Petite, 1998). As in the SEA and Maastricht, parliamentary representatives were active in early meetings but played a marginal role in later deliberations (cf. Moravcsik, 1998c). The expansion of parliamentary prerogatives was supported instead primarily by the successive national presidencies and by Germany, which kept co-decision provisions in the negotiating text. Also important were shifts in national positions. Shortly before Amsterdam the new French Socialist government, with Elisabeth Guigou as Justice Minister, pressed strongly for parliamentary powers; President Chirac acquiesced and was reported to remark to his advisers that it was an issue of marginal importance. Moreover, the new British government of Tony Blair was less adamantly opposed than its predecessor. Elsewhere, given that the elimination of the third reading was not seen as a major shift – given the rarity with which it appeared to influence actual outcomes – it seemed a relatively easy concession to quell democratic sentiment.

#### *Council Efficiency: Majority Voting in the First Pillar*

The Council of Ministers remains the most powerful institution within the EU system of governance; hence reform of the Council through increased use of QMV was considered by the Commission and others as the most significant reform under consideration at Amsterdam (Devuyst, 1997, p. 14; Petite, 1998). The Commission, of course, preferred a maximalist solution, namely expansion of QMV to all areas – a proposal generally supported by the Benelux countries, Italy, and some new entrants like Austria and Finland. (For this, the Commission advanced the superficially persuasive, if analytically fallacious, argument that the probability of a veto would be many millions of times greater with 30 members than with 15. This neglects that the probability that any single government will oppose a measure is generally correlated to the probability that others will do so; Council politics are typically coalitional, not unilateral.) France, too, came to advocate QMV in these areas after an internal analysis revealed that it had much less chance of being outvoted than of seeing decisions it favoured overcome a potential veto by another Member State (Petite, 1998). Neither a Conservative nor a Labour Government in Britain was willing to

contemplate extension of QMV to social policy (rules of worker representation and redundancy were proposed), but only to market liberalization.

While an attractive idea in principle, general QMV proved less promising in practice. Of around 65 Pillar I articles requiring unanimity, nearly half concerned monetary and financial issues and would therefore become obsolete with the transition to EMU. An additional dozen concerned core institutional and financial competences, such as structural funding and nominations to the Commission, on which governments were unlikely to favour QMV. (These issues are poised to become *more* controversial in coming years.) There remained 25 residual regulatory and single market issues, of which over half were areas in which governments had extreme reservations toward extending QMV – including free movement of peoples, social security, professional services, indirect taxation, culture, industrial policy, social policy and employment. (CEC, 1997; Petite, 1998). On some of these issues, opposition from Britain and numerous smaller countries might have been surmounted had it not been for German reticence.

German scepticism was not new. Germany had entered into previous IGCs with strong rhetoric on QMV but long lists of exceptions. In negotiating the SEA, Kohl had insisted on the insertion of Art. 100a4 granting derogations to governments with higher standards than the European norm – a clause strengthened in the environmental area at Amsterdam. (If backed by new scientific evidence, governments may derogate, regardless of their previous voting record.) Germany had subsequently been outvoted in the EU Council more often than any other government. In the Amsterdam IGC, this reluctance took the form of pressure against QMV from the German Länder, which held exclusive or shared jurisdiction in Germany's federal system in most of the areas under consideration. Third pillar issues were especially sensitive. Diplomats, including Germany's chief negotiator in Brussels, apparently expected Kohl to override domestic opposition at the last minute in the name of federalism. Yet the Chancellor, surely with one eye on the approaching transition to EMU, surprised all his partners in the final weeks and hours before Amsterdam by opposing compromise proposals for a broad extension of QMV. Extension of majority voting to a dozen relatively insignificant matters – such as creation of an advisory body on data protection, aid to the outmost regions of the EU, and R&D, an area governed by voluntary participation and (albeit less and less over time) *juste retour* – fooled no one. One top Commission official termed the outcome 'meagre' (Duff, 1997, pp. 155–6).

#### *New Competences: Employment*

Symbolically more salient, though substantively less significant, was the joint declaration at Amsterdam concerning unemployment in Europe. Unemployment reached 11 per cent across Europe in 1996. Despite healthy scepticism



concerning the ability of governments to do anything in this domain, publics nonetheless considered action in this area as a test of EU relevance. The result was a chapter on employment – the only exception to the informal agreement among governments not to consider new substantive competences in the Amsterdam Treaty. Countries like France and Sweden spoke of this chapter as embryonic ‘economic government’ to counterbalance the new European Central Bank (ECB) – e.g. the long overdue spelling out of Article 103 of the Maastricht EMU provisions – a position opposed by Britain, Germany and the Netherlands, who watered down the provisions. The Germans flatly refused to consider last-minute proposals by the new French Socialist government of Lionel Jospin for the use of EU funds for job creation or research (Duff, 1997, p. 64). The new chapter does permit the European Council to issue annual employment policy guidelines, surveillance of the employment policies of Member States, and a pilot project of incentive measures to encourage intergovernmental co-operation – the latter watered down to a pilot project. An Employment Committee was created. While, as one commentator noted, these ‘cosmetic’ changes permit the EU to ‘do nothing about unemployment it was not able to do beforehand’, at most they may provide a basis for eventual efforts to encourage co-operation by ‘shaming’ member governments. Modest changes were also made in EC environment, consumer protection, and public health policies.

### III. Foreign Policy and Home Affairs Pillars Revisited

The Maastricht Treaty had reinforced co-operation in the two major non-economic areas – foreign policy (including defence) and home affairs (immigration, asylum, and police co-operation). Of the large countries, such co-operation was of primary importance to Germany, which had a far less viable unilateral foreign policy than France or Britain and was the destination of well over 50 per cent of immigrants to the EU. In addition, immigration, justice, and policing were salient and potentially popular electoral issues for Kohl’s centre-right coalition. At Maastricht, France, Britain, and others had refused to communitarize these sensitive areas. Instead, member governments agreed to the French proposal that divided the EU into three pillars.

Reform of the second and third pillars was given a sense of urgency by the failure to achieve any significant results after the entry into force of the Maastricht Treaty. This failure was much noted by commentators despite the absence of objective evidence that policies would have been different under more centralized institutions. Some mistakenly argued that the Bosnian War would have been dealt with differently had CFSP been given more institutional backbone – a view largely discredited by the historical record. A marginally stronger case can be made that co-operation in the third pillar would be deepened

by more centralized administration. Yet this, too, is unclear. Bureaucracies remain insular; some governments see little advantage in co-operation. Still, encouraged by the Commission spokesmen and ongoing German concern, these areas, particularly the third pillar, came to be viewed as natural areas in which small steps toward deeper co-operation could be taken at a modest political price.

#### *The Second Pillar: Common Foreign and Security Policy*

The Maastricht Treaty had provided for a Common Foreign and Security Policy that functioned through classical intergovernmental means, thus formalizing the way ‘European Political Co-operation’ had functioned for two decades. At Amsterdam, the governments considered introducing greater QMV, flexibility, and better administrative support, but the gains were modest. Instead, Amsterdam confirms the essentially intergovernmental nature of EU foreign policy, but fine-tunes procedures in the name of efficiency.

Introducing greater QMV was the most significant potential reform of CFSP considered at the IGC. The Treaty introduces QMV in the General Affairs Council (where foreign ministers are represented) for ‘joint actions’ and ‘common positions’ implementing ‘common strategies’ previously adopted by unanimity at European summits. These terms are not well defined and may lead to disagreement. A truly determined government could seek to employ narrow and detailed initial delegation – objectives, duration, and permissible means – to restrict all *de facto* use of QMV. Still, the generalized adoption of QMV for second-tier decisions on implementation shifts the implicit default in such circumstances and had thus long been resisted by the UK, France, and Greece. However the Treaty permits a government to wield a ‘political’ veto by declaring its opposition to the adoption of a decision by QMV ‘for important and stated reasons’ of national interest. In such cases, the ministers may refer the matter to heads of state and government in the European Council, which then decides by unanimity.

An equally significant innovation lies in a unique flexibility clause introduced into CFSP. ‘Constructive abstention’ creates the possibility for a subgroup of Member States to conduct joint actions using EU institutions with the acquiescence but not the participation of reluctant Member States. If one-third of the Member States abstain, no action is possible. If a group representing less than one-third abstains from a decision, they are not obliged to apply it but do accept that the decision commits the EU as a whole. A subtle difference from the enhanced co-operation clause of the first pillar was that states are called upon, though not formally obliged, to refrain from any action likely to conflict with or impede EU action. If this procedure, already part of the implicit functioning of CFSP, has any impact, it will be because it permits dissenting states to register their dissent very visibly, often necessary for domestic reasons, without actually

blocking joint action and retaining the option to opt in later. Non-military actions, moreover, may be funded out of joint funds, regardless of abstention, though operations to complete 'Petersberg tasks' (see below) must raise ad hoc levies. Constructive abstention provides governments with greater flexibility, though it should not be exaggerated. The policy tools that can be manipulated in this way are limited; unless abstaining countries actually implemented EU policy, for example, it would be difficult to impose effective sanctions or embargoes.

A third area of potential CFSP reform was centralized administration and leadership. Maastricht had created an independent secretariat to oversee CFSP, but there remained differing views concerning how to institutionalize collective political leadership. The Commission and the French Government took traditional positions. The Commission pursued its long-standing desire to centralize foreign policy-making authority, like authority in so many other areas, in the Commission itself; it criticized the pillar design, noting that it might hamper co-ordination between the EU economic and diplomatic policies. This proposal gained little support and was never discussed seriously (Petite, 1998). The French, by contrast, sought to empower a senior political figure with a high degree of independence from the Commission. This position, dubbed 'Mr/Ms CFSP' (or rather perhaps M/Mme PESC), cynics noted, was likely to be held by a Frenchman, possibly Valéry Giscard d'Estaing. President Chirac's quixotic insistence on a more political post until the very last hours of the IGC testifies to the high priority attributed by the French side to this issue – perhaps the only one where a distinctively French proposal had any chance of acceptance.

Yet this was not to be. Most governments sought to maintain an intergovernmental structure. The result was a 'lowest common denominator' compromise of sorts, one that moved only modestly from the status quo. While denying the French 'Mr/Ms CFSP', the result reinforced the Anglo-French victory at Maastricht, which had preserved Member State initiative in this area. EU representation for CFSP would continue to be handled by the rotating presidency, but the Secretary General of the Council (SG) would centrally administer CFSP and serve, alongside the national presidency, as EU envoy and representative of CFSP. The creation of a new Deputy SG would underscore these new responsibilities. Critics argue that this does little more than authorize a 'bureaucrat' to assume the post of 'special envoy' already created by the Maastricht Treaty; defenders point to the potential for greater continuity. In the end, something approaching the French vision is possible only if a substantial majority of governments cease supporting the appointment of a national civil servant as SG, as in the past, and turn to a major political figure. Even this might not be enough. The Commission is to be 'closely associated'; in other words, it can be invited to participate in discussions. This outcome marks a clear victory

for the pillar design and, within it, the classically intergovernmental Council Secretariat over the Commission's more centralized, administratively uniform vision; short of a radical change in nomination practices, no serious competition to national foreign ministries is likely.

Turning lastly to defence co-operation, we observe only modest change. The French spoke of an independent EU defence identity, but advanced so few concrete proposals that others soon questioned their motives. Instead the French, whether out of commitment or calculation, joined Germany in an eleventh-hour plan, backed by the other four original EC members and Spain, for a progressive merger between the EU and WEU with an explicit timetable and flexibility provisions. Traditional pro-NATO countries such as Britain and Portugal, sceptics like Greece, and traditional neutrals like Sweden and Ireland remained sceptical; it was an issue on which numerous governments seemed willing to impose a veto.

The final outcome came closest to the sceptical position held by the neutrals and was not far – particularly when we consider firm commitments rather than rhetoric – from the completely negative views advanced by Britain. A protocol called on the EU to draw up proposals for closer co-operation with the WEU within a year, yet the language is non-committal and preserves a veto; the EU may recommend actions to the WEU. Governments may discuss a three-stage timetable for closer EU/WEU co-operation. EU defence policy may not prejudice the specific character of NATO. The only explicit step was the incorporation, following a Swedish-Finnish initiative, of the so-called 'Petersberg tasks' as part of CFSP. These tasks, which had become part of the WEU mission in 1992, include humanitarian intervention, rescue, peacekeeping and crisis management – all issues that are increasing in importance in the post-Cold War world, as the line between 'crisis management' and more traditional defence operations is increasingly blurred. The Nordic countries, along with Ireland and Austria, were the most adamant proponents of such inclusion, not only for positive reasons but also because it subtly disguised their opposition to further moves towards a more traditional European defence. For those dedicated to a European defence identity, Amsterdam was viewed as a straightforward 'failure'.

Finally, while not strictly connected with CFSP, another foreign policy issue of extreme interest to the Commission concerned the scope of 'exclusive competence' pertaining to international trade negotiations under Article 113 (Meunier and Nicolaidis, 1997). Under the Treaty of Rome the Commission enjoyed a monopoly over external representation in World Trade Organization (formerly GATT) negotiations (though overseen by a Council committee), with governments taking final decisions by QMV. With the Uruguay Round, however, Member States (led by France) successfully argued that new issues – services



trade, intellectual property, and investment – were not traditional ‘trade’ issues and therefore lay outside the scope of exclusive Community competence. This subjected them both to unanimous vote in the Council and to ratification by individual national parliaments. At Amsterdam, a majority of Member States led by the Commission sought to extend Community competence but the outcome reiterated the status quo. Even the Germans proved cautious. The only mitigating factor is that in the Treaty the Council can decide the status of new issues by unanimity before upcoming negotiations – another procedural hybrid that allows for some future extension of Community competence without Treaty revision.

### *The Third Pillar: Justice and Home Affairs*

Reform of the third pillar introduced by the Maastricht Treaty, justice and home affairs, was the most intensely debated issue in the negotiations. Three broad topics were discussed together: reform of the common policy toward immigration and asylum *vis-à-vis* third-country nationals, the integration into the EU Treaty of the so-called ‘Schengen *acquis*’ (the provisions on visas, borders and procedures negotiated under the Schengen Agreement, which aimed to abolish checks at intra-EC borders, signed on 14 June 1985); and co-operation in matters of policing and justice. These three concerns were linked not simply because they all generally concern the movement of people across borders and because they are all handled by justice and home affairs ministries, but also because co-operation on judicial, police and immigration matters becomes more imperative as internal borders among EU Member States dissolve, a single market emerges, and enlargement to the east draws near. Even among sceptical governments, there was some concern about the need to pool resources both to manage the pressures of migration (and domestic demand for action associated with it) and to respond to the internationalization of crime, not least drug trafficking. The third pillar was seen from the start, therefore, as the substantive area where progress at Amsterdam was most likely.

Governments that favoured more intense third-pillar co-operation called for ‘communitarization’ – the integration of the third pillar into the normal EU economic policy-making institutions, as well as an expansion of activities already conducted by the EU. Germany, a country on the front line *vis-à-vis* eastern Europe, led by a Christian Democratic government for which ‘law and order’ was an attractive and popular issue, and currently responsible for taking well over half of EU asylum-seekers and immigrants, took a leadership position. Communitarization of the Schengen *acquis* was also a particularly desirable strategy because it would automatically mean folding all current agreements under Schengen into the EU – including bilateral arrangements between Germany and its eastern neighbours, obliging the latter to accept the return of any illegal

immigrants to Germany who transited through their territory, regardless of their country of origin (Burrows, 1998). Even Chancellor Kohl rejected any automatic transition to QMV, however, in part because it threatened current Länder prerogatives.

In the run-up to Amsterdam, critics made much of the lack of substantial results in the third pillar since the entry into force of the Maastricht Treaty. Such critics, like those who criticize EU second pillar arrangements for failing to resolve the Yugoslav crisis, seldom explained the precise nature of preferred policies or how institutional reform would have assured that better policy would emerge. Surely the lack of policy outputs reflected substantial opposition among the Member States, as well as institutional bottlenecks. Immigration issues remained politically volatile in all countries, not least Germany, France, and Britain, because of right-wing opposition, fundamental concerns about institutional sovereignty, or geographical specificity.

More importantly, governments found themselves with widely disparate interests. Not only were some not members of the Schengen Accord, but at least two non-members of Schengen – Britain and Ireland, the former with only 23 ports of entry – were far better able to impose *de facto* control over movements across their borders than almost any continental country. As a corollary, internal policing was traditionally far less intrusive than on the continent. Hence Britain and Ireland rightly perceived less benefit and considerable cost imposed by international co-operation, a view that changed little with the election of the Labour Government. Despite the temptation to find *some* area in which to declare ‘success’ in the negotiations, opposition to communitarization by the UK, Ireland and Denmark meant that agreement was far from obvious until the last weeks before Amsterdam.

The introduction of a new title in the Treaty on free movement of persons, asylum and immigration and the concurrent shift of these issues from the third to the first pillar have been described as a success by many observers. Communitarization extends not only to visa, asylum and immigration policy but also to some judicial co-operation in the civil matters having cross-border implications; police co-operation and criminal matters remain in the intergovernmental third pillar. Hence the scope of the newly communitarized policies is slightly broader than even the Commission initially sought. The Commission gained the right of initiative, albeit shared by the Council for at least five years, which may help place on the agenda politically sensitive proposals that some Member States could not endorse publicly. (It will be interesting to see whether there in fact exist viable proposals that no single Member State would propose but the Commission does.)

The Treaty undeniably brings about gains in efficacy and accountability. Control by the Court, albeit excluding matters concerning the maintenance of law and order and the safeguarding of internal security, provides greater

guarantees for the protection of individual rights – although the Court's rulings on the interpretation of the Title may not affect judgments of Member State courts which have become *res judicata*. The replacement of the secretive 'K4 committee' by traditional COREPER structures may increase democratic accountability in this field as well as the coherence with other domains. A transition to QMV may be possible after five years without national parliamentary ratification. Finally, EU directives or regulations need no longer be ratified by national parliaments – a striking contrast to the uneven ratification of conventions under Schengen and Maastricht arrangements. Since Maastricht entered into force only one convention (actually negotiated before the Treaty was signed) has been approved by all 15 parliaments; a number of agreements are still to be examined by national parliaments, including on the operations of EUROPOL, customs co-operation and the fight against fraud.

Still, even on the most optimistic of readings, these gains are moderate compared to those to which advocates aspired. The transition to QMV will not occur for at least five years and only then with unanimous support. For the moment, the Commission lacks the exclusive right of initiative, except on rules governing visas, for which there had already been a partial exception under Maastricht. A proposal for automatic transition to QMV, either immediately or in five years, was opposed not just by the traditional recalcitrant countries, but by Chancellor Kohl, who was responding to pressure from the Länder, as well as other substantive concerns. Even in the longer run, it is hard to envisage an alternative to unanimity – in effect imposing new 'potential citizens' onto a Member State by qualified majority – occurring soon. The delicacy of the compromise is reflected also in the extreme legal complexity and ambiguity of the resulting arrangement. Some detractors suggest that the incorporation of the Schengen *acquis* into the Treaty will add complexity. NGOs supporting immigrant rights criticize the communitarization of bilateral arrangements that permit west European Member States to deport immigrants. Finally, communitarization was possible only by granting broad opt-outs and flexibility to Britain, Ireland, and Denmark. The UK and Ireland each obtained two opt-out protocols, one regarding the new free movement of persons, the other recognizing the Common Travel Area between the UK and Ireland. Denmark obtained a similar opt-out, made even broader by the inclusion of any decisions with defence implication. The transition from Schengen to the EU will take place under an 'enhanced co-operation' procedure not involving all Member States. In this area, a precedent has been set for an extremely loose form of variable geometry, if still a bit short of a pure 'Europe à la carte' scheme, in which recalcitrant countries choose the precise measures on which they would like to co-operate – though such co-operation would require unanimous approval – and governments can collective-

ly choose whether to act under the EU or Schengen. This raises interesting legal and strategic issues for the future.

#### IV. Success and Failure Reconsidered: Flexibility and Differentiation as Creative Adaptation

It is traditional, at least among European federalists, to evaluate major EU agreements teleologically. EU agreements are successful if governments embark on new schemes for substantive co-operation and embed those schemes by deepening a uniform legal and administrative order centralized in Brussels. Only this, in the teleological view, generates irreversible integration. This is the sort of vision that inspired the then Commission President, Jacques Delors, to proclaim in 1988 that 80 per cent of national regulations would soon be made in Brussels – a statement that, while (almost) true, betrays a rather rule-bound perspective on what is most important about integration. The teleological approach takes for granted that deeper co-operation is in the fundamental interest of Member States; failures to agree are therefore secondary factors: weak, ignorant or ill-intentioned politicians, random and incidental domestic pressures, the absence of compelling geopolitical motivations for co-operation, or a general lack of 'political will'. Evaluation is simple. Whatever deepens and widens co-operation and, in particular, whatever pools and centralizes authoritative decision-making, marks progress. In the teleological view, finally, it is essential to overcome difficulties quickly not simply in order to exploit future possibilities to move toward federal union, but because continuous forward motion – thus the 'bicycle theory' – is required to preserve existing gains.

From this perspective the Amsterdam Treaty seems bitterly disappointing. It maintains the 'pillar' logic introduced at Maastricht rather than expanding the full 'Community method' to foreign policy. Within the first pillar, the Treaty disappointed the Commission's ambition to generalize QMV, expand its own participation, and extend (or retain) Community competence to new trade negotiations (Devuyst, 1997). Explicit provisions for vetoes, akin to the Luxembourg Compromise, and extensive provisions for differentiation and flexibility are now embedded firmly in the Treaty. In striking contrast to the strategy employed in the original Treaty of Rome, in which unanimous voting procedures became QMV nearly automatically, future movement after Amsterdam continues to require explicit issue-specific unanimous votes of the Member States. While some third-pillar issues of immigration and asylum – the one set of issues in the negotiations where there are clear economic or regulatory benefits from co-operation – were moved into the first pillar, the maintenance of unanimity voting and the lack of a unique Commission right of initiative mean that evolution toward a supranational decision-making system will be at best slow.

Some flexibility provisions move close to a 'pick and choose' Europe *'à la carte'* (Shaw, 1998, p. 13). Even if the result does not, as one commentator asserts, 'push the Union in an integovernmental direction, it does reflect a striking willingness on the part of member states to eschew the "Community method" where satisfactory hybrid deals are possible' (Devuyst, 1997, p. 13). No wonder – as we saw in the introduction to this essay – that those who mark the successes and failures of integration against an ideal federal standard see Amsterdam as a catastrophic failure. At the very least, it limits the scope for future supranational solutions.

Yet this teleological mode of evaluating progress toward European integration – and the pessimistic assessment that follows from it – increasingly appear dated. Though newspaper columnists never tire of reciting how the Europeans seek to form a cohesive whole the size of the US and supranational officials and members of federalist groups continue to promote centralization for its own sake, national politicians, interest groups, and individual citizens increasingly doubt that the vision of a centralized, uniform, undifferentiated Europe, let alone a 'United States of Europe,' is either desirable or feasible. Among EU member governments at Amsterdam, only Belgium and Italy consistently adopted anything resembling the traditional position; neither Germany nor the Netherlands was nearly as unambiguous, not to speak of France, Britain, and others. Even the Santer Commission, with the public approval even of Delors, shied away from proposing a radical overhaul of the pillar structure (Delors, 1996). There is an expanding consensus that the EU properly provides a structure to complement, co-ordinate, even in limited ways supplant the policies of nation-states, correcting for their manifest weaknesses; yet the EU has not, will not, and should not replace the nation-state (Milward, 1993; Moravcsik, 1998c; Weiler, 1996).

Traditional federalists attribute such caution to contingent factors: the purported shift in public opinion away from support for European integration, for which there is little evidence; the decline of geopolitical pressure for co-operation after the Cold War, German unification, and the passing of a generation with personal experience of World War II; or the domestic weakness and general lack of 'political will' among national politicians – all of which results in a deficit of 'leadership', not least from the 'Franco-German motor' (Devuyst, 1997). This both misinterprets the dominant motivations underlying European integration in the past and misunderstands the current mood. Governments have traditionally pooled or delegated sovereignty in order to lock in implementation and compliance with agreements that offer clear (generally economic) gains. Consensus on institutional form has been greatest where there is underlying consensus on substantive goals, even when key participants – we need think only of Charles de Gaulle, Helmut Schmidt, or Margaret Thatcher – were openly

critical of supranational officials, institutions, and ideology (Moravcsik, 1998c; Milward, 1993). And today, if we are to believe that the modesty of the Amsterdam Treaty stemmed from atavistic nationalism or an extraordinary sensitivity to sacrifices of sovereignty, how do we explain simultaneous progress toward EMU?

The failure to move forward more strongly stems, more fundamentally, from the lack of any compelling substantive reason to deepen co-operation. What governments and publics seem to desire today – as they always have – is a European structure that solves practical problems while undermining state sovereignty to the minimum extent possible. While the need for the EU structure trade liberalization was obvious, it is far less clear whether the gains from deeper economic regulation fully offset the sacrifice of control over free movement of peoples, social security, professional services, indirect taxation, culture, industrial policy, social policy, employment, or fiscal policy – or, more precisely, governments have far more diverse preferences concerning these forms of co-operation. In comparison with previous treaty reforms, nearly all of which were driven by an overriding substantive, generally economic goal – the elimination of tariffs and quotas, the construction of the common agricultural policy, exchange-rate co-ordination, the completion of the single market ('Europe 1992'), and monetary union – the Amsterdam Treaty was preceded by a near total lack of concrete substantive proposals for policies that could be pursued under new institutional provisions. In the future, modest forward movement is likely in justice and home affairs, due to relatively clear substantive gains for a majority of states from co-ordinated visa and policing policies; elsewhere the prospects are less promising.

In historical perspective the Amsterdam debate was striking in its vagueness. The SEA and Maastricht were preceded by detailed substantive agendas in the form, respectively, of the 'White Paper' with its almost 300 proposals formed into a plan for 'Europe 1992' and the vision, whether technically sound or not, of a single currency and 'Economic and Monetary Union.' By contrast, the preparation for Amsterdam was strikingly devoid of discussion about precise scenarios and concrete purposes for which second and third pillar institutions were to be reformed, let alone the concrete benefits of co-ordinating residual economic regulation, culture, education, taxation, or social policy. In short, there has been much debate about who belongs in the 'core' of Europe and much less about what the core is. One reason is that European governments simply do not agree on overriding objectives.

Peter Ludlow is therefore half right when he observes, 'The age of the pioneers is over. That of the system managers is already with us – or ought to be. [Amsterdam] was bound to be different from its predecessors – for the very good reason that the latter had done most of the system building that was needed'. It

could only be successful if it managed 'to show that its modesty was its glory rather than its shame' (Ludlow, 1997a, pp. 4, 13). Ludlow is correct that the EU is moving beyond an era in which the primary focus has been on the expansion of common policies. Far from being the last of its kind, the Amsterdam Treaty is the harbinger of the future. Yet we should not assume, therefore, that there remains nothing fundamental to be debated at future IGCs. We have not reached the 'end of history' in Europe in which one can only, as did Alexandre Kojève in his time, retire to Brussels and cultivate the CAP.

Europe stands instead before a series of ongoing constitutional debates. The focus in the future – disguised up to now by the increases in the scope of EU policy-making in core economic areas where a common legal order and universal participation were and remain unquestioned – will be on the construction of a legitimate constitutional order for policy-making responsive to the desires of national governments and their citizens. The question facing the EU today is no longer how to expand the ideal of centralized institutions and uniform participation to new areas, but whether and when to do so. As in most constitutional politics, fundamental issues of this kind are unlikely to be resolved by the application of a single definitive principle, let alone by commitment to a centralizing teleology. Constitutional bargains tend instead to emerge from the balances between different underlying principles (Shaw, 1998; Coglianese and Nicolaïdis, 1998). Not since the days of Charles de Gaulle have such questions been debated as explicitly as they are today.

Within the EU, tensions are emerging between fundamental principles of democratization, uniformity, universality and efficiency (Brinkhorst, 1997). Further democratization of the EU legislative process, for example, clearly requires either reduction in the prerogatives of the Council of Ministers or reduction in those of the Commission. The former is unlikely and, accordingly, the Commission found itself in a defensive position at Maastricht and Amsterdam, as the more radical proposals for strengthening the Parliament, particularly those advanced by Germany, came at the expense of the traditional Commission monopoly on the right of initiative. How long will it be before the French desire to strengthen the Council and the German desire to strengthen the Parliament come together in an open alliance against the Commission? Yet might this not undermine the record of success of the Commission-centred system more insulated from special interests, more technocratic in its decision-making, and, therefore, more effective at promoting the common European interest?

Similarly, there is increasingly open tension between a universal and uniform legal order, on the one hand, and effective decision-making, on the other. At Amsterdam the result was a greater willingness of governments to dilute the uniformity and universality of EU commitments (outside core EU issues, such as market liberalization) in the interest of achieving substantive co-operation of

interest to some governments. Despite efforts to simplify the legislative process, divergent institutional procedures are employed and different sets of members are involved across issues. Clearly, if some flanking policies become key to the success of monetary co-operation, laggard states cannot impose a veto; if some Member States disagree with a foreign policy action, they need not be involved; and if countries hold to different traditions of internal and external control of personal movement, they cannot be compelled to join a border-free Europe. In such circumstances, 'evolutionary pragmatism' increasingly dominates legal simplicity – even more so than has been the case since the signing of the Treaty of Rome in 1957. Procedures ranging from no EU involvement at all to full communitarization are instituted, with each designed to create a distinctive balance between national prerogatives and community competence. Policy innovation in the years to come will be ever more focused within the grey area between the classical extremes of intergovernmental and supranational institutions.

This was not a novel innovation at Amsterdam, as federalists who attribute the result to recent geopolitical or ideological shifts would have it. It was instead the extension of a deep, accelerating trend over decades within Europe toward greater differentiation across countries and issues. Article 233 of the Treaty of Rome governing the Benelux countries, the EMS and EMU, the Schengen agreement, ESPRIT, Article 100a4 of the SEA, British and Danish opt-outs on issues like social policy, budgetary bargains, and European Political Co-operation all involved *de facto* acknowledgements that not all governments would be treated the same. Credible threats to exclude recalcitrant Member States were critical to both the SEA and Maastricht agreements. Prospective enlargement to 21 or more increasingly diverse Member States only intensifies the problems. It seems clear that the CAP will not be applied to new members in the same way it is applied to existing members – with long transition periods serving to differentiate between the two groups to an even greater extent than in the Iberian enlargement of the 1980s.

The difference between Amsterdam and previous negotiations lies in the legitimacy and openness of such proposals. In 1988, Margaret Thatcher's call for a 'multi-track' Europe in her notorious Bruges speech was dismissed as the height of Euroscepticism (Moravcsik, 1998c). Even after Maastricht, flexible arrangements were still spoken of by most Europeans as unfortunate exceptions, with a uniform *acquis communautaire* the clear ideal. In the decade that followed, the debate over Europe has been turned on its head. Today it is the more federalist countries that demand differentiation and flexibility – now termed 'differentiated solidarity', 'avant-garde', 'federal core', or 'enhanced co-operation'. In response and over the objections of traditional federalists, the Amsterdam Treaty elevated 'flexibility into one of the constitutional principles of the

EU' (Ehlermann, 1997, p. 60; de La Serre and Wallace, 1997). The debate has shifted to the relative burdens to be accepted by 'ins' and 'outs' – whether Europe should provide choices 'à la carte' or be centred on 'hard core'. Will flexibility undermine the threats of exclusion that have forced recalcitrant states to accept European solutions in the past – witness threats aimed at the French in the early years of the EU and the British more recently – or will it offer new opportunities for governments to make such threats? The answer depends on the outcome of the emerging constitutional debate (Pisani-Ferry, 1998).

The European project has evolved into the most successful example of voluntary international co-operation in history. For its first four decades, this was achieved through the progressive extension of the scope of co-operation among Member States. With EMU and intergovernmental co-operation in the second and third pillars, this phase is nearing completion. Amsterdam represents the beginning of a new phase of flexible, pragmatic constitution-building in order to accommodate the diversity of a continent-wide polity.

This is not to say that the EU is dissolving. The opposite is true. The 'bicycle theory', whereby integration will recede if it does not progress, is a fetching metaphor but one without substance (Ash, 1998). The EU is proving quite capable of moving forward where it is perceived as necessary, as in EMU, and it is proving capable of protecting the *acquis communautaire*. The one point of agreement at Amsterdam, from the most Eurosceptical government to the most federalist, was the sanctity of provisions guaranteeing free trade in goods and services.

Even less plausible is the spectre of World War III – fear that makes unlikely rhetorical bedfellows of Helmut Kohl and Martin Feldstein (Feldstein, 1997). Those who assert that the failure to continue progressing towards a federal Europe (or the collapse of certain schemes currently directed to that end) will spark a geopolitical conflagration are forced to invoke historical analysis and political science over two generations old. The primary cause of peace in postwar Europe has not been European integration, but the law-like propensity of developed democracies to avoid war with one another. The major geopolitical bargains underlying post-war Europe – the US commitment, the repatriation of the Saar, the remilitarization of Germany, the formation of NATO, and the like – were precursors, not products of the Treaty of Rome in 1957 (Moravcsik, 1996, 1998c). What has held Europe together and propelled it forward has been a series of mutually beneficial bargains, largely economic in nature, to promote the interests of European producers and consumers. Those who continue to believe that the EU is fragile – too fragile to withstand constitutional debate – because it has been powered forward by fears of reliving World War II, doses of federalist idealism, constraints imposed by federal institutions, and the intermittent 'political will' of national leaders, rather than a stable pattern of co-operation tailored

to the convergent economic interests of national governments and their citizens, are today's true Eurosceptics.

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## Governance and Institutions

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RICHARD CORBETT

*Member of the European Parliament for Merseyside West*

### I. Introduction

The key institutional event in 1997 was the conclusion of the Intergovernmental Conference (IGC) and the signing of the Treaty of Amsterdam. Other developments took place within the context of the existing Treaties, not least the preparations for the single currency and the beginning of preparations for enlargement. Routine institutional life also continued.

### II. The Treaty of Amsterdam

One and a half years of Intergovernmental Conference preceded by half a year of work by the Reflection Group culminated in agreement on a Treaty which many found to be disappointing in failing adequately to address a number of problems facing the Union, not least in view of its forthcoming enlargement. Nonetheless, the Treaty, if ratified, will bring in about 20 significant changes to the institutional structures and the governance of the European Union. Of particular significance are the following.

1. The UK opt-out of the Social Agreement will come to an end, thereby enabling it to be integrated into the body of the Treaty and ending a two-tier system in this field.