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Hlavac, Marek

Georgetown University

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**Less Than a State, More Than an International Organization:
The *Sui Generis* Nature of the European Union**

Marek Hlavac*

Georgetown University

Georgetown Public Policy Institute

December 2010

* Candidate, Master of Public Policy (MPP), Georgetown University, Expected 2011
A.B. in Economics, *summa cum laude*, Princeton University, 2008

ABSTRACT

In this paper, I show that the European Union (EU) is less than a state, but more than an international organization. Although it possesses some characteristics of both, the European Union is, I argue, a *sui generis* project: Although the EU wields extensive influence in some policy areas (such as competition policy or international trade regulation), its institutions' powers are quite limited in many areas that remain firmly within the grasp of its Member States' governments (such as security, justice, tax or redistribution policies). The European Union's supranational elements – especially the EU laws' supremacy over the laws of individual Member States – distinguish it, furthermore, from international organizations, such as the United Nations or the World Trade Organization. I conclude that the European Union is really a *sui generis* project that has not been attempted anywhere else: As such, it could be regarded as a useful case study, or perhaps even a “pilot project,” for regional integration projects elsewhere.

INTRODUCTION

In this paper, I show that the European Union (EU) is less than a state, but more than an international organization. Although it possesses some characteristics of both, the European Union is, I argue, a *sui generis* project: Although the EU wields extensive influence in some policy areas (such as competition policy or international trade regulation), its institutions' powers are quite limited in many areas that remain firmly within the grasp of its Member States' governments (such as security, justice, tax or redistribution policies). The European Union's supranational elements – especially the EU laws' supremacy over the laws of individual Member States – distinguish it, furthermore, from international organizations, such as the United Nations or the World Trade Organization.

My argument proceeds as follows: First, I outline some arguments that have been offered in the long-standing debate about the nature of the European Union, and explain why this debate is important. I then explain why the Union is less than a state: Its institutions do not have a large influence in many areas that national governments consider crucial. Next, I argue that the EU's supranational powers make it more than just another international organization: Unlike the world's international organizations, the EU requires that its Member States cede some of their sovereignty to the Union's common institutions. I conclude by arguing that the European Union is really a *sui generis* project that has not been attempted anywhere else: As such, it could be regarded as a useful case study, or perhaps even a “pilot project,” for regional integration projects elsewhere.

THE DEBATE ABOUT THE NATURE OF THE EUROPEAN UNION

The nature of the European Union – both the positive question of what the EU *is*, and the normative issue of what it *should* be – has been hotly debated ever since its humble beginnings as the European Coal and Steel Community (ECSC) in the 1950s.² Pollack (2005) points out that, in the European Union’s history, periods of increased centralization (such as the 1950s, and the renewal of the integration process under the Delors Commission in the 1980s) alternated with periods of retrenchment and devolution (for instance, the Charles de Gaulle-led backlash during the 1960s).³

The debate about the EU’s nature is an important one: This is especially true in light of the recent controversies about the adoption of the Lisbon Treaty – where, for instance, the euro-skeptic President of the Czech Republic Václav Klaus threatened to withhold his signature⁴ - as well as in light of frequent arguments about the proper role and scope of the European Union’s powers. On the one hand, some commentators, mostly euro-skeptical ones, have likened the European Union to a federal state, with powers that are perhaps too strong.⁵ Others have argued that the EU is too weak, and needs to increase the scope of its activities.⁶

A related debate revolves around the perceived “democratic deficit” of the European Union – a sense that its institutions may not be fully democratically legitimate.⁷ Some scholars, such as Moravcsik (2002) and Majone (1998), argue that the Union does not, in fact, suffer from a significant deficit, while others disagree (Follesdal and Hix, 2006). Understanding how far the

² To achieve greater simplicity in exposition, I will refer to the European Union’s predecessor institutions (such as the European Coal and Steel Community and the European Community) simply as ‘the European Union’ throughout the essay. This approach is common in academic literature.

³ Pollack (2005); Donahue and Pollack (2001), 98

⁴ Daily Telegraph, “Czech President Vaclav Klaus signs EU Lisbon Treaty into law,” 3 November 2009

⁵ The Economist, “Britain’s Eurosceptics Show Their True Colours,” 4 March 2009

⁶ For instance, Scharpf (1999)

⁷ Moravcsik (2002)

current powers of the European Union extend is a good starting point for an informed debate on these important issues.

LESS THAN A STATE: WHERE THE EU'S POWERS ARE LIMITED

A superficial glance at the institutional structure of the European Union reveals there are some similarities with the frameworks of its Member States' political institutions. The European Commission has, for instance, been described as “the executive body of the European Union.”⁸ This description is, however, somewhat incomplete, as the European Commission has the monopoly right of legislative initiative: It is the only EU institution that can, usually after extensive consultation within the Commission and with experts from Member States (a process also known as “comitology”), propose new legislative acts (“directives”) of the European Union. This exclusive right is, of course, a law-making, rather than an executive, function – a fact that belies the description of the European Commission as a purely executive organ.⁹

Some commentators have also noted that the European Commission resembles, in its structure, the executive branches of modern states: According to these accounts, the President of the European Commission is analogous to a Prime Minister, the College of Commissioners¹⁰ is the counterpart of an executive cabinet, and the individual Directorates-General are comparable to government ministries responsible for individual policy areas.¹¹

Similar arguments have been made about the European Parliament, the only branch of the EU that is directly elected,¹² which has been described as the European counterpart of the lower chamber of national parliamentary assemblies. The Council of the European Union (and, before

⁸ European Union (2010), “The European Commission”

⁹ Tsebelis and Garrett (2000)

¹⁰ European Union (2010), “The European Commission”

¹¹ See, for instance, Chalmers, Davies and Monti (2010).

¹² Moravcsik (2002), 604

the coming into force of the Lisbon Treaty in 2009, the Council of Ministers as well) is sometimes described as a hybrid executive-legislative body, and at other times as the European analogue of an upper chamber of a national legislature, representing the Member States.¹³

Although arguments from structural similarities between the political institutions found on the European Union level and those found on the level of its Member States can be appealing, they are fundamentally misleading: The European Union has very limited powers in some policy areas that are most important to, and indeed may be the defining characteristics of, modern states. These include, among other, the powers of taxation and spending, as well as policies in the realms of justice, law enforcement, and national defense and security. The European Union, in other words, clearly does not wield powers commensurate to those typically associated with modern states: It is, in this sense, less than a state.

The political scientist Andrew Moravcsik, for instance, argues that the Union's current activities, however, are restricted both by the EU treaties and by established practice to a relatively modest subset of the substantive activities pursued by modern states. He argues, in particular, that "[the European Union's] mandate focuses primarily on the regulation of policy externalities resulting from cross-border economic activities."¹⁴ The Union's strongest constitutional powers lie, for the most part, in the areas of international trade of goods and services (including agricultural commodities), competition policy, exchange rates and monetary policy, and in trade-related consumer and environmental regulation.¹⁵ The result is similar to what the EU scholar Giandomenico Majone and others, such as Kelemen (2004), have called "a

¹³ Pollack (2005), Jachtenfuchs (2002)

¹⁴ Moravcsik (2002), p. 607

¹⁵ *Ibid.*

regulatory state.”¹⁶ We shall see that this notion of a “state,” however, is quite limited in scope when compared against the functions commonly performed by modern states.

Importantly, the European Union is not very active in policy areas that are most crucial to the governments of modern states: Its institutions are, moreover, expected to abide by the principle of ‘subsidiarity,’ which Pollack (2005) defines as “the notion that the EU should govern as close as possible to the citizen,” and that it should regulate “only where necessary to ensure the completion of the internal market and/or other fundamental aims of the treaties.”¹⁷ The EU, for example, only has a very limited ability to tax, and – although it does manage and supervise the EU budget – it largely relies on the national and local governments to do the spending, and set priorities for fiscal policy.¹⁸ Moravcsik (2002) estimates that the EU’s ability to tax is limited to about three percent of national and local government spending – equivalent to less than two percent of the Member States’ gross domestic products. By contrast, the national and local governments of the EU’s member states collect taxes that amount to much larger proportions of their national incomes: According to data published by the Organization for Economic Cooperation and Development, these proportions range from about thirty percent of GDP in Slovakia to almost fifty percent in Sweden.¹⁹

The European Union, furthermore, is largely unengaged in social welfare policy: Traditional redistribution and social protection programs – such as pension schemes, the provision of unemployment and welfare benefits, or health insurance policies – remain in the hands of the Member States, and indeed vary widely across them.²⁰ Some programs that the

¹⁶ Majone (1998), Kelemen (2004)

¹⁷ Pollack (2005), 30

¹⁸ Moravcsik (2002)

¹⁹ Data collected by OECD (2007).

²⁰ See Pierson (1995) for a comparative perspective on the social policies of various European countries.

European Commission supervises *do* have significant distributional effects:²¹ Two major examples are the Common Agricultural Policy, a complex and controversial system of agricultural subsidies, and the EU Structural and Cohesion Funds, which include the European Social Fund (ESF) focused on “mak[ing] Europe's workforce and companies better equipped to face [...] global challenges” and on giving European “better skills and better job prospects,”²² as well as the European Regional Development Funds (ERDF), which aim “to promote economic and social cohesion [in the EU] through the reduction of imbalances between regions or social groups.”²³ On the whole, however, European Union institutions are not responsible for the wide range of redistribution and social welfare programs that we see in most modern states.

If a state is, as Max Weber has famously put it, an entity with a monopoly on the legitimate use of force,²⁴ the European Union is most certainly not one: In fact, the Union's coercive powers are quite limited. Although some law enforcement cooperation is facilitated on the European Union level (for instance through EUROPOL, “the European Police Office”²⁵), this collaboration focuses mostly on transnational issues such as “preventing and combating terrorism, unlawful drug trafficking and other serious forms of organized crime.”²⁶ Member States have their own, largely independent, law enforcement systems.²⁷

The European Union, furthermore, plays only a very limited role in national defense policies: Even though, formally, the Common Security and Defense Policy (CSDP) is a major part of the EU's Common Security and Foreign Policy, little progress has been made in creating

²¹ Borrell and Hubbard (2000); Becker, Egger and von Ehrlich (2010)

²² European Union (2010), “European Social Fund”

²³ European Union (2010), “Structural Funds: 2000-2006”

²⁴ Max Weber (1999), “Politics as a Vocation”

²⁵ EUROPOL (2002)

²⁶ *Ibid.*

²⁷ Moravcsik (2002), Gabel (1998)

EU-specific military capabilities.²⁸ Instead, Europe's security remains largely in the hands of the North Atlantic Treaty Organization (NATO), an international organization that was created in 1949 to be a bulwark against Soviet influence, and that is independent of the European Union.²⁹

All in all, then, it appears clear that the scope of the European Union's powers is not extensive enough to warrant the Union's description as a state: "At a first approximation," as Moravcsik correctly observes, "the EU does not tax, spend, implement or coerce and, in many areas, it does not hold a legal monopoly of public authority."³⁰

One statistics illustrates the EU's limited power particularly well: European Union institutions employ a relatively small staff. The European Commission, for instance, employs about 23,000 civil servants.³¹ Although critics of the European Union often complain that it is a bloated bureaucracy, the number of EU's employees is comparable to that employed by the municipal government of a larger European city:³² a number that would seem extraordinarily meager for the government of a full-fledged state, but one that appears less surprising for an entity with powers largely limited to various types of international regulation.

MORE THAN AN INTERNATIONAL ORGANIZATION: EU'S SUPRANATIONAL ELEMENTS

International relations theorists, especially those of the realist school of thought such as Mearsheimer (1994) or Waltz (2000), often stress that the world of international politics is characterized by "anarchy." There is, in other words, no sovereign above individual states that would enforce agreements, or punish those who deviate from previous commitments.³³ As a

²⁸ Conley (2007)

²⁹ *Ibid.*

³⁰ Moravcsik (2002), 608

³¹ European Union (2010), "European Commission"

³² *Ibid.*

³³ Mearsheimer (1994)

result, cooperation between states often proves to be difficult, as states can sometimes choose to defect from existing agreements, if it serves their own interests. Scholars of a liberal institutionalist bent generally accept the realists' premise of a fundamentally anarchic world order, but stress the role of institutions, which states can judiciously use to facilitate cooperation and maintain credible commitments.³⁴ The European Union takes the liberal institutionalists' argument even further, and introduces supranational elements – ones which require that “individual countries delegate part of their authority to the European [...] institutions.”³⁵

The European Union differs from traditional international organizations in one key respect: Unlike, for instance, the United Nations or the World Trade Organization, the European Union does not rely solely on the intergovernmental cooperation of fully sovereign states, but also has important supranational characteristics: Its Member States cede some of their sovereignty in favor of the European Union's common institutions. Accordingly, candidate countries have, in recent enlargement rounds, generally had to hold accession referenda, in which the populace was asked whether they agreed to join the Union: The ceding of some degree of national sovereignty is, after all, a politically sensitive matter.³⁶

The most important of the EU's supranational features is the supremacy of European Union law: Laws promulgated by European institutions are not only binding, but also take precedence over the Member State's domestic legislative acts.³⁷ There are, furthermore, institutional mechanisms – shared between the two “guardians of the Treaties”: the European

³⁴ Keohane (1994), Grant and Keohane (2005)

³⁵ A definition offered by Jean Monnet, then the President of the High Authority (a predecessor of the European Commission) of the European Coal and Steel Community, in 1955, as cited by Williams (1997) and Ruzskowski (2009).

³⁶ Keohane (2004).

³⁷ Scott and Trubek (2002)

Commission and the European Court of Justice – that allow the European Union to intervene, if they suspect a Member State is in violation of European Union treaties or laws.

In particular, the European Commission can initiate a non-compliance procedure, known as “infringement proceedings,” against a Member State that it believes is failing to uphold its obligations under European Union law.³⁸ As a first step in this pre-litigation procedure, the European Government sends the Member State a “letter of formal notice,” and requests a reply by a specified date. In light of the Member State’s reply or its lack of response, the European Commission may decide to prepare a “reasoned opinion,” in which it will detail the infringement that the Member State is suspected of having committed. As a last resort, the European Commission may refer the dispute to the European Court of Justice, thus initiating the formal litigation procedure.³⁹

Another feature of the European Union that can be seen, in some respects, as “supranational” is the requirement that central EU institutions make decisions that are in the interests of the European Union as a whole (i.e., that they promote the ‘common good’ of the Union),⁴⁰ rather than in the interests of particular Member States. This is evident, for instance, in the European Commission: Although individual Commissioners are nominated by the governments of Member States, they are expected to be independent and act in the general European interest, rather than to defend the interests their home countries.⁴¹ Such an approach sharply contrasts with intergovernmental negotiations in international organizations such as the

³⁸ European Union (2010), “Infringement Proceedings”

³⁹ *Ibid.*

⁴⁰ Gabel (2009)

⁴¹ *Ibid.*

World Trade Organization, where parties often pursue their own interests – sometimes at the cost of a deadlock in, or a breakdown of, the negotiations.⁴²

CONCLUSION: THE EUROPEAN UNION AS A *SUI GENERIS* PROJECT

All in all, we have seen that, while the institutional framework of the European Union exhibits some characteristics typical of states and others more commonly associated with international organizations, it cannot be readily categorized as either.

Unlike most modern states, the European Union concerns itself only with a limited range of policy areas: These are largely restricted to various regulatory policies, mostly to do with international trade and monetary policies. On the other hand, the European Union is not a pure international institution either, because its activities are not conducted solely on the intergovernmental level (between the governments of sovereign and independent states), but also have a supranational dimension: This is particularly true of EU law, which is binding for all Member States, and reigns supreme over national and local statutes or regulations. The European Union, then, is less than a state, but more than an international institution.

Instead, it is more useful to think of the European Union as a *sui generis* project. It is unique in several respects: It is an “economic project with political goals,”⁴³ first initiated by visionaries such as Jean Monnet and Robert Schumann,⁴⁴ that has, over time, expanded both its geographical span and the number of policy areas that it regulates,⁴⁵ while – at the same time – stopping short of acquiring the extensive powers characteristic of modern states. The institutional

⁴² For instance, several rounds of global trade negotiations – typically conducted on an intergovernmental basis - have either stalled or broken down. For an example involving the Doha round of trade negotiations, see Hufbauer and Pischedda (2007).

⁴³ Bunse (2010)

⁴⁴ Dinan (2005), Chapter 1

⁴⁵ Pollack (2005)

framework of the European Union has been likened, imprecisely, to the three branches of government – executive, legislative and judiciary - found in modern states. In reality, however, its institutions often combine legislative and executive powers, as can be seen, for instance, in the European Commission’s monopoly right of legislative initiative. The European Union, furthermore, combines intergovernmental forums, quite familiar from the world’s many international organizations, with unique supranational institutions. Finally, as the world’s largest and most extensive regional integration project, the European Union is bound to be closely observed by academics, policy-makers and the world public alike, as regional integration continues to deepen around the world.⁴⁶

⁴⁶ Desai and Vreeland (2010)

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