

Social Policy: State of the European Union Vol. 8 Memo Series
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Le rejet du traité serait vécu par les Européens comme un non à l'Europe. Il ouvrirait une période de divisions, de doutes, d'incertitudes. C'est une illusion de croire que l'Europe repartirait de plus belle avec un autre projet. Car il n'y a pas d'autre projet. L'Europe serait en panne, à la recherche d'un impossible consensus. Le monde, lui, continuerait d'avancer d'une manière accélérée. La France serait moins forte pour défendre ses intérêts. Bien sûr, nous continuerions à nous battre. Mais croyez-vous vraiment que nous pourrions défendre avec la même force nos intérêts économiques, sociaux, régionaux, ou de sécurité ? Croyez-vous que nous pourrions défendre avec la même influence la politique agricole commune, dont les paysans français sont les premiers bénéficiaires ? Croyez-vous que nous pourrions défendre avec le même poids notre modèle social ou notre exception culturelle ? (Chirac 2005) -*Jacques Chirac, 'Declaration aux Français', 26 May 2005, just before the May 29 'non' vote on the proposed EU Constitution*

"What type of social model is it that has 20m unemployed in Europe, productivity rates falling behind those of the USA; that is allowing more science graduates to be produced by India than by Europe; and that, on any relative index of a modern economy—skills, R&D, patents, IT, is going down not up? ...Of course we need a social Europe. But it must be a social Europe that works." (Blair 2005) -*Tony Blair speaking to the European Parliament, 23 June 2005, just before taking over the EU Presidency*

Introduction

There are certain critical periods in the evolution of the European Union where institutional change and public interest combine to focus attention on the constellation of the EU's decision making structure and policy outputs. Dates of enlargement are such junctures, as are times of Treaty reform and moments of new policy implementation such as the transition to EMU. 2005 is a particularly intense period of critical attention, coming as it does one year after the largest enlargement in EU history to ten new Member States, and in a period where the difficulties in ratifying a new EU constitution are creating intense debate about the future of the EU.

Social policy has been at the core of the recent debates about the future of Europe, in particular because of concerns raised by the current 'EU Social Model'. Concerns about high rates of national unemployment, and the argument that the EU provides for only weak enforcement of social standards, combined to create a strong argument at the heart of the French 'no' vote on the EU constitution on 29 May, 2005. Enlargement had already, in 2004, caused public anxiety about large numbers of low-skilled and semi-skilled workers from the new Member States seeking both employment and benefits in the EU-15, and displacing national workers with cheap labour (Traser 2005, p. 5). These fears led to derogations on the free movement of workers from eight of the ten new Member States¹ in all of the EU-15 except the UK and Ireland (Commission 2004). The proposal for a new EU draft directive on services also added further rhetorical fuel to the

¹ Malta and Cyprus were not included in the transitional arrangement.

debate in the spring of 2005. The draft directive on services would permit a service provider to engage, temporarily, in the provision of a service in another member state provided it met its own country's legislation and regulatory requirements (the 'country of origin' principle). The 'Polish Plumber' raised the spectre that cheap labour from the new Member States, especially those to the East, would flood the EU-15 and lead to increased unemployment and a lowering of social standards.

Another central focus of the debate around the constitution was that with a widening of the EU to new members, the ability of the EU to continue the large-scale redistributive policy embodied in the Common Agricultural Policy (CAP) would diminish (although projections are that few changes will happen in the upcoming 2006-13 budget cycle). Further, the focus of European redistributive policies would increasingly turn away from providing guaranteed income and assistance to specific sectors and lower-income regions and towards the spreading of neo-liberal labour market policies promoted by the UK and collectively labelled (with little nuance for elements such as the UK's provision of universal health care) 'the Anglo-Saxon model' (Timmins 2005). Social dumping, or the constant under-cutting of the minimum standard to ever-lower levels of wages, benefits and working standards, would be the result in the view of critics.

To be more specific, these are some of the social-policy related concerns at the heart of the recent French and Dutch debates about the constitution, and German electoral debates, as well the discussion on the future of Europe by the political left. On the other side of the ideological spectrum, those on the right fear that the EU, aided by powerful national unions and the ETUC, will become a super-state, placing unnecessary and costly regulation on business and employers, thus contributing to labour market rigidities and contributing to rising labour costs and unemployment. Enlargement, in this view, is positive in that it contributes to labour migration, which in some EU states is critical due to an ageing population, and increased global competition (Jones 2005).

The long-standing debates about the EU Social Model, and about the role of the EU relative to member states in the development and provision of social policy, is thus at a more heightened point than in many years. Understanding how EU institutions for social policy have been created—where the demands for their creation came from, the methods by which barriers to cooperation have been over-come, and the changing nature of the actors and processes by which EU social policy is developed—is critical, alongside political leadership, to determining where EU social policy may evolve in the future. The various features of EU institutions in the social policy field also reflect national preferences and ideas, and provide some indication of which of the national 'visions' for the EU are gaining in momentum, and whether the rhetoric about improving or expanding EU social policy is in fact matched by Member State action.

The dynamics of the EU's institutional arrangements for decision-making in the field of social policy, and their outputs, is a very interesting subject for an analysis based on a historical institutionalist perspective for two key reasons. First, previous EU enlargements have increased competitive pressures on social policy, raising demands from high-standard Member States for more cooperation. EU institutions have been shown to facilitate these demands, and even anticipate them. Will the 2004 enlargement continue this trend of institutional adaptation, or will there be an increase demand for national opt-outs and safeguards from EU legislation? To what extent may the 2004 enlargement be a 'threshold' that prompts formerly incremental change to suddenly

coalesce, producing much more wide-ranging effects? (Pierson 2004) Secondly, formal and informal rules of decision-making in the EU have favoured some actors while marginalizing others. How will these rules structure the various preferences in the Member States of the EU-25, and the role of the Commission, and what outputs may be possible?

Before turning to a survey of the current institutional state-of-play in the EU, a working definition of social policy is needed. According to a classic ILO survey of the 1950s, social policy includes the following measures: maintaining income during sickness, unemployment allowance, old age allowance (old age pension), and family allowance. Housing, education, community services, and health care also form part of the broad remit of social policy (Marshall 1975, p. 11). This broad conception of social policy has been embraced by contemporary scholars of social policy who define the core of social policy as consisting of 'social insurance, public assistance [social assistance], health and welfare services, and housing policy' (Majone 1993, p. 158).

EU social policy has, in large part, focussed on the free movement of labour, the transferability of social security, health and safety, social dialogue, worker consultation, conditions of employment, and policies to promote employment including worker training. Policies concentrate on areas related to the labour market and improving the individual employment situation (Sapir 2003, p. 18). In addition, the kinds of policies enacted by the EU do not require large-scale fiscal transfers to the level of the individual nor do they require extensive administrative functions, and are often termed 'social regulation' (Majone 1996).

The EU has more recently, since the Lisbon Summit of 2000, endorsed the open method of coordination (OMC) as a key method to guide Member State cooperation on a variety of policies on employment, social exclusion, and including such issues as poverty, long-term unemployment, social protection, and pensions which operates largely on the basis of benchmarking and naming and shaming (Council 2000). There is some marginal by the European Social Fund (ESF) to counter long-term unemployment, and in particular youth unemployment, does provide a financial EU-level tool to promote particular policies. Whether being a '“regulatory polity”—a system with instruments of regulation, but little fiscal discretion' is a blessing or a curse largely depends on the measuring stick applied to the EU case (Moravcsik 2005, p. 5). While the EU cannot in any way be said to re-create national welfare states at the regional level, the EU has by far the most advanced social legislation of any regional polity. The challenge is to acknowledge the effectiveness of the EU in promoting cooperation in specific policy areas, such as the equal treatment of women, the provision of a safe work environment, and access to worker-training, while not, as Andrew Moravcsik notes, overstating the 'limited substantive scope' of EU policies (Moravcsik 2005, p. 3). Throughout this chapter it is thus useful to bear in mind that there must be an explicit comparative tool to allow the assessment of EU policy-making. It is important to note that this chapter evaluates the current status of EU social policy *not* on the basis of its ability to reproduce the national welfare state at the EU level, but rather on its ability to promote a regional understanding of national challenges and to find regional solutions to these problems. Perhaps it is worthwhile to add that acknowledgement by national politicians of the limited legislative and financial tools available to the EU would also go a long way to

reducing the ire of voters on the EU constitution regarding issues related to unemployment and social policy more generally.

The institutional setting of social policy

Policy-making in the social policy field at the regional level in Europe now includes three distinct forms of governance by the European Union: governance by law, governance by EU-level bargaining between employers' and workers' associations in the Social Dialogue, and governance by the open method of coordination (OMC), first used in the European Employment Strategy (EES). The evolution of these three forms of social policy is all the more fascinating as they have expanded in a relatively short period of time, given that qualified majority voting (QMV) for EU governance by law in the social policy field (in Art 137, ex 118a) was only introduced in the 1987 Single European Act. Subsequent Treaty revisions of Maastricht (1993), Amsterdam (1999) and Nice (2002), have each resulted in the expansion of EU competence in the social policy field and in new forms of governance. At Maastricht, ex-Art 118b was bolstered to create the Social Dialogue between the EU-level social partners as an avenue for creating legislation. At Amsterdam the Employment Title was included, and at Nice the OMC, originally developed for the employment strategy, was extended to new areas of cooperation. More new forms of social governance have been created and have produced policy outputs in 1986-1999, during which the EU expanded to fifteen members, then in any other period. However, there are signs that with the coming enlargement to twenty-five member states there has been a key shift in the rules governing social policy that appears to make legislation in this area harder to create, and that favours the soft-law option embodied in the open method of coordination.

As Paul Pierson has explained, the key claim to be derived from historical institutionalism is 'that actors may be in a strong initial position, seek to maximise their interests, and nevertheless carry out institutional and policy reforms that fundamentally transform their own positions...in ways that are unanticipated and/or undesired' (Pierson 1998, p. 30).² The fact that Member States with diverse national welfare state regimes agree to contract in the social policy field indicates that the supranational level of decision-making, namely the opportunities for bargaining and incentives provided by EU institutions, must factor in to the analysis of how social policy integration occurs. More specifically in the EU-15, Southern Member States with lower standards should have had strong initial positions against cooperation, and yet they agreed to policy-making in common. Despite a preference for non-cooperation in the social policy field, the UK has also agreed to participate in EU governance of specific social issues. In addition, there are instances where France and Germany have expressed disinterest in cooperation, and yet have eventually agreed to new forms of cooperation (Johnson 2005). While the political rhetoric on EU social policy appears to be heating up, the institutional setting tells a different story about the ease of decision-making in this area and the leaders of policy innovation.

² The presentation and use of historical institutionalism also draws heavily upon (Addison and Siebert 1997; Scharpf 1997; Armstrong and Bulmer 1998; Bulmer 1998; Pierson 1998; Aspinwall and Schneider 2001).

Institutions encourage cooperation in a number of different ways. Institutions can solve collective action dilemmas. Institutions may provide actors with greater certainty about the behaviour of other actors through the provision of information, and may supply enforcement mechanisms to ensure compliance with behavioural standards (Hall and Taylor 1996, p. 939). Strong enforcement mechanisms are supplied in the EU by the oversight of national implementation of binding regulations and directives by the European Court of Justice (ECJ), given the supremacy of its decisions over national law (Deakin 1997; Hix 1999; Slaughter, Stone Sweet et al. 2000).³ Such an assessment is commonly found in intergovernmental explanations of EU-level Treaty bargains (Moravcsik 1998).

Elements drawn from a historical institutionalist analysis of the EU, on the other hand, concentrate on explaining why gaps—'significant divergences between the institutional and policy preferences of member-state governments and the actual functioning of institutions and policies'—emerge, and why they cannot be closed (Pierson 1998, p. 34). In order to explain the gap between the expected and the actual behaviour of Member States, and the emergence of new forms of governance in the social policy field over time, several institutional factors must be considered: formal rules, the effects of institutional learning, Commission entrepreneurship the financial incentives and disincentives provided by cooperation, and unanticipated consequences.

Formal rules: qualified majority voting and creating EU legislation

Institutions set out the formal rules by which states may create common policies. A key example of a formal rule in the EU context is the choice between qualified majority voting (QMV) and unanimity in policy-making to create EU regulations and directives. QMV was first introduced in a very limited area of social policy, Article 137 (ex 118a) on health and safety, in the SEA. Over successive treaty revisions, QMV has been extended to other social policy areas, including working conditions, the information and consultation of workers, and the integration of persons excluded from the labour market. In a constantly enlarging EU it has become impossible for a single large Member State (UK, Germany, France, Italy, or now Poland) to block policy, although in practice policy proposals are adapted so as to try and achieve consensus rather than forcing a vote (Hayes-Renshaw and Wallace 1996).

However, under QMV in an enlarged EU of twenty-five Member States, passing legislation by Council vote is much more complex, with 232 out of 322 votes needed, plus a majority of Member States with 62 per cent of the EU's population (EU 2000). Blocking minorities could be as little as the three largest Member States (Germany, France, UK), who have enough of the total population (44 per cent) to block. By the number of votes needed, the smallest blocking minority could be four Member States. The evolution of QMV is illustrated in Table 1. [*Note: I think I have this explanation of QMV and the table right, but I hope others have comments on how QMV has evolved especially since Nice.*]

³ A limit on the power of the ECJ is that national courts must refer cases to the ECJ, although the Commission, as guardian of the Treaties, may also take cases to the ECJ in cases of non-implementation.

Table 1 Qualified Majority Voting and distribution of votes in the Council of Ministers 1981-2005

	1981-85	1986-94*	1995-2004*	From 2005
France	10	10	10	29
Germany	10	10	10	29
Italy	10	10	10	29
Belgium	5	5	5	12
Netherlands	5	5	5	13
Luxembourg	2	2	2	4
UK	10	10	10	29
Denmark	3	3	3	7
Ireland	3	3	3	7
Greece	5	5	5	12
Portugal		5	5	12
Spain		8	8	27
Austria			4	10
Sweden			4	10
Finland			3	7
Poland				27
Czech Republic				12
Hungary				12
Lithuania				7
Slovakia				7
Cyprus				4
Estonia				4
Latvia				4
Malta				4
Slovenia				4
TOTAL	63	76	87	322
Number needed to pass under QMV	45 (71.4% of votes)	54 (71.1% of votes)	62 (71.2% of votes)	232 votes (72% of votes) +13 MS +at least 62% of EU population

*UK opt-out on Social Protocol 1991-97

During the constitutional convention there were debates about a form of 'super-qualified majority voting' in EU social policy (Norman 2005, pp. 104-5).⁴ In addition the UK's minister for Europe, Peter Hain, insisted that the UK could not accept an extension of QMV in the social policy area. Hain was supported by Ireland's Dick Roche, and by

⁴ Giscard D'Estaing agreed to the creation of a working group on Social Europe as part of the work of the Convention. The Social Europe working group was originally contained in the working group on economic governance Chaired by German MEP (and former president of the Parliament) Klaus Hänsch. Later, the working group had its own standing as a separate group under Greek MEP and Praesidium members Geroge Katiforis (Norman 2005, pp. 104-5). Katiforis 'admitted that the achievements of the group looked modest' (Norman 2005, p. 106). [Mandate for the group CONV 421/02 . Report on 6 February 2003 CONV 516/03 and CONV 516/1/03 REV 1 COR 1; see also report from economic governance group CONV 357/02.]

sections of the Germany political power-base, including the ruling Red-Green coalition⁵ and the Länder who wanted to retain vetos in the area of employment issues and who were also concerned about maintaining national immigration controls over the access of third country nationals to the labour market (Norman 2005, p. 262). Despite the active involvement of several Socialist MEPs in promoting the constitution as an opportunity for the expansion of EU social policy, the constitutional process did not expand the areas of social policy subject to QMV, nor reduce social policy areas subject to national vetoes. Unlike earlier instances of treaty bargaining where the UK's resistance to expansion of QMV, such as in the SEA, or to the effective provision for legislation by social dialogue as in the Maastricht Treaty, were effectively over-come by tactics ranging from issue-linkage to opt-outs, in the constitutional debate the issue of social policy was never elevated to sufficient importance to have been subject to these negotiating techniques for isolating resistant Members.

On QMV more broadly, the constitution ultimately rejected suggestions to move to a system of a 'double majority', or something close to it, of Member State support and population (EU 2003), and rather endorsed an even more complex QMV system than the Nice Treaty whereby a successful vote by QMV would require support by at least 55 per cent of the members of the Council, and the support of at least 15 Member States representing at least 65 per cent of the EU's population (EU 2004). Thus there appears to be a trend which bears watching that suggests that the EU may be entering into a phase where the standards for decision-making in the social policy field (and indeed in all areas subject to QMV) that lead to legislation (directives) have been raised, making collective decision-making more difficult.

The Treaties have also continued to put explicit limits on social policy cooperation at the EU level. Article 137 states: 'The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs' (EC 1999, Article 137(6)). These explicit exceptions are also replicated in the draft Constitution.

Other formal rules in the EU give the balance of power to the Commission in different stages of policy-making, and not the Member States. In the EU, formal rules on the creation of legislation under the Community Method give the Commission the right of proposal. The Commission may consult widely in the initial design of proposed legislation and choose the Treaty Article under which to propose legislation. As a result, legislation is sometimes proposed that does not have unanimous or even majority support in the Council. The Commission is also able to propose legislation to fill policy gaps left by previous legislation. Control of new proposals does not rest with the Member States in the form of the Council and thus no Member State can guarantee that regulation falling under EU competence will not be subject to proposals for new or enhanced legislation.

Policy learning as fostered by institutions: innovations in social policy

Institutions 'shape the direction of the acquisition of knowledge and skills' (North 1990, p. 78). Institutional learning effects include perceptions of the advantages of cooperation, and the expectations of future cooperative opportunities (North 1990, p. 94).

⁵ Germany's Foreign Minister, Joschka Fischer, in a speech on July 4, 2003 in Brussels noted that 'immigration policy is one of the most sensitive areas of home affairs', and that 'a generalized shift to QMV is not possible at present for Germany'.

On the positive side, learning effects create greater awareness of the interests and needs of other institutional partners so that effective issue-based coalitions may emerge, and the development of best practice models that involve the transfer of skills from one partner to another. On the negative side, learning effects from the broader experience of EU integration have made Member States extremely careful in their negotiations on social policy. Policy learning over time has also made Member States wary of being bound to policies enforceable by the ECJ, the financial implications of integration (especially for those Member States that are net contributors to the EU budget), and the ability of the Commission to take what may appear to be a limited Treaty basis and use it to expand EU competencies in unexpected areas. All of these learning effects come in to play when Member States are considering the development of new forms of regulation.

A vital function of institutions is thus in providing a stable setting for cooperation over time. By providing a forum for multiple iterations of cooperation over time, institutions allow Member States to learn what outcomes may be possible from the rules as they stand. Frustration with the resulting amount of cooperation from these rules will cause leader or activist Member States to suggest, or at the least be disposed to, alternative forms of cooperation. Learning effects of policy cooperation will also work to empower resistant Member States as well, who may demand forms of governance and specific policy outputs that will have limited implementation costs.

Policy learning was especially salient in the proposal of QMV in health and safety policy during the SEA negotiations, so as to prevent the UK, and possibly Southern Member States, from vetoing cooperation when the EU expanded to twelve members. Policy learning was also part of the history behind the Commission's proposal of the Social Dialogue; when several issues were stymied by national vetoes, the Commission turned to the EU social partners as an alternative route to regulation. While resistant Member States may have banked on the Confederation of British Industry (CBI) playing a veto role similar to the UK government in the Social Dialogue, other national social partners asserted their interest in producing legislation via this new form of governance. The CBI was sidelined, and QMV rules adopted internally by UNICE and ETUC ensured that no one national social partner could hold its confederation 'hostage' with a veto.

In the case of employment policy, Member States were not interested in giving the EU exclusive competence, and nor could they expect that resistant Member States would agree to creating EU legislation in employment policy. A form of governance with limited implications for competence, and no legislative enforcement via the ECJ or financial sanctions such as provided in the Growth and Stability Pact, was thus proposed. In this case Member States have made a trade off between cooperation and enforcement. In other words, Member States promoting cooperation could have expressed a preference for cooperation only under the conditions of governance by law, enforceable by the ECJ. In such an instance, it is highly probable that resistant Member States would have chose not to cooperate at all and thus blocked cooperation. Therefore, leader Member States have agreed to cooperation under weaker enforcement mechanisms, or even in the absence of enforcement mechanisms, trading off robust enforcement mechanisms for an agreement to cooperate. Rather than enforcement mechanisms, the OMC has incentive measures. Learning effects from past policy designs thus played a key role in determining the bargaining positions of Member States.

Interestingly, it was the Scandinavian countries with their long tradition of active labour market policies (ALMPs) that led the charge in the Amsterdam treaty negotiations for an employment section, joined by the smaller Member States. France and Germany, both with higher than EU-15 average rates of unemployment, were not initially supportive. They exhibited concerns about the possible loss of competency over employment policy, the desire to focus first and foremost on EMU, and the possibility that additional budget resources would be requested. While the UK initially opposed including employment provisions under OMC in the Treaty of Amsterdam under the Conservative government of John Major, with the election of Tony Blair the UK came on side to support (Johnson 2005, pp. 119-26).

The OMC may also be applied to issues areas where other forms of governance have been used. Health and safety policy is one example where governance by law is the norm, but where OMC may be increasingly applied. The European Agency for Safety and Health at Work was founded in 1994, and works according to principles that closely resemble the OMC. The Agency gathers information on occupational health and safety in order 'to identify and validate examples of good practical solutions', and to allow Member States 'to learn and improve from each other's experiences' (Agency 2001, pp. 4-5, 20). Such activity is in danger of shifting governance in the health and safety issue area 'from mainly regulatory policy-making into mainly persuasive policy-making' (Smismans 2001, p. 88), or as Wolfgang Streeck predicted in 1995, from hard law towards 'voluntarism' (Streeck 1995, pp. 430-431).

The key trends that must be analysed in the coming years are twofold:

- 1) does OMC have an impact on national policies? Some studies show that in specific policy areas, such as policies designed to improve the participation of women in the EU labour market and youth unemployment, OMC has resulted in changes across Member States and in particular in the Southern Member States where active labour market policies were virtually unknown before EU-level policies (Johnson 2005, pp. 128-138). Others are sceptical (Moravcsik 2005, p. 4);
- 2) does the application of OMC result in a declining use of governance by law and governance by Social Dialogue, both of which result in hard law outputs? While OMC will not erode current EU legislation, it seems likely that future areas of cooperation *both in traditional areas of EU social policy and in new areas* will likely be governed by soft law rather than hard law.

Commission entrepreneurship

Supranational actors are often able to move national-based actors beyond narrow considerations of their respective national interests. The role of the European Commission thus cannot be ignored in an explanation of the outcome of policy-making in the EU. Arguments about the 'common good' may be introduced by the European Commission, for example, and to encourage policy-making on the basis of criteria other than pure national interest (Pierson 2000). Concerned with policy-making in the Union as a whole, the Commission has often used the rhetoric of the need for 'balance' by linking the development of social policy at the EU level to the Single European Market (SEM) and European Monetary Union (EMU).⁶ Economic policy-making has not,

⁶ An example of Commission rhetoric is the following statement: 'we have to strike the right balance between economic and social considerations. We [the Commission] have firmly rejected the view that only

however, gradually led to increased EU authority over the social policy field, as neo-functional theories of integration would suggest (Lindberg 1963). Rather, social policies must be carefully promoted by the Commission over time, via Social Action Programmes or specific proposals, in advance of Member State agreement to cooperate (Commission 1974; Council 1974; Commission 1989; Commission 1995) (Commission 2005).

The Commission is often the source of innovations in EU governance in the social policy field, designed in some cases to over-come roadblocks. Even during Intergovernmental Conferences (IGCs), where the Commission does not have a formal role, Commission contacts with the government holding the Presidency of the Council of Ministers and with other governments have enabled it to promote the inclusion of new forms of governance in Treaty reform bargains.⁷ In the context of Treaty and policy negotiations the Commission may help to provide new and innovative versions of texts for bargaining because of its intellectual resources and ability to gather information on Member State positions, as in the case of the Maastricht Social Protocol negotiations (Ross 1995; Stubb 1998; Dehousse 1999). In addition, as the European Commission has the right of proposal under EU governance by law, or 'the Community Method', specific policies are promoted that support cooperation at the supranational level.

Even in modes of governance where the Commission does not have the right to propose legislation, activism by the Commission, such as at times of Treaty reform and at the level of policy-making committees, and by the European Court of Justice (ECJ) in case law on the application of Article 137 and other Treaty bases, has promoted cooperation on specific policies at levels unanticipated by Member States at the time of initial contracting. Complex decision-making rules and committee decision-making often reinforce the position of the Commission and isolate the most reluctant Member States during policy-making.

Key individuals in the Commission have also played the role of 'policy entrepreneur' (Kingdon 1984), developing policy proposals, playing the role of policy sherpa around national governments and key national PERMREP officials, and building coalitions of interested parties, such as in the case of Allan Larsson in employment policy.⁸ Commission officials are often more 'risk-oriented...open minded and innovative' than national officials and are encouraged to present 'new ideas' and 'innovative regulation which attempts to go beyond everything which can be presently found in the Member States' (Eichener 1992, pp. 53-54). Due to their self-interest in

economic considerations should be taken into account and that social policy is a luxury that can be afforded in good times but thrown out in bad times' (DG V official) (van Zonneveld 2000, p. 14). The Commission's use of rhetoric to create an 'image' of the policy problem at hand, and its ability to create 'venues' for policy cooperation, led one author using the term 'image-venue entrepreneur' to describe the Commission (Wendon 1998).

⁷ As an analysis of IGCs on the basis of historical institutionalist analysis explained: '[s]cholars should not easily discard supranational actors from their research designs on treaty reform—although looking at more factors is demanding and supranational entrepreneurship is not always easily visible' (Falkner 2002, p. 113). In addition, 'there is a need to relate developments in the periods between IGCs to the treaty reform process' that can only happen if the analysis spans policy-making over time (Christiansen, Falkner et al. 2002, p. 28).

⁸ Observations about the critical importance of policy entrepreneurs has given rise to well-deserved criticism that institutionalist theories subsume individual actors inside a more mechanistic view of political interaction. Some writers have attempted to 'put the individual back in' through actor-centred approaches to institutionalist theory that marry rational choice with institutionalist paradigms (Scharpf 1997).

promoting European integration, Commission officials often promote solutions that go well beyond amalgams or averages of national policies.

In day-to-day policy operation, the role of the Commission as an agenda-setter (Garrett and Tsebelis 1996; Pollack 1997), and as a process manager of the committee system that prepares legislation (Eichener 1992), enables it to drive through policies that do not represent either the lowest common denominator or some kind of rough average of Member States positions, such as in the case of health and safety legislation. The Commission, therefore, helps to 'shape the intellectual framework in which... national governments think about social policy' (Hine 1998) and the institutional environment in which EU Member States may confront social policy challenges.

Financial incentives and disincentives

The presence of funding in an institution, and the potential for members to access these funds, can act as a powerful incentive to cooperation. In the case of the EU, while budget lines associated with social legislation are minuscule in comparison to those that support agricultural production, they may in fact represent significant sources of funding for poorer Member States, especially when compared to national spending on specific policy areas such as active labour market policies (ALMPs). The availability of EU financing for the implementation of aspects of the European Employment Strategy (EES) is also key institutional incentive that helps to explain why poorer Member States agreed to this new form of cooperation.

On the other hand, those Member States that are the net contributors to the EU budget may rightly have a 'fear of financing' new policy areas. Germany, for example, had explicitly stated during negotiations over the EES that no expansion of the budget was to be predicated upon agreement to cooperate on issues related to employment. Having learned the lesson around the creation of cohesion policies, which were negotiated in particular by Greece and Ireland to order to reach agreement on the Single European Act, richer Member States have placed limits on the ability of EU Members to demand increased funding on the basis of institutional innovations. Ultimately, the absence of more extensive budget lines available for spending related to EU level social policies severely limits the ability of the EU to be involved in huge areas of national-level social policies that require large amounts of spending (pensions, social assistance, health care, education), and the ability to administrate at the national level.

Unanticipated consequences

One of the key elements of historical institutionalist theory is that actors are not fully aware of the implications of their choices, or the way future events will structure or force a re-interpretation of their choices. This means that while 'actors may be in a strong initial position, [and] seek to maximise their interests...[they] nevertheless carry out institutional and policy reforms that fundamentally transform their own positions (or those of their successors) in ways that are unanticipated and/or undesired' (Pierson 1998, p. 30).⁹

⁹ The phrase 'unanticipated consequences' is from Pierson (Pierson 1998). Other writers on historical institutionalism have used the phrase 'unintended consequences'. Although the difference between these two phrases may be minimal, 'unanticipated consequences' is preferred. This is because the rationalist underpinnings of my work assume that Member States will attempt to anticipate the consequences of

Member States are assumed to be rational in terms of knowing their underlying preferences, and articulating these in national positions during bargaining. However, uncertainty about the relationship of actions to outcomes makes Member States 'risk-adverse', and as a result, they may adopt policies that emphasise immediate collective gains over expectations of possible long-term payoffs (Knight 1992, p. 44). Evidence demonstrates that there is a high degree of uncertainty about the possible outcomes that result from placing social policy in EU Treaties, not least because of the leadership of the Ministry of Foreign Affairs in negotiations, and not Ministries for Labour, Employment, and Social Security, and because of a lack of expertise in particular Member States. In a 'complex' and 'constantly changing' bargaining environment, individual negotiators 'act within the boundaries of their limited knowledge, capacities, and ways of action' to select their preferred options (Stubb 1998, pp. 30-31).¹⁰ The opinion in committees of the relative expertise of Member States and even of specific individuals can greatly expand the influence of smaller Member States, such as the Scandinavian countries in matters of health and safety, while isolating those perceived as lacking in technical expertise despite their best efforts to represent the views of their country (Eichener 1992).

The volume of policies that exist at the EU level makes unanticipated consequences highly prevalent. This is because as policy areas increase, as new forms of decision-making proliferate, and as the number of members of the EU increases, limits are placed on the ability of individual governments to control the evolution of policy (Pierson 1998, p. 39). The best example may be the evolution of employment policy, which was eventually included in the Treaties despite initial German and UK opposition because of the support of many smaller Member States, and because of the creation of a very flexible form of coordination that permitted resistant Member States to agree to contract. OMC has now expanded into other areas, including pensions and social exclusion (EU 2000a). Germany, along with Britain and the Netherlands, originally rejected the Commission programme to fight against social exclusion in 1994. In 1995 a draft directive on social exclusion was rejected, again by Germany, on the basis of subsidiarity and an 'alleged misuse of the legal basis of Article 235' (Rhodes 1999, p. 143). The experience with the EES may have demonstrated that cooperation using soft law modes of governance 'creates no legal rights or obligations for legal or natural persons in the Member States, but is merely... a tool for promotion of cooperation of various policies within the Community' (Bruun 2001, p. 310). In this sense, OMC returns to the cooperative method of governance suggested in the Treaty of Rome (EEC 1957).

Institutions are thus essential to explain how policy cooperation may begin, how formal rules are set down for cooperation that do not always reflect the positions of the most powerful Member States, and how policy outcomes result that are above the lowest common denominator as policy cooperation often expands in ways unanticipated by states.¹¹

cooperation and yet, given the long time horizon in which policy-making will occur, will be unable to do so. Consequences of new bargains at the time of Treaty reform, or in instances of policy-making, are thus not so much unintended as they are unanticipated.

¹⁰ This comment is especially relevant, coming as it does from an academic and Amsterdam Treaty negotiator for Finland who was (in 2002) a member of Commission President Romano Prodi's Cabinet.

¹¹ Similar to the literature that emphasises governance in the EU (Jachtenfuchs 2001), historical institutionalism is eclectic in its emphasis on both actors (Member States) and interests (such as unions and employers), and the ways in which supranational institutions constrain actor preferences and shape change

Predictions about the evolution of social policy

As regional governance has evolved, it has expanded most quickly in areas closely related to the labour market, or in those policies falling under the category of social regulation. Table 2 [at the end of this paper] summaries the evolution of EU social policy from 1957 – 2005. These observations indicate that the EU is, at present, an underdeveloped system of governance in social policy *if one believes that the remit of national social policies should be replicated at the EU level*. However, it this is not only an unrealistic measuring stick, but a fruitless one. EU policies should not be expected to reproduce national policies, but rather to coordinate in areas where Member States deem this useful and to fill gaps that cannot be filled by national-level policies. In addition, studies of the evolution of social policies at the national level indicate that there will be inefficiencies, tensions, and mismatches between the demands created by work and welfare needs, and the actual policies provided, on the road of policy evolution. We should not expect EU or global-level social policies to be 'smarter' than national policies, bearing in mind the number of actors involved at the EU level. Fortunately an on-going dialogue has been under-way at the EU level about the new forms of risk that are present in society, in particular related to changes in family life and the nature of work, so that the Commission, other EU-level institutions and the Member States may evaluate the need for the EU to help fill the gaps or assist national social policies (Ferrera, Hemerijck et al. 2000, pp. 72-3; Duthellet de Lamonthe, Atkinson et al. 2004).

By evaluating the evolution of policy over time, it is possible to note the issues to which regional governance may expand despite their present exclusion from the consolidated version of the Treaties. The first is a set of issues that will be governed at the regional level by the open method of coordination (OMC): pensions, and poverty and social exclusion. As was the case in employment policy, cooperation at the EU level begun in 2001 before the Treaty of Nice was even ratified. National Strategy Reports on pensions were submitted in September 2002, and a joint Commission and Council report drawn up on pensions in Spring 2003 (Council 2002, para. 22). A similar process also began for reporting on social exclusion. Both of these new uses of the OMC do not, however, contain the issuing of Commission-proposed and Council-approved recommendations. Still, the standards to be met in each issue area are clear: pensions are to be 'both financially sustainable and meet their social objectives', and 'a high level of social protection' is to be provided in the Member States (Council 2002, para. 22, 25).

It is possible, too, that the OMC may apply to health care, and to housing in the coming years (Council 2001, para. 28; Council 2002, para. 12). In promoting cooperation on housing, the EU would return to an issue of social policy it concentrated on in the early years of the ECSC (Collins 1975). Other areas of potential cooperation are linked to the EES. A new goal of providing 'child care facilities...by 2010 to at least 90 per cent of children between 3 years old and the mandatory school age and at least 33 per cent of children under 3 years of age' has been proposed as part of removing disincentives to female labour force participation (Council 2002, para. 32). OMC may thus be a classic example of 'institutional conversion' where 'existing institutions are

(Marks and Hooghe 1996, p. 355). Indeed, many of the elements of historical institutionalism are folded into the multilevel governance literature, notably the constraint of principles by institutional rules and the role of unanticipated consequences (Marks and Hooghe 1996, pp. 353-356).

redirected to new purposes, driving changes in the role they perform and/or the functions they serve' (Thelen 2003).

Although the EU is not involved in financing benefits, it has issued objectives to Member States in two of the categories of social policy that require spending: social insurance, and social assistance. The close relations of spending on welfare state policies to government budget deficits, regulated for EMU Members by the Growth and Stability Pact, is no doubt pushing cooperation on pensions in particular. Still, the limited financial resources of the EU suggest that the convergence, or equalisation, of benefits to the elderly, poor, unemployed, disabled, and other groups is effectively excluded from cooperation. Even in those issue areas where cooperation does occur, such as health and safety, benefit levels are not the subject of legislation. There is, for example, no common benefit level for those injured at work even if they sustain identical injuries; a severed limb is not given equal treatment in France and Greece. There is also no equal access to services; the EU, for example, does not guarantee the right of workers to training schemes.

Wage levels are a highly sensitive area for cooperation, although at one time they were regulated in the coal and steel sector by the ECSC¹², as they are at the nexus between national regulation of the labour market, and competitiveness in the EU market. Equal pay for men and women is the only wage-related legislative role of the EU currently. While wage levels are explicitly excluded from Article 137 (EC 1999), a discussion on wages at the EU level has nonetheless proceeded, but largely on the relationship of wages to inflation. The broad principles that have been set out include the need for productivity to exceed wage increases, and the role of wage settlements by the social partners in contributing to non-inflationary growth and employment (Germany 1997). The idea of a 'decent reference wage' was included in drafts of the 1989 Charter of Fundamental Rights of the Worker (EU), but was removed after objections from the British, Spanish, and Portuguese delegations (Rhodes 1991, p. 14). The experience of Southern enlargement is that 'the raising of real wages is a slow process, in line with internal productivity trends rather than an abstract European 'norm" (Commission 2000, p. 3). Resistance to cooperation on wages and non-wage social costs is also suggested by the fact that they are a key way by which Member States can 'determine competitiveness in an integrated economy with a single currency' (Rhodes 1998, 40).

A main driver of the evolution of EU social policy remains the interests of the Member States. While the innovations in governance from the 1986-1999 period were rapid for an institution as complex as the EU, the major difference in the 1990s was that innovations were driven as much if not more by active Member States as by the European Commission. In a more diverse EU it may be harder for the Commission to build the effective coalitions it requires to support legislation, and the need for active Member States and Presidencies is growing. In past enlargements, with increasing diversity has come a concomitant increase in potential competitive pressures on social policy that higher-standard Member States were anxious to avoid. As a result, perceptions regarding the desirability of changing formal decision-making rules in certain areas of social policy were shifted and cooperation in new areas, albeit under different forms of governance,

¹² The guarantee of a fair wage for coal and steel workers, such that firms could not lower wages in an attempt to offset the costs of economic adjustment or lower wages as a means of lowering costs so as to become more competitive, was included in the ECSC Treaty under Article 68 (ECSC 1951).

became possible. It can be hoped that over time, and with better data gathering, the fears related to enlargement, in particular surrounding mobility issues, will be put to rest.¹³

The current enlargement makes the case not necessarily for an *expansion* of EU social policies, but rather the *increased focus on effective implementation of current EU policies in all Member States and in particular in the newest Members*. With the development of the OMC, it is possible to see that an effective compromise has been drawn between the desire of states to retain ultimate authority in social policy, and the realities of economic integration that increase demands for policy cooperation at the supranational level. As the OMC does not provide for extensive oversight mechanisms, and as new financial resources dedicated to equalizing benefits in the EU is not a priority is not on the horizon (especially in the context of highly contentious debates over the future of the budget), it is likely that the current institutional structure will frustrate the attempt of those attempting to enforce a more robust 'Social Europe' on the basis of current institutional structures, and certainly will frustrate those looking to expand EU social policy, particularly via legislation.

Only by focussing on specific and highly narrow areas of policy, such as female participation rates, and through using both the hard law and soft law options in effective combinations, may effective policies be implemented and impacts on stubborn problems such as national-level employment levels be seen. The current, and very real danger, to the progress achieved so far at the regional level in Europe is that even this narrow focus on 'modernizing the European Social Model' via the Lisbon Agenda targets (Council 2000)¹⁴ and the European Employment Strategy (Council 2001) cannot be fulfilled because of much broader disagreements about the appropriate involvement of insightful but weak EU instruments in national-level labour market reforms.

Note: I am in the process of tracking down updated and harmonised OECD and Eurostat statistics on unemployment and wage levels that I hope to have for distribution at our workshop. A good source on EU budget lines and projections for 2006-13 would be useful too.

¹³ A recent study highlights the lack of comparable national data on the movement of workers from the new Member States, but rough estimates show that the fears of large-scale and unmanageable Eastern migration, especially on a permanent basis, are not borne out by the current numbers (Traser 2005).

¹⁴ The development of targets at Lisbon is of interest given German opposition to them (Germany 1997, p. 7; Germany 2000, p. 5). As early as 1997 the target of a 70 per cent employment rate was raised by the Commission in its submission to the Luxembourg Summit (Commission 1997). The Commission again suggested the 70 per cent target for EU employment rates by 2010 in its paper for the Lisbon Summit, along with other targets for female participation rates (60 per cent by 2010), the reduction of poverty, and investment in human resources (Commission 2000). These targets were developed in a meeting of key DG V and Prodi Cabinet officials two weeks before the Lisbon Summit. 'Perhaps had there been more time for Member States to oppose they [the targets] would not exist!', noted one Commission Official who helped to develop them.

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