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EUSA REVIEW

EUSA Review Forum

Why and Whither? The Referendal “nos” of Spring 2005

A FEW MONTHS AFTER the French and Dutch electorate rejected the constitutional treaty, it is time to analyze the results of the June referenda and reflect on what they teach us about the EU's legitimacy predicament. We must first disentangle what the “no” voters wanted to reject: their own government, “Europe” as they saw it, enlargement —since the phobia of the outside ran deep, well beyond the now proverbial fear of the Polish plumber. There were many “nos” and the French and Dutch outcomes need not stem from the same political dynamic. An understanding of the social bases of the vote is thus also in order.

Paul Taggart provides such an analysis. Yves Mény and Jos de Beus then discuss in more detail the significance of the French and Dutch campaigns and electoral results both for the countries themselves and for European integration. George Ross concludes our Forum by arguing that the actual crisis in the EU stems from the anxieties about the European “social model” and notes the political difficulties that France and Germany, the EU tandem of yesteryear, face when it comes to reforming. Without growth and jobs, can there be a legitimacy for the European project? Without national reforms (EU-induced or otherwise), how do EU economies improve? This is the current double-bind.

This is a lively Forum almost as passionate as the referendum campaigns in France and the Netherlands. *In fine*, our contributors agree on a few fundamental points: in Paul Taggart's words, governments are bound to run into trouble when they “suddenly switch to direct democracy to attempt to ratify a complex treaty for a complex and unprecedented polity.” The scholars in this Forum also all think that Europe is now part of day to day politics. Yet this “domestication” of the EU is taking place at a time when confidence in the economy is poor, and trust in the political establishment is low. This is not perhaps what Winston Churchill had in mind when hoping for Europe to be in the “hearts and minds” of Europeans yet this may explain why the EU is not — except in Spain and a few other places— to borrow from Ernest Renan, “a daily plebiscite.”

— *Virginie Guiraudon, EUSA Forum Editor*

The Politics of Bifurcation: The 2005 Referendums in France and the Netherlands

Paul Taggart

THE REFERENDUM RESULTS in France and the Netherlands in 2005 show clearly that the politics of bifurcation are a real problem both for advocates and for analysts of the European project. What is extraordinary is that, when it comes to European integration, we have a profoundly complex issue and set of institutions and an issue directly involving large numbers of people in diverse contexts, and yet we expect it to fall into the two poles of ‘for’ and ‘against’. The votes against the Constitutional treaty were neither evidence of a growing monolithic Euroscepticism nor were they conclusive proof that domestic politics trumps European issues when it comes to national votes on Europe. They were part and parcel of the interweaving of EU and domestic European politics.

The referendum results show that the European issue is not becoming a fault line running through European politics but rather a staple part of the diet of European politics. It is becoming an issue like any other issue. We do not expect populations to take ‘yes’ or ‘no’ positions on issues like taxation, the welfare state or education. We expect people to take complex positions about what sort of education, welfare state, taxation they would like to see. And that is what we see with the European issue. But when European publics are forced into bifurcating their positions on European into ‘for’ or ‘against’ by politicians, they are clearly liable to express their dislike of the people making them do this.

What the results demonstrate is that a project charged with a democratic deficit can create as many problems for itself when it injects a flurry of direct democratic moments. The governments of 25 states universally use representative democratic politics to run their own polities. Perhaps it is no surprise that they run into difficulties when many of them suddenly switch to direct democracy to attempt to ratify a complex treaty for a complex and unprecedented polity.

The reasons that these two moments of apparent Euroscepticism received such attention is that (a) they occurred in the same period as part of the same ratification process, (b) that the two states were founding EU states and (c) that their collective result created such a headache for those seeking to push the European integration project

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EUSA Review

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From the Chair

John T.S. Keeler

A Special Award for Jonathan Davidson

IT IS A PLEASURE to announce that, at our October 21 annual meeting in Pittsburgh, the Executive Committee decided to honor Jonathan Davidson with a special EUSA Public Service Award. Davidson, Senior Advisor for Political and Academic Affairs at the Delegation of the European Commission in Washington, will be retiring in 2006 after a distinguished career with the British Diplomatic Service (1963-1981), the University of South Carolina (where he served as Director of the USC Washington Office 1981-1991) and the European Commission. As Head of Academic Affairs at the Delegation since 1991, Davidson has worked tirelessly to promote the study of the EU and trans-Atlantic relations at universities throughout the United States. He has collaborated with faculty coast to coast to organize scores of events over the years, and has played a pivotal role in the development of the EU Centers program since 1998. I know that many of our members join me in saying that we will miss Jonathan's unique combination of skill, dedication and charm. We will make a formal presentation of our award to him at our 2007 conference in Montreal.

Recognizing that our graduate students represent the future of our profession, the ExCom also decided to make every effort to increase funding for the Ernst Haas Memorial Dissertation Fellowships. Two were awarded this past year (from among forty-two applicants), and we hope to continue awarding two or more in the future. Please do consider making a donation to the Haas Fund either now or when you renew your membership. For your convenience, our EUSA website will soon be equipped to accept donations via credit card.

Another decision made at Pittsburgh was to locate the EUSA conference for spring 2009 in Los Angeles, California. This will be only the second EUSA conference ever held on the West coast; the first was located in Seattle in 1997. The ExCom expects to hold the 2011 conference either on the East coast, with Boston a strong possibility, or in Europe (possibly Brussels). The final decision on this matter will not be made until 2007, so members have ample time to make their preferences known.

Amy Verdun (University of Victoria) has agreed to succeed Virginie Giraudon as editor of the EUSA Forum, and Andy Smith (Institut d'Etudes Politique de Bordeaux) has agreed to succeed Daniel Keleman as Book Review

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(continued from p. 1) onwards. But the French and Dutch referendums need to be seen in the context of the referendums in Spain and Luxemburg that gave support to ratification of the treaty. And they need to be seen in the longer term as part of the process of normalisation of EU politics which includes Danish, Irish and even previous French referendum results, to say nothing of the nine referendums held in the accession states in 2003.

In France¹ the campaign appears to have generated real discussion about Europe (or as Yves Meny puts it here ‘around’ Europe if not ‘on’ Europe). A country at the heart of the European project and with apparently stable levels of support for the European project appeared to generate public opinion that was clearly volatile on the issue of the treaty. But the referendum also showed us a population that saw Europe as an issue salient enough to vote on.

National considerations did appear to drive ‘No’ voters. But the sorts of national concerns were those that were due to EU pressures - the perception that the treaty was too ‘liberal’ for France or too likely to contribute to French unemployment. In this way EU issues and domestic issues came together on the visions of which Europe there should, or should not, be.

Those voting ‘Yes’ in France tended to come from well-educated and well-off sections of society while the ‘No’ vote drew from those from lower-income levels and in less stable employment. The social group that supported the treaty were the professionals and executives. Catholics and Parisians were also supportive. In the public sector 64 per cent were against ratification.

In terms of the party alignment of French voters it is clear that the ‘No’ side brought together those at the periphery of the party system and those outside it. Exit polls showed that the most consistently negative voters on the treaty were those of the far left, the Communists, the far right and those without party attachment. The paradox here is that the whole push for a French referendum can be seen as a result of conflict within and between the major parties of the centre but that it was an alliance between voters aligned with peripheral parties that determined the outcome of the referendum.

The French referendum campaign and the result seems to demonstrate that Europe was not a ‘second-order’ issue in this instance. For those that campaigned for and against and for those that voted for ratification, the issue was Europe. The campaign was about European integration - or more precisely about different visions of Europe. The most common reasons for voting yes, according to exit polls, were that ratification would shore up Europe’s position in the world compared to other global players.

In the Netherlands², the referendum seemed to create turmoil in this country at the heart of the European project. The political establishment uniformly supported the treaty and the ‘No’ campaign brought together those on the peripheries

of the Dutch political system. Robert Harmsen describes the ‘No’ camp as a ‘patchwork of protest’ drawing together a populist left, a populist right and the small traditional Protestant parties. The arguments used against the treaty were disparate but were (as Jos de Beus here points out) a repudiation of the political establishment.

‘No’ voters were in a majority across all social groups but higher education and higher income-levels seem to be correlated with higher levels of support for ratification. In age cohorts, only the over 65s had a majority of support. Those voting against, in polls, tended to cite the Dutch budget contribution as a key issue and after that were issues of national influence and identity. Those voting for tended to cite reasons such as cross-border capacity, international co-operation and efficient European decision-making. Like its French counterpart, the Dutch referendum does seem to show that Europe was the issue and not simply a proxy for other issues.

In terms of party affiliation, voters who supported the Dutch government parties had a majority of voters for ratification. The only other party with such a majority was GreenLeft. The affiliations of the most ardently opposed were with the Socialist Party, the Wilders Group, the Pim Fortuyn List and the Christian Union. There was clearly an element of protest at the domestic as well as European ‘establishment’. The Dutch result bought together populist politics, protest politics with real issues of European integration for the Netherlands.

Why did the majority of French and Dutch voters reject the treaty in their referendums? The inconvenient, messy, but true answer seems to be that there were different reasons. There are similarities between the French and the Dutch cases but the most striking similarity is the heterogeneity of the ‘No’ camps. There is no monolithic European (or Eurosceptic) ‘No’ camp.

True, there are some similarities that we might expect (about education and income) but the arguments both for and against were different with each country and were not the same across both countries. In both cases, opposition came from the peripheries (if not exclusively from there). But we cannot even say the core of the political system was uniformly supportive, at least in the French case. The reasons for rejecting the treaty stem from specific national concerns about the impact of European integration on domestic politics, economies and societies. It is not a simple picture. It is not one that lends itself to bifurcated analysis.

The picture of why there were two referendum rejections of the Constitutional Treaty is not a simple one. It is not a question of for or against, of Euroscepticism or Europhilia. It is not a question of whether European or domestic factors determined the results. It is not even a question of establishment and protest. The real question is why we even expect there would be a simple explanation. For advocates, this complexity means that to try and force the issue into a

bifurcated referendum politics of support or opposition is both risky and liable to populist mobilisation against it. For those seeking to analyse the European integration project, it reinforces the fact that EU studies and European politics are impossible to disentangle and that treating them as separate spheres is untenable.

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Europe Bewildered, France Adrift *Yves Mény*

So the guillotine of the “no” vote has fallen. Swiftly and irredeemably. The French campaign steered well clear of any kind of political debate. Even forgetting the mistakes, the fudges and lies which have marked the discussions which have taken place around the treaty (rather than *on* the treaty), one brutal fact is obvious: there has been an undeniable expression of populist, social conservatism in France.

In the past we had got used to the kind of flamboyant, bantering populism so dear to Bernard Tapie, to the vociferous protests of special interest groups (hunting and fishing) and the rabble rousing of the far right (Le Pen). Now, here they all were, united and re-invigorated in the cocktail shaker of the “no” vote, bound together by the cement of an economic, social and political conservatism which saw our frontiers as simply letting in the barbarian and letting out our industry, our identity, our values, our public services and our social system which is-the-envy-of-the-whole-world.

The left wing “no” camp has yet to understand the Pandora’s box which it has opened. In semantic terms, it has achieved what the bulldozers sent in to demolish an immigrant housing complex by a communist mayor achieved symbolically some two decades ago.

Whether it likes it or not, by making a threat out of the foreigner who is “invading” us, by stigmatizing the foreigner who is stealing our jobs thanks to liberal policies, the left wing “no” camp has given breathing space to a xenophobia which was only waiting to claim respectability on the left, because it is an historical and factual error to think that stigmatization of the foreigner is the exclusive prerogative of the reactionary far right. Without questioning the good faith of the leaders of the left wing “no” camp, they nevertheless seem to have been rather quick to forget the existence of a concealed, but all the more potent working class xenophobia, since the struggle for employment places French born workers in direct confrontation with foreigners. It wasn’t the bourgeoisie or a few misled intellectuals who invented the equivalent terms in French for “rag-heads”, “eyeties” and “polaks” These discriminatory names were coined on building sites and in urban ghettos.

Whether it likes it or not, the left wing “no” camp has contributed to French paranoia, which sees the nation as a

besieged hexagon. The election campaign also revealed the ignorance which exists concerning what is at stake economically on a global scale and within Europe, which ignorance, it must be said, has been deliberately encouraged by almost all the political classes in France.

No one doubts that reform is difficult to achieve and that it involves sacrifices, no more than the fact that people must be provided with adequate social protection. But with the notable exception of Nicholas Sarkozy, who has not hesitated to call into question the excellence of an economic and social system, which for the past thirty years has “guaranteed” 10% unemployment, the rest of the leaders and the political parties in France have been happy enough to keep churning out the same old ideas.

Liberalism has become a mortal sin, as if we weren’t living and working in a market economy. Delocalisations have been presented as a detestable novelty which would be made even worse by the treaty, whereas for the past forty years the French government agency Datar has been organising the arrival and funding of foreign companies wishing to locate in France, for the benefit of the regions involved. While it is true that delocalisations involve hardships which must be taken into account, these cannot be prohibited by decree, unless the aim is to establish a soviet-type economy.

For the European Union, the French “no” further accentuates the mess which Europe finds itself in. Europe, because it has expanded, because its institutions have not yet adapted to the expansion, because the hopes invested in the beneficial effects of the Euro have not yet materialised (for want of the economic reforms which should have accompanied its introduction), has no clear perspectives, nor horizon, apart from further expansion (Bulgaria, Romania, Croatia, Turkey).

The ratification process will continue until the autumn of 2006, while, after Germany, Poland, Italy and then France will be in the throes of their own national elections. Clearly, until 2007, any action by the European Commission will be hindered by national political agendas and stultified by the ratification procedures, to say nothing of a more profound source of unease : the gradual transformation of the Commission into a bureaucracy entangled in the management of its financial and legal rules and restricted in its actions by the refusal of governments to back the policies of the future rather than those of the past.

Putting the Commission on the back burner in this way is already producing certain effects : there are few new initiatives under way; those already launched have been placed on standby, or strongly contested, like the all too famous Bolkestein directive. As a result, the downstream legislative activity of the Parliament is dwindling; and at the rate at which things are going, the Euro MP’s will soon be reduced to voting resolutions concerning the sexual comfort of bees.

The “no” vote, regardless of its future impact on the institutions is a clear warning signal : the majority of French

opinion is not ready to pursue the European adventure without being told more about its destination and its fellow travellers. Already, a time bomb had been put in place during the last revision of the Constitution in February 2005 : any new expansion subsequent to those already under way (Bulgaria, Romania) must now be subjected to a referendum. We cannot predict the mood of the French people in five or ten years time, but neither can we move ahead while blinding ourselves to certain realities. Any new expansion, whether it concerns the membership of Turkey or the Balkan states, will be very difficult for French electors to approve.

This referendum has also shown to what extent existing ambiguities concerning the nature and the purpose of the European Union raise, or will continue to raise, question marks. There are two opposite approaches, even if the dividing lines are unclear: on the one hand the creation of a market which would serve as a basis for more marked political ambitions; on the other, a market which would limit itself to its own ends.

In the first case, the economy would serve a European policy; in the second, there would be a vast economic space, protected from national politics. The second solution would provide a reasonable response to the removal of economic and social policies from the political sphere, in short, to the “*political disenchantment*” of Max Weber.

But, as the French referendum shows - and not only the French one – if you kick politics out of the door, it will come back in through the window, and in this case, in the form of the worst possible type of house breaking: the populist protest movement is only too happy now and the construction of Europe by subterfuge has achieved its aims.

In certain respects, the Constitutional Treaty is probably the last of these misadventures and soon Europe will have to make up its mind whether it wants to opt for a real Constitution or make do with a simple free trade treaty. The second part of the alternative is no doubt the most likely given that the forces in favour of the first, already weakened, are no longer capable of being a driving force: the Franco-German pairing would be hard put to launch any ambitious project, even supposing that the French people wanted them to do so!

France has already rejected, on many occasions, different German advances favouring a more integrated Europe. It is now unlikely that the German leaders would wish to come to the help of a France still dreaming of endowing Europe with the utopia of nationalised economies and the fading charms of a maladjusted social security system.

The partisans of the “no” vote have woken up in a pile of rubble : with a France which is inaudible and misunderstood by its partners, forced, very late in the day, and at increasing cost, to adapt itself to the requirements of the moment, if it wishes to avoid an inexorable decline.

May 1950 to May 2005: it's the end of an era. The modern day peasant uprising of 29th May has revealed a major identity crisis both within France and within Europe. Unfortunately,

what is to be feared is that this cry of distress, far from resolving the problems faced by the French people, will contribute even more to the break up of the European dream, before it has had a chance to be realised.

Yves Mény is President of the European University Institute, Florence, Italy. Translated into English by Rodger Hickman.

A Dutch Correction of the European Way Jos de Beus

On June 1, the Netherlands held its first national referendum since modern statehood, founded in 1813. Although everyone took volatility into account after the liquidations of the anti-islamists Fortuyn and Van Gogh, everything about the Dutch reception of the second constitutional treaty of Rome turned out to be surprising.

The campaign was fierce, lively and enlightening, compared to the slackness of earlier campaigns with respect to EMU, the euro, and eastern enlargement. The turnout was 63 percent, much higher than recent and average Dutch turnout in European Parliament elections. An overwhelming majority of voters rejected the treaty (62 percent), with a substantive share of young, less educated and female citizens. This outcome was a major defeat of the yes camp, including not only the center-right cabinet of Mr. Jan Peter Balkenende (Christian democrats, conservative liberals, social liberals) but also social democrats, greens, employers' associations, trade unions, leading newspapers, indeed the entire establishment of the nation. The no camp of small parties won (radical socialists, orthodox Christians with a leftist touch, right-wing populists). It forced the government to call off the ratification process in Brussels and to prepare an official national debate on the final goal of European cooperation. That debate was cancelled after the summer because of division within the political élite as well as the shared fear that it would speed up an ongoing self-delegitimation of the EU.

Thus, a brief outburst of Euroscepticism made an end to almost sixty years of permissive consensus in one of the oldest small member states. How and why did it happen? What is the next stage in Dutch politics of integration? What does it mean for Europe?

Most politicians saw Giscard's text as a codification of the old and a compromise about the new. Its understanding about European values, shared competences (rather than pillars), simple rules of voting and decision-making, and personal rights would by and large protect the stake of small states. Nevertheless, a parliamentary majority decided to turn Dutch consent at the level of states into a referendum issue because it was sure about the constitutional dimension of the treaty (binding citizens and peoples in an enlarged Union) while being unsure about the degree of knowledge and commitment of ordinary people in its own constituencies. The

campaign itself was marked by a permanent lack of coordination between the departments of foreign affairs and domestic affairs and a dual dramatisation. The yes camp argued that non-ratification implies the beginning of the end of European peace and prosperity, while the no camp singled out the beginning of the end of Dutch sovereignty and social citizenship. Compared to the French campaign, most discussants neglected the European ideal and alternative models of future integration. Instead, they focused on the Dutch pessimism about their society, government and common future. The main objection against the constitution was that it did not entail restrictions and incentives to stop European rulers intervening too fast, too expensively, too often and too deeply into the democratic community of the Dutch.

This recurring point in public debates resonated in the hearts and minds of many voters. Most electoral studies to date draw a pair of explanatory conclusions. On the one hand, Dutch citizens prefer to continue European membership and European integration, particularly in the new scope of security (counter-terror, defence, foreign policy). They do not see the current stagnation of European constitution making as a big deal. On the other hand, they distrust the European mode of representation in The Hague, other capital cities, Brussels, Luxemburg and Strassburg. They complain about a lack of basic information, loss of national sovereignty and identity, rash reforms with a EU blessing under the leadership of Balkenende (a conservative with fragile authority), unfairness (concerning the net payer position of the Netherlands), and visible failure of European projects and initiatives.

Mr. Bot, the Dutch minister of Foreign Affairs and former member of Coreper, swears that the Netherlands will remain a reliable European partner while it inserts a local moment of painful reappraisal. My prediction for the short run is less favorable. Domestic instability (a mixture of discord and confusion) will spill over to instability of the Dutch course in Europe as a mixture of standstill and obscurity. Dutch policymakers now develop a European *sur place agenda*. This agenda is an accurate reflex of Dutch dissatisfaction, but is also a complex continuation of the EU crisis. It entails prudent use of the rambling Treaty of Nice; temporary stops of further enlargement (Bulgaria, Croatia, Rumania, perhaps even Turkey); a turn from new Commission projects to good governance of old ones; priority for European growth and employment; overhaul of international cost sharing (that is, abolition of the Common Agricultural Policy); rethinking the place of national social policies, public services, associations and merit goods (cultural heritage) in a unified economic space; and strengthening the vigilance and supervision of national parliaments.

Dutch politicians, such as Balkenende, Bot and the main opposition leader Mr. Bos, must simultaneously serve their Eurosceptic crowd and find new allies abroad, such as the United Kingdom and the Nordic countries, without needlessly alienating a substantive minority of federalist Dutchmen and

representatives of the old axis of Germany and France. Even if we assume a constructive role of Blair and Brown and a less divisive role of Chirac and Schröder and their successors, this balancing act requires a measure of imagination and control of the new domestic politicisation of the European question that is strikingly absent in the present leadership of the Netherlands.

The European impact of the Dutch referendum is pervasive: this denial of European unity did not happen in Spain, but it can still happen everywhere else. It is also manifold.

First, this was an accident waiting to happen since the artificiality of elite consensus in national and European diplomacy was widely covered by television and widely known by the audience (such as the noncompliance with the Stability and Growth Pact). Second, major steps of integration trigger major unrest in society and major opposition in politics. From now on, European integration is part and parcel of the normal logic of domestic politics (leaving the special logic of foreign policy behind). Third, generations of architects of Europe told their national constituencies that they could smoothly integrate while maintaining their old sense of national identity. Such European “differentialism” is becoming obsolete. Whether the present generation follows the low road of integration (geo-economics, such as the Lisbon strategy of innovation), or the high road (geo-politics, such as Solana’s security doctrine), it has to publicly ask millions of voters to open up and Europeanise their present national consciousness. Fourth, renewal of public support of the EU cannot be attained by merely restoring the Monnet-Delors guardianship of economic problems. It must also include a European answer to legitimate popular concerns about insecurity (terror, crime, immigration, enlargement) and the shallow European promise of security by consensus among weak heads of state. Fifth, the most important element of the contested democratic deficit of the EU is the failure of representation by national parties, parliaments and party governments. European integration is part of a new cleavage that may well shape a future creative compromise about European (and global) preconditions of national citizenship and welfare in a wide sense.

Finally, the lack of *external* trust in the proverbial Polish plumber – that is, in human beings from new member states and neighbour states of the EU – is intertwined with a lack of *internal* trust among compatriots and citizens from different old member states. As long as today’s constitutional framers are not able or willing to break down the circle of populist distrust and to build a circle of liberal trust, the Treaty of Rome of 2004 remains brain dead. Without minimal solidarity, the internal market and monetary union – twin towers of European power – will collapse.

Jos de Beus is professor of political theory at the University of Amsterdam, the Netherlands

What Counts in This Crisis?

George Ross

THE FRENCH AND DUTCH REJECTIONS of the Constitution in late spring 2005 have left the EU in a deep crisis involving its legitimacy, failing EU institutional capacities, and new problems confronting the consequences of enlargement. This list is incomplete, however. A post-referendum survey of France concluded that the “... reasons why people voted **“no”...are based chiefly on national and/or social themes** which take precedence over European considerations...”³ The Dutch rejection was more EU-centered, but fully 21% of voters were worried about the economic situation and 65% thought that rejection might “allow for a renegotiation of the Constitution in order to place greater emphasis on the more social aspects”.⁴ In parallel *land* elections in North Rhine-Westphalia voters expressed deep concern about similar social themes, as did German voters more generally on September 18. There may be another important dimension to the EU’s “crisis,” therefore, connected to deep “social model” anxieties in key member states.

Comparing EU and US economic performance is the best place to begin. EU data underline that the US grew faster and had lower unemployment than the EU-15 and Euro-Zone over the last decade and that there are also substantial differences in social spending between EU members and the US.⁵ This has encouraged the *Wall Street Journal*, *The Economist*, and others to contend that American social policy minimalism explains US success while European social “social model” rigidities cause Europe’s problems. There are good reasons to doubt this, however. EU economies outside EMU have sometimes done nearly as well as the US, indicating at the very least that there may be a negative EMU effect at work, whatever the social model issues. Smaller EU-15 members have often done better than larger ones, the UK excepted, and this is particularly true for “smalls” with generous “European” social models (Austria, Sweden, Denmark, and, until 2001, the Netherlands).⁶ Finally, others have not done well at all, first among them France and Germany.⁷ Germany is the largest economy in the EU, accounting for 22% of its GDP in 2003, and perennially the world’s leading exporter. France is the second or third largest EU economy (the UK may be ahead, depending upon the year) with 16% of EU GDP, and the fourth or fifth largest exporter in the world. Each has had well over 10% unemployment in recent years, chronic problems meeting Stability and Growth Pact (SGP) targets, slow growth in the 1990s, and very little growth at all since the turn of the new century.

These facts bear witness to a different dimension of EU crisis than those on the post-referendum list. France and Germany are together responsible for much of the EU’s comparative economic decline since the early 1990s. Arguably, without new strategies in both countries the Union will

continue to be economically hamstrung. The Union depends on its member states in no area more than in economics where it now has little leverage beyond a broken SGP, weak macro-economic policy coordination, and endless exhortation about the Lisbon Agenda from a Commission that has difficulty being heard.

Things look even gloomier when one considers the political circumstances surrounding these economic problems. Oft-repeated claims that French difficulties represent refusal to modernize, in particular in “social model” areas, are nonsense. The French have frenetically reformed in social areas ever since 1983 when François Mitterrand turned away from “social democracy in one country” to renewing European integration. The French economy has been liberalized, the labor market has followed, and there have been major changes in the substance and funding of welfare state policies. The outcomes of reform are troublesome, however, including labor force reduction through early retirement and work-sharing, insistence on standard employment contracts discouraging flexible hiring, tax policies that deter job seeking, enhanced insider-outsider divides, and employer reticence about new hiring. There is irony here. Such outcomes are direct products of major French efforts to make recent European integration happen. Throughout the 1980s and 1990s, France was a statist country engaged in rapid liberalization and simultaneously a high inflation-soft currency country abruptly shifting to price stability, policy shifts that leaders deemed necessary to make the Single Market and EMU happen. As a corollary French citizens have been obliged to pay the adjustment costs for these shifts. France being democratic, politicians behind renewed European integration knew that asking citizens to accept greater insecurity would cause electoral problems. This undoubtedly explains the particular outcomes of reform, which the French themselves call the “social management” of unemployment.

Why have the French connected their social model anxieties to the EU? Europhiles sometimes forget the many promises made about European integration since the mid-1980s. Great payoffs of growth, prosperity, and competitiveness would allegedly follow short-term suffering. Results have been short of the promises, however. After twenty years, the French experience ever-greater inequality, chronic mass unemployment, more poverty, squeezes on cherished social programs, with no apparent end to demands for retrenchment and reform. The 2005 referendum on the Constitution provided a catalyst for blowback, therefore, structuring anxiety so that threats to the French “social model” could be seen as coming from the EU itself, hence frenzy about Polish plumbers, the equation of Bolkestein with Frankenstein, and belated discovery from the Constitutional Treaty that the EU had been busy liberalizing European economies all along. Blowback does little to solve the problem of France’s weak economic position, however.

The German story is different, although it ends in similarly

bleak conclusions. *Modell Deutschland* cruised through the “1992” years, doing well enough economically to serve as the EU financier of last resort. The economic burdens of German unification ended this glorious period. The constraints of EMU that followed unification underlined the consequences of annually shifting 5% of GDP from West to East. Today, in general conditions of slump – persistent mass unemployment and low growth - Germany’s neo-corporatist industrial relations system is now coming apart at its seams and growing welfare state costs repeatedly challenge government budgets. Unlike the French, however, the Germans have done very little “social model” reforming at all until very recently. As things got worse in the 1990s the Kohl government sought consensual change in a tri-partite “Alliance for Jobs” which failed utterly. It then legislated small reforms that were quickly repealed by the new Red-Green coalition after 1998. The Red-Green coalition then called its own “Alliance for Jobs” conclave, which also failed utterly. Finally, in its second term, the SPD-Green government bit the bullet with the Hartz and 2010 reforms. Germany’s institutions have been major barriers to reform throughout. Both in political and devolved social policy areas they were explicitly designed to promote consensus and prevent abrupt change. Thus when governments have tried to legislate reforms they have paid by losing election after election, the most recent example being the fate of the Red-Green government.

The French ‘no’ signaled that parts of the French electorate found “social model” reform promoted indirectly through EU market liberalization unacceptable, whatever the economic issue. The Germans, who were not asked to vote on the Constitutional Treaty, made clear both in regional elections and on September 18 that they do not want other Germans to do serious “social model” reforming. In neither case is “Americanization” needed. Intelligent reforming could preserve the outlines of existing social models and introduce new ways to internalize external economic challenges. Still, there are social model characteristics in both countries that contribute to mass unemployment, economic stagnation, welfare state programs that cost too much, and chronic failure to meet EMU and SGP obligations. What is really important, however, is that in neither case are solutions in sight. In both countries citizens are well mobilized to block changes, even those that do not threaten their cherished social models. The French are virtually certain to dither at least until the 2007 Presidential Elections, possibly longer. A German Grand Coalition with both large parties tied to a reformist mast might open up to more reform, but institutional obstacles and popular resistance are great. Thus at the end of the day, paradoxes abound. The Convention-Constitution episode has failed and the ever closer union for which many *conventionnels* quietly prayed will have to wait. Despite this, repairing the EU’s institutional plumbing should be possible, despite all the hand-wringing. But we should not overlook that the EU is primarily a set of economic and market arrangements whose forward

progress largely depends on payoffs to citizens of new growth and prosperity. Incessant Commission rhetoric about the Lisbon agenda notwithstanding, such payoffs depend on the national actions of member states, and, in 2005, particularly on the strategies France and Germany devise to confront their present economic inanition. Without French and German locomotives pulling the EU economic train the station will remain far away.

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Notes

¹ This analysis of the French referendum draws heavily on Sally Marthaler *The French Referendum on Ratification of the Constitutional Treaty, 29 May 2005* EPERN Referendum Briefing No 12. Available free at: <http://www.sussex.ac.uk/sei/1-4-2-9.html>

² This analysis of the Dutch referendum draws heavily on Robert Harmsen *The Dutch Referendum on the Ratification of the European Constitutional Treaty, 1 June 2005* EPERN Referendum Briefing No 13. Available free at: <http://www.sussex.ac.uk/sei/1-4-2-9.html>

³ Flash Eurobarometer *The European Constitution: Post-referendum survey in France* (European Commission: Brussels, June 2005), 17, bold in original.

⁴ Flash Eurobarometer *The European Constitution: Post-referendum survey in the Netherlands* (European Commission: Brussels, June 2005), 18, 23.

⁵ See Eurostat *Eurostat Yearbook 2004*, including the data CD Rom (Luxembourg: European Commission, 2004).

⁶ Many of these smaller European countries have also reformed their labor market and social policies while maintaining prior commitments to equity and even equality. The Swedes, for example, have “capitalized” a large part of their pension programs in ways compatible with the Swedish model. The Danes have created a system of labor market “flexicurity” that works superbly well. The “Dutch miracle” did very well in the 1990s, until it lost its high growth momentum in 2001, a downturn that has occurred largely because of trade dependence on troubled larger neighboring EU economies. It undoubtedly accounts for Dutch social anxieties expressed in the 2005 referendum.

⁷ Italy, another large EU economy, is even more troubled. Officially in recession in 2005, Italy is rapidly losing international market shares because of vulnerability to new lower-cost global manufacturers. It has recently been awarded the title of “new sick man of Europe” by *The Economist*. We leave Italy aside because Italy has most often been a follower in EU economic and political movements, rising and falling on what others, in particularly the Franco-German “couple,” do.

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Teaching the EU

Teaching Skills in European Integration Courses

Peter Bursens

European Integration within a Master in International Relations and Diplomacy

FOR A FEW YEARS NOW, European universities and Higher Education institutions have been reorganizing their teaching programs to comply with the requirements of the Bologna Declaration and successive agreements¹. Many institutions took this opportunity to introduce substantial reforms in the curricula as well. One major feature of these changes is an increased emphasis on teaching practical skills next to theoretical understanding and empirical facts. Courses on European integration could not escape from this pedagogic turn in academia. This contribution describes how such courses at the University of Antwerp (UA)² have been recently reshaped, introducing more balance between knowledge and skills.

At the University of Antwerp, the Department of Political Science³ currently offers a Bachelor in Political Science and a Master in International Relations and Diplomacy (MAIRD), both (primarily) taught in Dutch. In both curricula, courses on European Integration are included. This essay deals with the MA level. The MAIRD is designed for students holding an MA degree in the so-called 'human sciences'. Hence, students come from as different backgrounds as political science, sociology, communication science, law, economics, languages, philosophy, history, etc. Most of them aspire to an international career in diplomatic services, international organizations or multinational corporations. In addition to the five core courses (Theory of International Relations, Diplomacy, International Economy, International Law and Diplomatic History), students also receive a fair amount of EU related courses. In four of those EU related courses – *European Integration*, *Seminar on European Integration*, *Diplomatic Skills* and *Multi-level Governance*, practical skills take a prominent place.

The introduction of practical skills as a supplement to theory and empirics follows from the guidelines of university's Teaching Development Plan (TDP)⁴. The TDP urges the teaching staff to reform their teaching, starting from the issue of which theoretical, attitudinal and practical competencies students should acquire through a particular course (following the 'tail wags the dog' principal). With respect to European Integration, these competencies were broadly defined as the acquiescence of basic knowledge of European integration (history, institutions and policies), the development of a critical attitude towards European developments and media-coverage of the EU, and practical skills such as writing,

Editor's note: This column is written by members of EUSA's "Teaching the EU" Interest Section. For details about the Section and how to join, please visit www.eustudies.org/teachingsection.html.

debating, negotiating, and presenting and defending reports. The courses presented in the next paragraphs are all examples of how the more practical competencies were translated in the course designs.

Debates, Simulations and Games

European Integration is the MA's introductory course on the EU. It provides students with basic knowledge of the EU's history, institutions, decision-making architecture, policies and contemporary developments. In terms of practical competencies, this course seeks to develop debating skills. The combination of both objectives has resulted in giving debating exercises a central position in the course design. This format was chosen to simulate real life situations in which diplomats and international officials need to argue their position or defend their ideas to superiors. Students are not tested through traditional examinations, but through a series of practical debating assignments integrating tests on knowledge and skills. All assignments are based on the development of arguments in favor and against statements. Examples of such statements include 'The EU needs to renationalize its Common Agricultural Policy' and 'The Member States should convene a new Convention to discuss the future of the constitutional project'. Students are asked to develop arguments both defending and attacking the statements. These arguments are to be presented in a paper and used in debating exercises. The latter take place 'live' during classes, with fellow students in the audience, and are moderated by the lecturer.

An interesting way to organize debates is to allocate roles at random, triggering students to defend statements that run against their personal opinion. Understanding the argumentation of adversaries is, of course, an important skill for future diplomats. To multiply the exercise opportunities for students, debates are also organized 'virtually' through the electronic teaching platform Blackboard, again moderated by the lecturer⁵. To guide students through this innovative way of teaching, they receive introductory courses on debating skills and the use of Blackboard discussion fora. Finally, in this kind of course design, it is important that the lecturer has very clear ideas on evaluation criteria: students need to know what exactly a 'good' argument is, how they are expected to show that they master EU basics and recent developments, and what skills and knowledge they need to show during the debating examination.

Debating skills come close to, but are not the same as negotiating skills. The latter also take a crucial place among the MA's envisaged competencies. To teach and exercise

negotiating skills more explicitly, the Antwerp MAIRD supplements its courses in diplomacy with a course on *Diplomatic Skills*, focusing on a negotiation simulation. This exercise has got the mainstream design that is used in many other MA programs in European Studies and International relations. In Antwerp, several seminars are offered each year, simulating fora such as the UN Security Council, NATO Ministerial Summits and EU Councils. Students need to choose one assignment. The European seminar is developed in collaboration with the Netherlands Institute for International Relations Clingendael⁶.

In this exercise, students play the role of a Member State or a European Institution and simulate negotiations on the Ministerial level. The staff offers students introductory courses on diplomatic and negotiating skills, the specific decision-making setting, and the topics under negotiation. Additional lectures by practitioners (diplomats, politicians and/or civil servants) are recommended to enhance understanding of the real professional context. Students need to prepare written position papers and negotiation strategies. The exercise culminates in a one day event that simulates a European Council meeting. Although the latter is 'the' simulation event, students are urged to hold informal talks in the run-up to the final meeting.

As it is the case with the debating skills, the evaluation of negotiating skills is not an easy task. What is 'effective' negotiation behavior? Can negotiation performances be weighed? To give only one example: it is very tempting to grade assertive and over-active behavior too high. Such an attitude may not always be the most effective way to deal with negotiations. But how do you evaluate silent but yet very strategic behavior? In short, criteria should be developed very carefully and communicated in detail to the participating students.

Negotiating skills take a central position in the program to such an extent that they also make up a substantial part of the *Seminar on European Integration*. This seminar is a follow-up course on the introductory EU course and is meant for those students who want to specialize in European Integration. It is organized for a small group (up to a maximum of 15 students) and the topic changes every year. From the 2005 onwards, the topic follows the theme of EUROSIM⁷. The department's membership of TACEUSS⁸ makes it possible for the MAIRD students to participate in the internationally organized EUROSIM simulations. In terms of course design, this means that the seminar focuses on a detailed elaboration of the simulation topic (which can range from enlargement to IGCs to more detailed legislative proposals). The seminar culminates in the participation in the transnational simulation. It goes without saying that the internet is an even more important tool in this international seminar. It should be stressed that this transnational experience is much more than yet another negotiating exercise.

The transnational setting offers a series of extra assets for students aspiring to an international career. First of all,

students take a short, but intensive trip abroad. Secondly, students practice foreign languages since both the seminar at home and the international event take place in English. Both aspects are crucial features in a program that is (unfortunately) still taught predominantly in Dutch. It is also enthusiastically (and financially) supported by the teaching and international relations departments of the university. Thirdly, the contacts with foreign students, and more in particular with their culturally shaped negotiating behavior resembles international reality much more than the purely domestic exercises. In addition, each nationality is, of course, much more able to collect first hand empirical data from its respective capitals and diplomatic services. For many of the students, it's their first networking opportunity. In addition, international co-operation also serves the lecturers since the teaching workload can be divided and (teaching and research) networks can be developed and maintained.

Finally, the course on *Multi-level Governance* (MLG) goes one step beyond the more classic teaching of skills. While traditional negotiation exercises are almost always confined to a one day simulation of a single ministerial meeting (and to the preparations, of course), the game developed for the MLG course adds some extra dimensions. The MLG course doesn't exclusively focus on European integration. Its core competency aims include an understanding of and experiences with the complexity of public decision-making as a result of the verticalization of politics. Recent developments make concepts such as federalism, regionalism, intergovernmentalism, supranationalism and subsidiarity core features in this course. A complex simulation game was developed to make students experience the impact of multiple governance layers upon decision-making capacities of single actors. Since the EU is the ultimate extra layer, it has also become the main point of attention in the skill part of the MLG course.

Taking the EU's Regional Policy as a case, a dynamic and more complex simulation game was developed. The complex and dynamic features refer to the fact that not a single event, but a series of consecutive events on several levels is simulated. Students need not only to simulate the European Council meeting that decides upon the budget, but also the preliminary domestic negotiations on the national positions (often taking into account the central-regional-local relations) and the post-EU level decision phase of project selection within the member States. A similar course design as the one used for 'ordinary' simulations is used, yet in a more complex version. The asset of such a complex game is that it even more resembles the real context individual actors are confronted with: officials, politicians and diplomats often need to play simultaneous chess, i.e. they are forced to deal with several levels at the same time.

One last feature running through all courses is the exercise of peer-commenting. All courses on European integration include one or more paper assignments. In general,

papers are marked by the lecturer. In many cases, however, the supervisor's grading is supplemented by peer-grading. Students are asked to comment on structural and content related aspects of each other's papers, hence more or less creating a panel conference style of interaction and learning context. However, in contrast to what usually happens, the performance of the discussants is evaluated, rather than the papers or the paper-presenters. That way, students are even more stimulated to read each others' work thoroughly and provide colleagues with helpful comments and suggestions.

Assets, Suggestions and Pitfalls of Skill Teaching in EU Studies

Most of the recent literature on pedagogical strategies in higher education point out that, also on an academic level, transferring knowledge must be supplemented with the training of real life skills. Several advantages are worth mentioning. First of all, theoretical knowledge is retained longer when learned in a context that activates students. Reproduction is much less efficient than having students perform themselves. Teaching skills is not only an aim in itself, it also serves the aim of knowledge transfer. Interactive teaching in small groups, including discussion sessions and peer-grading, is a necessary but only first step in this direction. The combination of teaching both content and skills allows for students to deal actively with learning material. Inviting students to develop arguments and to debate with each other, forces them to understand the empirical facts and to apply their knowledge in real life situations.

In this way, chances are not only bigger that the knowledge itself remains acquired and active for a longer period, but also skills related to team-work, debating and negotiating. Enriched with an international component, the real life imitation becomes even more optimized. Organizations such as EUROSIM and others are excellent opportunities to introduce students to a transnational context. Also electronic platforms such as Blackboard can be used effectively to develop and evaluate students' skills, in particular with respect to debating.

While including skills without doubt adds an extra dimension to teaching European integration, some pitfalls should be pointed out. First of all, teaching skills and knowledge doesn't decrease the staff's workload. On the contrary, the organization of debates, simulations and games causes extra creative and administrative challenges that should be considered before starting. Secondly, students sometimes need to be convinced that academic education is more than the transfer of theoretical and factual knowledge. Innovative teaching methods must be sold to 'conservative' students who like to learn syllabi by heart, preferably only a few weeks before examinations. Learning skills requires a more intensive and continuous engagement. In the end, however, student's course evaluations point out that they highly appreciated the design.

Related to this is the uncertainty of how evaluation is carried out. This brings me to a final point. Perhaps the most important challenge for lecturers teaching skills and knowledge at the same time, is the search for objective, quantifiable evaluation criteria. The problems with grading traditional oral exams become even more manifest when grading debating or negotiating behavior.

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¹ The Bologna Declaration seeks to introduce a European Learning Area. It shapes the framework for reforms that should make European Higher Education systems more international and mutually compatible with the ultimate aim to compete with the US. A useful overview and start page can be found on: <http://www.dfes.gov.uk/bologna/>

² <http://www.ua.ac.be/>

³ <http://www.ua.ac.be/psw/>

⁴ http://www.ua.ac.be/main.aspx?c=*ONW

⁵ <http://blackboard.ua.ac.be/webapps/portal/frameset.jsp>.

Guest access can be provided upon request.

⁶ <http://www.clingendael.nl/>

⁷ <http://www.fredonia.edu/org/eurosim/>

⁸ <http://www.fredonia.edu/org/eurosim/taceuss/>

Archive of European Integration <http://aei.pitt.edu>

THE ARCHIVE OF EUROPEAN INTEGRATION (AEI) is an online repository for non-commercial, non-governmental publications (short monographs, working or policy papers, conference papers, etc.) dealing with any aspect of European integration. The AEI is hosted by the University Library System at the University of Pittsburgh with the co-sponsorship of EUSA and the Center for West European Studies/EU Center, University of Pittsburgh. All those who presented papers in person at the 2005 EUSA Conference in Austin may post their conference papers on the AEI.

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Essay

Problems With Cross-Border Banking in Europe: Positive and Negative Lessons from the United States *David G. Mayes¹*

CREATING THE SINGLE market for financial services in Europe continues to throw up a series of problems that frustrate progress and present authorities with new challenges. Many of these problems should not come as a surprise if one looks at the history of financial integration in the US as an example. Despite a head start of at least 150 years the US still has anomalies and difficulties with the treatment of financial markets and institutions that run across local legal borders. It is very unlikely that anyone starting with a clean slate for a system that will work well for a population of 300-400million and a land area the size of the US or Europe would come up with the US system any more than they would come up with the European one.

One of the problems that has emerged recently is what happens if a bank that operates in a number of countries decides to take advantage of the European Company Statute and headquarter itself in one country and operate in the others through branches. Nordea, which is the most cross-border major bank in Europe has announced that it intends to do just that. (Its structure is set out in Table 1.) Regulation of banking in the single European financial market was set up on the basis of trying to make sure that traditional regulation, based on each of the national member states, did not restrict the entry of institutions that were already licensed and trading in another country. Thus one member state (the host country) could not impede the entry of a bank licensed in another (the home country), if it wanted to set up a branch. It would be subject to local (host) regulation on how it ran its business, but the regulation of how it managed its risks and operated as a 'safe' bank would continue to be the responsibility of the home country. If anything went wrong then the responsibility would also lie with the home country, which would provide insurance for the deposits and be responsible for winding it up in single proceedings with all creditors and depositors treated equally in their priority, regardless of their country of location.

Such a scheme is fine if such operations remain small and are not the norm, as was the case when the legislation was introduced over the last 20 years or so: if a bank wanted to operate in another jurisdiction on any scale then it would set up a subsidiary and incorporate locally. In those circumstances the prudential regulation of the foreign operation would become the responsibility of the host country. Thus the match of where banks operated, who was responsible for them and anything that went wrong would be reasonably close. This is no longer true. Some bank branches have now reached a

size that they are of 'systemic' importance. 'Systemic' in this context means that if they were to stop operating suddenly the impact on the rest of the host financial system would be sufficiently large that the authorities would feel the need to intervene and reallocate and limit the losses in a socially beneficial manner.

Intervention makes sense if one country is intervening in a bank to handle systemic problems inside its own borders. It is quite another to expect the authorities and taxpayers in one country to intervene to help the financial system in another. Yet this is what we are already asking in terms of EU regulations. Although branches and subsidiaries differ in legal form they do not necessarily differ in practical terms. Some branches could operate as independent entities, whereas many subsidiaries could not – many essential functions of being a bank may be already undertaken in other parts of the banking group outside the country. Much of the point of mergers, for example, is to get advantages from being able to concentrate functions and avoid duplications. New Zealand is one country that has responded to concern by insisting first of all that any systemic institution be first of all a subsidiary and not a branch, and secondly that it does not outsource key functions in a way that cannot enable them to be operating again within the 'day' in which transactions need to be completed.

As it is, there is a major mismatch appearing in Europe between who is responsible for supervising banks and who is responsible for the stability of the financial system, which means that the system is unlikely to work properly in practice. The US has faced major problems of this sort and reacted by trying to restrict the cross-border activity of banks and setting up federal institutions such as the FDIC (Federal Deposit Insurance Corporation).

The Niceties of Bank Exit

Before we can discuss what might make more sense in a European environment to handle these issues, we need to explore the details of how to handle a bank 'exit'. (I use the word exit rather than 'failure' because in the event of a problem with systemic institution the authorities need to find a way of allowing the business to continue even if the failing institution is terminated in legal personality.) This is an issue that the US has directly addressed with FIDICIA, the FDIC Improvement Act, as a result of the problems in the Savings and Loans industry. Banks are not like other companies in two important respects. First of all, they have financial rather than physical assets, so that depositors and other creditors can rush in at the first sniff of a problem and demand repayment in an arbitrary first come first served manner, until the assets run out. Banks cannot apply for a temporary stop or protection against their creditors while they reorganize as this in itself stops the process of functioning as a bank. Second, whereas in other industries competitors are only too pleased to see one of their number collapse as they can take over the customers, in banking, the major banks are exposed

to each other and to the consequences that a major failure has in reducing asset prices. One collapse could easily lead to another and to a general loss in confidence that brings down the system.

It is thus essential for the authorities to intervene early on, press very strongly for a market solution through recapitalization by the existing shareholders or merger or acquisition by a sound competitor, or if this fails, stop the process before the losses mount. FIDICIA ensures this by a sequence of Structured Early Intervention and Resolution involving Prompt Corrective Action (PCA), ultimately involving the compulsory takeover of the bank by the FDIC if the process last too long and goes too far. The FDIC then has to resolve the bank in the way that minimizes its losses. There is a further reason why it is the FDIC that does this, and not some other institution. First of all, it is the ordinary uninformed person who as a depositor will not get to the bank fast enough to withdraw their money before a collapse. Secondly, bankruptcy is a long process which can last years. People cannot wait to get at their bank accounts for a long period of time, even if ultimately they get over 90 cents on the dollar. It would bring too much of the financial system to a standstill and harm too many 'innocent' voters. FIDICIA is thus a special public law governing the insolvency of banks.

In Europe most countries do not have the same neatness regarding their banking laws. On the whole, public law is not used and the authorities have to petition the courts for bankruptcy or take other steps to prevent the bank becoming insolvent. Moreover, there are major differences over the rules and institutions among countries. Fifteen years ago many countries did not even have deposit insurance and even if they do have a deposit insurer, it may not have a role like the FDIC does to step in and may have to take its place in the queue for reimbursement from the receiver rather than run the process. (The FDIC has 5,200 employees to run a system in a country of nearly 300 million people. The Finnish Deposit Insurer has one person part time for a country of 5 million, a difference of a factor of at least 100 in capability to act if we take into account the relative size of deposits). While all member states have to have deposit insurance up to minimum level, there is wide variety among schemes beyond that, so some are private and some public, some funded and some not, the accounts covered are different etc.) The ability to gain control of the assets of foreign banks is also different in the US, which applies the principle of 'territoriality' so that it can undertake separate insolvency proceeding for the assets within its jurisdiction. The EU on the other hand applies the principle of 'universality' and takes them together in single proceedings.

Thus the EU cannot follow the New Zealand route of applying territoriality, ensuring viable entities in their jurisdiction and having the power to intervene early through public law before losses mount. The EU therefore has to go the other route – a joint and workable agreement among the par-

ties involved before the event - which is much harder to achieve. It has to be able to get home and host country supervisors to work together more effectively, so that they can not only take joint responsibility for what they have done, but also each has to have sufficient access to information about the cross-border banks so that they can form a picture of the risks to financial stability in their jurisdiction. If something starts to go wrong they need agreement on the form of Prompt Corrective Action and the responsibility for leading it. Somebody needs to have responsibility for intervening and for minimizing the losses – but they need to decide in advance whose losses they are: depositors, GDP, taxpayers etc. There also needs to be an agreement on burden sharing – how should that be assessed, as the distribution of shareholders, depositors, employees, creditors, assets etc will all differ across the various countries?

There are thus two major problems: a lack of power to act and a danger of those who can act being unwilling or unable to bear the losses. The Swiss, who have two very large banks operating mainly in other countries in UBS and Credit Suisse, have recognized this and put a cap of Sfr4bn on any payout. However, they are not in the EU, where such an action is not permitted. We could thus see examples of banks being "too big to save" rather than the traditional "too big to fail" and hence crises emerging.

A Way Forward

The natural response is to create a European level regulatory body. This is not on the cards for supervision, as it would be a major undertaking and the large countries who would be most affected are not facing the problem on the same scale. However, perhaps some sort of resolution agency or EDIC could be set up to manage problems in the same mold as the FDIC. This has not really been discussed, although the Deposit Insurance Directive has been opened up for discussion by the European Commission. Most banks are not a cross-border problem nor are they systemic, so this does not need to be a grand entity - probably less than 30 banks fit into this group. The number is sufficiently small that it could perhaps be done on a case by case basis, perhaps run by the central banks as they have responsibility for avoiding systemic problems. But the countries involved differ as do the systems they would have to try to harmonize. Regulatory harmonization is progressing steadily aided by the Lamfalussy process and the formation of CEBS, the Committee of European Banking Supervisors, but it has a long way to go.

The Nordic-Baltic authorities are getting on with the job, without waiting for a European level solution as they have to be able to handle the reality of Nordea's intentions. They have a much easier task than most of Europe as they have a history of working together (their regulatory cultures and general approach to problems is similar but by no means identical, as their different reactions to the Nordic crises in the early 1990s reveals) their regulation is fairly well harmonized.

