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**Mountain or Molehill ?:  
A Critical Appraisal of the Commission White Paper on Governance**

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*Mountain or Molehill?*  
*A critical appraisal of the Commission*  
*White Paper on Governance*

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## **The Dilemma of Governance with Government**

**Alberta M. Sbragia\***

“European Governance: A White Paper” represents a major attempt at “institutional self-reflection.” . This paper examines the implications of the co-existence of “governance” at the EU level with “government” at the national level.<sup>1</sup> It then advances two arguments about the basic assumptions which underlie the White Paper. The first has to do with the assessment made by the Commission of the basic state of integration, its acceptance across the member-states, and the implications of national diversity for thinking about governance. The second addresses the issue of whether the Commission has understood the possible implications of its desire to reach out to associations of regional and local governments and various actors within civil society in a “reinforced culture of consultation and dialogue”. (p. 16) It concludes by arguing that the lack of “government” at the EU level needs to be taken very seriously by the Commission as it examines its future role in a Europe in which national capitals and national diversity are going to influence what “governance” can actually accomplish .

### **THE COMMISSION IN CONTEXT : GOVERNMENT VS. GOVERNANCE**

The authors of the White Paper have clearly consulted with the academy, and many of the reflections and recommendations clearly show the imprint of various debates about governance in the field of political and administrative science. In fact, the White Paper combines various definitions of “governance” which have been developed in the scholarly literature. (Cram 2001; Pierre 2000) However, most of the literature and debates about governance are based on certain core premises, none of which apply to the European Union. Those basic assumptions include 1) the existence of an elected central government with legitimate constitutional power recognized by both subordinate governments within its territory and the international system of which it forms part 2) the incorporation of society through regular elections as well as a range of other mechanisms (political parties, interest groups, corporatist structures, etc.) which vary widely across national states 3) the existence of a national identity which may be contested by several smaller groups within the nation state but which is nonetheless accepted by the majority

The Commission, for its part, was created precisely because none of the characteristics mentioned above existed at the European level –and they still do not

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<sup>1</sup> The term “governance” in the political science literature has numerous meanings (see, for example, Kohler-Koch and Eising 1999; Peters 2000; Rhodes 2000 ) The title of this paper refers to the very influential article on governance written by Rhodes (1996) The White Paper defines ‘governance as “rules, processes and behaviour that affect the way in which powers are exercised at European level” (p.8), and I use the term in the same way.

exist. If the EU had an elected government, the Commission as we know it would not exist. The Commission is an organization which was created and is supported precisely because 1) the EU has no elected government as traditionally defined and no indication that the citizens of Europe would accept such a government 2) the EU needs to manage “unequal state power” as well as administer a complex program of economic liberalization (Hurrell and Menon 1996: 392) and 3) the commitment to integration was “locked in” and given credibility by the creation of the Commission and its power to monopolize the proposal of legislation.

The Commission is unique—it is not found either in national systems, other regional arrangements, or in the international system. Neither NAFTA nor Mercosur, for example, have any institution resembling the Commission. It is a novel institution, even more novel than the European Parliament. As a transnational legislature with real power, the Parliament is also unique but it is clearly based on the model of national legislatures. (Sbragia 2003). The Commission, for its part, is not derivative of any other institution.

The Commission gives the European Union administrative capacity without, however, being constituted as a traditional executive headed by an elected government. Giandomenico Majone argues that the institutional arrangements within the EU hearken back to “the mixed polities of the pre-modern era” rather than to contemporary parliamentary or separation of powers systems. Majone concludes that

One of [the EU's] characteristic features is the impossibility of mapping functions onto specific institutions. Thus the EC has no legislature but a legislative process in which the Council, the Parliament, and the Commission have different parts to play. Similarly, there is no identifiable executive since executive powers are exercised for some purposes by the Council acting on a Commission proposal, for other purposes by the Commission, and overwhelmingly by the Member States in implementing European policies on the ground (Majone, forthcoming).

The Commission can be seen as a key member of the “core executive” of the European Union. Following Rhodes’ definition, the core executive “is the heart of the [government] machine” and includes institutions and actors which coordinate policy and handle conflict about policy within the administration. (Rhodes 1995:12) Top civil servants are often key members of the core executive. However, the core executive in a traditional state is concerned with the policy-making which is directed by elected officials (the prime minister, the Cabinet, ministers). The Commission, for its part, is operating without the government—the prime minister, cabinet—which gives meaning to the core executive in a traditional governmental structure with a public administration as traditionally understood.

The Commission does, however, set the legislative agenda because only it can propose legislation. It is that combination of administrative capacity and administrative power, on the one hand, and the lack of a constituted government which traditionally gives political direction to the administration, on the other, which makes the Commission so distinctive. The Commission certainly gives some direction through its monopoly of legislative proposals, but while the elected executive of a traditional state is able to mobilize the political resources necessary to ensure adoption many if not all of its legislative proposals, the Commission is not similarly endowed.. One need only compare

the legislative histories of national legislation in any of the parliamentary systems which make up the EU (or even in the separation of powers system in the US) to realize what a difference a strong elected executive makes in the actual adoption of legislation. Administrative and legal rather than political resources are the major weapons in the Commission's arsenal. Page argues that "while Commissioners certainly have the skills and the ability to give leadership through bureaucratic entrepreneurship, they lack the direct electoral mandate that enables them to mobilize political authority." (Page 1995:277-8)

While the Commission plays a critical role in policy formulation and initiation, it does not play the same role as a national executive in ensuring the adoption of the proposed legislation. The lack of a clearly identifiable elected government at the EU level means the Commission is more powerful than a traditional civil service, less powerful than an elected executive, and also more exposed to political attack from both national governments and the public than are public administrations in traditional states.

The Commission thus wields a comparatively high degree of power—and an unusual degree of visibility-- without having either legitimated by the usual democratic processes. Neither can it draw on the resource of "European" identity. A traditional civil service is not directly linked to democratic mechanisms either, but the political direction which informs its strategic policy activities does come from an elected government which in many ways draws on national identity as a political resource. The White Paper makes it clear that the Commission, sensitive to the charge that the EU is aloof from the citizen, wants to institutionalize closer links with actors outside of the world of EU institutions such as associations of regional governments, churches, and trade unions in order to strengthen its democratic credentials. By increasing participation and accountability, it is hoping to legitimate its very unusual degree of power while still operating within the institutional framework of the EU a framework in which a proper government is absent.

Yet the Commission does not view itself as a bureaucracy in the sense that students of public administration think of bureaucracy. Traditional bureaucracies do not play the "steering" role which the Commission plays (Sbragia 2000). The fact that it is not led by an elected government gives the Commission more independence (and of course makes it more vulnerable than traditional bureaucracies.) The White Paper makes it clear that while its independence and position in the EU's policy-making system is of key importance to the Commission, its more traditional civil service function does not have that kind of priority. The Commission finds its dual role of "coxswain" and "civil service" difficult to reconcile. (Sbragia 2000) That difficulty is clear in the issues raised by the White Paper.

The White Paper clearly speaks to how the Commission can be more inclusive in its "policy shaping" role. The Paper's insistence on the Community Method privileges the Commission's role as a policy initiator. However, It has very little to say about how the Commission can improve its work as a civil service or to use Brigid Laffan's term as a "policy manager." (Laffan 1997) Governance is conceptualized as having a great deal to do with participation and consultation but nothing to do with how the Commission actually treats those citizens who apply for grants, compete for contracts, or are designated to spend Commission money. Although studies of civil society organizations have pointed out the difficulty that citizens working at the grass roots level experience in dealing with the Commission's budgetary and administrative procedures, the Paper is silent on reforms which would make the Commission less intractably bureaucratic. Not



one of the five principles which the Paper argues “is important for establishing more democratic governance” has to do with making the Commission a better administrator.

Nothing, for example, is said about making it easier for the ordinary women’s organization or environmental organization or activists concerned with social exclusion to work with the Commission. Laura Cram, after studying women’s <sup>2</sup>groups in Ireland, the UK and Greece concludes that

the much criticized practice of project-based funding leads to discontinuities and dissatisfaction with the system. This, combined with the complexity of application and budgetary procedures, undermines the Commission’s position in a number of respects. Most importantly, however, rather than focusing on ‘inclusion’ and ‘participation’ at an abstract level as goods in themselves, the Commission would achieve greater results by simply ensuring that it provides an important service and performs its given functions efficiently. In this sense, ‘good governance’ is less about the participation of others and more about the effective functioning of existing structures”. (Cram 2001: 614).

While many of the member-states are equally bureaucratic, the fact that the Commission is “foreign” to everyone in all the member-states makes its administrative complexity far more striking and frustrating. Complexity, bureaucratic red tape, and the minutiae of regulations are interpreted differently when confronted within a national context than when found in Brussels. First, many groups initially view Brussels as a way to find more efficiency, more resources, and more support than they can find at home. When they expect little at home but more in Brussels and fail to find Brussels any more welcoming than their national capital, the disappointment at Brussels is keen. Secondly, the fact that the EU is essentially foreign means that it does not benefit from the reservoir of good will which national identity provides. National identity is a resource which national institutions can draw on, but one which makes the “unnational” Commission more vulnerable and isolated.

Part of the vulnerability of the Commission lies in the fact that while “new” national governments which took over from their predecessors (the Fifth Republic for example, or the German or Italian governments after World War II or the Spanish government after Franco).completely displaced those same predecessors, the European Union co-exists with national governments. The French Fifth Republic did not have to worry about what the officials of the Fourth Republic might be doing, and the German and Italian governments in the post-war period were not competing with the Nazi or Fascist governments which preceded them. (The new United States of America, for its part, replaced the American Confederation) The European Union, while “new”, has not however displaced any other type of public authority. It is in fact in the historically anomalous position of trying to create a new system which not only co-exists with its

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<sup>2</sup> The budgetary procedures of the Commission are particularly difficult for smaller groups. For example, the fact that the Commission often uses “payment in arrears” requires organizations to have enough funds to “cover ‘up front’ costs.” (Cram 2001:609) Such a requirement tends to privilege large groups and makes the EU seem even more remote to grass roots activists. Guiraudon, in discussing the role of NGOs dealing with migrants, makes the point that the Brussels based groups (which typically are not migrant led) have the technical expertise necessary to access Commission funding while grass-roots organizations (which tend to be led by migrants) in the member-states do not. Local groups are hurt by the Commission’s demands for “transnationality” as creating transnational networks and linkages is very costly. Thus, the Commission supports migrant groups only if they contribute to European integration rather than helping them for reasons related to social policy. (Guiraudon 2001:163-183)

predecessors--democratic nation-states--but also needs to incorporate them without removing them. The EU not only cannot reject or replace the national governments which created it, but it is intertwined with them. European citizenship, for example, does not replace national citizenship.

The fact that only national governments are present in national capitals has implications for accountability. When citizens are disaffected with their national government, the elected government takes the blame and is punished. Protests are organized against the government even when the government may not be responsible for the causes of the protest. (Imig and Tarrow 2001) The civil service stays out of the picture—and in fact is viewed as providing continuity. When the same citizens are disaffected with the Union, the Commission rather than an elected government is blamed --but no one can be punished severely enough to cause a change in policy. The lack of an elected government removes the focal point over which voters have leverage. The essence of democracy is captured by the fact that governments can be turned out of office while the civil service remains. In the European Union, the Commission remains but no one is turned out of office. (The Parliament is not visible enough to serve as a proper adversary). Even if a national government is defeated at the polls, fourteen other national governments remain over whom the disaffected citizen has no control whatsoever. I

Citizen disaffection, therefore, is more serious for the new institution than for the old. Lacking the foundations of legitimacy upon which national governmental systems rest, the discussion about ‘governance’ for the Commission is grounded in the fact that governments do exist in national capitals while public authority is exercised in Brussels. In national capitals, the term “governance” can be thought of as “government plus”—government plus networks of experts, non-governmental groups, professional groups, business groups, labor unions, environmentalists, feminists, etc. The legitimacy of this “government plus” is essentially unquestioned.

In Brussels, however, “governance” is “government minus.” Therefore, issues such as transparency and accountability become particularly salient (whereas in national capitals, the existence of “government” legitimates much that is opaque and secretive.) The Commission in fact is far more open and inclusive than bureaucracies in many of the member-states. Were a bureaucracy in a traditional state to put forth the proposals found in the White Paper, many analysts in most member-states would have found them to be very progressive. Yet the White Paper’s proposals are questioned due to the anomalous nature of the Commission itself.

The EU in fact has a “governance system” which simultaneously incorporates traditional national “governments” and the “decision-making process” of the EU. The coexistence and entanglement of these two modes of governance—one represented by democratic national governments and the other by the EU institutions—creates unprecedented challenges. History provides few guideposts as to how (peacefully and through the use of law) to address the dilemma of having two modes of governance co-existing while not sharing in equal measure the available “legitimacy space” . That space is primarily occupied by national governments, and the room for the EU is limited.. When it comes to legitimacy, the governance system gives much more room to the national than to the EU, and the Commission, as the EU policy-making institution most distant from the electorate, feels both vulnerable and particularly exposed to criticism (much of which it views as unfair).

Given this situation, the Commission feels as if it is in a corral. It feels the need to become still more entangled, to move outside its corral, in order to increase the legitimacy of an integrating Europe. It is worried about the alienation of citizens far more than are the national governments. The latter are much less concerned about citizen disaffection with the Union because their own legitimacy rests on a foundation of war, democratic elections, constitutionalism, and recognition by the international system. Their position in the "legitimacy space" is not seriously threatened by citizen disaffection. Citizens may not like the government and may feel alienated from institutions, but they typically do not want the national regime to disappear. National governments have not been found wanting in terms of legitimacy—the EU is not a successor regime which was created because citizens had rejected the legitimacy of existing national governments. From the perspective of the ordinary citizen, the EU and the Commission can be viewed as the "interloper" into the national domain, but it certainly cannot be identified as a successor to a failed regime.

And it is those same national governments which have the key links with societal actors. It is they which are governed by political parties with roots in the electorate and often links to organized groups in civil society. It is they who symbolize the democratic apparatus which post-war European states have created,

The Commission's main interlocutors were to be the member-states (subsequently joined by the parliament) rather than societal actors. The structure, the composition, and the size of the Commission's Services are not designed to "reach out" to a large and differentiated public. The Commission was designed for very different reasons and purposes. When it reached out to societal actors, it reached out to those which were transnational rather than strictly national or local. Fundamentally, its role was to try to find consensus among the member-states, not to incorporate numerous actors in shaping the policy it proposes.

The Commission is now seeking legitimacy and linkages below the level of national government. Once it does that, once it redefines its role in terms of those principles in the White Paper which have to do with participation, accountability, etc. it opens the door to a new interpretation of its role in the institutional architecture.

The Commission's White Paper therefore represents an attempt to improve the current functioning of a system which, although buffeted on many sides for calls for more democracy, more inclusion of civil society, and more democratic participation generally cannot respond to such calls with traditional means without a fundamental re-ordering of the European landscape. Yet, simultaneously it is certainly true that many call on the Commission to be more open, more accountable, more inclusive and more effective. In fact, the demands made on the Commission are very familiar to students of public administration in all industrialized democracies. (Behn 1999) For example, the experience of the French civil service in the past two decades certainly resonates with both the criticisms of the Commission and the Commission's response (Montricher 1996). Yet the Commission is not a bureaucracy responsible to a government, is not itself structured to be a government, and does not have the institutional mechanisms which link governments to society.

But If one has a situation in which a bureaucracy exists without an elected government, in which the elected Parliament has a thin veneer of legitimacy, and the governing elites and mass electorates are not ready to establish an elected government, what does one do?

Given that context, the White Paper represents a major step in thinking through how to make the Commission more open—while accepting the core fact that it is not a government and cannot be linked to society through the political mechanisms by which governments are linked. The Commission can consult with regional and local governments, but that relationship will necessarily be fundamentally different from a central-regional relationship in a national state, a relationship which is conditioned by partisanship and historical legacies. The Commission cannot duplicate the relationship between the (elected) German federal government and the collectivity of German Laender, for example. Given that fact, the Commission's response to calls for more accountability and inclusiveness will not satisfy those who use the template of "national" democracies against which to judge the Commission. Such a response, in fact, may lead the Commission to become far more entangled in the quagmire of intra-state center-periphery relations than it realizes.

## **THE FOUNDATIONS OF INTEGRATION**

Given the context in which the Commission is operating and in which it is considering its role, its proposed strategy for the future depends to a significant degree on its assessment of where European integration as a holistic process now stands. Its proposals can be read very differently depending on that fundamental assessment. The document makes it clear that the Commission is proceeding on the assumption that the current parameters of the European Union are largely established and beyond contestation. Its statement that "it is time to recognize that the Union has moved from a diplomatic to a democratic process, with policies that reach deep into national societies and daily life" is (p. 29) striking in this regard..

Very few would argue that the Union is solely a diplomatic process but neither would it be easy to argue that the diplomatic dimension has disappeared. The centrality of COREPER to the policymaking process testifies to the resilience of the diplomatic dimension. "Unequal state power" is still a basic fact of life in the Union, and the role of the Commission itself cannot be understood if that fact is denied. (Hurrell and Menon 1996)

To the extent that the diplomatic has been diminished, it is certainly not true that the "democratic" has substituted for it—at least if "democratic" is understood as allowing electorates to have a direct say. The fact that the European Parliament has far more power is certainly significant, but it is important to remember that the areas in which the Parliament is largely powerless are of key strategic and budgetary importance for the Union. While ministers are (usually) democratically elected, the fact that their work is prepared by COREPER indicates that the diplomatic and the democratic are intertwined in a way which the White Paper ignores. And of course there is the basic fact that the Union does not have an elected government, presumably something that would be required for a "democratic process" to be fully formed.

In a similar vein, the statements that “[people] expect the Union to act as visibly as national governments” (p. 3) and ‘people have similar expectations for the Union as they have for domestic politics and political institutions’ (p., 32) are quite remarkable. They seem to ignore the fact that the Maastricht Treaty was approved by an exceedingly small margin in France and initially rejected by the Danish electorate, and that the Nice Treaty has been rejected by the Irish. Furthermore, the underlying significance of the battles which took place during the Nice negotiations do not seem to have resonated with the Commission. Clearly, the Commission is proceeding on the assumption that the foundations of European integration are secure and that while the future represents a challenge, the past can be safely taken for granted. The acquis is safe, in other words.

The assumptions of the White Paper become clearer if we compare them with those of a report written for the French Senate as a contribution to the constitutional debate launched by the Treaty of Nice. (Senat, 7 juin 2001) The Commission paper assumes that the EU’s basic architecture and policy decisions as presently constituted are in fact firmly anchored in the political bedrock of contemporary Europe. The French Senate’s contribution is far more cautious.

For its part, the Commission argues that the existing institutions need to go “back to the basics” and that the Community method needs to be reinvigorated (without explaining why the deterioration of the Community method occurred in the first place). For the Commission, the policies made under the Community method are safely in the Union’s vault, and the main challenge is to ensure that future policies are adopted using the Community method. By contrast, the French report thoughtfully and thoroughly points out the danger zones in which the idea of a European Constitution may take the acquis of the European Union. In that analysis, policies previously adopted by the European Union are in fact within the danger zone. The White Paper assumes that the past represents a safe foundation upon which to build, whereas the Senate argues that the past, the acquis, is still open to challenge if care is not taken to protect it.

The core difference between the two approaches is quite significant. The Commission’s White Paper assumes that issues of national sovereignty, of national interest are rightly domesticated by the Community method, and that that Community method must be strengthened and used more widely. Issues linked to national diversity are not addressed in any serious way. The French Senate, by contrast, asks whether in fact the treaties and policies which have shaped the European Union up to now would withstand another round of national scrutiny at this point in European history. Would national parliaments in fact ratify once again all the decisions that they have ratified in the past? Would the German Bundestag or the Italian Parliament accept the Common Agricultural Policy?

The White Paper assumes that the project of integration is well anchored and focuses on the Commission developing better relationships with regional and local governments on the one hand and organized segments of civil society on the other. The French Senate, with a sense of what national parliaments in many of the member-states are likely to think, raises a sophisticated yellow flag. The Commission takes the European Union—institutions as well as core policies more or less for granted—while the Senate does not.

At one level, the Senate paper not surprisingly reflects the views of elected officials of one of the member states most concerned with its role, with sovereignty, and

with identity. The Commission paper is, again not surprisingly, concerned with the kinds of issues which a technocratic lineage would predict. In the latter view, participation aimed at improving policy proposals, performance and accountability is good. The Senate's view is far more politically aware, more sensitive to the "big" picture which the "constitutional" debate (which as it correctly points out is interpreted very differently by the various actors) is gradually sketching. Whereas the actions of the Berlusconi Government in 2001-2, for example, resonate with the warnings raised by the French Senate, they do not find an echo in the Europe assumed by the White Paper.

Implicit in the Senate's document and absent in the Commission's, I would argue, is a recognition, an acknowledgement that the Union is still very much composed of foreigners. In that sense, the EU is very much a diplomatic work in progress. The individuals within the European Union are defined by nationality, by culture, and the interactions which take place in Brussels are understood through the prism of culture, of identity, of history.

The 'shorthand' which political parties provide at the national level is provided by nationality at the European level. The importance of nationality—exemplified by the "national quota"—is so great that Liesbet Hooghe argues the top posts in the Commission itself have been allocated along consociational lines familiar to students of Belgium, Austria, and Switzerland (or Italy when it was characterized by the "partitocrazia"). Nationality rather than the merit familiar to students of Weberian models of bureaucracy is critical to hiring and promotion. The role of nationality is so pervasive that Hooghe concludes that officials in the Commission are "discourage[d]...from advocating the general European interest." (Hooghe 2001:178).

If nationality is so important even within the institution which is designed to be "European," its importance is difficult to over-estimate. Although the Commission wants better information to be given to citizens, that information is not going to be processed by a "European" cognitive map. The constitutional debate in fact demonstrates that very fact. A "federalist" position typically becomes recast as a "German" position. Furthermore, the Treaty of Nice negotiations highlighted the very sensitive nature of changing the rules by which the EU is governed. National interest—reinforced by national identity—is alive and well in Europe. As the Senate report argues, the constitutional initiative may actually serve to divide the member states because "les équilibres de la construction européenne sont fragiles." (Senat 7 juin 2001: 21).

The Senate report acknowledged the lessons of the Nice and post-Nice process. Any process which is going to require the assent of national governments, national parliaments, or national electorates is an uncertain one. The underlying assumption of the White Paper, by contrast, is one of facing challenges within a framework which is essentially stable. The assumption of the Senate report is that stability has to be worked at, that it is fragile. The Senate report treats the Nice negotiations as illuminating a fundamental underlying fact of life in the EU, a fact that Hurrell and Menon have termed "the management of unequal state power." (Hurrell and Menon 1996:392) The sensitivity to the cleavage between large and small states has become such that a report on EU bicameralism by the French Senate recommended that all member-states, regardless of size, should be represented equally if a second chamber were created (the report explicitly used the US Senate as a template) (Senat 13 juin 2001) The report argued that the second chamber should be primarily concerned with ensuring that subsidiarity were respected.

The difference between the two perspectives is important in understanding how the Commission seems to understand “Europe.” For the Senate, Europe is composed of member-states with very different interests and different political cultures. There is no doubt that the members of the French Senate realize that their interlocutors in other states are not French, are foreign. By contrast, the Commission does not acknowledge the “foreignness” of the members of the European Union. It calls for more consultation with associations of regional and local governments and organized groups which should be included in helping the Commission shape policy. These associations are to help the Commission deal with local needs and distinctive features.

But the only acknowledgement to “foreignness” is made when the Commission states that “the feeling persists that Community rules are “foreign laws.” (25) Rather than reflect on the implications of that statement, the paper simply goes on to say in bold print that “EU law is part of the national legal order.” (25) Here, it is clear that, for the Commission, the institutional trumps the cultural. If in fact EU law, which is made through a largely consensual method and one in which each member-state is involved and which has been accepted to a large degree by national legal communities, is still viewed as “foreign”, the penetration of Europe at the level of identity is less than is assumed in the rest of the document. And that should force the Commission to re-think some of its basic assumptions about the kind of Europe it is now facing.

In fact, the diversity of legal cultures within the European Union presents significant challenges for the construction of legal uniformity. Overcoming those challenges, according to Vivian Curran, is linked to culture. In a provocative and wide-ranging article, Curran argues that broader cultural perspectives provide the bridge between lawyers trained in civil law systems and those trained in common law systems. In her words,

...because of the profound influence of Romanticism in Germany, and Romanticism’s embodiment of common-law characteristics, a German lawyer should have the capacity to understand the common law mentality. Its foreignness will reside in its application to the legal domain. ...Consequently, the penetration of common law attributes should be easier, quicker and deeper in Germany than in France, a country in which the Enlightenment played a more dominant role in intellectual discourse and development than did Romanticism. (Curran 2001:70)

Curran’s line of argument makes clear that culture and law are linked in complex and subtle ways. Culture helps citizens understand –or not understand—institutions. No echo of that link is found in the Commission’s White Paper.

How can Community rules not be seen as “foreign laws”? The fact that they are institutionally integrated into the national legal order does not make them less foreign. “Foreign” does not relate primarily to institutions but to nationality, culture, and identity. And here the White Paper is silent. It does call for a “transnational space” which would help the Commission “stay in touch with European public opinion.” (11-12) However, someone reading the White Paper without knowing anything about Europe would find it hard to grasp that the presumed participants –civil society groups, regional governments, networks, churches, etc. which are called upon by the Commission—actually see each other as foreigners.

The Union is in fact made up of nationalities which view each one another as foreign and react to European Union activities through the prism of nationality. While they are now foreigners who live peacefully side by side and are able to think of themselves as “European” in selected situations, their collective memories are such that to construct a transnational civil society is very difficult. In fact, civil society defined in national terms is not that old in some of the member-states and will be even more loosely rooted post-enlargement. Whereas the single market and the regulatory reform that accompanied it could be viewed as projects that were “foreign” to all the member-states and required very significant adjustments in all of them, the kinds of policies that are now being debated within the Union (such as flexibility of labor markets) are those that within national contexts are understood primarily through the prism of political parties and/or intra-national territorial cleavage. Current issues, therefore, will not easily be interpreted as “transnational” issues.

## **LINKS TO SOCIETAL ACTORS**

The Commission's confidence that the state of the EU is sound underlies its view that it needs to strengthen its links with both subnational governments and civil society. Rather than analyzing disaffection by focusing on the content of policy, or issues related to subsidiarity, or the implications of national diversity, it focuses on increasing the participation of a variety of actors which have not been included to the degree they would like. It is interested in making its policy process more open and more participatory, especially for those who will be involved in executing EU policy on the ground. In particular, the Commission is interested in increased interaction with subnational governments, including the goal of a “multi-level partnership.” (p. 12)

Here we find the Commission proposing to compete with national governments for linkages with both subnational governments and actors in civil society. Given the internal arrangements within member-states, it is national governments which often very deliberately block regional governments from having more of a say in deciding national positions within the Council of Ministers. The “multi-level partnership” desired by the Commission therefore might well provide a channel for subnational actors interested in circumventing national constraints on their participation in national decision-making. At the very least, it is likely that subnational actors would try to use such a channel that way—and it is very likely that national officials would perceive the existence of such channels as a threat to their own powers over subordinate governments. Given the complexities of center-periphery relations in many of the member-states, and the implications for political parties of such relations, encouraging further participation ironically could well set off a backlash among those actors particularly concerned with subsidiarity. If there is one area in which subsidiarity would seem to be called for, it would be precisely the nature of center-periphery relations within a member-state.

And in fact national parliamentarians are those most likely to be concerned if subnational actors are given avenues for policy shaping which they themselves do not enjoy. A French Senate report analyzing the possibility of a second chamber at the EU level makes a very strong argument that such a chamber should above all force



subsidiarity to be taken seriously. (Senat 13 juin 2001) Given the European Court of Justice's restrictive interpretation of the provisions concerning subsidiarity in the Maastricht Treaty, national parliamentarians are very likely to feel that they should have a prominent role in the EU's policymaking process. At the very least, they should have a more prominent role than regional actors.

It is clear that national parliaments are making some headway in their battle for recognition. The Nice Declaration highlighted their possible role in the future, and national parliamentarians were a very significant portion of the total membership of the Convention to discuss institutional reform which opened in February 2002.

The Commission is clearly interested in making contact with those institutions which are concerned with the execution of policy within the member-states. National parliaments do not play that function. Yet it is quite possible that once the Commission begins "partnering" with selected institutions, other institutions which view themselves as more democratic, more representative than those selected by the Commission will challenge the Commission's choice. Just as the Commission will be competing with the national government, so will actors within the national system begin competing with each other. If the national associations of subnational governments are controlled by a political party (or coalition) different from the party (or parties) in power at the national level, the relationship between the Commission and the national government in question could be difficult.

## **CONCLUSION**

The Commission works without the benefit of an elected government but co-exists with a set of national governments which have far deeper roots in national societies than does the EU. It therefore faces the double challenge of carrying out a wide variety of duties for which a government would traditionally be responsible and doing so without the legitimacy which democratic processes give. Its role in the European Union has insulated it from many of the political—and cultural—realities within the member-states. In trying to become more outward looking, at becoming more open to consultation and dialogue, it runs the risk of overlooking the complex link between the institutional and the cultural in European member-states. Governance and government, while co-existing, are in tension; similarly, the national and the transnational are in tension at least partially because of the intersection between culture and "government" in Europe. A White Paper is not the venue in which to reflect on such tensions. Nonetheless, they may affect the Commission in the medium-term in ways which the Commission, with its lack of sensitivity to how culture shapes the way citizens view the Union, will find surprising.

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