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## Built to Last? The Durability of EU Federalism

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Many observers of EU politics viewed 2005 as an *annus horribilis*, and 2006 has brought little relief. Again and again, politicians and pundits of all stripes have proclaimed the EU to be ‘in crisis’. Events great and small, from the French and Dutch ‘No’ votes on the European Constitution, to the stalled budget talks, to threats of Italy quitting the Euro, to the rising tide of protectionism, to alleged strains on the EU’s absorption capacity, are routinely portrayed as threats to the very survival of the Union. Many policymakers and scholars maintain that the EU’s current institutional arrangements will not function in an EU of twenty-five (or more) member states, and that without significant reform, the EU’s institutional machinery will grind to a halt. In June 2005, even Commission President Barroso, whose very position would seem to call on him to serve as Euroenthusiast-in-chief, declared that the EU was facing a ‘permanent crisis’ (BBC 2005).

Of course, predictions of the EU’s imminent demise are nothing new. In March 1982, on the occasion of the twenty-fifth anniversary of the Treaty of Rome, *The Economist* led with a cartoon of a tombstone dedicated to the EEC. The inscription included the dates—born March 25, 1957, moribund March 25, 1982—and an epitaph borrowed from Tacitus—*Capax imperii nisi imperasset*. (It seemed capable of being a power, until it tried to be one.) Noting the weakness of EEC institutions, growing disenchantment among European citizens, Greenland’s secession and the looming threat of a UK secession, *The Economist* declared the EEC to be in a near-death coma, at risk of collapsing into prolonged crisis or total stagnation. Yet as we know today, the twenty-fifth anniversary was not the beginning of the end, but merely the end of the beginning. Three years later, Jacques Delors became Commission President and launched the Single Market program that breathed new life into the EEC and paved the way for the SEA and Maastricht’s Treaty on EU. In the ensuing years, the EEC (later the EC and then the EU) both widened—adding fifteen member states—and deepened—extending majority voting, enhancing the powers of the Parliament and the ECJ, gaining new powers in existing areas of economic policymaking and extending its authority to a host of new areas outside the purely economic realm.

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As we approach the fiftieth anniversary of the Treaty of Rome, we again confront the question of whether the EU is on its last legs. Are today's dire predictions any more credible than those made twenty-five years ago? Are the EU's institutional arrangements fragile? Are they in danger of collapsing under the weight of enlargement, as today's reports of 'crisis' suggest? Or instead, as Andrew Moravcsik (2005b) has suggested, is the EU's current 'constitutional settlement' actually quite stable? In short, is today's EU a fragile house of cards, or is it built to last?

Unfortunately, too many scholars and commentators address these questions on the basis of intuition and conjecture, rather than theory and systematic comparative analysis. As in so many areas of EU studies, the EU is treated as a unique case, which by definition cannot be compared to other political systems. This approach is the wrong way forward. We do not need to reinvent the wheel in order to identify the likely sources of instability in the EU and to assess the prospects for the Union's survival. A conceptual framework for analyzing the durability of EU institutions lies at hand, in the literature on stability and instability in federal systems.

Some observers reject the comparison out of hand, maintaining that because the EU lacks some crucial elements of statehood it cannot rightly be viewed as a federal system. However, in recent years more and more EU scholars have applied the lens of comparative federalism to the EU polity (see McKay 2001; Nicolaïdis and Howse 2001; Börzel and Hosli 2003; Kelemen 2003, 2004; Ansell and Di Palma 2004; Fabbrini 2005; Swenden 2004; Trechsel 2005; Schain and Menon 2006; Thorlakson 2006). Building on the work of earlier pioneers of the comparative federalism approach (such as Cappelletti, Seccombe, and Weiler 1986; Scharpf 1988; Sbragia 1992), these studies make it clear that the EU polity can operate as and be analyzed as a federal system even if it lacks necessary attributes of statehood. Indeed, the fact that the EU is not a state has not stopped scholars of comparative federalism from examining it. Unencumbered by the prejudice that the EU is *sui generis* and uncomparable, federalism scholars now regularly treat the EU as a case in their comparative studies (Friedman-Goldstein 2001; Filippov, Ordeshook and Shvetsova, 2004; Rodden 2005; Bednar 2006). For the purposes of the present analysis, the EU has the necessary minimal attributes of a federal system<sup>1</sup> and, crucially, the EU is riven with many of the same tensions that afflict federal systems.

This chapter explores the durability of the EU, asking what comparative federalism suggests about the prospects for the EU's survival. Drawing on recent work on self-enforcing federalism and on institutionalist insights into 'self-reinforcing' institutions, the chapter suggests that while the safeguards of EU federalism remain weak, they are strengthening. The paper also explores the range of forms of crisis that EU institutions might confront and suggests that the most threatening

<sup>1</sup> See definition of federalism below.

forms of crisis are highly implausible. As a result, the EU is, it would seem, built to last. While EU institutions are likely to prove durable, they will by no means remain static. The EU may have arrived at the broad outlines of a constitutional settlement with regards to its basic institutional design as Moravcsik (2005*b*) suggests; however, the allocation of authority between levels of government will continue to shift incrementally, with the EU continuing to gain power at least in the medium term.

The remainder of the chapter is divided into four sections. The first section explains why federalism is inherently, but not insurmountably, unstable. The second section identifies the safeguards of federalism that the literature on comparative federalism suggests are crucial for enabling federal systems to withstand centrifugal and centripetal pressures. This section also assesses the extent to which these safeguards can be found in the EU or appear to be emerging. The third section connects the first two, exploring various scenarios in which the absence of necessary federal safeguards might lead to some form of breakdown of EU federalism and assessing their plausibility. The fourth section concludes.

### **Why Federalism is Unstable**

Federalism is inherently unstable, and most federations fail (Lemco 1991). Federalism can be defined as an institutional arrangement in which (a) public authority is divided between state governments and a central government, (b) each level of government has some issues on which it makes final decisions, and (c) a high federal court adjudicates disputes concerning federalism (Kelemen 2003). In some sense every federal system is a house divided. Each level of government may have powerful incentives to undermine the federal system, and as a result, all federal systems (the EU included) face ‘two fundamental dilemmas’ (Riker 1964; Bednar, Eskridge, and Ferejohn 2001; De Figueiredo and Weingast 2005). The first is federal overreach. Federal governments may undermine federalism by aggrandizing their authority and usurping competences that the federal bargain had reserved for states. Taken to the extreme, this could transform a federal system into a de facto unitary system, in which state governments are mere administrative appendages. The second dilemma is state shirking. Constituent states may shirk on their commitments by refusing to comply with federal law, failing to contribute required resources (i.e. taxes) to the center or infringing the rights of neighboring states. Taken to the extreme, such behavior could lead to the breakdown of the system, with state governments splitting apart to form entirely separate polities. Unfortunately, institutions that help to resolve one of the dilemmas of federalism often exacerbate the other.

One might attempt to wish away these dilemmas by simply including detailed ‘competence catalogues’ in federal constitutions and mandating norms of ‘federal

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comity'. However, such parchment barriers are inadequate (Swenden 2004; Thorlakson 2006). Constitutions do not enforce themselves, and ultimately the institutional arrangements that underpin federalism must provide state and federal political actors with incentives to abide by the rules of the federation. In practice there is a continuous 'ebb and flow' of authority between states and the center (Donahue and Pollack 2001; Filippov, Ordeshook, and Shvetsova 2004). The danger is that these ebbs and flows may quickly turn into torrents and healthy tensions may explode into hazardous conflict. To be durable, a federation must provide for a rigid enough division of authority to prevent one level of government from usurping the authority of the other, while remaining flexible enough to allow for shifts in the division of authority in response to economic, technological, sociocultural and political developments (Nicolaidis 2001).

Federations that fail to provide the necessary mix of rigidity and flexibility can collapse in one of two ways: *implosion* or *explosion*. With implosion, centripetal forces undermine the autonomy of state governments and the federal system transforms into a unitary state. Implosion is quite simply not a threat to the EU. The notion that Brussels will usurp the authority of national governments and create a unitary European superstate is the fear and rallying cry of Euroskeptics across Europe. However, this is utterly implausible. Andrew Moravcsik is quite right in declaring that, 'the European superstate is an illusion' (2005a: 370). While the EU may continue to expand its authority in existing policy areas and extend it to new ones, even the most extreme cases of deepening would rely on a federal structure that preserved a central role for member state governments in both policymaking and implementation. In other words, the federal balance in the EU might in years to come tip further toward Brussels, but the EU could never become a unitary state.<sup>2</sup>

The more plausible routes to collapse would involve various forms of explosion. With explosion, centrifugal forces undermine the authority of the federal center and pull apart member states, to the point where the federal system fragments. In practice, explosion can take many forms, from extreme forms that lead to the total collapse of the federal system to relatively minor forms of fragmentation that loosen the ties of union but leave the edifice intact. While it may be easy to dismiss suggestions that the EU is on the verge of total collapse, less catastrophic forms of 'explosion' are plausible. In order better to understand the prospects for the EU's durability, we must first assess the strength of the 'safeguards' of federalism in the EU and then explore whether and how failures of these safeguards might lead to some form of collapse.

<sup>2</sup> Paradoxically, however, centralization might itself give rise to some form of explosion if, for instance, the growing concentration of authority in Brussels leads one or more recalcitrant governments to exit the union. I return to this possibility below.

**Federal Safeguards and Pitfalls**

To understand whether the EU is likely to prove durable, we must first clarify what we think holds it together and next consider whether we think the sources of the EU's stability are strengthening or weakening over time. The literature on federalism explores the conditions under which federal institutions are likely to prove durable and identifies a number of sources of stability in federations, often termed *federal safeguards*. It is important to distinguish such ongoing federal safeguards from the factors that provide the original motivation for the formation of a federal system. An extensive literature on comparative federalism has also examined the essential preconditions for the emergence of federalism (Deutsch 1957; Riker 1964; Wheare 1964) and some scholars have usefully applied this literature to the EU (Riker 1996; McKay 1999; Eilstrup-San Giovanni 2006). However, a federation can continue to thrive long after the initial conditions that gave rise to it have passed. For the purposes of this chapter, it is more important to explore the sources of the EU's ongoing stability (or instability) than to query its foundations. In this section, I review the leading sources of institutional stability identified in the literature on comparative federalism—including structural safeguards, partisan safeguards, judicial safeguards, and sociocultural safeguards—and assess both what role they play in sustaining EU federalism and whether they are strengthening or weakening.

Federal safeguards are fixed in the short term but are subject to change in the long term. The EU federalism can only be durable in the long term if its ongoing operations encourage behaviors that serve to strengthen its federal safeguards over time. In the language of institutional analysis, these dynamics are captured by the notion of self-reinforcement. Self-reinforcement is an extension of self-enforcement. A self-enforcing federal system is one structured such that the center and the states have incentives to fulfill their obligations to the federation, given their expectations about one another's behavior (de Figueiredo and Weingast 2005). To be self-reinforcing, the system must encourage behaviors that serve to expand the range of situations in which, or degree to which, it is self-enforcing.<sup>3</sup>

*Structural Safeguards*

As Madison recognized in the Federalist Papers (No. 45), participation of state governments in federal policymaking can provide an important structural safeguard against federal overreach (see also Wechsler 1954; Bednar, Eskridge, and Ferejohn 2001). Giving representatives of state interests a voice in the federal

<sup>3</sup> A self-undermining institution, by contrast, is one that is self-enforcing in the short term, but encourages behaviors that undermine its foundations in the long term.

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legislative process puts them in a position to defend their prerogatives against self-aggrandizing federal authorities. The most powerful means by which to safeguard state interests structurally is to represent state governments in a powerful upper legislative chamber. This is the approach taken, for instance, in the German Bundesrat. Other structural safeguards may involve giving states a role in the appointment of federal officials, such as federal judges or bureaucrats, or simply overrepresenting small states in the lower legislative chamber.

The EU has extremely powerful structural safeguards. Member state governments are directly represented in the EU's 'upper chamber', the Council of Ministers. Member state governments appoint the European Commission President and the College of Commissioners (now subject to the approval of the EP). Member state governments also appoint ECJ justices. Finally, member state governments both monitor the implementation of EU policies by the Commission (through the comitology system) and control the implementation of most policies at the national level.

These powerful structural safeguards for state interests make Euroskeptical fears of a European superstate utterly implausible. However, the structural safeguards that limit federal overreach offer little protection against state shirking and the explosion of the federation.<sup>4</sup> To identify federal safeguards against explosion, we must turn to the judiciary, political parties, and culture.

*Judicial Safeguards*

Federal courts are relied on both to police the division of authority between the federal and state governments and to enforce state government compliance with federal law. In other words, they are expected to prevent both implosion and explosion. While federal high courts can and do police both forms of opportunism, empirical studies (Bzdera 1993; Bednar, Eskridge, and Ferejohn 2001) have demonstrated that they are more effective in policing state cheating than in restraining federal overreach. In policing the division of authority, federal courts tend to be biased in the direction of the center, both because this is often in their institutional self-interest (if doing so expands the scope of federal law) and because the federal government will typically be in a stronger position to apply political pressure on a federal court than will states. By contrast, when policing state compliance, federal courts will have little to fear from backlash in an isolated, recalcitrant state.

The EU has a powerful supreme court in the form of the ECJ, and all indications suggest that the ECJ is growing more powerful. The strength of the ECJ is rooted

<sup>4</sup> Structural safeguards may discourage fragmentation in an indirect sense: states that enjoy effective 'voice' at the federal level may be less inclined to 'exit' the federation. A counterexample illustrates the point: the weak structural safeguards of Canadian federalism were blamed for stoking secessionist sentiments in Quebec, see Bednar, Eskridge, and Ferejohn (2001).

in the EU's fragmented institutional structure. As in other political systems, the fragmentation of power between the political branches empowers the judiciary. Divisions between the Council, the Parliament, and the Commission make it difficult for them to collaborate in reining in the ECJ. Therefore, the ECJ can take an assertive stance in enforcing EU law against noncompliant member states with little fear of backlash. Also, knowing that the ECJ and many national courts are independent and assertive, EU lawmakers invite them to play a central role in the policy process, encouraging the Commission and private parties to enforce Community law in court (Kelemen 2004).

The history of EU legal integration has witnessed a steady tightening of EU control over member state compliance. The development of the EU legal system has benefited from a dynamic in which member states encourage the EU to crack down on states who seek to free ride by shirking on their legal obligations. Though individual member states attempt to shirk in particular cases, the member states acting collectively have encouraged the Commission to take a strict line with lawbreakers. Thus the Commission has strengthened its enforcement activities radically over the past twenty years and now makes frequent use of its power to impose financial penalties on member states that disregard EU rulings (Börzel 2001; Kelemen 2006).

Judicial safeguards against member state shirking have also been strengthened by the development of decentralized enforcement of EU law by private parties before national courts (Alter 2001). Decentralized enforcement is based on the Article 234 preliminary ruling procedure, which provides that whenever a national court is hearing a case involving an unresolved question of EU law, that court may refer the case to the ECJ to ask for the proper interpretation of the law.<sup>5</sup> The procedure has encouraged the development of a dialogue between the ECJ and national courts that set in motion a self-reinforcing process that steadily strengthened the ECJ and EU law (Burley and Mattli 1993; Stone Sweet 2000; Alter 2001).

By allowing national courts at all levels to refer cases to the ECJ, the procedure enlists national courts as partners and generates a steady flow of cases that has enabled the ECJ to build up a body of case law that it can then refer to in justifying subsequent judgments (Stone Sweet 2000). Furthermore, many judges see the ECJ as a potential ally in battles with other branches of government, or higher courts, domestically (Alter 2001). Many litigants use the procedure to leverage EC law in the service of domestic policy battles (Alter and Vargas 2001). With national courts applying EU law, governments that seek to resist European law may be forced to disobey their own judiciaries; something they are loath to do. The key to this process has been that the preliminary ruling procedure allows the

<sup>5</sup> All national courts have the option of making such references, and final courts of appeal are obligated to do so.

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self-interested behaviors of the ECJ, national courts and private litigants to reinforce one another and continually to strengthen the EU legal system.

*Partisan Safeguards*

Party systems affect the incentives of state and federal politicians in several ways that may work to sustain federal systems. Riker (1964) emphasized how the decentralized structure of political parties (as in the USA) may play a vital role in defending state interests and maintaining federalism in the face of great centralizing pressures. Bermeo (2002) highlights the opposite dynamic, whereby the incorporation of regional interests into national political parties can help maintain federalism in systems threatened by centrifugal pressures. Turning to the EU's fragmented polity, the relevant question is whether the emerging European-level party system has the potential to safeguard EU federalism against centrifugal pressures?

A number of EU scholars have noted the growing power of party groups in the EP (Kreppel 2002; Hix, Noury, and Roland 2006). While MEPs increasingly toe the party line of their European party groups rather than voting along national lines, for the time being these nascent party groupings remain too weak to restrain behavior by national parties that might imperil the Union. In a recent comparative federalism study, Thorlakson (2006) highlighted how the lack of congruence between the national party systems in EU member states and the emerging European party system makes it difficult to build linkages between national parties and party groups in the EP.<sup>6</sup>

While the European party groups do not yet provide an effective safeguard against explosion, are there reasons to believe they will become more effective in years to come? In their historical, comparative study of federations, Chhibber and Kollman (2004) find that party systems track the shifting allocation of power in federations. Applying their insights to the EU, one would predict that the increasing transfer of authority from the national to the EU level will be accompanied by a strengthening of the role of European-level parties. Indeed, Kreppel's work (2002) suggests that the increasing legislative power has led to increased centralization of party groups in the EP. From this perspective, European parties will not build Europe, but if European leaders build it, they will

<sup>6</sup> The recent dispute between the British Conservative Party and the European People's Party both hints at how partisan safeguards of EU federalism might operate in the future and demonstrates that they are not yet effective. When Conservative leader David Cameron pledged to break away from the EPP and form a new coalition of Euroskeptic parties in the European Parliament, he came under severe pressure from leading figures in the EPP (such as Angela Merkel, Nicolas Sarkozy, and EPP Chairman Hans-Gert Pöttering) who threatened to isolate the Conservatives should they pull out. However, Cameron brushed off these threats and went ahead with his plan—recently announcing an agreement with the Czech Civic Democratic Party to form a Euroskeptic group after the 2009 European Parliament election.



come. The experience of other federal systems suggests that if the EU continues to gain authority at anything like the pace it has in recent decades, we should expect European-level parties to strengthen and gain influence over their national counterparts.

### *Sociocultural Safeguards*

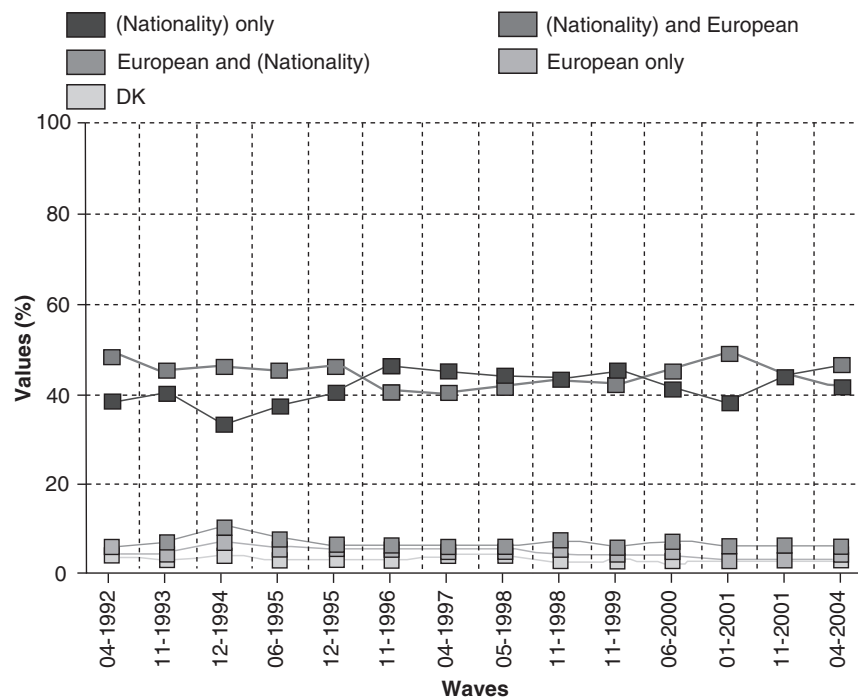
The sociocultural approach to federal durability suggests that the stability of federal institutions must be grounded in a shared sense of identity and political culture of federalism. Most of the major scholars of federalism including Tocqueville, Beer, Elazar, Stepan, and Riker have suggested, in one way or another, that ‘a culture of federalism’ is vital for the survival of a federation. Conceptualizations of federal culture vary, with some scholars viewing it in terms of common identity at the level of mass publics (Riker 1964; Elazar 1987; Stepan 2001), others viewing it as a shared sense of commitment to the federal project among political leaders (Franck 1968; Friedrich 1969; Elazar 1987) and others viewing it more as a shared understanding—or focal point—concerning the division of authority between states and the federation (de Figueiredo and Weingast 2005).

Without a healthy mixture of complementary identities, the routine infighting that is part and parcel of federal politics may degenerate into conflict that threatens the very survival of the polity (Franck 1968). Bednar (2006: 180) captures the essence of the danger, explaining that ‘If citizens identify primarily with one government then they may forgive or ignore (or even reward) opportunistic behavior by it.’ Similarly, Stepan (2001: 326) emphasizes how the lack of a sufficient shared sense of identity can increase secessionist threats in fragmented polities. If one level of government senses that it will not be punished by voters for openly defying the other—and that it may in fact be rewarded—then it may have an incentive to do so.

Turning to the EU, we must ask whether EU mass publics and elites have a sense of common identity sufficient to hold together the Union. There is sharp disagreement among EU scholars as to what degree of common European identity is necessary to support existing and future transfers of authority to the EU level, and whether such common identity exists or is emerging. Let us begin with mass publics. As in other federal polities, a sense of ‘Europeanness’ may be a complex hybrid mixed with national and subnational identities (Choudhry 2001; Risse 2001; Nicolaïdis 2004). Can we say anything about the current level and trajectory of this common identity? Eurobarometer surveys suggest that while slightly more Europeans feel at least some sense of European identity mixed with their national identities, there has been no long term increase in European identity over the last thirty years (Duchesne and Frogner 1995). Graph 3.1, which presents some recent Eurobarometer data (for 1992–2004), shows great stability in respondents’ senses of national and European identity.

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Question: In the near future do you see yourself as...?



Country: EU period: from April 1992 (EB37.0) to April 2004 (EB61).

GRAPH 3.1. Hybrid identities.

Source: [http://ec.europa.eu/public\\_opinion/cf/waveoutp](http://ec.europa.eu/public_opinion/cf/waveoutp)

Ultimately, whether the lack of a stronger common identity may prove troublesome depends on one question: just how much common identity is necessary to underpin the EU? We cannot answer that question with any precision. However, given that EU competences have expanded dramatically while levels of ‘European identity’ have remained rather static, the likelihood that the EU’s power has grown to the point where it exceeds the necessary basis of ‘identity’ safeguards must necessarily have increased.

Turning to political elites, there is greater evidence of a long-term increase in shared identities and a culture of federalism. Pioneering work on European integration by Haas (1958) and Friedrich (1969) emphasized how the development of shared identities and among national representatives at the EU level greased the wheels of EU politics. More recently, a great number of studies of EU policymaking in a wide variety of areas have found evidence that deliberative policymaking in European fora has led national representatives to develop shared norms and identities (Christensen, Jørgensen, and Wiener 1999; Checkel 2005b).

While some important studies have found that EU socialization pressures have at best weak influence on preference change of elite decision-makers (Egeberg 1999; Hooghe 2005), we can still accept the qualified claim that at least under some conditions, processes of socialization and deliberative policymaking can lead to some forms of collective identity formation among elite decision-makers engaged in European fora.

Though multinational federations can prove robust (e.g. Switzerland, Canada, and, so far at least, Belgium), most have proven unsuccessful.<sup>7</sup> Where federal institutions are imposed on divided societies in which political elites and mass publics lack adequate commitment to federalism, the system will be prone to fragmentation. For the EU to resist centrifugal pressures over the long run, the EU citizens and leaders may need to develop a stronger sense of common, albeit hybrid, identity.

### **Breakdown Scenarios and Their Plausibility**

While observers of EU affairs are quick to declare the EU to be in crisis, they are typically far less clear as to what exactly a crisis of the EU might entail. Many analyses of EU crisis seem to be premised on some version of the ‘bicycle theory’: if the EU does not continue rolling forward it will fall over. Leaving aside for the moment the fact that the bicycle theory lacks conceptual or empirical foundations, it is still worth clarifying precisely what people mean with the idea that the EU will ‘fall over’. What exactly would constitute a breakdown of EU federalism? Would we recognize one if we saw it?

The formal renunciation of the Treaties by all member states and the vacating of the offices in Brussels, Strasbourg, and Luxembourg would constitute an indisputable breakdown of the EU. But, short of such a dramatic and unlikely scenario, it is not self-evident precisely what sort of behaviors or institutional changes should be viewed as indicators of the breakdown of EU federalism. This section explores the range of variation on our dependent variable—the durability of EU federalism—by highlighting the behavioral and institutional changes that could be taken as indicators of the breakdown of EU federalism.

#### *Dissolution*

Formal dissolution constitutes the most complete form of breakup for a federation. In this case, the federation dies when all of its constituent states agree to end their union. Total dissolution is more likely in a federation with a small number of states, in which they simply break up the federation and decide to go their separate ways. Czechoslovakia’s velvet divorce and most recently the dissolution of Serbia

<sup>7</sup> However, as Bermeo (2002) notes, all the failed federations of the 20th cent. have been ones imposed by an outside power.

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and Montenegro illustrate this dynamic. As the number of states in the federation increases, so does the likelihood that some subset of states will maintain existing federal institutions, even if others have torn away from the federation. (We discuss this outcome—*limited secession*—below.)

While formal dissolution would constitute the most complete form of breakup of the EU, it is also the least likely. The current Treaty contains no provisions allowing for its termination. Formally, if all the member states agreed to end the EU, they would need to sign a new treaty detailing how and when to dissolve the Union. This treaty, like any EU Treaty, would need to be ratified, in some cases via a national referendum.

For the foreseeable future, it is difficult to imagine any plausible scenario in which the EU's twenty-five member states would agree to dissolve the Union. Sociocultural safeguards provide the strongest bulwark against dissolution. Even with today's modest levels of European identity, far more citizens across the EU think EU membership is a good thing than thinking it is a bad thing. Eurobarometer surveys over the past decade, supposedly a period of public disenchantment with the Union, show that consistently approximately 50 percent of respondents felt that EU membership was 'a good thing' while only approximately 13 percent felt that it was 'a bad thing'. Even in the most Euroskeptic countries, such as the UK and Sweden, those who view EU membership is a good thing consistently outnumber those who view it as a bad thing. (In 2006, 34 percent good vs. 28 percent bad in the UK and 39 percent vs. 32 percent in Sweden. See Eurobarometer 64: 9–12.) In this climate of public opinion, it is difficult to imagine politicians aggressively pursuing moves to dissolve the EU, or to imagine publics supporting such moves, either directly through referenda or indirectly through elections. If the EU is someday formally dissolved, this would most likely only come at the endpoint of a long series of partial breakdowns along the lines we outline below.

*Limited Secession*

The secession of one (or a small number) of member states would constitute a limited form of explosion. Though rare, such voluntary secessions are not unprecedented in federal systems. For instance, the Malaysian Federation continued (and continues) to operate after Singapore's exit in 1965. The EU itself has experienced secession. Though a full-fledged member state has never seceded, Greenland did secede from the Union in 1985 after achieving home rule from Denmark. The EU's draft constitutional treaty specifically establishes a mechanism for secession (Article I-60). Secession of a member state would clearly signal a crisis of the Union, but it might not prove catastrophic. Indeed, while any secession would be traumatic in the short run, one can imagine scenarios in which the exit of a 'preference outlier' might eventually facilitate strengthening of the Union. For instance, if a state with strong sovereignty concerns, such as Denmark

or the UK, left the Union, it might free up remaining members to pursue deeper integration in areas that had been blocked.

The secession of a member state would signal a failure both of the Union's structural safeguards, partisan safeguards, and sociocultural safeguards. Secession would be likely only where a member state felt that it could not adequately assert its interests through the Council of Ministers or its influence in other EU fora. If a member state found itself repeatedly outvoted in the Council on issues of core national concern and was unable to block such decisions at the ECJ as violations of subsidiarity or to mitigate their impact through the implementation process, then one can imagine (however unlikely) scenarios in which a member state would decide to quit the Union. Secession would also mark a failure of partisan safeguards, as the European partisan counterparts of the government in question would have surely tried to dissuade it from exiting. Finally, governments are only likely to quit the Union if such a move enjoys the approval of their electorates, which would itself indicate a clear failure of sociocultural safeguards.

#### *Atrophy*

Another form of breakdown would involve gradual atrophy. In this scenario, EU institutions would continue to exist in more or less their current form, but would be increasingly ignored by governments and interest groups, who might instead turn their attention inward or to other supranational organizations. Over time, the EU would cease to be a significant forum for policymaking. This type of atrophy would be unprecedented among truly federal systems. However, a number of empires and international organizations provide useful illustrations of this process. For instance, the Holy Roman Empire experienced a slow death through atrophy. Formally, the Holy Roman Empire existed for nearly a millennium (843–1805). In practice, the conflict between Protestants and Catholics in the sixteenth century initiated a downward spiral from which the empire never recovered. Over the next 200 years, the Holy Roman Empire devolved from a powerful, quasi-federal arrangement into an empty shell. By the eighteenth century, Voltaire famously quipped that the Holy Roman Empire was 'neither Holy, nor Roman, nor an Empire'. As Tim Garton Ash put it recently, might a future French philosopher, surveying a weak, loose agglomeration spanning into Asia Minor, the Caucasus, and to the edge of the Urals one day point out that the EU is 'neither European nor a Union' (2006)?

Atrophy would result most likely from an erosion of the Union's judicial safeguards. Though the EU enjoys strong judicial safeguards, these cannot be taken for granted. Defenders of national sovereignty and economic protectionists regularly rail against the ECJ's intrusions into national affairs. National politicians of all varieties complain of 'red tape' emanating from Brussels, and EU policy-makers increasingly profess commitment on the use of flexible, non-binding 'new

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modes of governance' such as the Open Method of Coordination (see Kelemen and Idema 2006 for a critique of the OMC). Thus far, such methods have been limited to peripheral areas of policymaking such as social policy. However, if they spill over into core areas of EU competence, such as the Single Market and the protection of individual rights, they could erode the EU's judicial safeguards. Were the EU to travel too far down this path, it might atrophy into something like the OECD (Organization for Economic Cooperation and Development)—a weak international forum for the comparison of 'best practices' and the dissemination of policy ideas—a far cry from the powerful EU we observe today.

*Growth of Variable Geometry*

The least obvious form of collapse would involve the growth of variable geometry. Some degree of variable geometry constitutes no threat to the Union. Variable geometry already exists in the EU, for instance with the variable memberships in the Eurozone and Schengen, voluntary opt-outs in areas such as immigration and asylum and plans for 'enhanced cooperation' in European Security and Defense Policy (ESDP). Variable geometry exists in many federations, where it is labeled 'asymmetric federalism', and is typically tailored to allow some states—for instance those with particularly distinct cultural identities—greater autonomy in policymaking.

Like other federations, the EU can operate effectively with some forms of variable geometry. To date, variable geometry has served primarily to facilitate deepening of European integration, allowing pioneers to move ahead and generating pressures to follow (Labeta 2005). However, taken to an extreme, variable geometry could vitiate the Union (Leslie 2000). Some observers fear that the exercise of opt-outs in sensitive areas—for instance a large state quitting the Eurozone—could initiate a great unraveling, leading more states to opt out of more policy areas. If voluntary opt-outs and opt-ins became the norm, the EU might come to constitute more of an inchoate assemblage of overlapping clubs than a formal federal-type organization with a legal order. As Schmitter (1996) pointed out in his analysis of potential Euro futures, this outcome (which he labeled *Condominio*) would be the most unprecedented path for the EU to take.

Greater reliance on variable geometry, if it is to emerge, is most likely to result from an effort to steer clear of two less attractive outcomes: limited secession and atrophy. In order to discourage skeptical member states from either seceding or grinding EU operations to a halt, those who wish to push ahead will be tempted simply to allow them to opt-out.

*Civil War*

A civil war, in which federal forces are deployed against a member state's forces or in which one member state's forces are deployed against another's would

constitute a breakdown of the federal system. Federal systems are designed to function as communities based on a shared rule of law. Where federal-state or interstate relations become violent, this rule of law is, at the very least, temporarily shaken. Such conflicts, by their very nature, signify a lack of common identity and the breakdown in the sociocultural safeguards of federalism.

Ultimately, the impact of a 'civil war' on a federal system depends on the outcome of the conflict. If state based rebels prevail, a federal system may collapse or at least lose one or more states to secession. If, on the other hand, federal forces prevail, the federal system may well emerge strengthened. Indeed, as Brian Taylor (2006) has argued, in practice many federal systems regularly rely on some degree of coercion. Similarly, Horowitz (1985) has argued that coercion may be crucial to deterring secessionist threats and helping federations to succeed.

Is a European civil war plausible? While a war pitting the EU as a collective actor against one of its member states is highly implausible, a variety of other civil war scenarios are easier to imagine. For instance, looking some years into the future, one could imagine a newly admitted member state in the Balkans requesting EU assistance in suppressing an armed insurgency by a minority ethnic group. They might in fact be eager for EU involvement, both to benefit from material assistance and to multilateralize the conflict so as to avoid potential charges of human rights abuses by domestic troops. If the EU mounted a successful 'peacemaking' and 'peacekeeping' operation, such a civil war might in fact strengthen the Union. By contrast, any violent conflict between two member states—for instance involving a border dispute or intervention by one member state to protect its ethnic compatriots in a neighboring state—would prove far more threatening to the Union. Fortunately, violent conflict between member states is highly unlikely for the foreseeable future.

### **Conclusion**

Rumors of the EU's impending demise are greatly exaggerated. The EU is not in a 'permanent crisis' as Barroso put it in June 2005, nor is it in a particularly 'deep crisis' as Jean Claude Juncker put it days later. The EU is certainly not facing an institutional crisis. The EU's legislative machinery continued operating effectively throughout 2005 and 2006, coping well with enlargement and continuing to make policy on everything from telecommunications to financial services, to environmental and consumer protection. Recently, the member states have backed the strengthening of EU powers in controversial areas such as counterterrorism and policing (with the Data Retention Directive, the European Evidence Warrant and proposals to give Europol new investigatory powers), and they have reached a compromise on the controversial services directive. The ECJ has continued to take a strict line enforcing EU law against errant governments and has expanded the

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reach of EU law into sensitive areas including health care policy (*Yvonne Watts*, Case C-372/04) and taxation (*Marks & Spencer*, Case C-446/03). In 2005, when the *Legia Nord*, a partner in Berlusconi's coalition government, raised the prospect of Italy quitting the Eurozone, some observers worried about the currency's future. The Euro has taken such threats in its stride, maintaining its strength on international currency markets.

In short, the EU still works, and it is extending into new policy arenas despite its supposed crisis. Though the EU lacks significant fiscal resources and has developed only a weak common foreign and defense policy, it has amassed an impressive array of powers at a rapid pace, with relatively few hiccups (such as the empty chair crisis and the Danish No Vote on Maastricht) along the way. From the long-term perspective, therefore, what is surprising is not that voters in two member states rejected the constitutional treaty, but that the EU does not experience more frequent clashes over its aims and direction.

Moravcsik suggests that we view the impasse over the EU constitution not as a sign of crisis, but as a sign that the EU has arrived at a stable constitutional equilibrium. He explains, 'The EU's current constitutional status quo appears stable and normatively attractive. Beyond incremental changes in policy, it is difficult to imagine functional pressures, institutional pressures, or normative concerns upsetting the stability of the basic constitutional equilibrium in Europe today' (2005a: 351). While one might agree with Moravcsik that today's constitutional status quo is normatively appealing, the notion that the EU is likely to remain in some type of stasis belies the experience of other federal systems. To be fair, Moravcsik does expect 'incremental changes in policy'. However, the experience of federal systems suggests that the cumulative effect of such incremental changes may yield significant changes in the division of authority between member states and the federal system. Even where they are self-enforcing and durable, federal systems are inherently unstable. They never stand still: rather the division of authority ebbs and flows between the center and the states in response to social, economic, and political change. To put it another way, if the EU achieves any sort of stable endpoint, it will be the first federal system in history to do so.

If the EU is facing any crisis, it is an existential crisis, driven more by anxiety and a panicked search for meaning than on any objective failings of the system. As with any existential crisis, so long as the victim does not commit suicide, they go on living. Indeed, the collective dialogue concerning the objectives of the EU that this crisis has sparked is surely good for a Union that has long failed to inspire much interest or passion on the part of its citizens. Perhaps the greatest danger in the current stalemate is that EU leaders seek to solve nonexistent problems, by introducing potentially destabilizing reforms to institutions that are operating quite well.