

Would the Constitutional Treaty Help Alleviate the Union's Legitimacy Crisis?

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1 Introduction

During the five years that is the life span of SIEPS we have witnessed increased attention to what is sometimes referred to as the ‘democratic deficit’ of the EU. Or perhaps better: an alleged ‘legitimacy deficit’.¹

The Convention on the Future of Europe was in part a response to such worries, and at least three features of the Constitutional Treaty seem to have been introduced to quell these concerns: Increased democratic accountability, increased visibility of human rights, and a new mechanism for the Principle of Subsidiarity.

What are we to make of these suggestions? My talk focuses of this question, for four reasons related to the host institution and our host country.

Firstly, the attention to this deficit is perhaps partly due to Sweden’s membership in the EU, and partly fuelled by SIEPS own publications over the five years it has existed.² Secondly, there are tensions between these three mechanisms, very visible from a Swedish point of view, where majoritarian democratic accountability stands out as a central condition of normative legitimacy. From that perspective it is not at all obvious that Subsidiarity and human rights constraints are legitimate: both of these arrangements explicitly limit the scope of centralised democratic rule in the form cherished in Sweden and other unitary states that celebrate Parliamentary Sovereignty, and that are characterized by very high levels of political trust in the authorities. Thirdly, our judgment on this topic may affect other urgent issues: Our assessment of the Constitutional Treaty and its plight, what if any innovations should be kept, the current limbo of the EU, and where the EU should go from here. Fourthly, I will suggest that the *federal* tradition of political thought makes it easier to assess these three mechanisms, applaud them, but also improve on them. With ‘federal’ I here simply mean that legal competences/authority is constitutionally divided between sub units of a political order and the centre bodies of that order. But the federal terminology may challenge deep rooted Swedish conceptions of state sovereignty, democracy, and legitimacy.

I first remind you of the bewildering literature of alleged symptoms, diagnoses and cures for this ‘legitimacy deficit’; then offer one unified account that combines normative political theory and elements of game theory, before I turn to comment on the three recommendations of the Constitutional Treaty. I shall argue that they jointly provide some normative improvement on the current European Union political order.

1 The research for this article was partly funded by the NEWGOV project on New Modes of Governance, financed by the European Commission. The Edmond J. Safra Center for Ethics, and Currier House, both at Harvard University, kindly offered optimal conditions to complete these reflections.

2 Including *inter alia* Fredrik Langdal, 2003:12 *Nationella parlament och beslutsfattande på europeisk nivå*; Jörgen Hettne, 2003:4 *Subsidiaritetsprincipen - politisk granskning eller juridisk kontroll?* ; 2004:3-7 *En konstitution för Europa? Reflektioner*.

2 Legitimacy Deficit?

Scholars disagree strongly about the symptoms, diagnoses and prognosis of whatever legitimacy deficit there might be. We even have different notions of legitimacy in mind: social, legal or normative.

Symptoms would tend to depend on the sort of legitimacy of concern. They include

- attitudes of *falling popular support*: Eurobarometer data on support for the existence of the European Community and of one's own country membership in it³; World Values Survey data showing mistrust of other Europeans⁴; reported mistrust of EU institutions⁵;
- indications of *noncompliant* behaviour: "variable implementation" or non-compliance with Union directives; declining voter turnout for European Parliament elections⁶
- challenges to the *legality* of European integration: warnings from the German Constitutional Court and the Danish Supreme Court;
- and shortfalls measured by *normative standards*, for instance laments about the lack of parliamentary control of executive bodies at the EU level.

Many have challenged such diagnoses of a legitimacy deficit. Some question the symptoms: Support is still high for European integration; Politicians are losing political support – but do so across advanced industrial democracies.⁷ And low

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- 3 For a perceptive analysis, cf. Karlsson, Christer (2001) *Democracy, Legitimacy and the European Union*. Uppsala: Acta Universitatis Upsaliensis.
- 4 Fuchs, D. and Klingemann, H-D. (1999) *Table 4: Trust in others -- from article 'National community, political culture and support for democracy in Central and Eastern Europe'*, Amato, Guiliano and Batt, Judy *The Long-Term Implications of EU Enlargement: the Nature of the New Border*. San Domenico di Fiesole: European University Institute. "www.iue.it/RSC/pdf/FinalReport.pdf", Nicolaidis, Kalypso (2001) *Conclusion: The federal vision beyond the nation state*, Nicolaidis, Kalypso and Howse, Robert *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*, 439-481. Oxford: Oxford University Press.
- 5 Again, such findings must consider that reduced confidence in parliaments, parties and the legal systems seems to be a general trend across established democracies – cf. Norris, Pippa ed (1999) *Critical Citizens: Global Support for Democratic Government*. Oxford: Oxford University Press
- 6 Jacobs, Francis, Corbett, Richard, and Shackleton, Michael (1995) *The European Parliament*. London: Cartermill, discussed in Sbragia, Alberta M. (1999) *Politics in the European Union*, Almond, Gabriel A., Dalton, Russell J., and Bingham Powell, Jr. G. *European Politics Today*, 469-520. New York: Longman
- 7 Dalton, Russell J. (1999) *Political support in advanced industrial democracies*, Norris, Pippa *Critical Citizens: Global Support for Democratic Government*, 57-77. Oxford: Oxford University Press.

and falling participation rates at European Parliament elections should not surprise, since national political parties tend to focus on domestic issues and national elections, and perhaps even collude against debates about European level choices of policy and institutions.

The disagreement is deeper: it goes beyond symptoms to diagnoses. Some scholars argue that the EU does not suffer from a legitimacy deficit, democratic or otherwise.⁸ Even those who think there is a crisis disagree about the diagnoses. Some point to the lack of procedural 'input' legitimation due to citizens' lack of influence and control. Others lament the lack of 'output' legitimation: the mismatch between citizens' preferences and politicians' delivery.⁹ Others again believe that the main problem is the creation of legitimacy deficits within Member States who are no longer permitted or able to meet popular demands.¹⁰

So reflective scholars, politicians and civil servants disagree about which medications to prescribe: ranging from not to fix 'something that ain't broken', to a wide range of solutions; more arenas of normatively salient deliberation, a written Constitution that simplify structures of decision-making, enhanced legal standing for the Charter on Fundamental Rights, to expand Member State discretion through the Open Method of Coordination, or a more efficient Commission that can better secure the European interest over the conflicting national interests. Some suggest strengthening the European Parliament. Others instead seek a stronger role for national parliaments.¹¹

Unfortunately, it is impossible to implement all the suggestions. There are trade-offs between Efficiency, transparency, decentralisation, democratic accountability and judicial review of human rights. Efficiency, democracy and constitutionalism may obviously conflict, even in principle.¹² Mechanisms of veto and other arrangements that require actual consent may hinder efficient problem-solving,¹³ as may accountability,¹⁴ and increased democratisation and

8 Moravcsik, Andrew (2002) *In defence of the 'Democratic Deficit': Reassessing legitimacy in the European Union*, *Journal of Common Market Studies* 40, 4: 603-24, Majone, Giandomenico (1998) *Europe's 'Democratic Deficit': the question of standards*, *European Law Journal* 4, 1: 5-28; but cf. Follesdal, Andreas and Hix, Simon (2006) *Why there is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, *Journal of Common Market Studies* 44, 3: 533-62.

9 Van der Eijk and Franklin 1996; Follesdal, Andreas and Hix, Simon (2006) op.cit

10 Scharpf, Fritz W. (1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

11 Neunreither, Karlheinz (1994) *The democratic deficit of the European Union: Towards closer cooperation between the European Parliament and the National Parliaments.*, *Government and opposition* 29: 299-314, but cf. Falkner and Nentwich (1995).

12 Elster, Jon and Slagstad, Rune editors (1988) *Constitutionalism and Democracy*. Cambridge: Cambridge University Press.

13 Tsebelis, George (1990) *Nested Games: Rational Choice in Comparative Politics*. Berkeley: University of California Press, Scharpf, Fritz W. (99)op.cit.

14 Scharpf, Fritz W. (99) op.cit, Naurin, Daniel (2004) *Transparency and legitimacy*, Dobson, Lynn and Follesdal, Andreas *Political Theory and the European Constitution*, 139-150.

politicization of the EU Commission.¹⁵ The authority to tax and redistribute may increase the problem-solving ability of the EU, but the expense of participation and democratic accountability.¹⁶

These disagreements notwithstanding, the Constitutional Treaty lays out at least three changes. I here want to focus on these apparently conflicting suggestions: Increase democratic majoritarian accountability; increase human rights constraints; and increase Subsidiarity – protection against majoritarian decisions.

How are we to assess them? I approach this question as a political philosopher concerned with normative legitimacy.

3 Normative Legitimacy

Normative political theorists tend to focus on the normative assessment of regimes or particular institutions, asking whether they are justifiable to all those living under these arrangements, as political equals. If so, those subject to the arrangements – for instance citizens – have a ‘political obligation’ to obey these institutions or officials.

Some philosophers may dismiss other forms of legitimacy – general support or actual compliance, or legality – as irrelevant for the normative issue. However, I submit that a more satisfactory account of normative legitimacy should include considerations of general compliance. This is especially important when we assess the proposals of the Constitutional Treaty.

I suggest that we should focus on the conditions for when citizens have a political obligation to abide by rules and commands by the authorities. It is not enough that the rules are normatively legitimate. Instead, I submit that Citizens have a political obligation only if such rules are also actually generally complied with. On this account, a normative duty to obey political commands requires firstly, that the commands, rulers and regime are seen to be normatively legitimate, and secondly, that citizens also have reason to trust in the future compliance of other citizens and authorities with such commands and regimes.

Institutions can bolster trustworthiness on both counts. Such trustworthiness in institutions and fellow citizens seems necessary for the long term support for the multi-level political order, and for authorities’ ability to govern. This is

London: Routledge.

15 Lindberg, Leon N. and Scheingold, S. A. (1970) *Europe's Would-Be Polity: Patterns of Change in the European Community*. Englewood Cliffs, NJ: Prentice-Hall, 269 as cited in Banchoff, Thomas and Smith, Mitchell P (1999) *Introduction: Conceptualizing legitimacy in a contested polity*, Banchoff, Thomas and Smith, Mitchell P *Legitimacy and the European Union*. London: Routledge, 5; Majone, Giandomenico (2001) *Regulatory legitimacy in the United States and the European Union*, Nicolaidis, Kalypso and Howse, Robert *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*, 252-274. Oxford: Oxford University Press, 261-62; Craig 2003, 3.

16 Börzel, Tanja A. and Hosli, Madeleine O. (2003) *Brussels between Bern and Berlin: Comparative federalism meets the European Union*, *Governance* 16, 2: 179-202..

especially important in an EU that has developed to make citizens increasingly interdependent – without having institutions in place to secure trust. The EU and the member state governments must become more trustworthy in the eyes of all Union citizens – and in the eyes of domestic supreme courts.

The three features – democracy, human rights and subsidiarity – contribute in several ways to make the EU more trustworthy. To explain this claim, I draw on insights from game theory.

3.1 *Assurance among Contingent Compliers*

Game theory and research on social capital shed much needed light on the challenges of trustworthiness. The challenge of political legitimacy is a particular instance of the complex assurance problems that face ‘contingent compliers’.¹⁷ For a contingent complier to decide to comply and cooperate with rules and institutions, and otherwise cooperate with officials’ decisions, she must

- A) perceive the government as trustworthy in making and enforcing normatively legitimate policies; and
- B) have confidence that other actors, both officials and citizens, will do their part.

Institutions can promote trust and trustworthiness among such contingent

17 Sen, Amartya K. (1967) *Isolation, Assurance and the social rate of discount*, Quarterly Journal of Economics 81: 112-124, Taylor, Michael (1987) *The Possibility of Cooperation*. Cambridge: Cambridge University Press, Elster, Jon (1989) *The Cement of Society*. Studies in rationality and social change Cambridge: Cambridge University Press, 187; Ostrom, Elinor (1991) *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press, Scharpf, Fritz W. (1997) *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Boulder, Co: Westview Presses, Rothstein, Bo (1998) *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State*. Theories of institutional design Cambridge: Cambridge University Press; Levi, Margaret (1998) *Consent, Dissent and Patriotism*. New York: Cambridge University Press. Recent normative contributions addressing the standards of normative legitimacy on the explicit assumption of such contingent compliance include Rawls, John (1971) *A Theory of Justice*. Cambridge, Mass.: Harvard University Press, Goodin, Robert E. (1992) *Motivating Political Morality*. Oxford: Blackwell, Thompson, Dennis F. and Gutmann, Amy (1996) *Democracy and Disagreement*. Cambridge, Mass: Harvard University Press, 72-73; Miller, David (2000) *Citizenship and National Identity*. London: Blackwell. For Social Capital, cf. Loury, Glen (1977) *A dynamic theory of racial income differences*, Wallance, Phyllis A. and Mund, Annette Le Women, Minorities, and Employment Discrimination. Lexington, MA: Lexington Books; Coleman, James (1990) *Foundations of Social Theory*. Cambridge: Harvard University Press ch 8; Putnam, Robert D. (1993) *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press; Putnam, Robert D. (1995) *Bowling Alone: America's Declining Social Capital*, Journal of Democracy: 65-78 ; Levi, Margaret (1998) *A state of trust*, Braithwaite, Valerie and Levi, Margaret Trust and Governance. New York: Russell Sage; Newton, Kenneth (1999) *Social and political trust in established democracies*, Norris, Pippa Critical Citizens: Global Support for Democratic Government, 169-188.

compliers in several ways to boost both conditions.¹⁸

With regards to the first condition - perception of the government pursuing normatively legitimate policies

1. Institutions can allow and foster *Civil society* that can allow the development and dissemination of a plausible public political theory, which may provide normative legitimacy by laying out and defending the objectives and normative standards of the political order: democracy, subsidiarity, solidarity, and human rights.
2. Institutions must be sufficiently *simple and transparent* to allow assessment.
3. The institutions must be seen to be generally sufficiently *effective and efficient* according to the normative objectives and standards.
Institutions may also help provide public assurance about the second condition - of general compliance
4. Institutions can be seen to *socialize* individuals to be conditional compliers, for instance in the educational system, or in political parties that foster somewhat consistent and responsive policy platforms.
5. Institutions can include mechanisms that can be trusted to monitor whether the policy or authority actually *solve the problems* aimed for.
6. Institutions can include mechanisms that can be trusted to *monitor the compliance* of citizens and authorities with the legal rules.
7. Finally, institutions can provide *sanctions* that modify or reinforce citizens' incentives, to increase the likelihood that others will also comply.

Let me sketch how the three mechanisms contribute to the requisite trustworthiness.

4 Democracy

Let us think of democracy as party competition for political authority, on the basis of deliberation and equal votes for all citizens. The best argument for democracy is that these forms of rule are those that can best be trusted to remain responsive to the best interests of citizens over time. Contestation and popular control over leadership and the policy agenda are crucial mechanisms.

¹⁸ I here modify Margaret Levi's model of contingent consent (Levi, Margaret (98) op.cit, ch. 2; Levi, Margaret (98) op.cit Braithwaite, Valerie and Levi, Margaret eds (1998) *Trust and Governance*. New York: Russell Sage.). See also Goodin 1992.

4.1 *Counting Votes – and Shaping Votes*

Democratic rule plays several important roles. One is to aggregate citizens' political preferences into common decisions, by competition among political parties for citizens' vote, by majority rule or some modification.

Party competition and opposition parties also play other important roles for trust building and for preference formation or shaping of citizens' attitudes toward others. Opposition parties question and challenge ill-directed policies, and thus serve to make government more credible in the eyes of voters. Party competition provides a mechanism - imperfect, to be sure - to keep politicians responsive to the interests of citizens by making threats of replacement credible.

Many theorists note the contributions of free media and multiple parties in citizens' character and political preference formation. This is a particular challenge in federal arrangements, where citizens and parties must develop 'dual loyalties': both to citizens of the own sub-unit, and an overarching identity and loyalty to the whole federation. Party competition crystallizes interests and perceived cleavages by giving some conflicts priority, and they make a limited set of policy platforms salient to voters. Parties create competing, somewhat consistent platforms that give citizens a better sense of realistic alternatives and the scope of the practically feasible. Thus they contribute to identifying more sound and well-directed policies, and affect voters' preferences and ultimate values about the objectives of the political order.

Institutions such as the voting structure and the regulations of parties can thus help socialize citizens and otherwise build trust, for instance by fostering the requisite normative sense of justice to consider the impact on others.

4.2 *In the Constitutional Treaty*

The Constitutional Treaty increases democratic accountability: it increases the power of the European Parliament, and gives national parliaments and media much more information about the decisions, and the parliaments get more influence over decisions at the EU level.

Critics will observe that, in contrast to many domestic democracies, there are few if any vehicles for encouraging a European-wide debate about the best objectives and policies of the EU. The few public arenas for political discussion make it difficult to mobilize political opposition.

But their absence may be temporary. Critics point out that there is presently little in the way of public debate - the good work of SIEPS and similar institutions notwithstanding. But there is reason to believe that the requisite public debates and forums are likely to develop as political contestation among parties increases. Only then can people see the impact of their votes, and that may increase the number of voters. I think we saw this when the European Parliament rejected Commission President Barroso's first slate of commissioners. The grounds for this rejection is surly contestable, but the main point here is simply that party political contestation is important to promote public debate, electoral participation and informed preference formation.

Thus pessimism about European level democracy should not be overstated: there are signs of more party organization and competition in European Parliament, and more policy contestation within the Council of Ministers. There

are therefore openings for contestation about the EU's policy agenda, and critical scrutiny of performance.

A more fundamental problem with majoritarian democratic rule in general is that permanent minorities may have good reason to fear that a majority will regularly disregard their interests. Even though party competition tends to make rulers responsive to the best interests of citizens, majority rule by itself is not trustworthy toward minorities: it cannot be trusted to protect and promote their interests.

There are at least two ways to protect against such threats and hence boost trustworthiness. Both are 'counter-democratic' in certain senses: they remove issues from the political agenda: Subsidiarity and Human Rights.

5 Subsidiarity

A "Principle of subsidiarity" regulates authority within a political order, where authority is dispersed between a centre and various sub-units – i.e. federations.¹⁹ The principle as specified in the Union treaties requires that authority or tasks should rest with the sub-units unless the centre will ensure higher comparative efficiency or effectiveness in achieving the specified objectives. And this claim had to be supported by reasons given in public.

This principle was introduced in the EU to reduce fears of unauthorized centralization. It typically protects sub units – and citizens – against domination, incompetence and tyranny from the centre, be it through majoritarian decisions or otherwise. An effective principle of subsidiarity can thus boost the trustworthiness of central authorities, that they will not abuse their power – democratic or otherwise - over sub-units and citizens.

5.1 *In the Constitutional Treaty*

The Constitutional Treaty introduces a new mechanism to ensure subsidiarity. The Constitutional Treaty gives more power to national parliaments to monitor proposed EU decisions, and appeal them. National parliaments can give a 'yellow card' if they think the decision violates subsidiarity. This mechanism will increase trustworthiness in the principle of subsidiarity as a guarantor against unwarranted centralization.

However, one may reasonably worry that this is not enough. The procedure only applies to some legislation. And the national parliaments can only appeal to the legislative institutions, and not even to the European Court of Justice. So this version of subsidiarity may not be a sufficient guarantee against central domination. And subsidiarity does not prohibit centralization against the will of subunits, but only places the burden of proof on those who wish to centralize decisions.²⁰ Indeed subsidiarity arguments may require centralizing authority in multi-level arrangements if this benefits the sub-unit – or other sub-units. The

19 Cf Hettne 2003.

20 Ref Follesdal, Andreas (1998) *Subsidiarity*, Journal of Political Philosophy 6, 2: 231-259.

risk of centralization is especially high if the centre has the authority to decide whether the principle applies to a particular problem. This creates problems when sub units – or citizens - disagree whether joint action is required and efficacious, and when they disagree about how to weigh the different objectives – e.g. in the EU.

A weakness of subsidiarity in general is that it does not protect individuals from domination, incompetence and tyranny from their own sub unit – unless this is specified as one objective of the union. So subsidiarity does not provide sufficient safeguards in a (quasi)federation – we must supplement with human rights protection against the sub unit authorities.

6 Human Rights

Human rights are important to promote general trust among citizens that a government will indeed pursue their interests. Human rights requirements achieve this because they restrict the options of governments, and indicate important objectives they must pursue. These safeguards reduce citizens' fears of abuse, particularly minorities who risk losing out in most majoritarian decisions.

Some have thought that the main role of human rights is to constrain the central authorities, since tyranny from central government is clearly a great threat to human flourishing. In political orders with federal elements, human rights must constrain both the centre and the sub units. An equally live threat is that a sub unit government – democratic or otherwise - will ignore the basic needs and interests of a minority within the sub unit – especially since one of the reasons for federal structures often is precisely to allow more substantial autonomy for the sub-units than in a unitary state. So such legitimate local autonomy must also be constrained by human rights considerations in order to merit trust by minorities.

6.1 In the Constitutional Treaty

The German constitutional court has insisted that it must be clear that the EU will respect human rights. In response, the Constitutional Treaty adds the long list of fundamental rights of the EU's Charter on Fundamental Rights²¹, including nondiscrimination, and respect for cultural, religious and linguistic diversity.²² It also states that the EU should accede to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.²³

The Constitutional Treaty also improves on a procedure to be used if a member state is suspected of human rights violations.²⁴ If the violations do not stop after dialogue, the Council of Ministers may ultimately decide to exclude

21 "europa.eu.int/comm/justice_home/unit/charte/index_en.html".

22 Art II-82.

23 Art I-9.

24 Art I-59.

the offending state from the EU.

Some weaknesses of these proposals appear from the point of view that I have laid out. Firstly, the Constitutional Treaty underscores that human rights will be secured by the European Court of Justice. However, this court must weigh the various values and objectives of the EU against each other. This may be normatively or legally problematic from a point of view that grants human rights priority over ordinary legislation and public policies. Consider that, while human rights are included among the Union's values in Art I-2, Article I-3 states the various Union's objectives. It remains to be seen how the European Court of Justice will weigh human rights against other important values and objectives – and whether it will agree the European Court of Human Rights on how to decide such issues. Accession by the EU would entail that the supranational European Court of Justice may be overturned – by another supranational court.

A second weakness is a tension between democracy, subsidiarity and human rights protection in the EU. Consider the procedure to address suspicions that a member state engages in systematic violations of the Union's values. This procedure is consistent with a certain conception of subsidiarity and democratic principles, but it also highlights the weaknesses of these principles and tensions among them.

Surely, international or Union efforts should firstly seek to enhance domestic mechanisms that will alleviate and prevent human rights violations. Such supportive measures by outsiders may include fact-finding and reporting of facts and legal norms to domestic audiences who may have few other credible sources.

But who is to decide whether Union action is required? Again, the alleged violator government will surely hold that no outside action is needed – and thus, on one conception of subsidiarity, central action is illegitimate. While if the ultimate focus of concern is on citizens, action may still be required. On the other hand, if it is for Union authorities to decide, subsidiarity will not prevent central action on this issue.

A third striking feature of the procedure is that the Constitutional Treaty does not allow – even as an ultimate recourse – humanitarian intervention into any member state on human rights grounds. This outcome of the intergovernmental bargain is surely not surprising for political scientists. However, I still find the mechanism remarkable from the point of normative political theory. This respect for member states' sovereignty would seem unwarranted: the EU was after all established to prevent wars and massive human rights violations. Should it not be allowed to intervene in abusive member states?

Instead, the ultimate sanction against a member state is exclusion from the EU. Some critics would say that this shows an insufficient commitment to human rights, and an undue respect for member state sovereignty and subsidiarity. Others may question the benefits of a more permissive regime for interventions – even well-intentioned ones. Optimists may think that interventions will be counter productive, and instead that the threat of exclusion from the EU is a powerful enough deterrent.

7 Conclusion

I have sought to argue that three mechanisms of the Constitutional Treaty provide some improvement of the 'legitimacy deficit' of the EU. This may be faint praise: Both EU optimists and skeptics may agree that there is an improvement but they may disagree about how bad the situation was and still is.

I have also argued that there are remaining tensions and weaknesses in the current arrangements. Some may well go away. In particular, we might expect more party competition about policies and 'constitutional' issues once citizens learn that who they vote for at European elections may actually make a difference.

Other tensions and sources of mistrust remain. In particular, I have suggested that the 'Yellow Card' arrangement for subsidiarity does not do enough to quell understandable fears of centralization. Furthermore, the much needed boost of human rights protections may be helpful, but may offer insufficient protection for minorities within member states. Tensions remain between these three mechanisms - In particular, from the perspective of Sweden, a well-functioning unitary democracy. Why should democratically accountable parliamentarians ever be constrained by unaccountable bodies, be they human rights courts or constitutional courts who uphold subsidiarity? I have suggested that one way forward may be to consider the need for institutions that provide assurance among contingent compliers. They – perhaps we - are committed to do their – our - share in fair practices – but only as long as they – we - are assured that the institutions are fair, and that most others comply.

I have also suggested that the tensions may be easier to address and assess from the point of view of federal political thought.

This is both bad news and good news, for Sweden and SIEPS, respectively. The bad news is that the worries about deep mistrust toward government, and concerns about federalism, are two perspectives that are utterly unfamiliar to Swedish political culture. However, I submit that for many purposes, Sweden is already part of a (quasi) federal political order, with widely different levels of political trust.

The good news for SIEPS is that I think these challenges of federal thought and trust merits further academic attention. How best to conceive of democracy, human rights and subsidiarity in this new European political order are issues that will remain high on the research agenda for at least the next five years, until SIEPS celebrates its 10th anniversary.