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Abstract

The essay looks at the Prodi Commission (1999-2004) in the context of the institutional balance in the European Union. Not only did Prodi come into office at a time of unprecedented weakness of the Executive, but the Commission operates within a changing institutional equilibrium, one made more precarious by the shifting political disposition of the Member States.

The paper is divided in two parts. Part I sets the broad institutional scenario. It argues that the institutional set-up of the Union is best seen as one form of "balanced government", one, however, fundamentally different from the constitutional system of "checks and balances". When looked at comparatively, the European Commission turns out to be a weak institution, vulnerable to pressure from the Council and the Member States. The Commission has none of the political legitimacy and social foundation which allow a constitutional power, say, in the USA, to resist external political pressure.

Part II reviews some of the items in Prodi's agenda, including the administrative reform ─perhaps the most successful operation during Prodi's tenure─, the contribution of the Commission to the Intergovernmental Conference of 2000 and to the Treaty of Nice, and the White Paper on European Governance. The Executive contribution to the "constitutional" Convention and the changing relations with the European Parliament are also discussed in Part II. A few remarks in Prodi's record in carrying out his agenda of "reform and change" conclude the essay.

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1. Introduction

The record of the Prodi Commission may be fittingly analyzed in terms of the dialectic between attempts at systemic change and systemic resistance. While under previous Commissions, including Delors's, change has been incremental following the ebb and flow of European integration, the nomination of Prodi signaled the need for a new departure. The conditions under which he was chosen in 1999 after the resignation of Santer, a trauma which has left an enduring mark on the morale of the institution; the inclinations of the man as former prime minister of Italy ─Prodi as a sort of prime minister of Europe: these and other factors shaped an agenda premised on the reassertion of the European Executive through internal reform and the restoration of the Community method.

A wider spectrum of forces beyond the vicissitudes of Union life shaped the context in which Prodi was to operate. The conjuncture surrounding the Commission in the five years of its existence (1999-2004) has been one in which the reassertion of state power, occasionally bordering on disrespect for the Union Executive, the growing "parliamentarization" of Community life and demands for democratization were imposing constraints working not infrequently at cross-purposes. To this, one should add the weakening of the Paris-Bonn axis perceived by Prodi's staff as a serious complication in the political steering of Europe.

The pattern was familiar except that it manifested itself in markedly conflictual tones: the pattern, that is, of institutions bent on nurturing a more integrated Union and new loyalties, on the one hand, and forces resistant or openly hostile to change, on the other hand, a trend of which the Treaty of Lisbon (2007) is the most recent manifestation. No greater contrast exists, for instance, between current attempts at watering down the Stability Pact and Prodi's effort to make economic policy a truly Community matter.

The paper looks at Prodi's agenda in the context of the institutional structure of the Union. Not only did Prodi take office at a time of unprecedented political crisis of the Commission; more importantly, the Executive operates in the context of an unstable institutional equilibrium, made more precarious by the changing disposition of the member states to "pool their sovereignty" in designated areas.

The essay is divided in two sections. Part I sets the broad institutional scenario. It argues that the institutional set-up of the European Union is best seen as one form of balanced

government, one, however, fundamentally different from "checks and balances" as practiced in the USA. While "checks and balances" rests on the equal legitimation of constitutional powers all of which emanate, either directly or indirectly, from the people, institutional balance in Brussels reflects the heterogeneity of the Union, "peoples and states", and the lack of a shared political finality for the same Union. Hence an institutional set-up which is hierarchical rather than truly balanced (Fabbrini, 2004) with the member states in firm command.

Based on documentary evidence and direct observation[1], Part II analyses some of the major themes in the Commission's agenda, including internal reform, the Executive's contribution to the Treaty of Nice and changing relations with the European Parliament.

A few remarks on Prodi's record in carrying out his agenda conclude the paper.

2. Institutional balance - how it operates in Brussels

In its modern form, balanced government is an 18th-century invention, the most celebrated version of which is the doctrine of separation of powers. It is through the separation of powers, variously construed, that balanced government has become a constitutional reality in a number of countries. In its essence and original intent, the doctrine was meant to ensure responsible government and public freedom. The partitioning of state powers, fostering mutual control and cooperation among the various branches of government was meant to serve the basic goals of the liberal state: the rule of law and freedom from arbitrary domination.

Separation of powers is a concept not easily adaptable to Brussels. Born out of efforts to change state power into a non-tyrannical form of government (Montesquieu, Madison), the doctrine prescribes distinct spheres of competence among the various state powers within a homogeneous political entity, that is, the territorial state ─attributes none of which pertain to a supranational regime *in fieri* like the Union.

The Union departs from this model in a number of ways, which may be briefly summarized.

1 Much of the empirical evidence in this essay is drawn from a study conducted while I was a guest of the Prodi's Cabinet in 2000 and 2001. I would like to thank Romano Prodi and the heads of his Cabinet at the time of my research, David O'Sullivan, Michel Petite and Stefano Manservisi, for giving me access to the Commission. The members of the Cabinet were equally generous with their time and advice.

Firstly, the design for European unification, original and unprecedented as it is, does not alter the fact that we are dealing with a Union of states gradually evolving towards some kind of supranational entity. European institutions bear witness to the tension inherent in such a project ─states bent on pooling portions of their sovereignty─, especially ambiguity as to the ultimate locus of sovereignty (states, peoples, what?). As in any newly-created center of authority, authority has to be generated and accumulated before it can be carved out - a predicament under which interinstitutional relations tend to be less of opposition than of cooperation against centrifugal forces. The priority, in other words, was to set out and shelter the Community mode from other methods of international action, especially intergovernmental cooperation. The end result of such contrasting pulls ─controversial distribution of power and the need for a common front─ has been a pattern of institutional relations which may be called "antagonistic collaboration".

The system is such that the institutions of the Union: 1) must cooperate in order to bring about action; 2) in so doing they bring to the process the views of their respective constituencies ─governments, peoples, etc. ─ as well as their own vision of the European construction, and in which 3) they relate to each other on the basis of interlocking rather than clearly distinct attributes. The sharing of power in Brussels bears some resemblance to "consociational democracy" (mutual protection through the joint exercise of authority). The European Commission, in particular, is not a decision-making body and has little "exclusive" competence, even though it has been given the unique prerogative to propose legislation. Thus, while there is interinstitutional balance in the European Union, it does not follow neat functional lines, a point which I shall illustrate later on with some practical examples.

Secondly, as is the case for federal states, yet with none of the rigor to be found in the latter, the most basic dimension is territorial: it pertains to the division of competence between Brussels and the member states. Not only is the Union premised on the principle of attribution, whereby it has authority exclusively in the sectors and within the powers recognized by the Treaties, but the respective role of the Union institutions and of the member states is subject to periodical redefinition. Institutional stability is not a trait of the system. On this score, it is only fitting that the principle of institutional balance, not to be found in the original Treaties, has received formal recognition in the Protocol on subsidiarity and proportionality appended to the Treaty of Amsterdam (1997). Even within this cadre, the question of "competence" remains a touchy matter

never to be treated lightly in Community discourse. The Commission, in particular, is quite resistant to any attempt at formally circumscribing its powers for the good reason that it has few "exclusive" powers. Confusion and ambiguity provide the needed flexibility to an uncertain and evolving structure.

Thirdly and relatedly, in a constitution in which there is a variety of legal bases on which to ground legislative proposals with changing distribution of authority and voting methods depending on the procedure invoked (unanimity, qualified majority, etc.), institutional balance cannot be a uniform principle valid throughout the system. Institutional balance in, say, foreign policy operates quite differently from law-making in Community matters. This is, incidentally, still the case under the Lisbon Treaty, even though the treaty was intended to formally abolish the "pillar" structure of the Union. Furthermore, over time legislation in the same policy area, say, the institution of agencies, has come to be based on shifting legal ground and different institutional procedures (agencies were introduced ex art 308 and through Council Regulations in the 1990's, through Council and Parliament Regulation in the 2000's).

It is hardly surprising, then, that legal base challenges have been increasingly used to negotiate institutional balance via the Court. As one study notes, "The wider legislative role afforded the European Parliament, the increase in (the number of) legal bases, and the divergence between the Member States over the Community's role… moved the question of legal basis into a key role in the institutional balance debate" (Cullen and Charlesworth, 1999: 1246).

Lastly, there is the question of the status of the principle under discussion in Union jurisprudence. As noted, absent in the original Treaties "institutional balance" entered primary Community law as late as the Amsterdam Treaty (1997). As in other important matters, it was the European Court of Justice which opened the way. In a judgment of 1956 (Meroni) later to be known as the Meroni doctrine, the Court ruled that "there can be seen in the balance of powers which is characteristic of the institutional structure of the Community a fundamental guarantee granted by the Treaty to the undertakings… to which it applies" (quoted in Lenaerts and Verhoeven 2000: 3).

The construction by the Court in the Meroni case covers what may be called the legal interpretation. The aim is to set limits to the delegation of discretionary powers, prevent institutional usurpation and ensure respect for the rule of law.

Politically, “institutional balance” has a broader meaning: it refers to a specific mode of reaching decisions and conducting business in the Union. On this view, it is meant to ensure that Union action is the result of the cooperation between the Union institutions and respect for the role assigned each of them by the Treaties. It ensures, in particular, the pursuance of concerted policies under the rule of law (unlike, one might add, the intergovernmental method which allows for joint action outside of any jurisdictional scrutiny). As a general principle of the Union legal order enforceable before the Court, “institutional balance” may be seen as the juridical counterpart to the “Community method” (see section on the Community method)

The Court of Justice has provided a more complete reading in the Chernobyl case (1990)[2], the other major pronouncement of the Court on the matter, ruling that interinstitutional balance is a “system for distributing powers among the different Community institutions, assigning to each its own role in the institutional structure of the Community and (in) the accomplishment of the tasks entrusted to the Community” (quoted in Lenaerts and Vorhoeven, 2002: 4).

I shall pause for a moment and offer some examples as to how “balance” operates in Brussels. They are drawn from observations made in the course of a study on the Commission and in one DG, Enterprise (see footnote 1).

The Council is a living example of balanced government at work. Whenever acting in a legislative capacity, the presence of the pertinent Commissioner reminds the observer that l) Ministers of the member state Governments, whatever their degree of agreement, can do nothing in the absence of a legislative proposal from the Commission, nor 2) may override the Executive without the assent of the attending Commissioner, who has the faculty to withdraw the item whenever he/she deems the changes to be seriously at variance with the original intent of the proposal. The Commissioner has greater liberty whenever decisions are made on the basis of qualified majority (QM). In such cases, she may manoeuvre to bring about a voting majority or a blocking minority, as the case may be, by accepting or rejecting amendments - one further reason for the Commission to press for the widest possible use of QM.

A second example concerns the European Parliament (EP). Severely restricted in its role until the Single European Act (1986) empowered the EP with what were to become co-decision powers, it is now a full player perceived with considerable fear by the

Executive. The parliamentary liaison officer in the de Palacio Cabinet, commenting on the change, noted that while Strasbourg received little attention in the early l990's, it is now a central preoccupation of the Commission.

I shall come back to the role of Parliament. It suffices to note here that the EP has induced in the European Executive, at least under Prodi, a degree of political deference which reflects as much the weakness of the Executive after Santer as the growing clout of the Assembly.

The way in which the internal acts of the Commission are generated also bears witness to a pattern of negotiated agreements. One instance is the interservice consultation, arguably the most important bureaucratic procedure within the Executive. It is based on the notion that each legislative proposal, or act, from any Service of the Commission must be ultimately submitted to all the other DGs, with each Commissioner and his/her Head of Cabinet entitled to a **veto d'attente** until a satisfactory version has been worked out. This results in many texts being drafted and redrafted, not infrequently up to five or more versions of the same document. Unanimity is not required, but no item is submitted to the Commissioners until the interservice exchange generates a consensus solid enough in the judgement of both the Secretary General and the President's Cabinet to justify its inclusion in the agenda of the College. There are exceptions: sensitive and divisive dossiers are sometimes settled at the College level once all the other layers of negotiation have been unsuccessfully tried out. (One such case was the White Paper on chemicals).

In the nature of things, as the dossiers move along from the administrative to the political level they become increasingly "politicized". Prodi tried to counteract this tendency by laying greater stress on the DGs' responsibility to settle as many dossiers as possible at the interservice level, with limited success. Once the Members of the College and their Cabinets are drawn into the discussion, they inject into the deliberation overtly political concerns including national sensibilities, which make the governments of the member states, or more accurately the countries of each Commissioner, vicariously present in the decision-making of the Commission. Nor, it should be noted, is this objected to. There is evidence to suggest that top officers, including members of President Prodi's Cabinet, view such inputs as a vital component of intra-institutional pluralism.

2 The question arising in Chernobyl was whether the European Parliament had a right to bring an action for annulment against acts of the Council or the Commission. See Lenaerts and Verhoeven (2000).

No list of Community practices can plausibly omit the committee system (advisory Committees, Comitology, committees of scientific national experts and the whole panoply of similar bodies operating in Brussels). Not only, as one officer told this writer, are advisory committees part of the "power base" of the Commission to which they provide advice, negotiated political consensus and expertise; more importantly for my argument, the proliferation of such bodies combining consultation and deliberation shows how the "balance of power" notion in the EU reaches deep into European societies and state life, well beyond the formal perimeter of the Union's institutional system (De Burca, 1999).

2.1 The doctrine of separation of powers in comparative perspective

So far, I have dealt with institutional balance in the EU providing some examples as to how it operates. There are, however, broader questions to be answered: under which conditions can a branch of government resist pressure? And is such balance, assuming one to emerge, the product of interaction among institutions of comparable authority or the result of a system pluralistic yet hierarchical? Also, how does the distribution of powers link up with democratic accountability ─a key question in view of the fact that the doctrine under discussion has become a basic tenet in American liberalism (Madison), just as institutional balance in Brussels is deemed to be essential to the democratisation of the Union.

One recent study (Fabbrini, 2004) has convincingly argued in favour of a broader approach to the Union, one which sees its institutional structure as part of a larger family rather than as a "unique" case. Following Fabbrini, this section looks at the political system of the European Union in the light of comparable systems such as the USA, perhaps the purest incarnation of "separation of powers". This might better clarify the specific nature of interinstitutional balance in Brussels and the social foundation of its system of authority.

Institutional balance may be found in a number of settings the common denominator of which is the idea of balanced government. This leads naturally to Montesquieu, the first to formulate the doctrine of separation of powers.

It is worth recalling that the prime concern of Montesquieu was with political freedom rather than with the structure of government. His interest in the constitution of England

proceeds from his celebrated definition of liberty: “Une constitution peut etre telle que personne ne sera contraint de faire les choses auxquelles la loi ne l'oblige pas, et a ne point faire celles que la loi lui permet”. Freedom, then, is not independence or even the privilege of living under laws of one's own making; it consists in being free from the abuse of state power. This can be achieved, Montesquieu argued, “through a distribution of authority whereby the legislative power and the two branches of the executive ─the power to make peace and war and the power to judge, respectively─ are administered by different classes of people” (my translation from the French).

In its pure form, the doctrine of Montesquieu can hardly work since it calls for “an organic division of government in three branches” each of which would be confined to the corresponding function. Furthermore, “the persons who compose the three branches…must be kept separate and distinct, no one being allowed to be at the same time a member of more than one branch” (Lenaerts and Verhoeven, 2000). Thus conceived, there would be little interaction, little mutual control and problematic cooperation. To make the doctrine a working rule “it has proven necessary to combine the principle of separation of powers with other political ideas, such as the idea of balance and, in particular, the concept of checks and balances”, the central feature of which is that “each branch of authority can fulfill its tasks…only when at least one other branch cooperates to that effect, thus controlling the use the first makes of its power” (Lenaerts and Verhoeven, 2000: 9).

On this view, not separation of functions but the impossibility for any institution to act alone and the correlative need for concerted action are at the root of control and restraint. I shall come back to the idea of checks and balances at the end of this section.

A second problem, besides the notion of balance, relates to the social foundation of the various branches of government, that is, the constituencies, if any, for which they speak. Montesquieu broached the problem in his discussion on the legislative branch, for which he favored a structure providing two distinct chambers, for the nobles and the people, respectively, with the **faculté d'empecher (**or veto power) vested in the former and the **faculté de statuer** in the latter. More vague were his considerations on the social bases of the executive, about which he says that power is best vested in one person, the monarch, rather than many, for the sake of efficiency.

Elaborating on the point, one study notes that there is “a deeper strand in Montesquieu's call for a division of governmental power…. Each institution represents a particular

interest and particular views. The balance of powers is to reflect the ideal balance between the different interests within a society", adding that "the ideal of separation of powers… links up with the republican ideal that sees the democratic process as an institutionalized, and thus civilized, dialogue between different interests, which is capable of uncovering the common good for all" (Lenaerts and Verhoeven, 2000: 9; cf. Craig, 1999). On this reading, Montesquieu is linked to Machiavelli and his idea of republican government, according to which freedom for all is best safeguarded if the various "humours" (or classes) in the population are given an institutional role in the government of the city.

Thus, a new element enters the theory: the search for the common good. "In negative terms", one legal scholar notes (Craig, 1999: 54), "institutional balance would serve to prevent tyranny…In positive terms, such a balance would help to ensure a deliberative democracy within which the differing 'constituencies' which make up civil society" engage in a debate meant to identify and pursue the common interest (cf. Eriksen, Joerges and Neyer, 2003).

The reinterpretation of Montesquieu in terms of the republican ethos speaks to our problem since the whole process of European integration may be said to consist in the attempt to frame common interests and common policies in the midst of centrifugal forces. It is not fortuitous but intrinsic to the political logic of European integration as it unfolded after 1945, that the notion of general interest, by now a relic in national debates, is at the center of Commission rhetoric and the major justification of its powers.

Once "balance of power" is seen in conjunction with social representation and the representation of the major interests in society as a prerequisite for the pursuit of the common good the institutional structure of the EU appears in a new light.

For one thing, the orientation to the common good and the institutional machinery meant to uncover the "general interest" are as basic to the "Community method" as they are to the republican model, a point to which I shall return shortly. On this view, the Community model links up with the republican tradition, whose twin pillars are institutional balance **and** democratic deliberation geared to the pursuit of the public interest (Craig, 1999: 54).

The problem is whether the Commission has powers commensurate to its rhetoric and the political clout to use such powers. One should not forget that the idea of a

government reflecting the major group in society is contingent on the latter's capacity to have their voices heard through appropriate institutions. A number of characteristics in the EU system makes this prospect unlikely or highly problematic.

Firstly, the Union "does not rest on an organic separation of powers but on a balanced interaction between representatives of various interests". The legislative function is jointly exercized in most matters by Parliament and the Council, yet the European Parliament has no right to propose legislation. And although the Commission has the quasi-monopoly of legislative initiative, a unique prerogative and its major source of political leverage, it is not free to frame implementing legislation except under the supervision of the member states acting through "comitology". As for the Council, in part the Upper House, in part the authority which ensures ultimate political direction, it is accountable to the European Parliament only to a limited degree. Any attempt made by the Commission to introduce a neater division of labor among Community institutions, for instance by revising comitology and the exercise of executive responsibility, has met with strong resistance from member states and the Council.

The absence of a genuine separation of powers may be traced to the dual nature of the Union, as a union of peoples and states. This results in heterogeneous institutions, with the Parliament speaking for the peoples, the Council representing the governments and no agreement as to which is the ultimate locus of sovereignty. Heterogeneity is compounded by the differentiated bases of political legitimation. The European Parliament draws its credentials from direct popular mandate even though it remains a far cry from a full-fledged parliamentary assembly. The Parliament has, in particular, refrained from claiming for itself the right to propose legislation in order, in part, not to unbalance the system and erode the unique position of the Commission (Craig, 1999: 56). As for the Council, its role in the institutional scheme "can be defended most fundamentally because the democratic legitimacy of the Community is founded upon its states as well as its peoples". It also draws credibility from the fact that ministers represent democratically elected executives and from the nature of the Community as an international agreement (Ibid.).

It is enough to stroll in the halls of the Lepsius building, the home of the Council in Brussels, to sense the powerful effect of such combination of factors. Nothing can rival the self-assurance and sense of righteousness of officers acting from a national popular mandate. The exercise of responsibility within a shared Union has attenuated but not drastically altered this perception. In particular, the Council seems to view the European

Parliament as a sort of outlandish institution within a political entity which for all its peculiarity partakes of the nature of an international organization. As for the Commission, it suffers from the shortcomings to which I now turn.

The notion that modern democratic government rests on elective representation and that the representation of all major groups is a prerequisite for the pursuit of the common interest, calls into question the bases of Commission authority. In a representative scheme the Commission is, strictly speaking, an anomaly. It is vested with the institutional mission to serve the European interest precisely because it has no special constituency to serve —a heavy burden for any Executive. (All of the above is a quotation from, or a paraphrase of Lenearts and Verhoeven, 2000: 10).

The reasons for such an anomaly are well known. In the conditions under which the idea of a united Europe was launched after 1945, none but officers freed from a national mandate were deemed capable of acting on behalf of common goals. The institutional design of the Commission proceeds from such imperative. Conceived as a non-representative body, framer of the general interest and guardian of the Treaties, the European Commission embodies a non-electoral type of representation which has a long history but no modern legitimation (Pitkin, 1967). Hence its originality but also vulnerability vis-a-vis those institutions which rest on various forms of democratic mandates, that is, the European Parliament and the Council. The current debate on the democratic deficit, greater transparency and the like does nothing but magnify the fragility of the Executive and the sense of insecurity of many of its officers.

Lenaerts and Verhoeven (2000: 10) point to a third peculiarity of the Union: "One could complement this list (of institutional traits) by referring to the many instances wherein European law accomodates for the participation of functional interests in European governance". This, again, is due in part to the peculiar status of the Commission. Deprived of a parliamentary majority for guidance, the Commission draws inspiration and direction from a number of sources including, crucially, groups in civil society, especially business. They provide the "intelligence", expertise and expectations without which the Commission would be incapable of formulating plausible lines of action.

In view of the above it comes as no surprise that the Commission is a major target of lobbying and the center of wide-ranging consultation (cf. Graziano, 2002). Interaction with groups is both informal and formal. Formal consultation is usually through

advisory committees set up by the individual DGs. They give voice to the clientele of each Service, of which they constitute an essential interlocutor. How to harmonize sectorial pulls and the overall European interest in the day-to-day administration of dossiers is a further major challenge for the institution and its officers.

To sum up. The constellation of factors reviewed, particularly the question of the legitimacy, formal powers and political clout of the Commission, explains why the Commission is more often than not incapable or unwilling to resist political pressure, especially when mounted by powerful member states. Paolo Ponzano (1996; 2000), for many years the representative of the Commission in the COREPER I, has documented the declining autonomy of the institution vis-a-vis the Council and other actors. Such dependency affects both the manner in which the right of initiative is being exercized and the content of legislation. Legislative proposals from the Commission are increasingly in response to external solicitation, especially from the Council or the various Governments. Although such requests are not binding they are politically irresistible. Equally if not more important is the fact that the Council has been increasingly operating on the basis of intergovernmental deals rather than a "communitarized" institution. As Ponzano shows, the timidity with which the Commission has wielded its powers in Council deliberation has much contributed to such a state of affairs.

Things work very differently, to wind up our discussion, in a full-fledged system of checks and balances. A brief reference to the USA brings out the contrast.

For the framers of the American Constitution, the basic problem was not dissimilar, **mutatis mutandis,** from the one we find in Machiavelli and other republican blueprints: how to protect the public interest (as conceived by the propertied minority which drafted the Constitution) and the rights of individuals from the oppressive power of factions, especially majoritarian factions, the most dangerous since they could avail themselves of the majoritarian principle basic to democratic rule (Graziano, 2001). The solution has been a republic organized around multiple and autonomous constitutional institutions, which, however, must cooperate with each other in order to bring about public action. The extension of the Union to thirteen states in 1787 was supposed to work in the same direction, by making factions more difficult both to forge and operate.

What is unique to the US and cannot be replicated in an international organization is the existence of a **demos** in the name of which the republic was founded and is governed. As Fabbrini (2004) makes clear, the ingenuity of the American constitution consists in the fact that the will of the people is tapped through differentiated elections and finds expression in institutions none of which can issue a vote of no-confidence vis-a-vis the other. National elections for the choice of the president (every four years), state elections for the Senate with a partial renovation of the Upper House every two and local elections for the House (a two-year mandate), provide the foundation for institutions which rest on an equal yet differentiated basis of popular legitimation.

Nor is this the end of the story, since in addition to periodical elections there is a higher law, the constitution, which guarantees the equilibrium between popularly elected institutions and between the latter and non-elected bodies like the Supreme Court. So that, Fabbrini (2004) concludes, the government is not the President but the ensemble of constitutional bodies.

The gist of the argument is that for a system of checks and balances to emerge and function, the various branches of government must be buttressed by a constituency invested with the authority to delegate power, which in a democracy is the popular will. In the USA there is one, broad constituency, that is, the "people" which is called upon to express itself through a variety of elections, at different territorial levels and at different points in time. The system is such that each institution originating from the people (or in the case of the Supreme Court, originating from the Constitution) has the power and authority to resist pressure from the others. This, and none else, is the social and political foundation of checks and balances.

By contrast, in the European Union authority stems from a variety of sources which are not only irreducible to each other but in competition as bases of legitimation. The "neutral" yet intensely political role of the Commission stems from this lack of agreement on a clear, shared ordering among the competing sources of political legitimation.

2.2 The "Community method" as an alternative form of balanced government

In spite of the spurious form it takes in Brussels, or perhaps because of that, institutional balance is a working principle jealously advocated by those which stand to lose the most by the undiluted exercise of state power, that is, the Parliament and the Commission. There is not one single version, each institution subscribing to its own interpretation. Controversy and confusion are made worse by the current "three-pillar structure", each of which has its own institutional balance.

To circumscribe the subject we may say that l) institutional balance is at the core of the "Community method"; b) that the Commission is the staunchest supporter of such a method and that c) it subscribes to a vision of the future premised on the extension of the Community model to the ensemble of the Union agenda, with the qualifications to be made below.

Prodi offered his own version in a speech made before the European Parliament on October 3, 2000. (All the quotations in this paragraph are from this text).

Built around the institutional triangle of the Council, Parliament and the Commission, the Community method has proved extremely successful: "All the lasting achievements of the European Union from the single market to the euro, including four successive enlargements, have been the product of our unique system, based on a delicate balance between the Community institutions". The originality of the system, Prodi added, "lies without doubt in the Commission and its right of initiative":

"The Commission is the melting pot into which the various national interests and tensions are poured, and from which emerge proposals that seek to reconcile these often conflicting interests. In this way it provides not only the synthesis and analysis of the problems at issue but also a starting-point for negotiations in which, once national differences have been aired, the common European interest can be identified."

The Executive is, however, part of a broader system:

"The European interest is the product of an institutional system in which Parliament, Council and the Court of Justice play an equally decisive role". "Any weakening of these institutions weakens the whole". The Union derives its democratic vitality from the direct legitimation of the European people and the legitimation of the Members States. "Enhancing the intergovernmental model at the expense of the Commission but

also, ultimately, of the Council would therefore undermine the democratic nature of the whole European structure". As we shall see, the need to enlist the support of the Council and the Permanent Representations was one important consideration in the preparation of the speech.

A second trait on which Prodi never tired to insist is this: the Union conforms to "the principle of a Community based on the rule of law, respect for which is guaranteed by the Court of Justice". Coupled with the inclusion of the Charter of Fundamental Rights in the Constitution, the rule of law makes the Community a veritable Community of right, in contrast, again, to what is obtained in intergovernmental cooperation and in the sectors which have not been "communitarized". As an example of the latter, Prodi cites the "Third Pillar" (justice and home affairs): "even the deliberations of the fifteen Justice Ministers on such sensitive issues as penal law and police cooperation escape the scrutiny of Parliament and the Court of Justice".

Prodi offered one final argument. As the Union departs from such unique system, it runs the risk of fragmentation. A prime example is the office of High Representative for foreign and security matters: "This model confuses the roles of the Council and the Commission in a way that could ultimately jeopardize both struts of the institutional system and exclude Parliament from any effective power". Hence the need to "absorbe" the Office into the Commission "with a special status tailored to the needs of security and defense", a provision which has found its way into the Treaty of Lisbon.

The need for coherence in the realm of economic policy is no less compelling. The current situation, Prodi noted, is "indecisive and muddled. The Central bank is independent, but unlike every other protagonist on the world economic stage it is not flanked by a stable economic policy body representing the… the economic strategies of the Union and its members." Here again the solution does not lie in the creation of one more High Representative, this time for economic policy, but in making the Commission "acting on a mandate from the Council…the voice of the Union's economic policy".

One word about the background to the speech. Written by Michel Petite, the Head of Cabinet and architect of the operation, the idea emerged in a situation in which at the eve of the Nice Council, a growing number of politicians including Chirac and the German Foreign Minister Fischer were offering their views on the future of Europe. But, as Petite notes, "Prodi was not free to tell his own utopia as Chirac and Fischer had

done" without departing from his institutional role. By focusing on the Community method Prodi could offer his own vision while remaining true to his duties. The timing was also important: the speech had to be made early enough so as to impact on the Nice Council (December 2000), yet not before the Danish referendum on the euro, out of respect for the Danish voter.

The pronouncement must be equally seen in the context of the political isolation of the Commission at the time. In April 2000 Prodi had been the object of vitriolic attacks from Der Spiegel, Le Monde and The European Voice questioning his capacity for leadership. One headline in Der Spiegel labeled Prodi "The loneliest man in Brussels" (April 3rd, 2000). Characteristic of the "siege mentality" of the Cabinet at the time is the fact that it saw in the campaign not just criticism from the press but an assault on the Commission engineered by a number of Foreign Ministries in the member states.

Petite made sure that the operation would find a receptive audience by sounding out several actors, including the various Commissioners some of whom had been reported as "plotting" against the President, and the parliamentary groups. The choice of the venue fell on Parliament, a potential ally. Special attention was paid to the Council and to the Permanent Representations on the theory that they, too, stand to loose by the erosion of the Community system. Finally, the High Representative for Foreign Policy, Solana, a key target in the attack on fragmentation, was informed and personally reassured.

One lesson from the episode is that the notion of institutional balance, far from being a shared principle, is part and parcel of a vibrant dialectic. The Commission frames it in terms of the "Community method" in which it sees the quintessence of the **"orthodoxie communautaire".**

3. The Prodi Commission. The man and the agenda

> "Prodi is still having trouble understanding that he and his Commissioners have only as much weight as the Heads of State or Government allow them to have"
>
> **Der Spiegel**, April 3, 2000

By summer 2002, half way through his mandate, Prodi felt reasonably reassured after considerable initial problems. The period 2000-2002 had been one of political difficulty for the Commission, strain and isolation for the President. Resistance and foot-dragging

were to be expected as the result of plans, to be described below, to "reconstruct" a discredited institution. But personal factors played a role. Three factors, in particular, added to the problem: l) a style of leadership perceived as both ambitious and hesitant, possibly a reflection of the Italian penchant for compromise; 2) some ill-conceived or premature initiatives like Qaddafy's invitation to Brussels; 3) a limited capacity for communication. One should add a less than faultless "**maitrise des dossiers**", which cast doubts on Prodi the administrator.

At mid-term, things looked better. As Prodi told this interviewer in July 2002, "the worst is over". Trusted men had been put in key positions[3], attacks from the press had somewhat abated, while a number of goals basic to the Commission had been achieved or were in the process of being realized, including the introduction of the euro, negotiations on enlargement and the launching of the Convention. These were part of a broader agenda which will be discussed in this section.

Out of the enormous amount of activity and ideas which substantiate the work of an institution as complex as the Commission over several years, it is possible to select, I believe, a number of statements illustrative of its general line of action. Five items, I believe, were at the core of Prodi's agenda on institutional matters. They are: the strategic objectives 2000-2005; the wide range of measures known as internal reform; the contribution to the Intergovernamental Conference in 2000 and to the Treaty of Nice; the White Paper on European governance; and the contribution to the Convention.

[3] Three positions are central to the strength of the Commission President: Secretary General, Head of Cabinet, Director of the Legal Service. By mid-2002, all three posts were held by officers whom Prodi could personally trust: David O'Sullivan, his former Head of Cabinet, had been appointed Secretary General; Michel Petite, also a former Head of Prodi's Cabinet, had been made Director of the Legal Service while Stefano Manservisi, a long-time associate of the President had moved from the position of Deputy Head to that of Chef de Cabinet.
The Forward Studies Unit came to play an equally important role. Prodi changed the unit into the Group of Presidential Advisors (GOPA) which was placed under his own authority rather than of the Secretary General's as had been the case with the Cellule de Prospective.
Much could be said of the complex pattern of cooperation and rivalry within the circle of Presidential officers. Two remarks will be offered here.
The first concerns the office of Secretary General (SG). The SG is at the same time the head of the Commission bureaucracy and the chief administrative advisor to the President, briefing him before each meeting of the College - two roles which may come into conflict especially under a President who intends to reform the Services. Moreover, the President is heavily dependent on the Secretariat General due to the paucity of the Presidential staff - basically 9-10 members of the Cabinet plus the presidential advisors. His Cabinet could not possibly discharge its many duties, including the setting up of dossiers, political coordination and mediation, without the support of the SG, especially the expertise of officers in "Coordination", arguably the most important direction within the Secretariat General.
The second point has to do with potential rivalry between the GOPA and the Cabinet. One area of friction has been speechwriting. The Cabinet was concerned that not infrequently the main input for important statements was coming from the GOPA, a body with access to the President but no operational responsibility. The close personal relationship between the head of COPA and Prodi did not make things easier. I should add that over time relationships within the Presidential circle improved remarkably.

These items will be discussed in turn. The changing relations with Parliament will be discussed at the end of the paper.

3.1 Initial steps

Innovation has the greatest chance at the inception of a mandate when power positions are not yet crystallized. This has been the case in 1999 in the wake of the power vacuum left by Santer and before the parliamentary vote ratifying the nomination of Prodi. In this interval, a few men ─David O'Sullivan; the future head of DG Enterprise Fabio Colasanti and other close associates of the President designate─ laid the foundation for the new Executive along two lines: l) redefinition of the institutional role of the Commission vis-à-vis Council and Parliament; 2) a clearer separation of politics and administration in the functioning of the Executive[4]. The idea underlying the latter aim was that, in order for the College to be freed of petty matters and solely concerned with political direction and responsibility, the maximum amount of bargaining was to be conducted at the DGs level and only genuinely political conflict passed onto the political leadership.

Other measures taken in the interregnum included: l) the reorganization of the "foreign service function" in three DGs, RELEX, Trade, Enlargement and the launching of DG Enterprise charged with industrial policy; 2) relocation of the offices of the Commissioners, previously housed in the Breydel, in the building of the DG for which they were assigned responsibility; 3) down-sizing of the Cabinets to six members and internationalization of their composition so as to make them organs of the Commission rather than partisan arms of the Commisioners; 4) creation of a Media and Communication Service as the collective voice of the Services[5].

3.2 The team

Crucial to the project was the quality of the team. On the whole, Prodi's College may be rated, I believe, of a rather high quality, well-balanced politically and relatively well-balanced in terms of gender (five women out of twenty), with some three-fourth of the members former ministers[6]. Prodi claimed that the nomination of the Members of the

4 Prodi's speech before the EP, May 4,1999
5 Prodi's speech in the EP, July 21, 1999
6 Prodi's speech in the EP, July 19, 1999

College was made with his agreement as President designate, a claim which, if true, must have helped the homogeneity of the team. Certainly no open conflict erupted during parliamentary confirmation of the kind which marred the birth of the Barroso College. Each of the nominees subscribed to the obligation to resign if so requested by the President, a commitment which went beyond Prodi's formal powers at the time.

What may be averred on the basis of the meetings I was able to observe, is that the College tended to operate rather consensually with ample delegation of authority to each Commissioner and no great internal division.

Whether Prodi actually exercized his powers to the full extent of his authority is more debatable. My impression is that, all in all, his has been a relatively relaxed leadership meant more to orient than guide, to mediate than to decide. One should add that an Italian President in Brussels has none of the diplomatic support which, say, a French President of the Commission might enjoy. All of the above should be taken with caution since Prodi has a grasp on problems, men and dossiers greater than what seems to be visibly the case.

Most of the statements I reported on the reshaping of the Executive are from speeches before the European Parliament, towards which Prodi took a number of exacting engagements to be examined below. It suffices to say here that the two vice-presidents of the Commission, de Palacio and Kinnock, were given responsibility, respectively, for relations with the EP and internal reform, a fact, Prodi noted, which "reflects the importance I attribute to these two sectors"[7].

3.3 The Strategic Objectives of the Commission 2000-2005

Early in 2000, Prodi presented the strategic objectives of the Administration before the EP[8]. As the name indicates, they are designed to set the broad priorities on the basis of which to frame, or at least rationalize, Commission action. I will comment on the political assumptions underlying the document, the four policy areas chosen and, briefly, on one such priority, enlargement. The rest of the essay will discuss the institutional aspects of the agenda.

7 Prodi's speech in the EP, July 9, 1999

[8] Prodi's speech in the EU, "A Project for the New Europe", February 15, 2000

Prodi believed that European integration was entering a new stage: while the 1980's witnessed the development of the single market and the '90's the advent of a common currency, the new challenge consisted in the transformation of the Union into a truly political entity. In his judgment, the new frontiers of European integration were Justice and home affairs, a common foreign policy, cooperation in the realm of defense and "the crucial question of fundamental political values". This explains the importance he attached to institutional reform and the convening of the "constitutional Convention", a procedural innovation which he strongly supported and, as he claims, invented.

A related idea was the necessity to reappraise the overall structure of the Union. European integration had developed through a "geological succession of layers" with no "master plan" to direct the project. There was a pressing need to bring political coherence to the fabric, refocus the Union and set up "a new and more democratic form of partnership among the different levels of government" ─member states, regions and civil society[9]. It would be wrong, however, to interpret such a plea for change as a call to redesign competences. While favoring decentralization, the Prodi Commission has been quite jealous of its own prerogatives ─an orientation confirmed by Prodi's explicit reference, as an example of the new approach, to competition. While the administration of policy in this area left room for national authorities and decentralized jurisdictions, the policy itself was to remain the sole responsibility of the Brussels Executive.

A third theme, one which Prodi never tired of insisting upon in the five years of his mandate, was the need to open up the process to civil society. The White Paper on European Governance, to be discussed below, mentioned for the first time on this occasion (February 15, 2000), was to be inspired, in part, by this very concern.

Here again, rhetoric and reality should not be confused; or better said, Prodi's genuine reformist impulse as a center-left politician should be kept separate from what the institution and the bureaucracy were prepared to give up. I have, for instance, the most vivid recollection of the dismay caused in a number of functionaries by Prodi's plans for greater transparency in the Union, including the setting up of registers of documents open to public scrutiny. Nor is this simply a re-run of the conflict between politics and administration. The fact ─and the complication─ is that the Commission is a political bureaucracy, with the rigidities of an administration and the need for strategic manoeuvering typical of a government. "Space to think", that is, a sphere impervious to

9 Prodi's speech "A Project for the New Europe", cit.

external scrutiny, has been the defensive response of the establishment when confronted with the President's intention to open the process to "civil society".

This is the political backdrop against which the Commission set up its strategic objectives for 2000-2005, which consisted of four priorities: promotion of new forms of European governance; the need to stabilize the continent and strengthen Europe's voice in world affairs, enlargement to the East being one essential step in this direction; a new social and economic agenda, including the introduction of the euro; a better quality of life, including security against crime as well as in the realm of food and air transportation.

The administrative reform of the Commission was part of the package, indeed "an essential pre-condition for realising our vision of Europe".

Most of the discussion below refers to point 1 (European governance). Here I shall very briefly comment on enlargement, one of the strategic goals of the Prodi administration.

My impression is that the Commission, while carrying out its role as negotiator with considerable skill, did not think through the implications of enlargement including uncertainties as to the "boundaries" of Europe and the identification of new candidates. Probably what is driving the process are diplomatic and national security imperatives, especially in the case of Germany, rather than well thought-out policies reflecting the priorities of the Union.

Our institutional perspective, however, seems to provide one plausible explanation. There seems to be at work a strong institutional impulse, or institutional logic, making for the unconditional support of enlargement. It has to do with the fact, I believe, that in a Union whose heterogeneity and fragmentation is bound to increase with the inclusion of new members, the power of the bureaucracy is also bound to grow. The Commission is the center of gravity in such a dispersed world, proposing new legislation, administering programs and an expanding budget, and its power and authority are bound to augment as the sphere of action broadens. One proof **a contrario** is the critical reaction to current plans within the College to cut for itself a less ambitious role. A political bureaucracy cannot but be unhappy when told, as the current Commissioner for the Internal Market McCreevy is reported to have said, that the new aim is to initiate as little legislation as possible.

One final remark. One diplomatic advisor to Prodi characterized the negotiations with the ten candidate countries as one more proof of the merit of the Community method.

There is reason in such a view. By centralizing negotiation in the hands of one actor, that is, the Commission acting on a mandate from the Council, this approach has made it possible to replace the plethora of bilateral dealings of each member state with each applicant country with one coordinated process. The result has been simplification, to be sure, but also a pattern of negotiation structured around a uniform **grille** of chapters, as well as uniform parameters for evaluating progress towards accession.

3.4 Internal reform

Fraud, corruption and nepotism, the charges that brought down Santer, were only one trigger of the administrative reform of the Commission. The root of the problem and the general direction of the response reflected, above all, a situation in which the Commission had been given growing responsibilities unmatched by adequate resources. In the process, other systemic problems causing inefficiency and irregularities like career patterns and financial controls came into the picture and were made part of the reform. But the moral tone surrounding the operation, the resentment and **amertume** of a large body of officers cannot be understood unless we recognize that the bureaucracy felt as much responsible for the wrongdoing of some of its members as the victim of a system in need of serious change.

It is to the credit of Prodi, Neil Kinnock, the Commissioner in charge of internal reform, and the whole Commission that a crisis induced by parliamentary censure was changed into a challenge the result of which has been the first shake-up of the European bureaucracy in forty years. As the communication from Mr Kinnock outlining the reform[10] notes with some reason, "Administrative Reform will help the Commission to fulfill its institutional role as the motor of European integration. It is thus a political project of central importance for the European Union". (Hereafter I shall refer to the White paper Reforming the Commission as the "Kinnock document").

It would be impossible, and unnecessary, to analyse in any detail a plan made up of some one hundred actions spanning almost three years, perhaps the most demanding operation in terms of time and energy under the Prodi Administration. The more modest aim is to illustrate the spirit of the plan and the sectors singled out for reform.

10 **Reforming the Commission. A White Paper** - Part I. Communication from M. Kinnock in agreement with the President and Ms. Schreyer, 1 March 2000

The measures fall into three distinct groups: priority setting and efficient use of resources; human resources and career development; financial control and the repression of fraud. The whole is prefaced by a chapter on professional ethic ("A culture based on service") which is at the origin of strict codes of conduct introduced in the course of 2000-2001 for the personnel, political and administrative alike.

Underlying the measures on priority setting is a new system known as Activity-Based Management, whereby policy priorities and the corresponding resources are planned together at every level in the institution. The operational mechanism is a new procedure called Strategic Planning and Programming (SPP). Without going into technicalities, it suffices to say that SPP has two aims, one of which is priority setting. The procedure is meant to induce the Commissioners and the services under their jurisdiction to come up with a list of priorities spanning a period of 2-3 years. The focus is on new programs rather than on ongoing operations, with the aim of programming the activity of the Commission more selectively and over a longer span of time than in annual budgeting.

The other goal of SPP has been to counteract through middle-range planning pressure from without, especially from the EP and the Council, so as to restore a measure of autonomy and flexibility to executive action.

Goals and resources may also be matched, the Kinnock document states, though "externalization", a term which covers a number of options including devolution to Community bodies like the **agences d'exécution**, decentralization to national public authorities as in the area of competition and contracting out to private-sector organizations, quite a common practice in the field of development aid. In order to guide the Commission on externalization, Kinnock set forth a "basic principle" according to which "regulatory or negotiating activities and actions to allocate funds involving the exercise of discretionary power can only be invested in public administrations" and cannot be delegated.

This is not the place to dwell on the complex question of agencies, which are of many different descriptions. I would simply recall that the principle set down by Kinnock ─no delegation of authority whenever **la puissance publique** is involved─ generated heated discussions within the Commission on the question of whether to delegate, in which area and how, including the structure of the agencies and the composition of their governing bodies. This has been especially so in the case of the new independent agencies (not to be confused with **agences d'exécution)** such as the European Aviation

Safety Authority, the European Food Authority and the Authority on maritime security, all of which have been instituted in recent years. Although the composition of their boards varies, they are generally made up of representatives of the member states, of the Commission and Parliament and in some agencies of interested parties including industry and consumers.

A second set of measures set forth in the reform plan concerns the personnel and career development. The basic concept is that a function-based bureaucracy should be turned into a performance-oriented administration for the sake of efficiency and equity. The former system, based on self-contained categories of personnel (A,B,C,D), relied "heavily on qualifications and training at the moment of recruitment" and took too little account of qualifications acquired afterwards, as well as of skills and tasks actually performed. The Commission "proposes to develop a…more linear career structure without categories" so as to make career advancement dependent on merit more than on seniority. An annual assessment is introduced for all, including Directors and Directors General.

Never an easy task, the introduction of new staff regulations was made more difficult by their being proposed by Neil Kinnock, a former labor leader from Britain suspected of propounding an Anglo-saxon philosophy centered on performance in lieu of the French model based on seniority, and of doing so with a view to ingratiate British public opinion ─not a model of support for European integration.

The last set of reforms pertains to financial control. The system of financial management was to be gradually changed from one of "ex-ante visa" administered by the Financial Control DG to ex-post evaluation exercised within each DG. Director Generals were to be made directly answerable for adequate internal control in their respective departments. For this, they could count on assistance from a newly-founded Central Financial Service. The aim was "to create an administrative culture that encourages officials to take responsibility for activities over which they have control ─and (give) them control over activities for which they are responsible", including financial resources. The Community financial interests were to be protected through a variety of means including an independent Anti-Fraud Office (OLAF).

Enough has been said for the reader to grasp the main thrust of the reform. I should only add that for the reform to succeed, interinstitutional cooperation is needed. For one thing, as Kinnock noted, "the Commission will have to refuse (new) tasks when it is not

properly resourced". On the other hand, in their capacity "as legislators, the Council and the European Parliament will handle the revision of the Financial Regulations and the Staff Regulations" to bring them into line with the provisions of the reform.

The upshot of the argument is that "internal reform" is neither a merely internal act nor a purely administrative operation. It consists in a wide range of political measures with profound implications for the functioning of the Union.

3.5 The contribution of the Commission to the Intergovernmental Conference (IGC) on institutional reform and to the Treaty of Nice[11]

2000-2004 was a period of almost uninterrupted Treaty revision to which the Commission contributed with specific proposals. The discussion largely centered on democratization, representation and efficiency in a Union facing its most ambitious enlargement. This section deals with the IGC on institutional reform (February-December 2000), the outcome of which was the Treaty of Nice.

The argument may be organized around four topics debated in the IGC and of central concern to the Commission: 1) composition of the Commission; 2) extension of qualified majority (QM); 3) weighing of the votes in the Council; 4) reinforced cooperation. Other issues include the composition of the Court and the status of the charter of fundamental rights.

As the **avis** of the Commission submitted to the IGC makes clear (see footnote 11), enlargement poses a dilemma to the Executive: how to include new members without endangering collegiality. Collegiality requires that each Commissioner participates in the making of decisions on an equal footing irrespective of nationality. This, the **avis** notes, is the basic source of legitimation in an institution which does not emanate from the popular vote. From this angle, the Commission is a bureaucracy which "reflects" the national components while pursuing the general interest of the Union. On the other hand, in an enlarged College consensus is problematic because of size and due to the absence of the factors which assure cohesion in national executives, namely, the government/opposition divide. Cohesion is based on political, often personal, chemistry within the College and Treaty obligations.

11 The document on which this section is based is Com (2000) 34, **Adapter les institutions pour réussir l'élargissement. Avis de la Commission**, January 26, 2000

Hence the two options offered the IGC: a smaller college based on rotation or an inclusive one headed by a more authoritative president. It should be noted that within the President's Cabinet the idea of excluding some members was never seriously considered. If anything, competition with the Council counseled against exclusion. The challenge was to have a representative college yet differentiated from the Council, a challenge to which the Commission responded by advocating stronger powers for the President.

On this, and little else, the Commission obtained satisfaction. The President was given authority: l) to decide on the internal organization of the Commission, 2) allocate and reshuffle portfolios among the Commissioners, 3) appoint the vice-presidents, and 4) request members to resign. These are the changes for which the Executive, especially the Legal Service, fought long and hard.

Of equal if not greater importance has been the question of QM in the Council. In the view of the Commission unanimity was to apply only to decisions affecting the institutional balance, including comitology, the composition of the Court, the linguistic regime and article 308 authorizing actions not contemplated in the Treaty. In all other matters QM should be the rule. In fact, QM became the yardstick in terms of which the Commission was to evaluate the outcome at Nice.

Success or failure at Nice depended, in particular, on QM being extended to five policy areas thought to be of central importance after enlargement: immigration and asylum; structural funds; social security and taxation to the extent that they impinge upon the single market, and the common commercial policy including services and intellectual property.

Without entering into a policy by policy assessment, progress has been modest in all these areas. Just as modest have been the results as to the strengthening of the codecision powers of Parliament (Governments defeated in the Council would have a second chance in Parliament). It should be said that of all the institutions, Strasbourg has been the most critical of Nice; one sign of this has been the cold reception given Chirac in the course of the parliamentary debate on the outcome of the IGC, as compared to the warm welcome given Prodi on the same occasion.

The Commission was equally defeated on the ponderation of votes. As is well-known, the distribution of votes in the Council and seats in the EP was to become the epicenter of the struggle, with the various governments searching both for compensation (one

Commissioner lost in the College, so many more seats sought in the EP) and ways to fence off the numerical preponderance of the new entrants, many of which are micro-states. For quite some time, the problem with the Council had been the loss of weight of the most populous members due to overrepresentation of small countries. (The minimum population of the countries whose vote is necessary to form a QM in the Council fell from 67.70 of the total population of the Union in 1958 to 58.16 in 1995. Cf. **Avis** cited in footnote 11, p. 23).

The Commission bypassed the difficulty by proposing, unsuccessfully, the "simple double majority", whereby a Council decision is adopted if backed by the majority of states representing the majority of the total population. As for reinforced cooperation, the Commission presented a package meant to facilitate recourse to the procedure. It included changes in the Council decisions authorizing cooperation from unanimity to QM, allowing as few as three states to launch cooperation and making the procedure applicable to foreign and security policy. Here too success was nil.

Reflecting on the over-all approach of the Executive to the IGC one may wonder, in conclusion, whether the Commission missed in part the point by arguing in terms of function and principle rather than in terms of power. As the Forward Studies Unit noted[12], "the Commission's specificity in the negotiation is that it is not primarily concerned by power issues but rather by efficiency and practicability of the institutional system". Yet, in Nice we witnessed little more than crude power politics with little or no concern for the overall needs of the Union.

3.6 The White Paper on European Governance (2001). An interpretation[13]

The White Paper on Governance suffered from overexposure during its gestation and a poor reception once it was made public. It remains, however, an important document since it was intended as the first comprehensive review of the working of the Commission **a droit constant**, that is, prior to modifications of the Treaties.

12 European Commission, Forward Studies Unit: Note for the attention of the President. Subject: Evaluation grid for the results of Nice, December 4, 2000

13 European Commission, **White Paper on European Governance**, July 25, 2001.
The White Paper will be further analyzed in the section on Parliament in connection with the EP's reaction to the document of the Commission.

The attitude of Prodi has been curious. He had been the father of the document on the theory that governance in the Union was in urgent need of rationalization and democratization, especially the need to open up the system to civil society. He harped on this in all manner and fora well before the content of the document was known. Yet, he involved himself quite late in the process when most of the ideas had been vetted and options delineated[14]. Nor his and other Cabinets did much better: as late as February 2001 one Head of Cabinet admitted that not much was known of the document[15].

Disconnection with the political leadership was one problem. A second difficulty has been the manner in which the document was put together. The basic input came from twelve inter-service working groups organized around a number of topics (the European public space, new forms of regulation, links with civil society, etc.). Thus, a document meant to produce an overall reappraisal of the Commission ended up in the hands of bureaucrats.

The exercise was coordinated by a task force headed by Jerome Vignon, a former head of the Forward Studies Unit.

Some of Vignon's insights[16] are helpful in understanding the Commission's inner reading of the problem. In Vignon's view, over time there had been a dislocation in the institutional system of the Union which has seriously altered the balance of powers and democratic control: the Commission had been too timid in the exercise of its prime responsibility; the quality of legislation had suffered as a result of laws assorted with all kinds of technical details introduced so as to better control the Executive; the Council, especially the General Affairs Council, had not lived up to its task of coordinating the Council of Ministers while the European Parliament has been deprived of important powers through comitology and other means. Not infrequently, member states have been at fault in the implementation of Community law.

The Commission has suffered the most. Its right of initiative has been severely curtailed. One result has been that it has been blamed for problems on which it has little control:

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14 Commission européenne, Préparation du Livre blanc sur la gouvernance éuropéenne. Comunication de M. le President, October 24, 2000.
Projet de communication à la Commission sur les options de la gouvernance. Pour une gouvernance démocratique européenne, February 6, 2001, known as “Interim Report”.

15 From the notes taken during the Chef-Cab special meeting on the White Paper on governance, February 15, 2001

16 This paragraph is based on a document intended for the President's Cabinet. Vignon's document is available on request.

"lors de la phase législative, Vignon wrote (cf. note 16), la Commission se trouve en grande partie dépossedeer de sa responsabilité d'initier…une législation. Sur les cinq à six cents propositions législatives annuelles de la Commission, seulement l0 % reflètent une véritable proposition originale; 20 %…répondent à une requête du Conseil ou du Parlement; le reste du droit primaire est induit…par les accords internationaux ou par la mise à jour de la législation existante" through comitology, which largely escapes parliamentary control. (Comitology has since been modified so as to allow for a better involvement of Parliament).

Hence the main political conclusion of the White Paper: "At the heart of the proposed reform of governance is the refocusing of the institutions ─the Commission, the Council, and the European Parliament" (p. 33, White Paper). This is, in my view, the gist of the message: not so much the rhetoric on participation but the need to restore an eroded Community method and its intended balance of powers. In this context, an end must be put to the dispossession of the Commission's basic rights and the disjunction between tasks and responsibility.

Some of the changes may be brought about through the rationalization of current practices (3.4. Refocused policies and institutions), while more radical adaptations, for instance comitology, require the revision of the Treaties (IV. From Governance to the Future of Europe).

Proposals for changes "**à droit constant**" include: the need to more clearly identify the long-term objectives, to which the Commission responded by introducing the Strategic Planning Procedure (see above); to improve the structure and culture of consultation, which led the Commission in 2002 to codify the minimum standards of consultation[17]; to simplify and improve the quality of legislation, to which the Executive responded in 2002 with a specific action plan[18]. The latter commits the Commission to evaluate the impact of Union legislation and choose from a variety of instruments (legislative act, co-regulation, self-regulation, open coordination, etc.), a matter to which the White Paper devotes considerable attention (3.2 Better polices, regulation and delivery)[19]. The underlying idea is that for the Union to regain efficiency and legitimacy it must make

17 Com (2002) 277 Comunicazione della Commissione. Documento di consultazione. Verso una cultura di maggiore consultazione e dialogo. Proposta di principi generali e requisiti minimi per la consultazione delle parti interessate ad opera della Commissione, June 5, 2002

18 Com (2002) 278 Comunicazione della Commissione. Piano d'azione "semplificare e migliorare la regolamentazione", June 5, 2002

the most judicious use of regulatory tools, the principle of proportionality being as strategic today as subsidiarity was ten years ago.

To focus on the **functioning** of the institution was not the only option. For an appeal to the public to take a greater interest in the Union it was not even the most logical: people have a limited interest in procedures. The alternative would have been to focus on policies, a strategy favored by a number of Commissioners. Pascal Lamy, the influential Commissioner for Trade at the time, while advocating a goal-oriented document pointed out one reason why that option was impractical: the profound division in the College as to the finality of the Union and, no less important, the "social model". It should be added, that a different White Paper would have required an entirely different mode of preparation, with greater involvement of the political leadership and a lesser role for the bureaucracy.

3.7 The Commission and the Convention

Prodi claims that he advocated the format of the Convention on the very day that the Nice Summit ended - not an implausible claim for an institution which read Nice as the final proof of the exhaustion of the intergovernmental method.

In the run-up to the European Council in Laeken which launched the Convention (December 2001), the Cabinet reached two conclusions: firstly, the debate on the future of Europe should not be restricted to what was agreed in Nice[20]. The other set goal was that the Convention should come up with a veritable constitution. "A Project for the European Union" of May 2002[21], sets out the Commission's vision. It is, as such, a fitting ending to our discussion on the agenda of the Commission.

Not a formal submission to the Convention but a contribution to the debate, "A Project" is divided into two parts: the policies which European citizens expect from the Union; the constitutional treaty. The premise is that Europe needs common policies to confront global challenges and that such policies should be pursued through one and only one

19 The evaluation of the impact of legislative proposals is the object of a specific communication: Com (2002) 276 Comunicazione della Commissione in materia di valutazione d'impatto, June 5, 2002

20 Traité de Nice, Déclaration sur l'avenir de l'Union à inscrire à l'acte final de la Conférence.
According to the Declaration, the debate on the future of Europe should focus in particuliar on four points: 1) a more precise division of competence between the Union and the Member States; 2) the statute of the Charter of Fundamental Rights; 3) simplification of the Treaties; 4) role of the National Parliaments in the European architecture

21 Com (2002) 247 Comunicazione della Commissione. Un progetto per l'Unione europea, May 22,2002

method, the community method. A unitary institutional frame should be introduced, the three pillars done away with and QM made the “general procedural rule”.

In the section: “One project, three fundamental tasks”, three priorities are identified: consolidation of Europe's economic and social model combining prosperity and solidarity; the creation of a European space of security and justice; an effective foreign policy in keeping with Europe's responsibility as a world power. I shall concentrate on the economy and external action which involve important questions of institutional balance.

One of the most far-reaching proposals concerns the coordination of economic policy. The Commission has consistently argued that the disjunction between monetary policy, the responsibility of the European Central Bank, and economic and budgetary policy, a national prerogative, is unsustainable. Under the current system, the Commission can make recommendations in regard to the Guidelines on economic policy and the administration of the stability Pact. The suggestion is to turn recommendations into “proposals”: while the Council may vote down the former by QM, it may change proposals only by unanimity.

The Commission had little success. Or, to be more precise, things have been moving in the other direction. Not only has the constitutional Treaty left the distribution of authority regarding economic policy unchanged, but recent Council interpretations of the stability pact have further diluted budgetary discipline.

As to foreign policy, the consolidated practice has been that the Executive takes responsibility for the **civilian** aspects of external action ─trade, aid, etc. ─ while the Council and the High Representative are in charge of the military and diplomatic side.

In the document under discussion, the Commission takes the view that foreign policy cannot be compartmentalized. Diplomatic and military action, justice and police coordination, the environment, trade, aid and the external representation of the eurozone are part and parcel of one foreign action. Efficacy and the efficient use of means require integration. The objective, the Commission add, is neither to communitarize foreign policy “which would be incompatible with the emergent European military dimension”, nor make it more intergovernmental. A third way has to be found which the Commission articulates as follows.

The “two centers of gravity” ─the RELEX Commissioner and the High Representative─ must be fused into one office to be located within the Commission.

The Commission sees the matter in terms of a hierarchy on top of which it places the Community model: while "the intergovernmental logic organizes a first expression of the common will of the member states around the high representative", the Community method has "the characteristics necessary to durably define the general interest of the Union, from the phase of analysis and initiative to the mobilization of resources and of common instruments".

A number of adaptations are necessary, to be detailed shortly. But first I would like to recall one more argument in favor of the Community method, and that is the conjunction in the same body of the "capacity for political initiative" and for carrying it out. It "is not conceivable", the Commission notes, "that the high representative presents proposals without identifying the means to put them in practice. Nor is it conceivable that a body external to the Commission disposes at will of means and instruments of which the Commission guarantees the administration and for which it is responsible…"

What is at stake, then, is the coherence and credibility of Union policy. The question is, in addition, one of institutional equity, foreign policy being one more case of disjunction between goal-setting (by the Council) and political and financial responsibility, which falls on the shoulders of the Commission (see above the discussion on the White Paper on Governance).

We may be brief on other aspects since none of the above proposals has found its way into the constitutional Treaty, in which foreign policy continues to be the almost exclusive prerogative of the governments and the Council. Unicity of function and unicity of office do not imply disregard for the specificity of the CFSP. For one thing, diplomatic, economic, military security requires specific procedures. Also, a distinction has to be made between foreign policy, on the one hand, and aid and trade. Finally, geography, history and the military capacity for intervention in specific regions, the Commission notes, create objective differences among states which is the task of the foreign minister to accomodate in his overall foreign policy.

On the institutional framework, the Commission makes three sets of proposals. Firstly, it recommends that the Union and the Communities be merged into one political entity provided with juridical personality. A second set concerns the distribution of competence. A final cluster deals with the Union's decision-making structure, including more extensive co-decision powers for the EP and the abolition of comitology.

The Executive advocates the abolition of the "pillar" structure. This is the solution adopted by the Convention even though, as noted, foreign and security policy remains governed by principles which radically depart from the Community method. (The same is true, incidentally, in the Treaty of Lisbon layout for foreign policy). Prodi also recommended the removal of the opting-out clause as incompatible with equality among European citizens and an enlarged Union.

On the question of competence, the Commission's line has been that no rigid classification is needed since most policies have a European and national dimension: it all depends, the document notes, on the specific measure. Moreover, a clear-cut classification would unnecessarily restrict the Union's scope of activity. Distribution of tasks, then, should not be by sector but **degree of intensity of Union action,** which may range from harmonization to "soft" regulation. For some policy areas it might be useful to specify the appropriate degree of intervention so as to preserve national competence. Precisely because a rigid classification would be inexpedient the Executive recommends that specific provisions be introduced into the Treaty "to ensure that the principles of subsidiarity and proportionality are respected". The Convention decided otherwise and the constitutional Treaty lists areas of exclusive competence, concurrent legislation and support measures, the same scheme as the one adopted in the Treaty of Lisbon.

The Commission had better luck on article 308, the object of much criticism. This article gives the Union the necessary operational flexibility even though it may require a better definition of the common objectives as set out in article 3 of the EU Treaty.

The concluding proposal calls for a more coherent division of tasks. European citizens would have a better grasp on the Union if each institution were assigned distinct responsibility. The proposals are similar to the ones outlined in the White Paper on Governance. Firstly, co-decision should become the norm in the making of European laws. In the second place, European laws should concentrate on general objectives with a clear distinction between the law and what pertains to norms of execution. Finally and concomitantly, article 202 should be revised and the Executive and national administrations assigned responsibility for the execution of policies and legislation. Comitology, in other words, should be radically changed, a long-term aspiration of the Commission.

To conclude. Not only did the draft treaty produced by the Convention prove abortive. But as the list of proposals just outlined shows, the Commission obtained **gain de cause**

in very few cases. An analysis of the Treaty of Lisbon (2007), which is beyond the purview of this essay, would lead to similar conclusions showing if anything else a further involution in terms of integration.

3.8 On the European Parliament: A Changing Balance

As I noted at the beginning of this essay, changes in the relations with Strasbourg are among the most notable transformations during Prodi's mandate. New powers conferred onto the Assembly and "politics", especially the circumstances surrounding the downfall of Santer, explain the mutation. Thus, an institution of uncertain status on which the Commission would routinely rely, changed in a relatively short span of time into a full-fledged actor, one which inspires respect, indeed fear in the Executive.

One sign of this is the procedure whereby the Committee on Budgetary Control clears the Commission of its obligations with respect to the execution of the Union budget. The "discharge", as the procedure is known, raises real fear and anxiety within the Executive as the vote in Parliament approaches. The Commission has adapted to the situation in a number of ways, one of which has been the creation of a house organ called GAP (Group of parliamentary advisers). GAP is made up of the Commissioners' parliamentary liaison officers and meets weekly. It ensures the day-to-day liaison with the Assembly, including response to parliamentary amendments to Commission proposals, the setting-up of the list of Commissioners who are to attend plenary sessions of the EP and other matters.

I shall confine my remarks to two documents. The first is the EP resolution on the White Paper on European Governance, voted in November 2001[22]. It shows the extent to which Parliament and the Executive differ in their views as to how "democratize" the Union. I shall turn next to the Framework Agreement between the Commission and the EP signed by Prodi in July 2000[23], a good mirror of the changing balance between the two institutions. (All references in this paragraph are to these two documents).

The overall tone of the EP resolution on the White Paper is one of caution if not outright rejection of participatory democracy and of a number of other proposals. Participatory

22 Com (2001) 428 Résolution du Parlement européen sur le Livre blanc de la Commission "Gouvernance européenne"
23 Framework Agreement between the Commission and the European Parliament, 5 July 2000. Secretary General, "Practical Guide to the Framework Agreement", 16 October 2000

democracy “must be introduced cautiously” with a constant eye to the principles of “representative democracy, the rule of law and…political accountability” ─all of which would be undermined if “civil society” were given unqualified access to the Union decision-making circuits. As for decentralization of Commission tasks, including independent agencies, it should not be affected at the expense of Parliament, subsidiarity or proportionality. All in all, Parliament turned out to be to an even greater degree than the Commission an uncompromising advocate of both the Community method and the institutional balance on which it is premised.

Let us look at some of the provisions in the EP resolution on governance, which is in four parts: participation, regulatory agencies, transparency, and involvement of regional authorities.

On participation, Parliament makes three remarks. Organized civil society, “whilst important, is inevitably sectoral and cannot be regarded as having its own democratic legitimacy, given that representatives are not elected by the people”. Prodi's plea for greater involvement of citizens and associations is thus called into question on democratic grounds. In the second place, “consultation of interested parties with the aim of improving draft legislation can only ever supplement and never replace” the Council and Parliament as democratically responsible co-legislators. And thirdly, participatory democracy would profit from a more systematic consultation of the Economic and Social Committee and the Committee of the Regions, especially in the early stage of legislation.

The Parliament's main concern with independent agencies, like the recently created European Food Authority, is that they may obfuscate the Commission's political responsibility. The creation of new authorities should not lead to “a reduction in expert and judicial scrutiny by the Commission”; to the same end, agencies must be grounded on a “clear legal base”. Nor do the EP's reservations end here. As the document points out, the setting-up of such bodies would make the right of codecision and political scrutiny by the EP and the Council more difficult, and the Union less transparent. For all these reasons, delegation of tasks to agencies must be restricted to purely technical decisions and subject to very detailed regulation.

On transparency, the Parliament's view is that the most urgent task is to reform the operation of the Council whose openness “is a sine qua non for good governance”. The resolution stresses the need for the Council to hold its meetings in public when acting in

a legislative capacity and for public debates to take place at the start and the end of all legislative procedures. In the same vein, Strasbourg regrets that the White Paper does not mention the regulations on access to documents, of "paramount importance for the achievement of good governance in the Union".

The last part of the EP resolution, "Involvement of regional and local authorities", is broader that its title implies since it includes industry's co-regulation.

On the role of local government in Union governance, the views of Parliament are in line with the conservative bent of the document under review. The EP flatly states that delegation of powers to regional authorities in the Member States "would undermine the basic structure of the Union and be in breach of the principles of subsidiarity and proportionality". Greater involvement of local government should be sought by enlisting expertise at regional level within the Member States in the early stage of legislation, in addition to consultation with the Committee of the Regions.

The White Paper contains an ardent plea for industry's co-regulation. Together with other devices, including the "open method of coordination", co-regulation is meant to unburden the agenda of the Commission and the manner of its execution. The European Parliament has two objections in this respect. Firstly, co-regulation would not guarantee the effective exercise of Parliament's responsibility with respect to either the choice of a legal instrument or implementation of the regulation. In the second place, "in no circumstances" co-regulation should be made to apply to environmental "targets for industry… approved by the Council under agreements between the Commission and trade associations which are neither "representative" nor "accountable".

To sum up. The EP's stance on the Commission's proposals for a more open mode of governance may be termed conservative in that it rarely departs from consolidated practice. Resistance to Commission proposals does not stem solely from the Member States, but from Parliament and the adamant defense of its recently acquired powers. The Community method turns out to be, in the light of the Parliament's position, both the linchpin of Commission powers and a strait-jacket on its capacity for innovation.

The Framework Agreement between the EP and the Commission aims at introducing a higher level of political responsibility and information following the resignation of Santer in 1999 and the cases of misconduct which led to the fall of the Commission. It integrates a number of commitments made by Prodi in the course of the investiture procedure. It does not redesign powers, but regulates the manner in which they are

exercized. The Agreement is, genetically and textually, a lopsided document that seeks, as stated in paragraph 1, to "reinforce the responsibility and the legitimacy of the Commission" and to restore trust and cooperation between the two institutions.

I shall focus on the most important innovations which may be grouped under a number of headings. A first set of steps seeks to strengthen the flow of information so as to allow the EP to keep abreast of, and better evaluate Executive action. They range from the presentation before the EP of the political program of the Commission at the start of a new Executive to semi-annual reports on the implementation of the Commission Work Program. Furthermore, the Commission must inform Parliament of its decisions before they are passed on to the Press (this applies, for instance, to decisions immediately following each College meeting). It is also under obligation to inform Parliament as to the implementation of the Executive's internal reform.

A second and more important set of measures falls under the "**suite donnée procedure**". Under such scheme, whenever the EP asks the Commission to introduce a legislative proposal, the Executive is committed to give appropriate follow-up to such request. A parallel obligation applies to parliamentary amendments voted in the course of the second reading. If rejected, the Commission must provide reasons why it cannot accept such amendments. This set of provisions seeks to reconcile the Executive right of initiative and the need to provide Parliament with reasoned explanations.

Other clauses are meant to enforce political responsibility **stricto sensu.** One provision prescribes that, should Parliament express a vote of censure vis-à-vis a Commissioner, the President is bound to take into serious consideration the possibility of his/her resignation. In the case of reshuffle or change in portfolios, the Assembly should equally and timely be informed. To these engagements, one may add the Commissioners' obligation to attend parliamentary debates on their respective business.

Perhaps no other clause in the Framework Agreement has given rise to more heated debate and controversy than the provision of confidential information to Parliament in matters related to its control missions, including **décharge;** just as no other measure is a better proof that we are in the presence of an accord which cuts deeply into the autonomy of the Executive. The point at which an internal document reaches the level of formalization as to fall under this obligation, is a matter of conjecture. Be as it may, it is evident that in discharging this onerous responsibility the Commission must keep a

balance between the right of Parliament to receive pertinent information and the Executive's legitimate needs of confidentiality.

To this list, long and incomplete, one should add a cluster of measures which make it incumbent for the Commission to keep the EP fully and timely informed on matters in which the Assembly has limited powers, including international negotiations, the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). Parliament must be informed as to the intention to start an international negotiation and on progress in the course of negotiations. And since the aim is to allow the Executive to take note of the orientations of the Assembly, the information must be both timely and adequate. MEPs may be included as observers in Commission delegations charged with international negotiations. As for the CFSP and JHA, the Agreement extends existing best practice to these sectors. Here the Executive commitment consists in informing Parliament, particularly with respect to initiatives and positions of Member States in the CFSP and JHA areas.

Enough has been said to grasp the content of the Agreement and its political significance. It codifies relations at a time of maximum political weakness of the Commission. It also signals a trend in the direction of the further parlamentarization of Union life.

4. By way of conclusion

A long essay deserves a short conclusion. In assessing Prodi's record we should remember that Prodi found a shattered institution. The reordering of internal structures, procedures and priorities, on the one hand, and the reassertion of the Commission's authority, on the other hand, were not a matter of choice but an institutional imperative. In addition to a complex, multi-faceted internal reform, perhaps the most successful operation during the five years of his tenure, the relaunching of the institution took the form of the vigorous reassertion of the Community method and the underlying interinstitutional balance.

It is here that the institutional and comparative dimension discussed in Part I enters the picture. The perception, so clear in Prodi's staff, that the Commission has been "under siege", was no passing phenomenon. The Commission is weak especially in terms of political legitimation. It suffers from a chronic disproportion between goals, that is, the formulation and execution of common policies under the Treaties, and means, including a weak institutional foundation. This is brought out in Part I, in which the political system of the European Union is seen against the backdrop of other species of "balanced government", particularly "checks and balances". The Commission has none of the institutional resources and social foundation which allow a constitutional authority, say in the USA or Britain, to resist external political pressure.

This, to my mind, is not a way to **a priori** absolve the Executive, but to put its efforts in context.

Changes in the institutional system, the focus of this essay, may come about in two different contexts: **à droit constant,** that is, without modification of the Treaties, or through Treaty revision. The White Paper on European Governance is a prime example of the former mode of innovation, while Executive contribution to the Treaty of Nice and to the "constitutional Convention" falls into the latter. The White Paper suffered from a number of weaknesses, including its bureaucratic mode of preparation, which are investigated in the essay. But a number of other obstacles, some unexpected, stood in the way of the proposed changes. The European Parliament, in particular, emerged as a stern critic of the Commission and its attempts to innovate in the direction of "participatory democracy". Thus, the Community method, vigorously defended by

Parliament, has turned out to be as much a resource in the hands of the Commission as a barrier to political reform.

Nor was success much greater in the case of the Treaty of Nice. None of the major proposals advanced by the Commission in view of enlargement found their way into the Treaty. This applies equally to the extension of the QM mode of voting in the Council, "double majority" (population cum number of member states) as the criterion on which to base QM and the proposals meant to lay the foundation for a common economic policy. The story of the Convention is partly similar, even though this innovative method of Treaty revision followed the lines advocated by the Commission. But, to cite just one example, on the crucial question of competence for which the Commission recommended no rigid classification, the Executive had to adapt to quite a different scheme, one which more sharply delimits its sphere of action.

While all of the above may not be a sufficient guide for evaluating success and failure of the Prodi Commission, it places its record in the appropriate institutional and political context. For a more adequate appraisal, we must rely on the historians who have the heuristic tools, the degree of removal and wealth of information required for a critical judgment on the Union.

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