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Decision Making in the European Community: The Council Presidency and European Integration, by E.J. Kirchner

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Court) to choose between two parts of its own soul—
between liberal multiculturalism on the one hand and 
liberal religious neutralism on the other.

With Jacobsohn's help we see how vastly different 
such questions appear when considered from the per-
spective of Israeli constitutionalism, which he calls an 
"alternative pluralism." In the U.S., pluralism is said to 
require the state (and its schools) to be scrupulously 
neutral among rival sub-communities and their values. 
In Israel, pluralism requires the state to accommodate—
and empower—the cultural institutions of various reli-
gious sub-communities, even while it publicly affirms 
the centrally Jewish identity of the polity as a whole. The 
American rule of religious neutralism, if transplanted 
unmodified, would shatter the identity of the Jewish 
state, and would be regarded by most Israelis (Jew and 
Arab alike) as a homogenizing doctrine corrosive of the 
actually existing plurality of communities. Americans 
may find such thinking incongruous. But in a brilliant 
move of internal comparison, Jacobsohn points them to 
the one "glaring exception" to America's liberal consti-
tutionalist norms: the native American tribes (p. 18).

Based on early treaties and their claim to primeval 
nationhood, the tribes, as communities, enjoy constitu-
tional recognition in a manner more consistent with the 
Israeli than the American brand of constitutionalism. 
Most revealing was the 1968 "Indian Civil Rights Act," 
opposed by native Americans as an assimilationist in-
strument whose exaltation of individual rights would 
erode tribal cohesion. Jacobsohn notes that the final 
version of the Act pointedly omitted any no-establish-
ment-of-religion clause, since the integration of spiritu-
ality and public order often constitutes tribal identity. As 
Jacobsohn says of Israel, such communal autonomy 
"supports political stability by providing non-dominant 
(and inassimilable) groups with mechanisms that enable 
them to minimize the effects of their inferior position in 
the larger society" (p. 35).

Liberal doubters might dismiss the native American 
case as a constitutional regime's pragmatic compromise 
with a marginal anti-constitutionalist sub-community. 
The bigger question, then, is whether such arrange-
ments qualify as a version of constitutionalism when, as 
in Israel, they mark the scheme as a whole. Does the 
Israeli experience represent its own principled form 
of constitutionalism, as Jacobsohn seems to hold, or does it 
qualify only to the extent that it conforms to the norms 
of American-style individualist liberalism, with devia-
tions regarded as anti-constitutionalist malfeasance?

The State of Israel does not, of course, have a formal-
ized constitutional text; it has an incomplete set of "Basic 
Laws" on different subjects passed by the Knesset, and 
in no list of constitutionally protected individual rights. In 
the absence of a definitive document, the 1948 Declara-
tion of Independence has loomed large. Along with the 
1950 Law of Return, the Declaration continues to define 
the Israeli policy, and under its terms the Israeli Su-
preme Court has developed a practice of judicial review 
that includes substantial protection for individual civil 
liberties. Score one for Israel, at least by American 
criteria.

Yet Jacobsohn does not gloss over the lack of a text. 
Creating a unified text is a daunting task, he explains, in 
the face of the tensions which comprise the Israeli polity. 
For Israel is constituted by its dual commitments—
announced in the Declaration—to being a Jewish state 
and to ensuring equal rights and freedoms for "all its 
inhabitants," Jacobsohn calls this "a mix of universal 
and particularistic principles" (p. 237). In several rich 
chapters, he examines the political and jurisprudential 
consequences of this mixture. He examines the recent 
controversy over amendments to the Law of Return 
(Who is a Jew?). He shows how the Israeli Court's 
dominance has been curtailed by the mix of constituti-
tional principles just as much as by the tradition of 
parliamentary supremacy. He reviews education policy, 
national security censorship, and free-speech jurispru-
dence, most intriguingly the Kahane case and the ban on 
the showing of the film The Last Temptation of Christ 
(banned briefly out of respect for the sensibilities of 
Israel's minority Christian community).

Jacobsohn shows how ambiguity characterizes Israeli 
jurisprudence in all of these areas. He is far from 
portraying Israeli law as consistently communitarian or 
iliberal; by his own account the outcomes often match 
those of American courts. But with careful attention 
to nuance, he demonstrates how, even in those cases 
which seem to track most closely with American juris-
prudence, there remains among Israeli judges a princi-
pled reticence to embrace the liberal view wholesale, 
and a consistent recognition that Israel's Jewish identity, 
and its fragile cultural context, make it unwise—even 
unconstitutional—to replicate the jurisprudence of indi-
vidual autonomy rights.

In his final chapter, Jacobsohn broods on the theoretical 
implications of his comparison. He struggles to 
articulate the meaning of constitutionalism independent 
of liberal criteria. As illuminated by the Israeli experi-
ence, constitutionalism "is definitely not illiberal pol-
tics," he says, "but its conceptualization should not be 
confined only to polities that embody an unambiguous, 
robust commitment to the ends of liberal democracy" 
(p. 237). I think his own remarkable argument suggests 
that we go further still. He makes me wonder whether a 
mixed constitution of the Israeli variety isn't in fact more 
authentically constitutionalist than any of the unmixed 
varieties which (like "liberal constitutionalism") do not 
obstruct the despotism of their own principles.

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GRAHAM WALKER

Decision Making in the European Community: The 
Council Presidency and European Integration. By 
$24.95 paper.

The entry into force of the Maastricht Treaty on 
European Union on 1 November, 1993 came after much 
delay, including a razor-thin referendum vote in France 
and two such votes (the second was to deal with an 
initial rejection) in Denmark. The treaty has introduced 
a new level of complexity (some would prefer to char-
acterize it as a new level of confusion) into the nomen-
clature, decision-making process, institutional frame-
work, and relations between Brussels and the national 
governments of the 12 European Community member 
states.

The European Union is now the umbrella term refer-
ring to the already-existing "three-pillar" structure of 
the European Community (the European Coal and Steel 
Community, European Economic Community, and Eu-
ropean Atomic Energy Community) and the two new 
"pillars" constructed by the Maastricht Treaty: the Com-

500
mestic Foreign and Security Policy enhancing the new European Political Cooperation process and certain areas within the domains of the justice and interior ministries (especially greater collaboration/cooperation between police and other authorities on crime, terrorism, and asylum-immigration issues). The European Community still continues to exist as a separate legal entity within the broader framework of the Union; but, in view of the difficulties of delineating what is strictly EC or Union business, the term of choice is now the European Union, rather than the more limited Community, as contained in the title of this book.

Compounding this complexity, there exist two Councils: (1) the Council of Ministers of the European Union (formerly “of the European Communities”) comprising (usually but not exclusively) the foreign affairs ministers of the 12 member states and (2) the European Council, comprising the heads of state or government of the member states. The “ministerial” Council meets quite regularly (about 80–90 times a year), whereas the “prime-ministerial” Council meets at a biannual summit. Each Council has its “Presidency”—a rotating (six-month term) chief presidency officer or “President-in-Office.”

At the level of the European Council, the head of state or government of the member state holding this rotating six-month office acts as host, chairs the meeting, sets the agenda, acts as official spokesperson, and (depending upon a series of conditions) may be able to set the tone and nature of Union activities for the six months and initiate various public policy proposals. At the level of the Council of Ministers, the foreign minister (or another portfolio, depending upon the specific agenda) of the member state holding the rotating presidency plays a leading role.

Emil J. Kirchner, Director of the Center for European Studies at the University of Essex and a long-time observer of European Community/Union politics, has written a timely and important evaluation of the decision-making process at the level of these Council Presidencies and the offices’ role in, and impact on, the European integration process, the management of international cooperation, and institutional community building.

The author, through a judicious use of archival material and personal interviewing, along with an analysis of decision-making theory and the various theoretical approaches to political integration, examines how the Council Presidencies impinge on the integration process, especially since the Single European Act and the two 1991 Intergovernmental Conferences (on the European Monetary Union and European Political Union). Assessing the balance and distribution of power between the actors at the Union and national levels, the author consistently refers back to the basic question, Is the Council Presidency primarily a device to maintain and strengthen “national control” over decision-making within the European Union, or do the offices go beyond national prerogatives and enhance integration?

The negotiations that led to the Single European Act and the two Intergovernmental Conferences are interpreted by the author as requiring a new approach to, or understanding of, the relationship between the Union-level institutions and the member states. The author concludes that European Union decision-making is not solely a transfer of powers from the national capitals to Brussels but also a sharing of competencies between national and Union institutions and a “pooling of sovereignties” among the member states that evokes, at least for me, the American phenomenon of “cooperative federalism.”

Kirchner has succeeded in presenting a most readable assessment of the dynamics of European integration, but this success has, in a sense, limited the book’s overall attractiveness. Decision Making in the European Community is highly useful and informative to the professional well versed in the intricacies of the European Union and to the advanced graduate student, but it is not recommended for the general student, the public, or as a text.

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The two volumes reviewed here report findings and conclusions from ambitious research projects investigating aspects of policy making in a cross-national setting. In both, the research emanates from on-going collaboration by international teams of scholars, the participants individually expert in the politics of particular countries and guided, collectively, by cross-national research strategies. The editors lay out first the theoretical and methodological approach of the research, followed by applications in various national settings. They conclude with a chapter summarizing results across cases. The projects are differentiated both by institutional focus and the role assigned to policy in the design of the research. The Laver and Budge collection seeks to determine whether “policy matters” in the decisions made by parties to participate in the formation of governing coalitions. In contrast, the Olson and Mezey anthology explores ways in which legislatures may independently influence the making of economic policy in institutional contexts where political executives have become preeminent. The commitment to cross-national comparison suggests that the goal of both projects is to establish theoretical propositions by empirical generalization.

The projects depart from quite different theoretical and methodological traditions. The Laver and Budge work is rooted in three decades of formal and empirical work investigating coalition processes and behavior. While a certain mathematical elegance attaches to the coalition theories that have been developed, attempts to verify propositions empirically have generally produced disappointing results. Laver and Budge argue that this weakness stems from a general failure to take sufficient account of contextual constraints in adapting theoretical concepts for empirical testing. Thus they develop two expectations regarding coalition behavior in cabinet-forming contexts: that the motivation of actors (parties, generally) is “policy seeking” rather than “office seeking,” and the governments that form will be “policy viable” (not constrained by numerical criteria). Drawing upon cross-national longitudinal data coded from party manifestoes and coalition policy declarations, a number of hypotheses regarding these expectations are tested.