

The moral permissibility of the EU's decision to adopt democratic membership conditionality

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Abstract

This article addresses the moral significance of causal beliefs. Its primary moral claim is that the objectives of a policy should constrain policy selection in at least one way. At a minimum, policymakers should believe that the policy they support will effectively achieve its stated goals. Applying this standard to the EU's decision to adopt democratic conditionality for membership, I conclude that while its introduction in the 1960s or 70s might have been morally permissible had it been adopted, its actual introduction in the early 1990s was not. The reason that the EU's decision to adopt democratic conditionality for membership is subject to legitimate moral critique is that it was not adopted to support democratization, but rather to manage political and economic conflicts amongst member states. The stated goal (democratization) did not properly constrain the EU's selection of policy instruments (membership conditionality).

1. Introduction

On October 12, 2012 in the Norwegian capital of Oslo, Thorbjørn Jagland declared, "The Norwegian Nobel Committee has decided that the Nobel Peace Prize for 2012 is to be awarded to the European Union. The Union and its forerunners have for over six decades contributed to

the advancement of peace and reconciliation, democracy and human rights in Europe.”¹ Praise for the EU’s contribution to the spread of democracy to non-democratic states has not been limited to public officials. Robert Dahl, for one, has stated that the EU’s ability to foster democracy within states may even compensate for its inability to address the democratic deficit amongst member states.²

The EU’s membership conditionality is considered by many to be the Community’s most effective means for promoting democracy in non-member states.³ It is thought to be effective because membership and its attendant benefits are powerful incentives for states seeking entry into the EU to introduce sweeping reforms to their domestic political systems. To answer whether or not the policy is desirable, however, requires answering at least four derivative questions. First, should fostering democracy be an aim of the EU? Second, does the EU promote a desirable “model” of democracy? Third, is a Community policy preferable to separate national policies? Fourth, should membership policy be used as an instrument for democracy promotion? Answers to these questions are likely to be philosophically controversial. They will be philosophically controversial because reasonable disagreements are likely to persist about (a) the value of democracy in itself and relative to other desirable goals, (b) the best model of democracy, (c) the trade-offs between national sovereignty and collective action, and (d) the morality of using membership policy as an instrument to promote that model of democracy.

¹ http://nobelpeaceprize.org/en_GB/laureates/laureates-2012/announce-2012/ Accessed 8 December 2012.

² Robert Dahl, "Can international organizations be democratic? A skeptic's view," in *Democracy's Edges*, ed. Ian Shapiro and Casiano Hacker-Cordón (1999), 23.

³ Karen Smith, "The use of political conditionality in the EU's relations with third countries: How effective?," *European Foreign Affairs Review* 3(1998); Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe," *Journal of European Public Policy* 11, no. 4 (2004); Laurence Whitehead, *Three international dimensions of democratization, The international dimensions of democratization: Europe and the Americas* (1996). At the Copenhagen European Council (1993), leaders of EU member states declared that states seeking membership must “achieve stability of institutions guaranteeing democracy.”

The purpose of this article is to provide a partial answer to the fourth issue – should membership policy be used as an instrument for democracy promotion? The answer I provide is only a “partial” answer because I address only the *decision* to link democracy and membership. I do not address how we should evaluate the policy in retrospect – for instance, whether the policy has achieved morally desirable effects. The article assumes that our judgments on the initial decision and the actual effects of the policy may differ. In brief, I argue that, at a minimum, policymakers should believe that the policy they support will be effective for achieving its stated ends. Policymakers can be wrong, of course, but prospectively they should *believe* that they are right. On the basis of this criterion, I argue that the decision to adopt democratic membership conditionality was not justified because the evidence suggests that the EU adopted conditionality to solve problems other than democracy.

The argument of this article is divided into two sections. In the first section, I argue that the ends of an action should constrain the means selected according to what I call the “maxim of causal effectiveness.” This is true whether one’s moral philosophy is deontological or consequentialist in nature. In the second section, I apply this standard to the two main episodes in which the EEC/EU linked membership to the nature of a country’s domestic political regime. Based on original and existing research, I demonstrate that had the Community adopted democratic membership conditionality in the early 1960s it would have been permissible, but when it was adopted in the early 1990s it was not.

2. Why the ends of action should constrain the means

It is often thought that the purpose of an action is a salient fact in moral evaluation. But it is surely not the only consideration. We are worried about the effects of action. The road to hell, as the saying goes, is often paved with good intentions. In international politics, that road is often

thought to be quite short. Realists, notably, have called attention to the paradoxical outcomes of idealistic foreign policies.⁴ Nonetheless, intentions are often thought to matter at least as one part of our evaluations. Consider a few examples.

Take for instance the principle of “right intention” in the just war tradition. In the contemporary era, “self-defense” is generally understood to be an acceptable justification for the initiation of fighting. “Revenge,” on the other hand, is not. Whereas the purpose of self-defense is the protection of the community, its territory, and institutions, revenge aims at “satisfaction” for some wrong previously committed. Satisfaction does not refer to the fulfillment of some obligation – as in “the satisfaction of debt obligations” – but psychological or moral satisfaction: the enjoyment that is felt when bad things happen to the guilty. Both self-defense and revenge can be responses to identical offenses, and be carried out with identical means and result in identical outcomes. The purposes of the 2003 US war on Iraq could have been a war of self-defense or revenge, and at least some of the debate surrounding the invasion was cast in these terms. While both opponents and supporters of the war disagreed on the actual purpose of the war, they nonetheless agreed that the purpose was relevant to their evaluation of it.

A similar point can be made about the principles of “distinction” and “double-effect.” In the just war tradition, combatants are legitimate targets of violence, whereas non-combatants are not. Belligerents must deliberately distinguish between combatants and non-combatants. Subject to certain limitations, the doctrine of double-effect states that inadvertent or accidental deaths of non-combatants (even if foreseeable) are permitted if they are a “secondary” effect of attacking a military target. Although it is permissible for non-combatants to be killed as the result of a deliberate attack on a military target, the intentional killing of non-combatants is not, even if a legitimate military target is “in the area.” The distinction is an important one because it means

⁴ George Kennan, “Morality and foreign policy,” *Foreign Affairs* (1985).

the doctrine of double-effect does not work in reverse. It is not morally permissible to target non-combatants even if by doing so a military target is also destroyed. A state cannot target non-combatants but inadvertently destroy a military target and legitimately claim that its actions were just. What the principles of distinction and double-effect mean is that the instruments of destruction and the outcomes of fighting do not exhaust the moral interpretation of a particular attack or the general prosecution of a war. According to this line of thinking, a bomb dropped on a munitions factory in an area heavily populated by non-combatants is moral or immoral, legal or illegal depending on whether the target was the factory or those who were living around it.

Intentions are thought to be relevant to evaluating decisions on the initiation of war and on a war's prosecution. If we think this is true, then the principle of consistency requires us to consider intentions in the promotion of democracy. If we think intentions matter in warfare this is at least a *prima facie* warrant for believing it should also matter for democracy promotion.

However, before considering the relation between the purpose of an action and the means selected for achieving that purpose, I will address one potential criticism. The purpose or intention of an action can be thought of as the end or ends an actor or group of actors purposely pursues through that action. A focus on the intention of an actor is central to deontological approaches to ethics. The moral assessment of an action references the intended effects and relevant ethical principle. Kant, for instance, famously declared that we should act in such a way that recognizes the equal moral value of all individuals. The intended effects of our action should realize the principle of equal moral value. Intentionally avoiding targeting civilians is one way of realizing this principle during warfare. Our actions should not just conform to the principle of equal moral value but should be purposely intended to do so.

The focus on actors' intentions may be thought to divide a deontological from a consequential ethics, which focuses on the state of affairs brought about by an action. Thus from consequentialism we get the maxim "the ends justify the means." If deontological and consequentialist ethics were strictly divided between their focus on intentions rather than outcomes, then my proposal on the moral significance of causal beliefs may be morally controversial. It would be controversial because it would appear to emphasize deontological intentions rather than consequentialist outcomes. A strict division of deontology and consequentialism on the significance of intention is, however, spurious.

Both deontological and consequentialist moral theories claim to be prospective theories of moral action. That is, both approaches claim to provide agents rules or guides they can consult prior to acting. As moral maxims, "act according to the Right" or "act according to the Good" both implicate the intentions of an actor. Although they are divided on what *types* of intended effects are morally relevant, they nevertheless both evaluate action at least in part in reference to the intentions of the actor.

The standard for evaluation forwarded here is agnostic as to whether those ends are driven by deontological or consequentialist concerns. The maxim can be stated thus: actors should support policies they believe to be causally effective for the stated ends. I call this the "the maxim of causal effectiveness." It is derivative of the general claim that intentions matter in the moral evaluation of policies. It is derivative in the sense that it is because an agent's intentions are morally relevant that causal beliefs are morally relevant. Only those actions or

policies that are prospectively believed to be effective at bringing about the stated end are potentially morally permissible.⁵

One important characteristic of the maxim is that it is subjectivist in nature. It is subjectivist in the sense that the relevant considerations in the evaluation of an action are the beliefs of the actors.⁶ The subjectivism of the maxim may be contrasted with an objectivist rendering, where the standard of evaluation would be what actors *should* have believed about the causal effectiveness of a hypothetical course of action given, say, the best available information or had they given due diligence in ascertaining the relevant facts. It is possible that there are good justifications for an objectivist account of beliefs. No doubt an objectivist account would in many cases provide a more robust criterion for evaluation since it would consider not what actors actually believed but what they should have believed about the effectiveness of the policy they supported. Nevertheless, even if the maxim of causal effectiveness is weaker given its subjectivist nature it provides a basis for evaluating policy support. Moreover, if policy support does not even satisfy this weaker criterion, we have a stronger basis for doubting the moral permissibility of the policy.

How is the maxim of causal effectiveness relevant to evaluating the EU's decision to make democracy an aspect of membership conditionality? EU membership conditionality consists in the deliberate linking of a state's membership candidacy or actual membership to the fulfillment of certain political and economic conditions.⁷ If we think that intentions are relevant to the evaluation of a policy decision, then one reason we might think that the EU's decision to

⁵ The term "potentially" is important here. There may be other moral reasons for ruling out policies that nonetheless satisfy the maxim of causal effectiveness. In this sense, satisfying the maxim is necessary but not sufficient for a policy to be morally permissible.

⁶ Of course, this is not to claim this is the only relevant consideration.

⁷ This description is derived from Karen Smith's definition of "political conditionality". Smith, "The use of political conditionality in the EU's relations with third countries: How effective?," 256.

implement democratic conditionality was permissible was because it was believed to work by the relevant actors. EU leaders may have shared what Frank Schimmelfennig and Ulrich Sedelmeier call the “dominant logic underpinning EU conditionality”: “[it] is a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions.”⁸ The EU promises more generous trade conditions, enhanced foreign policy cooperation, increased amounts of financial or technical aid or membership itself with the *purpose* of encouraging democratic reforms. One reason conditionality would have been justified is that it was believed to accomplish the stated goal of democratization.

To underline why we should think that the causal beliefs of policymakers matter in our evaluation of policymaking, it is worth considering three other ways EU policymakers could have understood the relationship between the goal of democratization and conditionality. EU leaders could have thought either individually or collectively that conditionality was ineffective, counterproductive or less effective than some other approach. Ineffective refers to the belief that a policy of conditionality would have no greater likelihood of supporting the outcome of political reforms than the absence of such a policy. If EU actors thought conditionality was ineffective, then it is difficult to see why it would be justified as a strategy for bringing about democracy. It could serve some other purpose, of course, but democracy could not lend it justificatory support. If conditionality was thought to be counterproductive to bringing about democratic transformations – perhaps because the burdensome requirements alienated leaders or because the requirements alienated the publics who are generally the primary bearers of the burdens – then conditionality should be rejected if democracy is the goal. If policymakers believed

⁸ Schimmelfennig and Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe," 662.

prospectively that conditionality would be either ineffective or counterproductive, then its selection as a policy tool is without merit.

What about a situation in which conditionality is believed to be somewhat effective but not as effective as some other policy? For instance, during Spain's second bid to be accepted into the European Economic Community (EEC), Spanish leaders often argued that membership would be the most effective means for anchoring Spain's process of democratization.

Democratic consolidation would be the outcome of membership and not the precondition of it. It is possible that EU leaders agreed with their Spanish counterparts that immediate membership would be the most effective instrument for ensuring democracy. Nonetheless, they might have believed conditionality would also be effective (if less so than immediate membership) and selected it because they thought it would satisfy some other desirable goal. It would seem that in such a case we should conclude that if democracy was the stated priority, immediate membership was the morally preferable option because it was believed to be most causally effective.

Nonetheless, given conditionality was believed to be effective, we would accept that it was a second best option.

In sum, to ask whether the EU's democratic conditionality for membership is desirable involves, in part, a retrospective judgment. Has it been effective? What have been the costs? What have been the benefits? I do not want to reject the legitimacy of retrospective evaluation. However, if we think that the moral evaluation of a policy must also address the relevant intentions of actors, then we are also required to evaluate decision-making prospectively (that is, prospectively from the view of the agent of the action). What are the *expected* effects? Was a policy selected *because* it was believed to achieve the stated ends? Indeed, it would be strange if prospective judgments were not a necessary aspect of moral evaluation. If they were not, that

would mean there could be no moral guidelines formulating or choosing actions or policies. In the absence of moral guidelines, agents would be without guidance on what forms of action were permissible or even required. The fact that intentions matter for moral evaluation has at least one important implication for policy selection: because policies are the means through which policymakers achieve particular goals, only those policies that are believed to be effective are potentially morally permissible.

2. Evaluating the EU's democratic conditionality for membership

What is the evidence concerning what EEC and EU leaders thought about the effectiveness of conditionality? Did they think it was an effective means for supporting the political reforms in Southern Europe and subsequently in the newly independent states of Central and Eastern Europe? Or did democratic conditionality serve some other purpose?

2.1 Democracy as a condition for membership

In this section, I argue that the original effort to require states seeking membership to be democracies was linked to an understanding of the ECSC, EEC and Euratom – the Community – as composing a moral community. This conception of the Community was expressed most clearly by members of the Parliamentary Assembly (MEPs). Accounting for the beliefs of MEPs is important because it was the Parliament and allied societal actors that successfully pushed for attaching political conditions to membership, despite the original opposition and indifference from member states.⁹ Importantly, the belief that only democratic countries were morally acceptable members of the Union did not entail the belief that a democratic condition for membership could serve as a fillip for a country's internal transformation. That is, MEPs

⁹ D.C. Thomas, "Constitutionalization through enlargement: the contested origins of the EU's democratic identity," *Journal of European Public Policy* 13, no. 8 (2006).

believed democracy should be a condition for membership, but they did not believe that membership could be an instrument of conditionality.

The evidence for these claims – that MEPs viewed democracy as a moral requirement for membership and that establishing a democratic condition for membership was nonetheless not understood as an instrument for promoting democracy – is found in the 1961 Birkelbach Report (the Report) and the debate held by the Assembly with regards to the report in 1962. Although written under the supervision of the President of the Socialist Group in the Parliamentary Assembly, the Birkelbach Report should be considered a fairly accurate representation of the common position of the Parliament. This is for several reasons. First, the Political Committee, which was responsible for drafting the Report, was composed of members of all three Political Groups in the Parliamentary Assembly. Of the sixteen members of the Committee, six were members of the Socialist Group, six from the Christian Democrat Group and four from the Liberal and Allied Group. Second, the Committee unanimously adopted the Report before forwarding it onto the Parliament as a whole for consideration and debate. Third, the Parliamentary debate on the report demonstrates a high level of concurrence amongst the various speakers. Where disagreements did occur, they were largely limited to how to deal with the applications of neutral states and which states deserved priority with respect to association (whether with European or non-European, especially African states and territories). The claim here is not that there were no disagreements, but that the report and the debate express points of widespread agreement on the issue of democracy as a requirement for membership.

Unlike the Council of Europe (1950) and the failed Draft Treaty to establish the European Political Community (1953), the Treaty of Rome (1957) did not contain provisions that specified democracy amongst the requirements for membership or association. According to Article 237 of

the Rome Treaty, membership was open to all “European states.” Decisions on membership required the Council to consult the Commission, to act on the basis of unanimous agreement amongst the member states, and to ratify an offer of membership according to each state’s domestic constitutional requirements. According to Article 238, association agreements required the Council to consult the Assembly and act by unanimous agreement. Although the six founding members were all parliamentary democracies, nowhere in the Treaty of Rome is democracy named as a precondition or purpose of the newly founded Community.

On December 21, 1961 Willi Birkelbach presented Document 122 on behalf of the Political Committee to the European Parliamentary Assembly. Officially titled “Rapport sur les aspects politiques et institutionnels d’adhésion ou de l’association à la Communauté.”¹⁰ The document is better known with reference to its rapporteur as the “Birkelbach Report.” The Birkelbach Report was the third of a trifecta of reports produced by the Political Committee that addressed a variety of issues arising with the integration of non-member states into the Community through either association or membership.¹¹ The immediate (and acknowledged) impetus for the Report (drafted between the 10th of November and the 19th of December 1961) was the decision by a number of states in 1961 to submit requests for opening negotiations with the aim of membership or association.¹² The most important of these was Britain’s request for

¹⁰ There is no official English translation of the Report. The original report was translated into the four official languages of the Communities at the time of its drafting: German, French, Dutch and Italian. Community documents were not widely circulated in English until the UK joined in 1973. Translated into English, the report’s title is “Report on the political and institutional aspects of membership or association with the Community”. The discussion of the Report and associated debates are based on the author’s translation from the French.

¹¹ Marinus van der Goes van Naters, a Dutch member of the Socialist Group, had written on the procedural issues of negotiating and concluding a membership accord with Britain. Pierre Blaisse, a Dutch member of the Christian Democrat Group, had reported on the commercial and economic aspects of expansion.¹¹ The Birkelbach Report also followed a highly critical report on the establishment of an association agreement with Greece and the sidelining of the Assembly and Commission in the negotiation process.

¹² Birkelbach, I.1.4.

membership, which was received on 9 August 1961 and formal negotiations began in October.¹³ The report also appears during the period when member state leaders were in deep and fraught discussions over foreign and defense policy cooperation. In the wake of the French National Assembly's rejection of the proposed European Defense Community and along with it the European Political Community in 1954, leaders of the Six continued to discuss the possibility of closer political cooperation. In the July 1961 Bonn Declaration, state leaders asserted their commitment to "give shape to the will for political union already implicit in the Treaties establishing the European Communities."¹⁴ In the Report, the Political Committee links the development of the political aims of the Communities with conditions for closer relations with non-member states.¹⁵

As the title indicates, the Report addresses the political and institutional aspects of association with and accession to the Community.¹⁶ Divided into five sections, the report addresses in what sense the Community is "open" to new members and associates; the geographical, economic and political conditions for membership; the political implications of membership; the institutional aspects of membership; and the political and institutional problems of association. A key conclusion in the Report is that non-democratic states are not eligible for membership: "The political regime of a country seeking to join the Community cannot be treated with indifference." It continues,

¹³ Official negotiations with Denmark were also opened in October 1961. Ireland submitted its request in July 1961, but would not receive a positive response until October 1962. Austria, Sweden and Switzerland applied for association in December 1961

¹⁴ Bulletin of the European Economic Community, "Statement issued by the heads of State and Government," No. 7/8 August 1961.

¹⁵ It is worth noting that the Report and accompanied debate appear prior to Franco's regime officially request for entry, which was submitted in February 1962. Thus the Parliament's initial action should not be seen as a reaction to the possibility of an authoritarian state joining the Community.

¹⁶ The report is broken into five sections: Following (1) the introduction it addresses, (2) the preconditions for membership, (3) the political aspects of membership, (4) the institutional aspects of membership, and (5) the political and institutional problems of association.

Guaranteeing the existence of a democratic form of state, within the meaning of a liberal political organization, is a condition for membership. States whose governments have no democratic legitimacy and whose people do not participate in government decisions directly or by freely elected representatives, cannot be admitted into the circle of people that form the European Communities.¹⁷

This point is repeated by a number of MEPs during the parliamentary debate on the report. Five of the ten delegates that addressed the Assembly explicitly discussed the democratic requirement and all five affirmed that membership was only open to democratic states.¹⁸ No speaker opposed the democratic criterion for membership outright. In his presentation as rapporteur and President of the Socialist Group, Birkelbach stated, “Regarding political conditions, we believe that only states which guarantee in their territory truly democratic governing practices and the respect for human rights and fundamental freedoms can become members of our community.”¹⁹ Fellow socialist Fernand Dehousse agreed, “it must be considered whether they are democratic states.”²⁰ Similarly, Jean Duvieusart in his comments as President of the Christian Democrats and speaking on their behalf stated that Birkelbach was “quite right to stress” that the Community could only form a union with states that were “animated by the political philosophy of democracy.”²¹

Importantly, while the Report and MEPs in the debate repeatedly return to the theme of democracy as a *condition* for membership, membership is never portrayed as a modality of *conditionality*. It appears that both in the Report and the debate that the Assembly did not believe

¹⁷ Birkelbach, II.3.24-25.

¹⁸ In focusing on the number of speakers who *explicitly* discuss the democratic criterion for membership, this may understate the actual number who would have agreed with its inclusion had they been asked. A number of speakers may have *implicitly* signaled their agreement in their comments, especially since a number asserted their overall agreement and admiration for the Report in which the democratic criterion is explicitly presented. The one member of the Liberal and Allied Group who spoke did not address democracy but asserted his general agreement with the Report’s findings.

¹⁹ Assemblée Parlementaire Européenne, “Débats: Compte rendu en extensor de séances” No. 52 January 23, 1962. Édition de langue Française, p. 55.

²⁰ *Ibid.*, 70.

²¹ *Ibid.*, 62.

membership could function as a carrot to induce authoritarian states to transform their domestic regime. As will be seen below, this is especially striking given the way membership and other benefits from closer relations with the EC/EU are portrayed in the late 1980s and early 1990s context.

The absence of the notion that membership could be used to prod authoritarian regimes toward democracy can also be seen in Birkelbach's questioning of EEC Commissioner Jean Rey in response to the Franco regime's request for opening negotiations. In his statement, Birkelbach states, "we categorically reject any kind of assistance to a regime that is the enemy of freedom." On these grounds, he opposes those who think closer relations could lead to a "progressive democratization." What he does not say is the exclusion of Spain from the EEC would or could prompt reforms. Rather, he stakes out his opposition to closer economic relations because all countries "must obey the same rules of competition." Most centrally, an EEC-Spanish agreement would violate Article 118 of the Treaty of Rome: workers have a right to association and collective bargaining.²²

The Birkelbach Report and associated debates are significant because they set out the position and reasoning of the primary institutional actor that supported a democratic condition for membership. It later framed the Assembly's and other social groups' opposition to the Spanish application in 1962 and subsequently the association agreement with post-coup Greece and Portugal's membership while they remained under military rule.²³ A close reading of the Report and the ensuing Parliamentary debate demonstrates democracy was a central element in the Parliament's framing of political conditions. The promise of membership, however, was not

²² Parlement Européen, "Question orale sur l'ouverture de négociations avec l'Espagne," (1962), 81-84.

²³ For a discussion of the Community's policy toward the southern European states see Geoffrey Pridham, *Designing democracy: EU enlargement and regime change in post-Communist Europe* (Palgrave Macmillan Basingstoke, 2005).

depicted as a means to bring about domestic political reforms in non-member states. During this first period, democracy should be seen as a condition of membership but membership as an instrument of democratic conditionality.

Returning to the criterion set out in section one, it is clear why a decision to promote democracy through membership conditionality could have been morally permissible in the 1960s. Given the Parliament's goal of ensuring that all member states were democratic states, had MEPs believed that membership conditionality would be an effective tool for promoting democracy, its use as such would have fulfilled the maxim of causal effectiveness. However, MEPs did not express the belief that membership was causally effective for supporting democratic reforms. They understood democracy as a condition for membership but not membership as an element of democratic conditionality.

2.2 Democracy as conditionality at the end of the Cold War

This section evaluates the EU's decision to adopt democratic conditionality as an element of its membership policy at the end of the Cold War. The decision was formally adopted at the June 1993 Copenhagen Summit of the European Council, where EU heads of state and government declared that ten countries of former communist Europe were eligible to become members of the European Union once they had achieved "stability of institutions guaranteeing democracy." Whether this decision was desirable according to the maxim of causal effectiveness depends on sorting out some difficult empirical issues, namely why did the EU insert democracy as an aspect of its membership conditionality? Two books have already addressed the topic: Karen Smith's *The Making of EU Foreign Policy: the Case of Eastern Europe* (1999) and José Torreblanca's *The Reuniting of Europe: Promises, Negotiations and Compromises* (2001). Smith and Torreblanca reach opposing conclusions: whereas Smith argues that membership

conditionality was the outcome of the Twelve collectively setting a goal and matching the policies to achieve it, Torreblanca details a much messier process where conditionality was a vehicle for achieving different and conflicting ends having little or nothing to do with promoting democracy in central and eastern Europe. How we will judge the EU's adoption of democratic conditionality largely depends on whether we find Smith or Torreblanca more convincing. Who we find convincing depends on the empirical evidence the two authors rely upon. I will begin, therefore, with a summary of each author's argument before turning to an evaluation of the evidence.

Smith explains the adoption of democratic conditionality as a function of the Community's response to the end of the Cold War and the emergence of post-Communist regimes in Eastern Europe. According to Smith, since the late 1980s the EC/EU has pursued a consistent, common policy toward Eastern Europe that aimed to promote regional security and stability through democracy. For the leaders of the Twelve, "The success of reforms was considered crucial for ensuring the long-term stability and security in Europe, in the belief that capitalist, free-trading, democratic countries make better neighbours because they do not pose a threat to security."²⁴ In her view, member states and EC institutions agreed that supporting political and economic reform through conditionality would enhance security in Europe.

The policy of conditionality followed a two-part change in the beliefs of EC leaders. The first focused on the goals and the second on means. First, in the transition from the Cold War to the post-Cold War era, security was redefined. Prior Western European security preoccupations centered on military security, especially the defense of Western Europe against a potential Soviet invasion. With the dissolution of Soviet control over Eastern Europe and subsequently the dissolution of the Soviet Union, the focus of Western leaders shifted toward non-traditional

²⁴ Karen Smith, *The making of EU foreign policy: the case of Eastern Europe* (Palgrave Macmillan, 1999). 43.

threats to security: ethnic disputes, violations of human rights and economic deprivation. Leaders viewed political reform as part of the solution to each of these potential sources of insecurity. Constitutional democracy would ensure against the abuse of national minorities and when paired with liberalizing economic reforms would support a fairer distribution of resources and opportunities.²⁵ Regional security came to be understood as less dependent on the defense of borders or credible deterrence than on addressing political and economic injustice.

Second, EU leaders came to believe that in order to achieve regional security, economic foreign policy needed to be made a Community competence and use conditionality in the dispersal of economic benefits. State leaders collectivized their national prerogatives and transferred policy control to the Community-level to take advantage of “economies of scale”. States previously worried about losses of sovereignty – notably the UK and France – came to understand the enormity of the challenge in Eastern Europe. Effective action would require coordination and cost-sharing. Multilateralism was the price of effectiveness. Alongside the shift from bilateralism to multilateralism, the EC embraced a new strategy of governance. During the 50-year conflict, Western Europe had largely relied upon positive incentives to manage East-West relations.²⁶ Counter to the dominant US strategy of containing the Soviet Union’s military capability by denying it and its allies the benefits of trading with the West, European leaders sought to stabilize relations through building bonds of common interest.²⁷ Led by the governments of West Germany, trade and other sorts of exchange were seen as providing positive incentives to maintain stable relations and perhaps over time contribute to political liberalization.

²⁵ Ibid., 49, 56-63.

²⁶ Smith, *The making of EU foreign policy: the case of Eastern Europe*: 37-41.

²⁷ The exception was trade in military hardware and technology.

The creation and implementation of conditionality thus “reversed” the dominant Western European Cold War strategy – crudely, peace through trade – that had framed policies towards Eastern Europe and the Soviet Union. Whereas interdependence depended on first building positive forms of relations in the expectation that policy shifts would follow, conditionality demanded changes in policy and domestic institutions as a precondition for the benefits of better relations. First applied in the trade and cooperation negotiations with Hungary (September 1988) Poland, and Romania (April 1989), conditionality was subsequently extended to aid packages for Poland and Hungary (July 1989).²⁸ In February 1990, the Commission formally proposed to the Council that aid recipients must fulfill five conditions: a commitment to the rule of law, respect for human rights, the establishment of multiparty systems, the holding of free elections and economic liberalization.²⁹ As member states came to believe that trade and aid arrangements would be insufficient for reaching the Community’s objectives, democracy and human rights conditions were introduced into association agreements and eventually as a precondition of enlargement itself.

In Smith’s narrative, leaders of the Twelve believed the goals of security, welfare and democracy were indelibly linked and chose the most appropriate means (conditionality) for achieving the EC’s objectives. Her narrative is one of goal-setting, progressive learning and effective implementation. EC leaders defined an objective, selected appropriate governance tools – multilateralism and conditionality – and adjusted their strategy in light of circumstances and previous experience. Rewards were paired with reforms. And the progressive upgrading in relations – from trade and cooperation agreements, to financial and technical aid and finally to enlargement – was based on a calculation of likely success. In her words, “Enlargement was

²⁸ Smith, *The making of EU foreign policy: the case of Eastern Europe*: 68.

²⁹ *Ibid.*, 70.

agreed to because it should help spread stability and security to Eastern Europe.”³⁰ If Smith is right, then the argument for the moral permissibility of EU conditionality is straightforward. Conditionality, rather than the Cold War policy of *détente*, was chosen because it was believed to be effective at achieving democratic governance in Central and Eastern Europe. The decision to introduce conditionality was virtuous because EU leaders matched ends with means.

Managing internal conflicts of interest

For Torreblanca, EC/EU conditionality went through two distinct phases. Phase one begins with the Joint EC-CMEA Declaration of June 1988 and lasts until the fall of the Berlin Wall in November 1989. During this period there was a relatively stable consensus concerning the responsibility of the EC and member states to support reforms in Eastern Europe and conditionality was employed as a spur to further developments. Political and economic conditionality framed trade and cooperation negotiations and aid agreements with Hungary, Poland, Czechoslovakia, and Bulgaria. This period was not without disagreement. Germany and the UK, for instance, worried that aggressive conditionality would spark a conservative backlash and thus undermine Gorbachev. A statement released by the European Political Cooperation Secretariat, and thus expressing the collective view of EC foreign ministers, questioned whether reforms should be expected to lead to western-style democracy. Nonetheless, the shift away from the strategy of “interdependence” was notable. Disagreements over the pace and expected outcomes of conditionality did not block improved economic relations from being used to reward fast reformers (Hungary and Poland) and penalize slow reformers (Czechoslovakia and Bulgaria).

³⁰ Ibid., 103.

In phase two, consensus broke down. Beginning with the Polish elections of June 1990 and through the fall, the question of supporting reforms in Central and Eastern Europe became embroiled in the broader issue of European integration. Leaders floated different proposals on final relations. Thatcher pushed for a wider Europe. French President Mitterrand spoke of a “confederation” with Central and Eastern Europe. President Delors preferred the idea of “concentric circles.” At the same time, plans over economic and monetary union remained very much in flux. And the question of the reunification of Germany divided opinion. In this context, conditionality became the vehicle for managing internal conflicts over the future of European integration and the distributional costs of closer relations with the CEECs. That is, rather than being primarily an instrument for supporting reforms, it became a means through finding common ground between “drivers” and “brakemen.”³¹ For drivers like the UK and Germany who favored expansion, conditionality established criteria that could be fulfilled and thus be used to justify enlargement. For brakemen like France, the southern European states as well as Commission President Jacques Delors, conditionality established criteria that would slow or even block closer relations.³²

A primary example of this new dynamic was the agreement reached by leaders of the member states and the Commission on the scope and conditions for association with the EC (as provided for by Article 238 of the Treaty of Rome) at the Dublin European Council in April 1990. The final proposal included elements of political dialogue, free trade (and possibility for the free movement of persons and capital), and economic and financial cooperation. Both the offer and future development of association were conditioned on the meeting of economic as

³¹ Frank Schimmelfennig, *The EU, NATO and the integration of Europe: Rules and rhetoric* (Cambridge University Press, 2003). 177-78.

³² José Torreblanca, *The reuniting of Europe: promises, negotiations, and compromises* (Ashgate Pub Ltd, 2001). 52.

well as political criteria, including the rule of law, respect for human rights, free elections, multiparty systems, and market economies. For country leaders like Thatcher, association was envisioned as a halfway house on the path to membership. For others like the Delors and Mitterrand, while not the end-point in relations, association was agreed to because it excluded reference to the possibility of membership.³³

Both Smith and Torreblanca provide plausible accounts of EC/EU policy toward Central and Eastern Europe at the end of the Cold War and there is some evidence for each of their conclusions. Their explanations, however, are markedly in tension. Smith argues that the Community progressively matched political ends – stability and democracy – with appropriate, conditional means – trade and cooperation agreements, aid, association and eventually the prospect of Enlargement. Torreblanca argues that after an initial period of agreement on conditionality, closer relations with East and Central Europe became hostage to conflicting political and economic interests. In this context, conditionality was not employed for achieving the stated end of democracy. Rather for “drivers” of enlargement (e.g. the UK and Germany) it was a way to argue for expansion and for “brakemen” it was a means of slowing or stopping a process that would damage their interests regarding, *inter alia*, further integration (EMU), CAP, structural and cohesion funds, and the protection of key economic sectors (especially in textiles, steel and agriculture). How are we to adjudicate the evidence for these conflicting claims?

Both Smith and Torreblanca rely upon public statements and newspaper coverage. A primary strength of Torreblanca’s book, however, is its extensive use of internal working documents on the European Commission as well as interviews with former members of the Commission during the crucial period, or what Andrew Moravcsik calls “hard primary

³³ Ibid., 59, 62-67.

sources.”³⁴ What Torreblanca demonstrates through tracing the behind the scenes negotiations, and Smith misses by focusing on public declarations, is that member states repeatedly rejected Commission proposals to improve market access for Central and East European countries in order to protect domestic sectoral interests, EC funding (e.g. CAP and cohesion funds) or investments and refused to consider membership because of the expected negative impact it would have on integration (e.g. EMU) as well as the economic impact. Rather than the Community progressively upgrading incentives to spur further reform, most countries opposed closer relations so as to protect their economic and political interests. The decision to finally give Central and Eastern Europe a membership perspective came only after it was agreed that the Maastricht Treaty would first be ratified (at that point far from a sure thing given the Dutch “no” vote) and all economic (like greater market access especially in agriculture, textiles and steel – those sectors most important to the Visegrad Three) and political (like the European Political Area) measures proposed by the Commission to pave the way for enlargement were eliminated.³⁵ That is, the prospect of enlargement was only offered after key incentives envisioned for domestic reform had already been removed. Torreblanca concludes that the conditions placed on membership were fundamentally aimed at ensuring that the countries would not “require massive subsidies or exemptions to the *acquis communautaire*”³⁶ and the “accession perspective was only agreed when all the possible linkages which worried these countries had been removed.”³⁷

By contrast, Smith’s account of the decision to offer membership is frequently speculative. She notes the decision came after beginning of the conflict in Yugoslavia failed Russian coup attempt in 1991 and 1992. This leads her to conclude that there was “pressure on

³⁴ Andrew Moravcsik, *The choice for Europe: social purpose and state power from Messina to Maastricht* (Cornell University Press, 1998). 82.

³⁵ Torreblanca, *The reuniting of Europe: promises, negotiations, and compromises*: 322.

³⁶ *Ibid.*, 333.

³⁷ *Ibid.*, 329.

the member states to respond positively to the membership demands” of the Central and Eastern European states.³⁸ But she does not cite any evidence as support in support of this contention.

If Torreblanca is right, then the evaluation of the decision to adopt democratic conditionality is straightforward: it failed to satisfy the maxim of causal effectiveness.

III. Conclusion

The key philosophical claim I have argued for here is that policy objectives should restrain policy selection. The purpose of a policy should constrain the means through which it is pursued. The specific constraint I defended is a weak one: actors should choose a policy that they believe is causally effective to the end they have chosen. This “maxim of causal effectiveness” is comparatively weak because it makes no judgment about the morality of the ends per se. A stronger criterion would require the ends themselves be justified. It is also a weak criterion because it is “subjectivist” in nature. To satisfy the criterion only requires demonstrating that actors actually believed (whether they should have or not) the selected course of action would be effective for achieving the stated ends. Whereas conditionality would have been permissible according to this criterion when membership requirements were first debated in the 1960s, the primary institutional actor that pushed democracy – the Parliamentary Assembly – did not believe a democratic criterion would actually work according to the logic of conditionality. MEPs did not express the belief that it would provide an incentive that could lead to domestic political reform. When membership conditionality was finally agreed to in the early 1990s it was accepted not because of its ability to bring about further democratization but to manage internal conflicts over enlargement. Conditionality served as a useful vehicle both for those states

³⁸ Smith, *The making of EU foreign policy: the case of Eastern Europe*: 108.

who wanted to expand east and for those who wanted to delay enlargement so as to protect their economic and other political interests.

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