GEOFF GARRETT: "THE POLITICS OF LEGAL INTEGRATION IN THE EUROPEAN UNION."

EU member state governments weight the costs of acceptance of an ECJ decision against the benefits of an effective EU legal system. The benefits of accepting a decision are related to the country's gains from the internal market. If the benefits from an effective legal system governing the internal market outweigh specific domestic costs, a rational government will accept the ECJ's decision. Garrett describes Burley and Mattli's argument as being comprised of three elements: (i) The development of the EU legal system was unforeseen; (ii) European law has expanded because the ECJ has coopted member state judges and lawyers; and (iii) while this legal system is not in the interests of the member states, the latter have failed to reorient the system to match their preferences. The last element is the focus of Garrett's critique: He argues that (e.g.) the German government's behavior in *Cassis* can easily be explained in terms of rational self-interest.

The cost of an adverse ruling would have been low, since "not all segments of the German alcohol sector would be hurt by the importation of Cassis." Moreover, by fighting the case in court, the German government would portray itself as a "good European." Once the decision had been rendered, Germany could use its own compliance with the decision as leverage over other member states. Garrett sets up a four-cell matrix (Fig. 1) with high/low "benefit to national economy of trade liberalization" and high/low "market share and political clout of industry potentially harmed by court decision." Governments are likely to overtly evade a Court decision if "benefits" are low and "market share" is high, and are most likely to accept the decision if the opposite is true. In the other two cases, governments will either justify evasion (high benefit; low market share) or conceal evasion (low benefit; low market share).

Not only do member state governments act strategically, but so does the ECJ itself. While *legitimacy* purportedly does constrain ECJ judges (at 178), Garrett puts forward a peculiar view of how the Court will ensure that individual governments will not "flout" its decisions: He treats Articles 30 and 36 ("free trade" and "restricting trade") as simple alternatives that stand in tension to one another, and he asserts that "ECJ behavior [presumably in 'selecting' between the two] will likely be conditioned by its expectations about the likely responses of member governments." In other words, "when the court knows that an adverse decision against an important sector in a powerful member state not only will likely be evaded but also that this behavior will threaten its credibility and power, one should expect the ECJ not to challenge the government by accepting the existing protectionist behavior under Article 36)" (at 179).

WALTER MATTLI AND ANNE-MARIE SLAUGHTER: "LAW AND POLITICS IN THE EUROPEAN UNION: A REPLY TO GARRETT."

Points of contention are the nature of state interests, as considered by the ECJ, and the nature of the judicial decision-making process. The argument is not so much about whether a rational account of state behavior can be established, but how the "relevant preferences and constraints" should be defined.

Mattli and Slaughter claim that the preferences of member states and the Court diverge, and that the

Court has a particular vision of Europe: "In any given instance, [the ECJ judges] were likely to interpret the Treaty of Rome as requiring faster and deeper integration than member state preferences would have specified." Law provides a mask (legal/technical/nonpolitical reasoning) and a shield (within these constraints, the court can reach outcomes "that depart significantly from member state preferences in case after case).

Garrett is mistaken in his claims that (i) the Court takes into account the interests of member states in particular cases (this violates the very core of the 'rule of law'); and (ii) Articles 30 and 36 are co-existing, contradictory articles (Art. 30 is the rule, and Art. 36 the exception; states carry the burden of justifying their behavior under Art. 36).

Moreover, Garrett's use of *Cassis* as an example is misplaced, since his theory fails to explain Germany's compliance with the decision. Garrett claimed that Germany complied with the decision in part because it would only affect a small segment of the liquor industry. However, Germany also complied with the *Reinheitsgebot* decision, an adverse ("free trade") ruling which affected a much larger and powerful segment (the German beer industry!). Secondly, on Garrett's own argument, Germany should have capitalized on the *Cassis* decision and its own highly competitive status within the European internal market to advocate trade liberalization. Historically, however, Germany has opposed the principle of mutual recognition (as affirmed in *Cassis*) because of its resistance to other nations' standards.

Mattli and Slaughter advocate further research on the question of *whose* interests are being advanced through European legal integration, and *how*.