

## European Constitutional Political Economy: Enlargement and the Crisis of Institutional System

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### Abstract

*The classical “integration process” has reached a critical point and constitutional limits, which make a qualitative change of importance in the system of community government indispensable. Our paper is based on an analysis of the constitutional choices of citizens and governments using a political-economic model, whose main conclusion centres on the need for breaking the central governments’ monopoly in the representation of national interests of the Union’s member states, both at a constitutional level (reform of treaties) and in the institutional balance (decision making).*

**Key Words:** Integration Demand, Integration Supply, Collective Supranational Action

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## 1. Introduction

This essay uses the analytical instrument of Political Economy in order to identify the main factors of the problems associated with the institutional reform required by the historical challenge of enlarging the European Union to include the countries of the East. Nevertheless, the decision-making problems and the difficulties for advancing in the process of integration and increasing the powers of the European Community have been almost a constant feature of its history. The theory that will be maintained in this essay is that the previous models are, to a large degree, obsolete and that the classical "integration process" has reached a *critical point* and *constitutional limits*, which make a qualitative change of importance in the system of community government indispensable. Due to the large amount of theoretical contributions related to this topic, we only will refer to the most important ones within the available academic literature. In particular we took into account the works of (Armstrong and Bulmer, 1998), (Hix, 1998) and (Sandholtz and Stone Sweet, 1998) in relation to the governance in the EU. In reference to the decision-making process in the EU we shall refer to the works of (Scharpf, 1994a), (Peterson, 1995a), (Richardson, 1996a, 1996c) and (Moravcsik and Nicolaïdis, 1999).

The impossibility of extending, due to a simple matter of quantity, the present composition of community institutions leads once more to the decision-making problems that are characteristic of the opening-up of new stages in the process of European integration. The possible dilemma between deepening and enlarging has been faced with the principle of "reinforced integration"; nevertheless, the reform of the European Community's institutional system is still a problem of the first magnitude in order to facilitate both the development of the Union and the unavoidable challenge of its extension to the countries of the East.

The remaining part of the paper will be structured in the following sections: In section 2 we define demand integration and supply

integration functions, in section 3 we remark the constraints in the supply side by the Government, in section 4 we warn the existence of constitutional limits in the integration process, finally in section 5 we establish the main conclusions.

## **2. A Constitutional Model of the European Union: Integration Supply and Demand**

The constitutional choices regarding the advisability of supporting the integration process are based on the balance between the perceptions of the benefits of increasing integration and the costs resulting from joint supranational action. The former are the most evident aspects of the integration process and are the ones that have always been highlighted by European movements and institutions. Nevertheless, the latter and their main components are key elements in order to understand the factors underlying the integration processes and their constitutional design. Related literature in this topic are those of (Putnam, 1988), (Moravcsik, 1994) (Grieco, 1995), (Pierson, 1996), (Cecchini, Catinat and Jacquemin, 1998), (Caporaso, 1998), (Hooghe and Marks, 1999).

### **2.1 The Costs Function of the Joint Supranational Action and Benefits of the Increasing Integration Process**

On the fiftieth anniversary of the Schuman Declaration (Fontaine, 2000) it seems unnecessary to underline the positive elements of constructing a democratic community, whose rules discipline the exercise of the governments' powers. As Jean Monnet highlighted, the objective is to surpass mere international cooperation, creating a "fusion of interests" that surpasses the mere maintenance of its balance, so that by sharing areas of sovereignty an institutional system may be created that would promote cooperative strategies based on agreement and on the exercise of civil and economic rights.

The international order generates problems with a certain Hobbes-like nature (Buchanan, 1975) in the sense that govern-

ments are faced with a dilemma of individual incentives that prevents them from relinquishing the exercise of pressure. The pressures and counterpressures among governments constitute best-response mutual actions (Nash–Cournot equilibriums) and, at worst, they originate escalations of conflict (absence of equilibrium), as shown in Figure 1, which represents the respective paths of moderate and accelerated reactions that explain both kinds of situations.

The same analytical outline can also be applied to the needs generated by development processes and the extension of markets. Pressure can be understood as one more kind of protectionism. The protection intensities are counterbalanced among the different parties and only lead to a useless effort and to an inefficient compartmentalisation of the market, but again the optimum, relinquishing the protection and integration of markets, is an unstable solution without an institutional structure that disciplines the governments' commitment.

It is not necessary to stress the benefits that community construction and the European Union provide the public and governments with. These benefits, which have also and correctly been called the "costs of non–Europe", constitute the positive factor or the potential benefits of integration that are evaluated by the citizens and by the Governments at the time of deciding whether they want to increase the Community's powers and the degree of European integration.

However, as opposed to this positive or beneficial factor, we should not forget that the creation of an area of supranational decision making also generates a negative or curbing factor, the costs of Europe itself, which are the result of the difficulties and problems of bringing together, under a common jurisdiction, peoples with different economies, histories and cultures.

The costs resulting from joint supranational action itself are the losses of individual utility caused by the decisions adopted at this

level, after the powers have been assigned to the Community by the member states. Such costs can be divided into two main kinds:

- 1) external or imposed costs, which are those that result from the adoption of coercive decisions contrary to our interests.
- 2) the supranational authority's decision-making costs, i.e. the transaction, negotiation and voting costs required to reach a decision.

Both kinds, imposition and decision-making costs, are not independent of the rules governing the decision-making procedures nor the starting positions and the distributions of interests within the different areas of the states committed to the integration process. Below we present an adaptation of Buchanan and Tullock's model (1962) in order to apply it to the constitutional choices regarding the assigning of powers to a supranational authority.

The factors that influence the costs related to the creation, extension and functioning of supranational institutions are numerous and complex. Nevertheless, for analytical purposes, we will consider three main factors or basic variables: political influence, degree of integration and the national heterogeneity.

The constitutional dimensions that determine the decision-making processes within Europe's supranational institutions are combined in what we will call the degree of political influence "P", which reflects the capacity of blocking a decision contrary to our interests. In this sense, political influence varies between two extremes, 0, when there is no influence over the decisions affecting us, and 1, when there is complete control in this regard, unanimity or the right of veto, which enables the blocking of any undesirable decisions.

Figure 2 represents the basic characteristics of the relationship between integration costs and the decision-making rules that determine the degree of political influence over the decision-making process. Two different positions are highlighted, that of the public in general, represented by unbroken lines, and that of the govern-

ments in particular, represented by dotted lines. In both cases, the expected imposed costs are higher the lower the degree of influence in order to avoid a decision contrary to our interests. At the limit when the political influence tends towards zero, the expected costs of an arbitrary dictatorship tend towards infinity. On the other hand, the expected costs of imposition decrease as the capacity for blocking a decision contrary to our interests increases and, at the limit for the case of unanimity, " $P=1$ ", they are zero. However, in the case of the public, the decision-making costs (null in the case of an arbitrary dictatorship) increase as the degree of political influence increases and, for very inclusive rules close to unanimity, the decision-making costs increase rapidly, tending towards infinity. Consequently, the optimum situation, that which minimizes both kinds of costs, is precisely the one that corresponds to the lower vertex of the curve representing the total cost for the public,  $P^*$ .

The situation in the case of governments is different for two reasons: 1) firstly, due to the number; since the number of governments involved is small, the costs of the negotiation processes with rules that are very inclusive, verging on unanimity, do not become infinite, even when higher than desired, and 2) secondly, since governments are accountable to the public (parliaments and elections), the inconsistent exercising of the right of veto and the blocking of the decision-making process generates political costs that tend to curb the costs resulting from unanimity or decision-making rules verging on it. As a result, the curve representing the total costs for governments reaches its minimum in an area of political influence that is a lot higher and verges on unanimity (or very qualified majorities).

Such conclusions can also be applied in order to analyse the effect of quantity on the decision-making institutions; as the number of governments increases, the curve representing the costs of joint supranational action rises and the efficient solution requires the

reduction of the inclusiveness of the decision-making rule, moving it away from unanimity, with the resulting loss of political influence, which is extremely undesirable for governments.

Let us now see how the levels of national heterogeneity affect the costs of joint supranational action, which involves considering the form of the curves of total costs according to the degree of national heterogeneity. It is clear that the higher the perception of the degree of heterogeneity, the higher the expected costs of imposition, which will therefore require decision-making rules that are more inclusive, closer to unanimity –which means that the minimum total costs will increase with the level of heterogeneity and the efficient levels of political influence will approach 1. When the level of homogeneity is very low, the minimum of the costs is attained precisely at unanimity and is considered to be very high. Joint action should be limited to what is absolutely necessary and its basis should be very close to inter-governmentalism in the decision-making procedure. As the supranational homogeneity decreases, the expected costs of imposition also decrease and this enables less inclusive decision-making rules, whose lower total costs require greater degrees of integration and more supranational powers, since the balance between the benefits and costs of the joint supranational action are more and more favourable.

As far as coexistence under supranational jurisdiction increases the degree of homogeneity, a process of cost displacement is produced that promotes new demands for assigning power to the supranational authorities. This is the essence of the self-cumulative process of the “Monnet Method” and of the gradual logic of successive steps in European construction.

The problems arising from enlargement can be considered in a similar way, since the effect of increasing the size and number –as well as the corresponding heterogeneity– involves an effect similar to that of reducing the degree of homogeneity: i.e. an increase in expected costs and a rise in the inclusiveness and caution of the decision-making processes.

Precisely for these reasons, the principle of flexibility and strengthened integration is a guarantee of importance, since it enables a closer circle of integration among the members with a higher degree of national homogeneity and it facilitates the construction of a leading group of countries promoting the integration process in concentric waves from a central nucleus.

## 2.2 Integration Demand

The evaluation of both factors (benefits and costs) by the citizens (the public in general and its different interest groups: workers, businessmen, economic sectors, functionaries, etc) generates what we may call the "*integration demand*" (Faíña 1991), i.e. the correspondence between the levels of integration that the public wants according to the degree of national homogeneity and the risks and problems that this may generate in a common organization.

We have to take into account that between the degrees of integration and the political influence there is a dependence relation. This dependence arises from the limitations that the decision-making problem with a very inclusive vote rule imposes on the amount of decisions that can be reached in a certain period of time. High degrees of integration implies the adoption of a vast number of harmonising decisions in short periods of time. This means the necessity of reduced the inclusiveness of the decision rule and to reduce the political influence (specially the governments) in order to achieve a relatively high degree of integration.

Thus, once we have overcome the critical threshold, where the profits of the integration process start to balance and overcome its costs, " $h^*$ ", the subjective value of the integration will be the higher the lower the degree of national heterogeneity will be.

Taking into account the above expression, we can obtain the long-term integration demand that is linked to the reduction of the national heterogeneity. We define it as a long-term correspond-



ence between the degree of integration that the citizens wish and the levels of political influence that the citizens would accept on the supranational institutions. This relation is described in the following graph (Figure 3) where we offer the existing relation between the different values of the political influence and the level of integration that is wished in the collective supranational action.

The central idea of the “Monnet method” points out that Europe cannot be constructed suddenly, nor under the mere impulse of great ideals, but rather little by little, creating and progressively broadening the common bonds of interest and the actual and rightful solidarity among the European people. This seems substantially correct and highlights two fundamental characteristics of the *demand for European integration*:

- On the one hand, it considers the costs of integration itself, since when the degree of national homogeneity is high, any attempt at sudden unification could cause such high costs that would make it impossible.
- On the other hand, it highlights the “self-accumulative” and “self-driving” nature of the integration demand. If at the different levels of integration, regardless of their limited extent initially, a legal framework with a view to stability and a set of common rules in one or more sectors are created, their action regarding the different behaviours and individual decisions will reduce the degree of national heterogeneity. This harmonizing process reduces the costs of unification and generates a demand for greater levels of integration, giving rise to a self-propelled spiral of integration that would converge towards an economic and political union under different confederate or even federal forms.

Nevertheless, the “gradualist optimism” that seems to be implicit in certain conceptions of the European integration process does not deserve much credibility. Not even from the sole perspective of integration demand can a mechanical process be proposed. The constitutional decisions and support for the integration systems

are not independent of their systems of rights, nor of the balance and justice of their institutional rules and balance.

### **2.3 Integration Supply**

However, progress in integration does not only depend on its demand, since neither the public in general nor its different professional sectors and interest groups can produce the constitutional changes involved in subjecting governments to a system of supranational assigning of sovereign spheres to be jointly administered: The capacity to promote this process, *the supply of European integration*, still corresponds almost exclusively to central governments.

Central governments, due to the constitutional structure of authority, have wide-ranging powers of monopoly in the field of the reform of treaties and are present in the Community's basic decision-making centres. They are the filters through which all community initiatives have to pass in order to be successful. The calculations about costs and benefits of the progress in integration made by the central governments from their constitutional position in the Community and in the representative democracies of the member states determine another basic coordinate of the process of European integration: the "integration supply", i.e. the correspondence between the levels of integration and the degrees of control and influence over the community institutions sought by the governments according to their own calculus on the utility maximization.

The logical analysis of the central governments' integration decisions (Frey 1984 and Vaubel 1986), taking into account their aspirations and determining factors in a representative democracy, reveals a certain degree of pessimism regarding the difficulties of the integration process in a political-economic union (Faïña and Puy 1988):

- At the initial levels of integration, where it is possible to operate over a wide-ranging basis of intergovernmental unanimity, it is probable that the integration supply will even exceed the demand and that it will mainly be the central governments themselves that will initially promote the integration process.
- Nevertheless, once the process goes beyond its initial stages and greater and more solid levels of integration are demanded, the situation changes and supply restrictions appear. High levels of integration are incompatible with the rule of unanimity in the intergovernmental organ and the decision-making processes have to be streamlined with rules, increasingly less inclusive and further removed from the veto and easy blocking minorities. The high decision costs of unanimity and of very inclusive decision rules (blocking coalitions are easily generated) hinders the adoption, in minimally efficient conditions, of the greater volume of supranational decisions required in the advanced phases of the process. As the majority decisions arise and become more widespread, the central governments become more stubborn and cautious, since they are afraid of the high political costs of being obliged to carry out decisions imposed by other institutions and by their partners as regards matters of great importance. But in turn, as the level of power of the community system is extended, there also arise limitations due to the governments' capacity of constitutional supply: the capacity and constituent legitimacy in order to increase the power of the supranational system in absence of appropriate citizen representation and participation. The conclusion is that, in the long term, all integration processes will have to face increasing supply restrictions.

Such restrictions do not involve any determinism as regards the final evolution of the integration processes. The representative governments have wide-ranging degrees of freedom in order to attain their interests, but they also have to face the restriction of maintain-

ing their probability of re-election above a critical level. The final result will therefore depend on the force and intensity of the demand for integration and the transparency and efficiency of the “political markets”.

### **3. Decision-Making Rules and Constitutional Choices of Supranational Integration**

#### **3.1 Supply Deficits and Integration Decisions**

Beyond the first steps in the integration process, where the intergovernmental elements of the decision-making process enable the central governments to advance in integration with a low risk of expected costs, restrictions in the integration supply begin to arise on the part of the central governments. This is the case shown in Figure 4 below.

The rising curve represents the evaluation of the benefits of a new step forward in joint supranational action and the two “U”-shaped curves represent the total costs of a new step forward in integration according to the estimates of the public, unbroken curve, and the central governments, dotted-line curve. The central governments, with a more cautious estimate, fear the costs of imposition and decide to cede a very small part of their political influence, “ $P_g$ ”; the balance of this position is high for the governments but very low for the public in general, who cannot take advantage of the benefits of the increased integration.

The integration demand clashes with a supply restriction and it is therefore impossible, in the short term, to reach point “ $P^*$ ”, where a greater transfer of political power enables the public to take full advantage of the benefits of integration.

Situations of this kind have been frequent in the history of the European Community. The procedures for their solution have always been the same, generating an idea that has produced a current of public opinion in their favour that not even the most recalcitrant governments have been able to successfully oppose for a

long time. The case of the last long wave of integration that arose from the idea of the domestic market and its logical consequence, monetary union, seems to indicate such.

### **3.2 Constitutional Limits in the Process of Integration**

The previous evolution has most probably promoted European construction at the first levels of integration. Nevertheless, the old structure, according to which the central governments used their exclusive competence in the supply of European integration in order to shape the Community to suit themselves, with the intergovernmental organ at the centre of the decision-making processes, has reached its own constitutional limits, due to the integration process' maturity and progress. This is illustrated in Figure 5 below, which shows the process' constitutional limits.

The aforementioned figure shows five successive levels or stages of integration. Beyond the first steps in which the integration supply exceeds the public's integration demand, the supply evolves in step-like fashion along the broken line of arrows due to the impulse or pull of demand (Downs 1957).

The maturity and progress of the process leads to a stage or phase of integration (shown in the figure as I<sub>4</sub>, Economic and Monetary Union) in which the supply becomes permanently rigid. What is the reason for this? Unlike previous situations, two constitutional factors prevent the continuation of the process based on the previous model of supply impulse:

- Firstly, the supply becomes rigid because it is at the limit of its own constituent capacity. To what extent can the simple procedure of reforming the treaties, without strengthening the constitutional dimension, give rise to a closer union?
- Secondly, the very demand for integration becomes vertical and loses its driving force. This is so because at the level of important transfers of power to supranational jurisdiction, the loss of the central governments' political influence required in order to pro-

gress with integration also involves a loss of the representation and influence of national interests on the part of the public, who do not have any other national authorities of representation in the Community system.

The risks of continuing with integration, without promoting other mechanisms of representation and connection with national interests, could be very high and the positive impulse of public opinion in the member states could be lacking. The best solution to the problem consists in completing the loss of influence of the governments in the Council with an increase in the cooperation with other political authorities in the member states (national parliaments and regional authorities), thereby producing the necessary constitutional change: ending the central governments' monopoly in the representation of the member states' national interests.

This solution is totally analogous as regards the problems arising from enlargement and the loss of political influence due to the community institutions' adaptation to a large number of countries.

#### **4. Concluding Remarks**

The main conclusion that is reached by the analysis of the constitutional choices of citizens and governments using our political-economic model, is the necessity for breaking the central governments' monopoly in the representation of national interests of the Union's member states, both at a constitutional level (reform of treaties) and in the institutional balance (decision making).

The reactivation of the "European integration process" in the eighties has led to a degree of maturity in the transfers of power and has become so widespread that it has reached a point where it is impossible to continue without breaking the "central governments' monopoly" in the representation of the member states' national interests. The impressive progress made in the last fifteen

years has led: 1) in the case of the transfers of power, to the Single European Act and the unification of the domestic market and the Maastricht Treaty and European Economic and Monetary Union and 2) in the case of enlargement, from the Community of 9 to the new 15-member one, including German reunification. Nevertheless, having reached the end of this wave of expansion and deepening of community powers, new urgent problems have arisen that require a continuation of the reduction of the unanimity decision-making procedures in the Council and a reduction in the weight of the “intergovernmental organ”, as well as those other characteristics of an “international” nature (members of the Commission and judges according to country, etc).

Due to the importance of the community system of government’s powers and functions, it is not sufficient to lighten and facilitate the Council’s decision-making procedures by means of less inclusive rules that are further removed from unanimity and blocking possibilities; it is also necessary to maintain a suitable “representation of the national interests” of the member states’ citizens (whose only representatives are still the central governments). Reform should therefore be carried out in the sense of extending the guarantees and possibilities of participation and influence of the citizens and their regional and national interests, which involves the following main reforms, among others: 1) Strengthening citizen guarantees and rights, 2) Associating national and regional parliaments to the Union’s decision-making processes, possibly by means of collaboration with the European Parliament, and 3) Increasing the participation of regional authorities, possibly by means of the Committee of Regions, in cooperation with other institutions such as the Parliament and the Commission.

In short, the objective is not only to limit the influence of the “inter-governmental” organs and procedures, but the necessary institutional reform should also find new authorities of cooperation and participation in order to take into account national and regional

interests in the Community's decision-making processes. This involves giving up the principle that the representation of national interests should correspond exclusively to central governments. The implications have a double dimension: 1) Firstly, as regards the adoption of constitutional rules (Reform of Treaties and National Law), the exclusive and "monopolistic" role of central governments should be surpassed by means of the Intergovernmental Conference and representative organs should be linked with greater constituent capacity, as is the case of the cooperation between the European Parliament and the national parliaments. The *four-party Convention* (Council, Commission, European Parliament and national parliaments) that draws up the Constitution of Fundamental Rights is a magnificent channel for strengthening both the constituent capacity and the constitutionalization of the Union. 2) Secondly, the reform should lay the foundations of a new "institutional balance", where the representation of "the member states' national interests" does not correspond exclusively to the "central governments" and their organs of representation (Council) and administrative influence (committees), linking the procedures to national parliaments and regional authorities, possibly by means of cooperation between the European Parliament, the Commission and the Committee of Regions.

Finally, the analysis of the factors underlying the constitutional decisions of the public and the governments and the interrelation between integration supply and demand, presents a clear conclusion that, to some extent, supports the federalist conceptions of European construction: The institutional reform required by extension to the East and the deepening towards political and economic union cannot be conceived as a constant process of adding successive spheres of sovereignty, assigned by the member states to the community institutions in order to be jointly administered under the pre-eminence of intergovernmental organs: European Council, Council of Ministers and their related committees. *Both the extension to a large number of countries and the construction of the minimum political*



*union backing economic and monetary union require a change of structure –perhaps slow and gradual but decisive- to put an end to the central governments’ monopoly in the Community’s decision-making nucleus, as regards both the reform of treaties and the institutional balance of power and decision-making procedures.*

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**Figure 1**

*Hobbes-like Features in International Relations*

**Figure 2**

*Decision-making Rules and Integration Costs*

**Figure 3**

*Integration Demand and Political Influence*

**Figure 4**

*Supply Deficit in Integration Decisions*

**Figure 5**  
*Constitutional Limits in the Integration Process*