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Author(s): Tsebelis, George

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**THE EUROPEAN CONVENTION AND THE ROME AND BRUSSELS IGCS:
A VETO PLAYERS ANALYSIS**

George Tsebelis

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George Tsebelis is Professor of Political Science at the University of California, Los Angeles. This paper is based on a seminar that he presented at the *Center for Advanced Study in the Social Sciences*, Juan March Institute, Madrid, on 1 April 2005, under the same title.

Abstract

This paper describes the consequences of proposed changes to the decisionmaking rules of the Council of Ministers of the European Union. According to the 2001 Treaty of Nice, a triple majority---a qualified majority of weighted votes, a majority of countries and a qualified majority of population---was required for changing the status quo. The 2003 convention proposal reduced the requirements from three to two by dropping the qualified majority of weighted votes and reducing the qualified majority threshold of population from 62% to 60%. I argue that this proposed modification would have had a number of important consequences for the political institutions of the EU. First, it would have facilitated political decisionmaking. Second it would have reduced the weight of the Council in the decisionmaking process. Third it would have reduced the role of the judiciary and bureaucracies in the EU in favor of the political process. The consequences of the text adopted in Brussels are exactly in the middle between Nice and the Constitutional convention.

Introduction*

The EU is in the process of adopting a new constitution. A European Convention under the Presidency of Valéry Giscard d'Estaing elaborated the document, which was presented at the Intergovernmental Conference of Rome at the end of 2003 and was rejected. The rejection led to a new text adopted in the Brussels IGC which from the point of view of this analysis is close to a 50-50 split between the Nice and the Convention texts.

This is not a new situation for the EU. After a period of constitutional and policy inertia, the EU adopted new constitutional arrangements in 1987, 1991, 1997, and 2001, all before the Convention. This means that each EU constitution has lasted for 3 to 4 years on average. Debate over the functioning of political institutions has preceded each new constitutional arrangement. In effect, the EU has been in a process of continuous constitutional design (and redesign) for about 15 years.

What was the response of the institutional literature to all these changes? For a long period of time, these changes were ignored because the literature (an off-shoot of the International Relations literature) was embroiled in a paradigmatic war that left the study of political institutions ignored: intergovernmentalists neglected the study of institutions because of major developments at intergovernmental conferences, and neofunctionalists ignored institutions altogether in favor of spillover processes (for a discussion see Garrett and Tsebelis (1996) and Tsebelis and Garrett (2001)). The institutional descriptions of the EU were based on neologisms like: It is "neither a state nor an international organization" (Sbragia (1992: 257)); "less than a Federation, more than a Regime" (W. Wallace (1983: 403)); "stuck between sovereignty and integration" (W. Wallace (1982: 67)); "institutionalized Intergovernmentalism in a supranational organization" (Cameron (1992: 66)); the "middle ground between the cooperation of existing nations and the breaking of a new one" (Scharpf (1988: 242)). Some scholars even took advantage of the lack of theoretical grounding: Sbragia (1992: 258) approvingly quotes Krislov, Ehlermann, and Weiler

* I would like to thank Sven-Oliver Proksch and Thomas König and Thomas Bräuninger Koenig for their help. The first, calculated the frequencies of decisionmaking under different EU rules by using a computer program generated by the other two. I also thank Lisa Blaydes and Sven-Oliver Proksch for their assistance.

claiming: "The absence of a clear model, for one thing, makes ad hoc analogies more appropriate and justifiable. If one may not specify what are clear analogies, less clear ones may be appropriate."

In this paper instead of using analogies (appropriate or inappropriate), I examine legislative procedures adopted at Nice in 2001 and at the European Convention in 2003 and in Brussels in 2004 in light of veto players theory (Tsebelis 2002). I analyze the outcomes of decisionmaking generated by these procedures and discuss the policy, political and structural implications of the different arrangements. My argument is that the procedures proposed in the Convention text resolved a series of problems facing the EU, and the final compromise is exactly in the middle between Nice and the Convention.

More specifically, I argue that the EU was characterized by a plethora of veto players, which made decisionmaking very difficult. In addition, the Nice arrangements---which gave most of the decisionmaking authority to the Council--- had increased the powers of the judiciary and the bureaucracies. Giscard was able to reverse all these features with one stroke of the pen: he had the power to eliminate the qualified majority decisionmaking rule in the Council. As a result, he could have made political decisions easier to adopt by reducing the power of the Council, the bureaucracy and the judiciary. The final compromise is certainly better than Nice but not as good as the Convention solution particularly since the EU enlargement introduces increasingly politically heterogeneous players into the Union.

This paper is organized into three sections. First, in a short section I introduce the arguments from veto players theory (Tsebelis 2002) that will be necessary for the analysis of EU institutions. Second, I explain the differences between decisionmaking proposals introduced in Nice, the Convention, and the final compromise focusing on the elimination of qualified majority voting in the Council. Third, I discuss the implications of qualified majority voting in the Council for the difficulty of decisionmaking, for the weight of the Council vs. the parliament in decisionmaking, and for the importance of the judiciary and the bureaucracies in the EU.

1. Veto players and their policy and institutional implications

According to Tsebelis (2002) veto players are individual or collective decisionmakers whose agreement is necessary for a change of the legislative status quo. From this definition follows that the higher the number of veto players, the more difficult it is to change the status quo.¹ Tsebelis calls the “difficulty of changing the status quo” *policy stability* and in addition to the effect of the number of veto players on policy stability he demonstrates that the larger the ideological distances among veto players, the higher policy stability is.

Here I will extract some ideas from the book that will help us understand the EU institutions.

i. Changing the qualified majority requirements. Tsebelis (2002) demonstrates that as the required majority for a decision increases, policy stability increases. This is the basic property that we will use in the article. I will argue that the Treaty of Nice produced institutions with exceptionally high policy stability, making political decisionmaking practically impossible, while the agreements proposed at the Convention would have rectified the problem. Again, the final solution lies somewhere in between.

ii. Bicameralism and changing qualified majorities. What happens if decisions are made by the congruent position of two distinct chambers, as is the case in the EU? In particular, what are the effects of changing the threshold of qualified majority decisionmaking in one chamber? Tsebelis (2002) has identified two different effects of such a change. First, the power shifts in favor of the chamber whose threshold *increases*. Second, the overall policy stability of the system increases.

iii. Effects on Judiciary and Bureaucracies. Tsebelis (2002) argues that Bureaucracies and the Judiciary are involved with legislatures in a sequential game: Bureaucracies and the Judiciary interpret the law and then the legislature can decide to overrule their statutory interpretation or not. This is a standard argument in the literature on judges and bureaucrats.

¹ Actually, increasing the number of veto players will *not decrease* the difficulty of changing the status quo, since as we will see the addition of some veto players may have no impact.

The implication is that as policy stability increases the role of judges and bureaucrats increases, because they can make decisions without concern of being overruled.

2. Qualified majority in the Council: to what extent does it impede decisionmaking?

In the previous section I argued that, in principle, increasing the qualified majority threshold makes decisions more difficult. The argument is simple and straightforward, but the actual differences between the sets of procedures introduced at Nice in 2001 and at the Convention in 2003 may have been inconsequential. In this paper, I will argue quite the opposite: the differences between the proposals put forth at Nice and the Convention are significant and consequential. The Brussels IGC adopted an intermediate solution.

Tsebelis and Yatağan (2002) analyzed the dynamics of bargaining in Nice, and argued that it was the first time that the three criteria (qualified majority of weighted votes, majority of states, and qualified majority of populations (62%)) did not coincide, and that different countries were attached to different principles. As a result, the conferees in Nice adopted the detrimental strategy of including all three criteria for valid decisionmaking. In other words, the countries bargaining in Nice were involved in a collective prisoners' dilemma game and it was individually rational to insist on their own preferred criterion. As a result, they became collectively worse off by their inability to strike a compromise.

In the remainder of this section I will use the number of winning coalitions in the Council to represent the different decisionmaking rules. This methodology has been used by power index analysis of EU institutions in order to infer the "power" of different countries. I have argued against this methodology (see Garrett and Tsebelis (1996), Tsebelis and Garrett (2001)) because it ignores both the preferences of the different actors, as well as the institutions of the EU. Here I use this method for two reasons: *First*, I cannot take into account the actors' preferences. It is impossible to know the preferences of actors who have thus far not participated in the EU, or to consider the coalitions they would be willing to form. It is theoretically possible that winning coalitions are a very small percentage of the

overall number of coalitions, and yet, these coalitions form with extremely high frequency because a certain number of countries have almost identical preferences. However, numerical comparisons are the only feasible strategy at this point. *Second*, I am not interested in the “power” of different actors, which is a function of votes in the Council as well as preference configurations, but rather on what the Council can or cannot do on the basis of its decisionmaking rule. However, the analysis that follows can be criticized since it does not take into account the preferences of the different actors; I would love to be able to do so, but will have to wait until more data is available on coalition formation in the 25 member EU.

TABLE 1

EU15/Pre-NICE	Votes	Qualified Majority Voting (62/87)	QMV + Majority of MS + 62%
		winsets	winsets
Germany	10	2199	2199
UK	10	2199	2175
France	10	2199	2175
Italy	10	2199	2175
Spain	8	2040	2004
Netherlands	5	1761	1728
Greece	5	1761	1728
Belgium	5	1761	1728
Portugal	5	1761	1728
Sweden	4	1671	1638
Austria	4	1671	1638
Denmark	3	1572	1542
Finland	3	1572	1542
Ireland	3	1572	1542
Luxembourg	2	1462	1435
Winning coalitions		2549	2513
Decision Frequency		0.077789	0.076691

As Table 1 demonstrates, the short-term effects of Nice were minor. Indeed, under the 62/87 qualified majority rule in effect before the Treaty of Nice the number of winning coalitions with the single qualified majority criterion before Nice was 2549 out of 32768

possible coalitions, resulting in a decision frequency of 7.78%. Had the weighting of the votes been preserved, this number would have been slightly restricted by the triple majority principle to 2513 out of 32768 coalitions (the table indicates that the first three decimal points of the decision frequencies are practically the same).

TABLE 2

EU 15/NICE	Qualified Majority Voting (169/237)		QMV + Majority of MS + 62%
	Votes Nice	winsets	winsets
Germany	29	2348	2348
UK	29	2348	2338
France	29	2348	2338
Italy	29	2348	2338
Spain	27	2280	2265
Netherlands	13	1816	1801
Greece	12	1788	1773
Belgium	12	1788	1773
Portugal	12	1788	1773
Sweden	10	1714	1702
Austria	10	1714	1702
Denmark	7	1614	1602
Finland	7	1614	1602
Ireland	7	1614	1602
Luxembourg	4	1523	1508
Winning coalitions		2707	2692
Decision Frequency		0.082611	0.082153

The effects of the triple majority become even smaller in an EU of 15 members with the weighting system adopted by the Nice Treaty itself. Now with the simple qualified majority criterion (169/237) the number of winning coalitions is 2707 out of 32768, while with the triple one, it is reduced to 2692 out of 32768 (now the first three decimal points are identical). In short, the decision frequency increased only slightly from 7.78% to 8.22% with the Nice triple majority principle.

TABLE 3

EU25	Votes	Pre-Nice:	Treaty of Nice:	Convention:	Constitution:
		QMV (232/321)	QMV+ Majority of MS + 62% pop	Majority of MS + 60%	55% of MS + at least 15 MS + 65% pop. + 4 MS in block. minority
		winsets	winsets	winsets	winsets
Germany	29	1,064,341	1,063,676	6,358,510	3,023,749
UK	29	1,064,341	1,063,648	5,616,196	2,667,807
France	29	1,064,341	1,063,646	5,611,025	2,665,472
Italy	29	1,064,341	1,063,646	5,573,809	2,650,049
Spain	27	1,040,713	1,040,022	5,099,561	2,419,575
Poland	27	1,040,713	1,040,022	5,089,235	2,411,881
Netherlands	13	830,464	829,972	4,468,862	2,171,443
Greece	12	813,299	812,813	4,338,580	2,117,939
Czech Republic	12	813,299	812,813	4,333,723	2,115,828
Belgium	12	813,299	812,813	4,331,262	2,114,753
Hungary	12	813,299	812,813	4,328,804	2,113,666
Portugal	12	813,299	812,813	4,326,393	2,112,605
Sweden	10	778,735	778,408	4,299,335	2,100,886
Austria	10	778,735	778,406	4,279,914	2,092,228
Slovak Republic	7	726,659	726,496	4,212,480	2,063,573
Denmark	7	726,659	726,496	4,210,034	2,062,482
Finland	7	726,659	726,495	4,207,565	2,061,446
Ireland	7	726,659	726,495	4,170,431	2,045,426
Lithuania	7	726,659	726,495	4,170,431	2,045,426
Latvia	4	673,651	673,573	4,137,357	2,031,764
Slovenia	4	673,651	673,573	4,127,676	2,027,612
Estonia	4	673,651	673,573	4,112,608	2,021,275
Cyprus	4	673,651	673,573	4,097,781	2,015,011
Luxembourg	4	673,651	673,573	4,087,618	2,010,689
Malta	3	655,519	655,451	4,087,618	2,010,689
Winning coalitions		1,204,448	1,203,736	7,543,799	3,393,499
Decision Frequency		0.035895	0.035874	0.224823	0.101134

Note: The weighting of the votes for the EU with 25 member states (first two columns) is based upon the provisions of the Accession Treaty (*Official Journal L 236 of 23 September 2003*). Table 3 indicates that after the expansion to 25 members the difference between the simple qualified majority criterion (232/321) and the triple majority criterion remains insignificant (the number of winning coalitions goes down from 1,204,448 to 1,203,736, but what is significant is that these numbers identify 3.6% of winning majorities in the Council).

It is to the great credit of the Convention and its leader Valéry Giscard d'Estaing that they correctly identified the source of the high policy stability generated by the Nice Treaty: two of the decisionmaking requirements (majority of countries and qualified majority (60% of population) impose fewer restrictions on the decisionmaking process. The key restriction

comes from the qualified majority requirement of weighted votes. As a result, the convention leadership introduced the much more permissive double criterion. The frequency of valid decisions increases by a factor of 6: from 3.6% to over 22%.

So, the frequency of valid decisions went from 8% in an EU of 15 (before or after Nice) to 3.6% in an EU of 25 (after Nice) to 22.5% under the Convention proposal. After the failure of the Rome summit, this number drops back down to 3.6%. Why did the Rome IGC reject the Giscard proposal?

Most of the negotiations were shrouded in secrecy, but some accounts were published in the press, and I will try to focus on these reports. First, we know that Poland and Spain vetoed the Convention proposal, leading to the failure of the summit. Official statements (particularly the one by Schröder criticizing Poland---which began its participation to the EU with a veto) made that point amply clear. Second, while we do not know for certain, there is some information regarding the counter proposal put forth by these countries. Here is a quote from *Sueddeutsche Zeitung* (12 December 2003): "...According to many EU diplomats, there is evidence that Rome is seeking a solution on the basis of the double majority principle. As a concession to Poland and Spain, Prime Minister Silvio Berlusconi could make the offer to have the reform take effect in 2014 instead of 2009. It would also be possible to increase the population threshold of 60 percent. It is said that Spanish delegates had floated the idea of 66 percent, since Madrid would then have similar chances of building blocking coalitions in the Council as in the present situation. Berlin and Paris seem to be ready to go along only with 62 percent though..."

This quotation clearly demonstrates the effect of the delay: it keeps the Nice Treaty in place. The effects of different majorities, however, are less obvious. The only thing we know on the basis of the previous analysis is that increasing the required majorities makes decisions more difficult, and consequently shifts powers to the Council, and increases the role of bureaucracies and the judiciary. The question remains: by how much? What difference will it make for the EU if the required majority is 60, or 65 as in the final document adopted in Brussels? And what if a simple majority of countries is required (as Giscard suggested) or 55% is necessary as Brussels decided? We now turn to this issue.

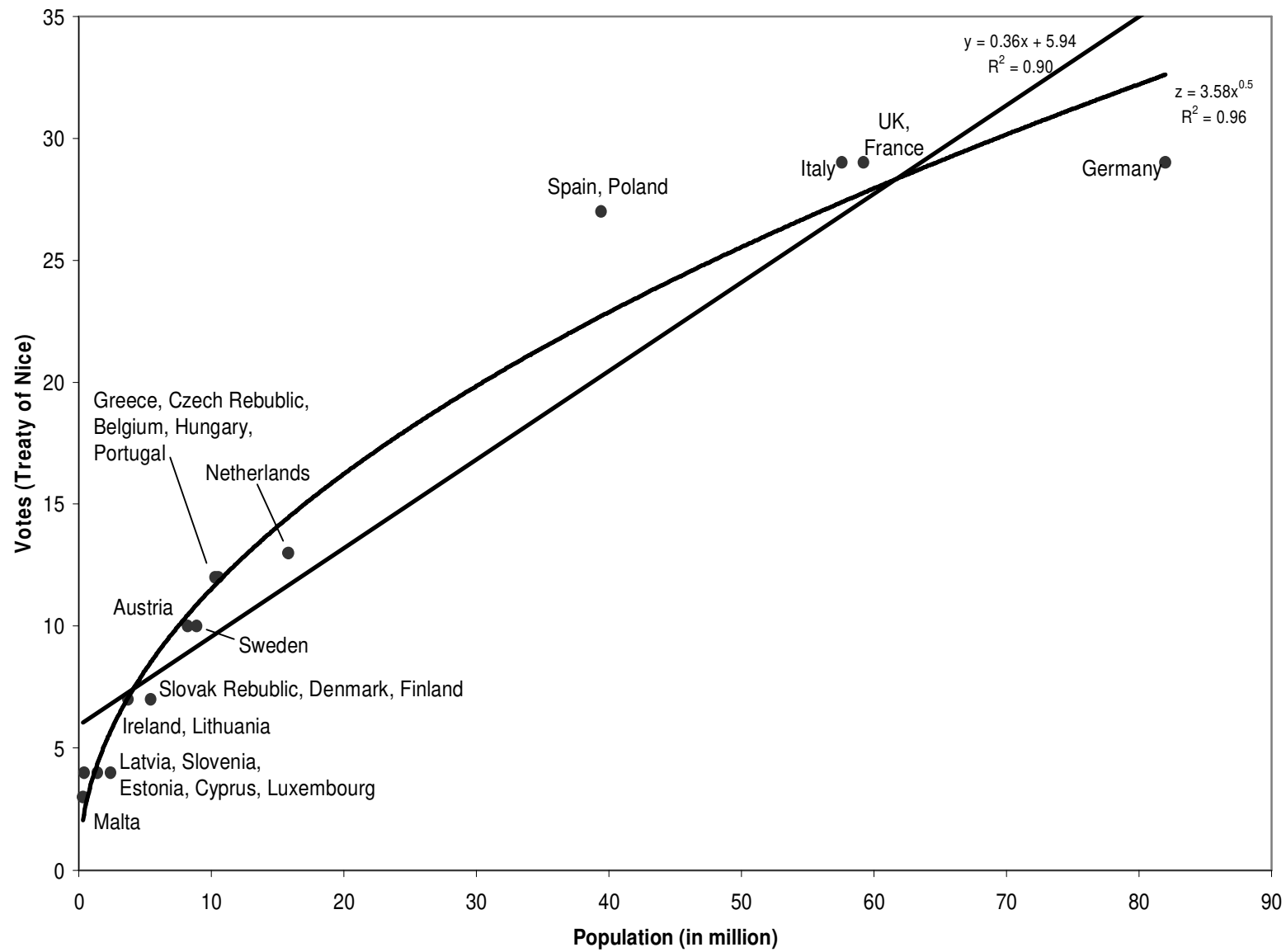
The last column of Table 3 presents the outcomes of the decisionmaking rule adopted in Brussels: a 65% majority of the population of the EU, a 55% majority of the countries, and the requirement that in order to block a decision 4 countries are required (in order to eliminate the possibility of 3 major countries blocking EU decisionmaking).

As the last column indicates the overall frequency of winning coalitions is around 10%. Compare this number to the 3.6% of the Nice Treaty and the 22.5% of the Giscard proposal. The final solution adopted is about 50-50 split between the two previous proposals. Why did Spain and Poland fight so hard in Rome, and is the solution adopted to their satisfaction?

The Spanish proposal (and I repeat here the confidentiality of negotiations makes it impossible to assert that this proposal was made) is similar to the results of the Nice Treaty: it makes Spain and Poland participate in most winning coalitions, or to put it differently it made participation of Spain or Poland a necessary condition for most coalitions to succeed. Spain and Poland pushed the outcome back to Nice. But what was so attractive about that treaty for these two countries?

Figure 1 provides the answer. The Figure depicts the population and the number of votes that each country received in the Nice Treaty. I have fitted these points with a linear and a square root curve. According to different theories these two curves provide the “best” way of representation of different countries.

There are five countries that are outliers with respect to both curves: Italy, France, UK, Spain and Poland. It is well known that the French Presidency in Nice did not want France to have fewer votes in the Council than a unified Germany (Tsebelis and Yatağan 2002). In fact, Germany introduced the 62% of population clause in order to get some advantage over the other 3 large countries (France, Italy, and the UK). Yet, Germany has a population of 80 million while the other three countries have approximately 60 million each. Given this French position, it was difficult to deny Spain and Poland (with around 40 million each) an advantage similar to the other large countries. If 20 million people do not count for a



difference in representation between France and Germany, why should they count for a difference in representation between France and Poland?

The result of this logic was that these five countries, are way above the curves that the others form. In fact, Poland and Spain are even more obvious outliers than the other large countries. The implication is that no voting scheme based on population can ever provide Spain and Poland the same advantages that they had under Nice.

There may be additional reasons for Spain and Poland to have this intransigent position. Elections were upcoming in both countries and it would be difficult to explain why the representatives of these countries gave up the advantages they enjoyed under Nice. Statements were made by the American administration implying that France and Germany are the “old Europe”, implying that the “new Europe” (Poland and Spain, both American allies in the Iraqi war) have moral justification to block the other EU countries.

But Poland and Spain were not able to turn back the clock to Nice for a long time. The IGC in Brussels abandoned the weighted voting scheme of Nice but at the price of adopting a decisionmaking scheme that is located exactly in the middle between Nice and the Convention. In the next section I will compare the two extreme solutions, and the reader should keep in mind that the final outcome is located in the middle.

3. The effects on policymaking, democratic deficit, and impact of the judiciary and bureaucracies

As demonstrated in the first part of this paper, introducing greater constraints in decisionmaking in the Council is not a simple inconvenience. It has profound policy, political, and structural implications. I will discuss each of these issues in turn.

i. Policy implications. In the first part of this section I demonstrated that imposing constraints on the decisionmaking of the Council (or the Parliament) leads to further

difficulties in EU decisionmaking since when the core of the Council increases the core of the EU either increases or remains the same. In the second part I explained that the restrictions imposed by the Nice treaty were very significant, and that the proposals made at the Convention would have resulted in dropping one of the requirements, increasing by a factor of 6 the number of decisive coalitions in the Council, thus making changes to the status quo ten times easier than before. This is a numerically significant difference, but why should one care whether the EU is able to make political decisions or not? Could we say that an EU which is unable to decide politically is a better institution than a politically active EU?

In fact, the whole debate about political vs “other” issues in the EU is based on whether it is better for the EU to be able to make decisions that overrule the positions of any individual member country or not. It used to be that all decisions needed unanimity in the Council (Luxemburg compromise). Then, economic issues became part of the EU jurisdiction (Single European Act). Over the years, the environment was added to the areas of European jurisdiction, then issues of security introduced immigration and the free movement of people in the EU and currently only the issues of taxation and foreign policy remain exclusively in the hands of the member countries.

While there is no general “philosophy” about which issues should or should not be in what jurisdiction (why is it better for countries to have fiscal but not monetary discretion as determined by the Maastricht treaty) the ability of political decisionmaking by the EU is directly linked to which decisions will be made, de facto, by the political institutions of the EU and which will be made by other institutions (national or supranational). We will focus on the national ones here.

Policy stability in any political system enables the citizens to know the rules of the game and undertake initiatives that will be beneficial to them on the basis of these rules. On the other hand, the ability to make changes to policy enables a political system as a whole to adapt to a changing environment. Let me use two examples to make the point clear: Having a taxation system that remains stable will enable people to make investment decisions that are as profitable as possible and therefore, lead to higher levels of growth. This is a standard economic argument (“rules better than discretion”, Kydland and Prescott (1977)) and

empirical analyses have corroborated this line of reasoning (Henisz 2000). On the other hand, an exogenous shock (like an increase in the price of oil) may lead different political systems to adopt some kind of response, like increased taxation on oil in order to reduce consumption, or decreased taxation in order to keep prices stable in other areas, or the study or exploration of alternative energy resources.

Is it better for a political system to have more or less policy stability? As I have argued elsewhere there is no general answer, unless a political system occupies some kind of extreme position (if, for example, unanimity is required for decisionmaking in a Parliament like the Polish Duma, or decisions on human rights are made by simple majority in which case a majority can decide to oppress the human rights of a minority).

Obviously the EU does not fall into an extreme category like the ones described. However, will it be facing an economic and political environment with lots of shocks (and therefore, high variance of external conditions)? The developments of terrorism, potential trade conflict with the US, globalization and the opening of new markets, are all external shocks that may leave the European nation states ill-equipped to confront problems. Consequently decisions by the EU will become more necessary not less. So, restricting the Council's decisionmaking capabilities undermines the EU today more than it did in the past.

As a result of this analysis, I have argued that the steps taken in Nice were negative, and the failure of the IGC in Rome (which preserves the Nice rules) had been a further unfortunate development. The insistence of countries on their own rights and the lack of focus to the collective consequences would have inevitably led to an inability of the EU to address new issues; ultimately, this would have left each country to make its own decisions, but with only its own forces, facing situations where its own weight may not be enough to confront difficult conditions.

ii. Democratic Deficit. Scholars continue to discuss the issue of a "democratic deficit" connected with EU institutions. It is not clear what the discussion is about. It may be that political decisions do not reflect the wishes of the public. Or, it may be that information about the decisions made by the political system is not disseminated to the public. In all cases, there

is a statement about the reduced role that the Parliament plays in political decisionmaking. Let us analyze these issues separately.

If one uses the term “democratic deficit” to describe a discrepancy between public opinion and decisions made by the political system, this is a feature common in all political systems. Given the volatility of public opinion it is not possible to have measures reflecting public opinion all the time. In fact, it is not clear that we should, and probably mediated democracy is adopting a different model where important decisions are delegated to political elites who will be accountable in the subsequent election, when the consequences of the decisions will be clearer.

If “democratic deficit” implies the ignorance of the public about decisionmaking “in Brussels” then it is a factually correct characterization, although it covers decisionmaking in Strasbourg (the location of the plenary sessions of the European Parliament) as well as decisionmaking in Luxembourg (the location of the European Court of Justice). In fact, the average European is disinterested in European decisionmaking, and is irritated by specific decisions (whenever he or she hears about them). This phenomenon does not reflect the intention of supranational elites (the EP is always trying to communicate its decisions to national parliaments and the public) but rather the predisposition of the EU population. When it becomes clearer that EU decisions are transposed to the national level, and a series of national decisions are taken unanimously *because* they reflect European legislation, and as a result individual countries have to adopt the specific policies, the attention of the public may increase.

The reduced role of the European Parliament is an inaccurate perception. As I have argued elsewhere, there is a difference in the role and importance of Parliament than one would expect from Presidential and Parliamentary systems: the titles of these systems are misleading. It is parliaments in Europe that complain that they are little more than a rubberstamp for government decisions, and it is the President of the United States that complains that he cannot restrict the initiatives undertaken by the US Congress. The reason for this discrepancy between titles and reality is that the parliament makes proposals to the Executive in Presidential systems, while the Government makes proposals to the Parliament

in Parliamentary ones. The institution that makes the proposal enjoys greater discretion than the one that accepts or rejects the proposal.

Looking at EU institutions, the EP is able to make its own proposals to the Council, and according to the rules currently in place it shares agenda setting powers with the other policymaking institutions (Commission and Council). In fact, the Commission has stated that: “Since the Single European Act came into force on July 1 1987, over 50 percent of Parliament’s amendments have been accepted by the Commission and carried by the Council. No national Parliament has a comparable success rate in bending the executive to its will” (Commission Press release 15 December 1994, quoted in Earnshaw and Judge (1996: 96)).

So, the term “democratic deficit” is not an accurate characterization if it is meant to reflect the power of the European Parliament. However, as I demonstrated in the first section of this paper, this influence declines when one imposes decisionmaking constraints on the Council as the Nice Treaty did.

iii. Power of Judges and Bureaucrats. Another consequence of the failure of Rome would have been the increased role of bureaucrats and judges. While most analyses think that increasing the power of bureaucrats is a nightmare, the same assessment is not made with respect to judges. The latter are supposed to have the welfare of citizens in mind while the former are not.

It is not clear why judges are considered under a different lens than bureaucrats by the literature: they both interpret legislation, and there is no compelling analysis that tells us that they have different goals from each other (neither the arguments that the judges care for the “common good” are compelling, nor any argument has been made that bureaucrats do *not* care has been made). But no matter what the interests and or preferences of these institutions, the real question is: should political decisions be made by the elected representatives of the people of the EU, or should these decisions be left to non-elected agents?

The question may seem provocative and the answer obvious. I just want to clarify that I do not share this belief. There are decisions that are better to be left to judges than to elected

representatives: for example issues of human rights are better left to Courts. Similarly, there are decisions that are better left to independent agencies (like an ombudsman) than to governments. However, these arguments cannot be made for the majority of political decisions, and reducing the capacity of a political body to make these decisions increases the likelihood that these decisions will be made by non-elected (and non-politically accountable) agents. I am not sure that this was the intention of national governments (including the ones of Spain and Poland) at the IGC in Rome, but it would have been the consequence of the Treaty of Nice if the IGC in Brussels had not partially rectified the failure of the Rome meetings.

Conclusions

It is ironic that what happened under the Presidency of one President of France was repealed under the Presidency of another President of France: Jacques Chirac was the President of the EU in 2001 when the Nice Treaty was accepted and as such was responsible for the acceptance of the triple majority requirement that seriously undermines the decisionmaking abilities of the Council. Valéry Giscard d'Estaing (and ex-President of France) was the President of the Convention, which repealed the most restrictive clause of a qualified majority of weighted votes in the Council, a proposal which would have unblocked the Council and enabled it to make political decisions.

This decision to decrease policy stability in the EU was an important one, because under the Nice rules the EU will be unable to function. As I demonstrated, the difference between the two sets of rules on policy stability is overwhelming, and policy stability (or in the case of Europe of political immobilism) affects not only policies, but also the democratic deficit and the role of the judiciary and bureaucracies as well. The final outcome was a Solomonic judgment: select a decisionmaking scheme that was located in the middle between the two. So, the EU will be able to make some decisions, not as few as under Nice and not as many as under the Convention proposal.

References

- Bräuninger, Thomas and Thomas König (2001) Indices of Power IOP 2.0 (computer program). Konstanz: University of Konstanz. <http://www.tbraeuninger.de/IOP.html>.
- Cameron, David R 1992 "The 1992 Initiative: Causes and Consequences" in A. Sbragia (ed) *Euro-Politics* Washington D.C.: Brookings.
- Earnshaw, David and David Judge 1996 "From co-operation to co-decision: The European Parliament's path to legislative power" in J.J Richardson (ed) *European Union: Power and Policy-Making* London: Routledge.
- Garrett, Geoffrey and George Tsebelis. 1996. An Institutional Critique of Intergovernmentalism. *International Organization* 50:269-300.
- Henisz, Witold J. 2000. The Institutional Environment for Multinational Investment. *Journal of Law, Economics and Organization* 16: 334-364.
- Kydland, Finn E. and Edward C. Prescott, 1977 "Rules Rather than Discretion: The Inconsistency of Optimal Plans" *Journal of Political Economy* 85: 473-91.
- Sbragia, Alberta M. (ed) 1992 *Euro-Politics* Washington D.C.: Brookings.
- Scharpf, Fritz W. 1988. "The Joint-Decision Trap: Lessons From German Federalism and European Integration" *Public Administration* 66: 239-78.
- Sueddeutsche Zeitung. 2003. "Machtkampf in der EU gefährdet Verfassung", 12. December 2003 (own translation).
- Tsebelis, George. 2002. *Veto Players: How Political Institutions Work*. New York : Russell Sage Foundation ; Princeton, N.J. : Princeton University Press.
- Tsebelis, George and Geoffrey Garrett 2001 "The Institutional Determinants of Supranationalism in the EU" *International Organization* 55(2): 357-90.
- Tsebelis, George and Xenophon A. Yataganas 2002 "Veto players and Decisionmaking In the EU after Nice: Legislative Gridlock and Bureaucratic/Judicial Discretion" *Journal of Common Market Studies* 40 (2):283-307.
- Wallace, William. 1982. "Europe as a Confederation: the Community and the Nation State" *Journal of Common Market Studies* 21: 57-68.

Wallace, William. 1983. "Less than a Federation, More than a Regime: The Community as a Political System" in H. Wallace, W. Wallace and C. Webb (ed) *Policy Making in the European Community* (2d ed) N. York: Wiley.