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## FEDERALISM AND VETO PLAYERS

— *GEORGE TSEBELIS*

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### 1 Introduction<sup>1</sup>

The term *federal* is used for countries where: “(1) two levels of government rule the same land and people, (2) each level has at least one area of jurisdiction in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere” (Riker 1964: 11).

RIKER has argued that there will be no differences between federal and non-federal countries. But economists studying federalism pointed out two important differences between federal and unitary countries. First, HAYEK (1939) suggested that because local governments and consumers have better information about local conditions and preferences they will make better decisions than national governments. Second, TIEBOUT (1956) focused on the effects of competition among jurisdictions since people can “vote with their feet” and argued that federalism provides people with the choice among different menus of public goods.

These early approaches ignored the question of incentives of politicians to provide public goods and preserve markets. WEINGAST (1995: 24) focused on the following fundamental problem: “Markets require protection and thus a government strong enough to resist responding to the inevitable political forces

<sup>1</sup> Parts of this paper were first published in my book “Veto Players: How Political Institutions work” (2002) and are reprinted here by permission of Princeton UP. The editors thank Princeton University Press for this permission.

advocating encroachments on markets for private gain. The fundamental political dilemma of an economic system is that a state strong enough to protect private markets is strong enough to confiscate the wealth of its citizens." The answer according to WEINGAST was "market preserving federalism", that is a federal regime that would require balanced budgets from the constituent states. All this theoretical literature (see Buchanan 1950; Oates 1972) shaped the expectation that economic benefits are associated with federalism because of decentralization and the competition among different states.

On the other hand, empirical analyses (see Davoodi and Zou 1998; Prud'homme 1995; Tanzi 1995; Treisman 2000a, Treisman 2000b) do not provide corroborating evidence, and point out problems associated with decentralization. In particular TREISMAN (2000b) created a data set including 154 countries and defined five different types of decentralization depending on the political institutions prevailing in a country, the number of tiers that different units can be classified, the size of the lower level units, etc. His conclusions were that countries with higher levels of decentralization have higher levels of corruption, and lower levels of provisions of public goods indicating "quality of government", like the inoculation of children, and reduction of adult illiteracy. He concluded: "The TIEBOUTIAN idea that decreasing the size of government units will strengthen competition between governments for capital, thus stimulating greater efficiency and honesty, is not supported. Countries with smaller first-tier jurisdictions tended to be perceived as more corrupt" (Treisman 2000b: 1). The same result holds with other measurements of decentralization as well: decentralization and corruption are positively correlated in TREISMAN's data.

My approach to federalism does not rejoin this ongoing debate on the effects of decentralization. Instead, I focus at the institutional design of countries at the federal level. At this level federalism is associated with bicameralism (Switzerland, Germany), with qualified majorities or unanimities (Luxemburg Compromise in the EU), or with the combination of both modes of decisionmaking (current EU, US). My argument is that these decisionmaking procedures increase the number of *veto players* – actors whose agreement is necessary for a change of the status quo – in federal countries. Increasing the number of veto players, in turn, increases policy stability in federal countries,

which means that changes of the status quo become more difficult. Finally, policy stability is associated with a series of other institutional results: increase of government instability in parliamentary systems, increase of regime instability in presidential systems, increase of the independence of bureaucrats and the judiciary across the board, and reduction of the importance of legislative agenda control. I provide the reasons for these effects of policy stability, and I use the case of institution building in the EU to assess my arguments.

The paper is organized into 4 sections. First, I provide the connections between federalism on the one hand, and qualified majorities and bicameralism on the other. Second, I explain how each of these two decisionmaking systems increases the number of veto players in a country. Third, I explain the connections between veto players and a series of other variables (bureaucracies, judiciary, government and regime survival). Fourth, I use an example from the change of rules in the EU to form expectations about their impact.

## 2 The Institutional Forms of Federalism: Bicameralism and Qualified Majorities

RIKER's definition of federalism has been the starting point for the study of the institutions of federalism. HICKS (1978: 175) essentially uses RIKER's definition and takes RIKER's point one step further in terms of their institutional implications: "If we agree that a federal system has the dual purpose of creating a nation and preserving the identity of its units, it is clearly essential that Constitution and institutions must be appropriately devised for both purposes [...]. The Constitution will provide for: (1) a probably large Assembly representative of all citizens and chosen from the units (or States), most likely in proportion to their relative populations; (2) a House of States or Senate, considerably smaller but normally providing strictly equal representation of all States [...]."

Similarly, BEDNAR, ESKRIDGE and FEREJOHN (2001: 9) discuss the institutional design of federalism: "Opportunism by the national government is best constrained by fragmenting power at the national level. By making it harder

for a national will to form and be sustained over time, these mechanisms will tend to disable national authorities from invading state authority, especially as to controversial political issues (the most tempting target for national cheating on the federal arrangement). The foregoing fragmentation may be accomplished through a formal system of separation of powers and extra requirements (such as bicameral approval and presentment to the chief executive for veto) for legislation.”

In fact, most analysts associate federalism with “strong bicameralism” to use LIJPHART’S (1999) terminology. That is a system where the second chamber has formal veto and does not have the same composition as the first one. Indeed, most federal countries have a strong second chamber. What is not well known is that the bicameral constitutional form, which after the adoption of the US Constitution became frequently realized in federal countries, was not the first institutional arrangement characteristic of federalism. European federations like the United Netherlands, the Swiss Cantons, and the German Confederation made decisions by bargaining among the representatives of the different states (Tsebelis and Money 1997: 31). On the basis of these experiences MONTESQUIEU’S ideal confederal republic was an association of small homogenous states making decisions by unanimity (Inman and Rubinfeld 1997: 76), while CONDORCET’S way of avoiding the problems of majority cycling was decisionmaking by qualified majorities (Tsebelis and Money 1997: 38).

In philosophical terms, MONTESQUIEU’S conception of federalism was based on the small units that represented similar preferences, and the unanimity or qualified majority rule that reduced the probability of imposition of one state’s preference on another. For CONDORCET, bicameralism did not have any advantage that could not be achieved in an easier and more secure way by qualified majorities in one chamber.<sup>2</sup>

MADISON developed his model of the federal republic set forth in “The Fed-

<sup>2</sup> In “*Lettres d’un bourgeois de New-Haven a un citoyen de Virginie*” (written in 1787) he claimed: “But it is easy to see (and this matter can be rigorously demonstrated) that there is no advantage, with respect to the truth of decisions, in multiplying the legislative bodies, that one would not get in a simpler and more secure way by asking for a qualified majority in one

eralist” (especially nos. 10 and 51) by criticizing the vices of the Articles of Confederation, with respect to two main weaknesses: “first, the external and internal weaknesses of a government based on a compact among number of small sovereign republics; and second, the heart of his case, the danger of majority tyranny within such small states. These two lines of argument controvert the two elements of MONTESQUIEU’S model of confederate republic: the compact solution and the small republic theory. The remedy for both failings MADISON finds in the sovereignty of the people in the large compound republic” (Beer 1993: 245). MADISON’S argument also contradicts CONDORCET’S analysis, which provides equal weight to all possible majorities or qualified majorities, a point we will study in the next section.

### 3 Bicameralism, Qualified Majorities and Veto Players

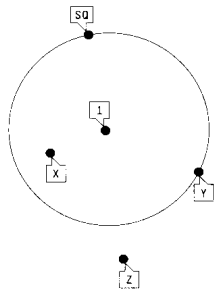
Both qualified majorities and bicameralism have been used as bases of federalism, but over time, it is the second that replaced the first. What are the similarities and differences of these two decisionmaking rules? And what happens if one combines the two as is the case in the US, the EU or de facto in Switzerland? These are the questions I will address in this section. My argument is that both these decisionmaking rules bias decisionmaking in favor of the status quo by increasing the number of veto players in a political system.<sup>3</sup> However each one of these systems (as well as their combination) protects different locations of the status quo.

chamber” (Condorcet 1968 vol 9: 76; my translation from the original). In other parts of his work he gave examples of what one can call type I and type II problems of bicameralism: If a decision needs to be made by simple majority it might be frustrated by the lack of congruent majorities in two chambers, and if a decision requires a qualified majority it may be obtained with a lower number of votes in a bicameral system (“Est-il utile de diviser une Assemblée nationale en plusieurs chambres?” in Condorcet (1968 vol. 9: 333–63).

<sup>3</sup> I remind the reader that veto players are the individual or collective actors whose agreement is necessary for a change of the status quo (see Tsebelis 2002).

Why do qualified majorities and bi- or multicameralism increase the number of veto players? If we consider the legislature of a country as a single collective veto player deciding by majority rule, then both bicameralism and qualified majorities introduce additional constraints, by specifying that some or all of the simple majorities are not sufficient to make a decision.

Figure 1: Circular indifference curves of a veto player



In the remainder of this paper I will consider a model in which each actor has preferences in a policy space, and that he is indifferent between alternatives that have equal distance from his ideal point (circular indifference curves). Figure 1 presents a two-dimensional space, where dimensions 1 and 2 might be the size of the budget for social security and defense respectively. In these two dimensions a veto player (1) is represented in the center of the circle. The Figure also represents 4 points SQ, X, Y, and Z in different locations. The veto player is indifferent between points SQ and Y, but he prefers X to either of them. He also prefers either of them to Z. As such, the circle with center 1 and radius 1SQ (henceforth [1, 1SQ]) or "the indifference curve that goes through SQ" goes also through Y, while point X is located inside the circle and point Z is located outside. I call the *winset of the status quo* all the outcomes that can replace the status quo by the prevailing decisionmaking rule. We will be able to identify these points by drawing the circles centered in each veto player and going through the status quo and taking their intersection. We will see that both bicameralism and qualified majorities make the winset of the status quo smaller, because some parts of what used to be the winset of the status quo are not valid anymore.

Figure 2: Winset of bicameral (by concurrent majorities) and unicameral (by qualified majority) legislatures

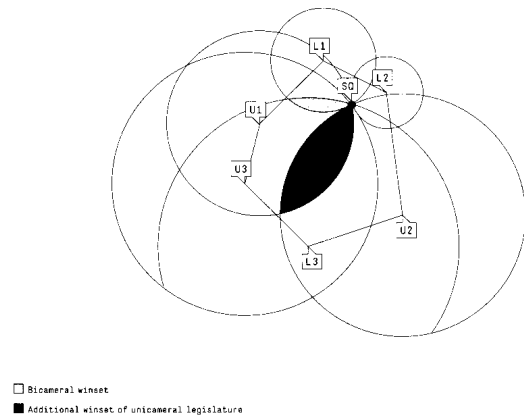


Figure 2 demonstrates this point, first in the case of bicameralism. Suppose that there were six actors in a parliament, and consequently, four of them were necessary for a majority decision. Any combination of four out of the six players would be sufficient to replace the status quo. Now suppose that we divide the six initial players into two groups, the group L1, L2, and L3 (representing the lower house), and the group U1, U2, and U3 (representing the upper house). If the requirement for a replacement of the status quo becomes congruent majorities in the two houses, some of the previous majorities (like L3, U1, U2, and U3 in the figure) are now invalidated, because they do not represent majorities in both houses. Figure 2 shows the winset of a bicameral system crosshatched, and the winset of a unicameral, but not bicameral legislature, single-hatched.

A similar argument can be made if instead of bicameralism one would in-

roduce qualified majorities. If we consider the case of a  $\frac{5}{6}$  qualified majority, Figure 2 demonstrates that the winset of the point selected as the status quo is empty. There is no coalition including five out of the six players that agrees to a replacement of the status quo. However, each one of the two systems makes different positions of SQ invulnerable.

3.1 Bicameral diversity

Usually in federal countries agreement of the upper chamber is necessary for the adoption of legislation, i.e. in the US or Switzerland. In addition, in federal countries the second chamber is likely to have dissimilar political makeup from the first, because the first represents the population and the second the states. Other reasons for political differences may be different electoral systems, or different decisionmaking rules. An example of different rules is provided by the US Congress with the Senate's filibuster rule that does not exist in the House: as a result of this rule, a qualified majority of  $\frac{3}{5}$  is essentially needed for legislation to clear the Senate, while a simple majority is needed for the House.

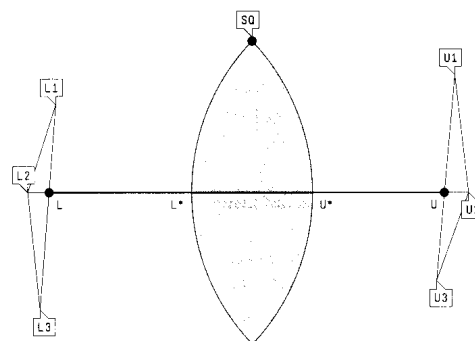
Bicameral legislatures may therefore introduce a second institutional veto player if the second chamber has the possibility to veto legislation. However, it would be incorrect to assume that second chambers without veto power do not affect legislation. TSEBELIS and MONEY (1997) have demonstrated that such chambers can influence outcomes, and sometimes can even abort legislation like, for example, the House of Lords when it suspends legislation just before an election which leads to the termination of bills.

The arguments that I make here about two chambers can be easily generalized for any number of chambers as the examples in the last section will demonstrate. First, if parties are cohesive, the different number of chambers may increase the number of veto players, but this does not complicate the analysis. For example in Germany if a certain coalition controls the majority in one chamber but not in the second, then the parties required to form a majority in the second chamber have to be considered additional veto players. Let us now study the situation according to which both chambers have veto power over

legislation, and the parties in each one of them are not cohesive, as usually happens in bicameral presidential regimes, which is significantly more complicated.

When parties are weak, the majorities that prevail in each chamber are not stable and the majorities of the two chambers do not necessarily coincide. As a result, veto player analysis cannot move beyond the assertion that there are two institutional veto players. Figure 3 provides a visual representation of the argument in a very simple case.

Figure 3: Bicameral core and bicameral winset of SQ



LU Bicameral core  
 □ Winset

The two chambers – the lower one represented by L and the upper by U – are drawn in two dimensions, and located away from each other. Any coalition in each one of them is possible, and they decide by congruent majorities. Under the above conditions, first there are some points that cannot be defeated by the

decisionmaking rule in place. They are called the *bicameral core*. These points are along the segment LU. Indeed, any point over or under this segment can be defeated by its projection on the LU line. In addition, any point to the left of L can be defeated by L<sub>1</sub>, L<sub>3</sub>, and a unanimity of Us. Similarly, any point to the right of U can be defeated by U<sub>1</sub>, U<sub>3</sub>, and a unanimity of Ls.<sup>4</sup>

Figure 3 also presents the winset of one particular position of the status quo. I consider the individual members of the two chambers and identify all the points that command congruent majorities in the two chambers (shaded area).

The location of the bicameral core in this analysis is important, because as we see in Figure 3 the bicameral winset is divided in half by the bicameral core. As a consequence, the closer the status quo is to the bicameral core, the smaller the winset of the status quo, which means policy stability increases. In addition, the bicameral core is the major dimension of bicameral conflict. Given that points outside the core can be defeated (by congruent majorities) by their projection on the core, the real dispute between the two chambers is reduced to the adoption of a point in the L\*U\* interval.<sup>5</sup>

### 3.2 Core and winset of qualified majorities

Consider now a legislature composed of seven members C<sub>1</sub> to C<sub>7</sub>, which decides by a qualified majority rule of  $\frac{5}{7}$ . It is possible that for certain positions of the legislative status quo this legislature cannot select any policy alternative. These points will constitute the  $\frac{5}{7}$ -majority core of the legislature. Where are these points located?

Consider the line C<sub>1</sub>C<sub>5</sub>. It divides the seven members of the legislature into three groups: legislators C<sub>2</sub>, C<sub>3</sub>, C<sub>4</sub> on one side of the line, C<sub>6</sub> and C<sub>7</sub> on the

other side, and C<sub>1</sub> and C<sub>5</sub> on the line. The line C<sub>1</sub>C<sub>5</sub> has a qualified majority of the legislature (C<sub>1</sub> to C<sub>5</sub>) on one side of it. Are there any locations of the status quo that these five legislators would not find in their common interest to modify? The answer is affirmative. Any SQ located among C<sub>1</sub> to C<sub>5</sub> cannot be changed by these five actors unanimously (which would provide the required  $\frac{5}{7}$  majority of the legislature). On the other hand, if the SQ is located on the same side of C<sub>1</sub>C<sub>5</sub> as points C<sub>6</sub> and C<sub>7</sub>, then all legislators C<sub>1</sub> to C<sub>5</sub> can agree to replace it by (say) its projection on the line C<sub>1</sub>C<sub>5</sub>. So the points that cannot be upset by an agreement of C<sub>1</sub> to C<sub>5</sub> are located on the same side of C<sub>1</sub>C<sub>5</sub> as points C<sub>2</sub>, C<sub>3</sub>, and C<sub>4</sub>.

Let us replicate the same argument with respect to the line C<sub>2</sub>C<sub>6</sub>, which also has a qualified majority C<sub>2</sub> to C<sub>6</sub> on one side of it. For similar reasons as laid

out before, some of the points located on the same side of C<sub>2</sub>C<sub>6</sub> as the members C<sub>3</sub>, C<sub>4</sub>, and C<sub>5</sub> cannot be upset by a unanimous agreement of C<sub>2</sub> to C<sub>6</sub>.

Figure 4:  $\frac{5}{7}$  and  $\frac{6}{7}$  Majority in two dimensions

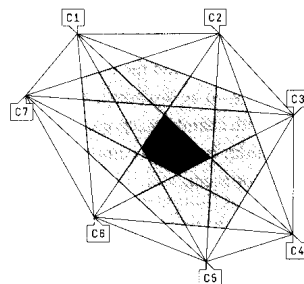


Figure 4 replicates the above arguments with all the possible lines that separate a  $\frac{5}{7}$  qualified majority on one side of them, and identifies the points that cannot be upset by any  $\frac{5}{7}$  majority inside the legislature, that is, "the  $\frac{5}{7}$  core" of the legislature. These points are located inside the heavily shaded area in Figure 4.

What happens if one increases the qualified majority requirement inside the legislature? Figure 4 considers also the  $\frac{6}{7}$  qualified majority core (the lightly shaded area in the Figure) and shows that the core increases when the required qualified majority increases.

<sup>4</sup> See HAMMOND and MILLER (1987) and TSEBELIS and MONEY (1997). The latter mistakenly draw the core further than points L and U.

<sup>5</sup> The bicameral core is not guaranteed to exist particularly in high dimensional spaces. However, TSEBELIS and MONEY (1997) have demonstrated that even in the absence of a bicameral core the strategic situation is not modified significantly.



A comparison of the bicameral core and the qualified majority core in an n-dimensional space (assuming that they both exist) indicates that the first is a single dimensional object, while the second is in general in n dimensions. And the shape of the core affects the size of the winset of the status quo (that is, policy stability). For the winset of the status quo to be small in a bicameral system the status quo has to be located close to one particular line, while under qualified majority rule, if the status quo is located centrally within the collective veto player, its winset will be small or empty, which means policy stability will be high.

What is the implication of this difference? A qualified majority decision-making process is likely to leave centrally located policies either unchanged, or produce incremental changes to them. Qualified majority decisionmaking is also likely to produce outcomes centrally located in space. The outcomes of bicameralism are more random. If the two collective veto players in a bicameral system are located on opposite sides of a policy question, bicameralism will focus the discussion on the issue. If however the two veto players are in agreement on the policy question, the issue is not likely to be discussed in a satisfactory way between the two chambers.<sup>6</sup> Let me produce some examples: if one chamber of a bicameral legislature is more rural and the other more urban, questions of agricultural subsidies are likely to be discussed, and a compromise on the issue identified. If, however, both chambers represent younger or older voters, a discussion of the social security issue or a compromise taking both sides of the issue into account may not occur.

### 3.3 Bicameralism and qualified majorities combined

What happens if bicameralism is combined with qualified majorities such that one of the chambers decides by simple majority but the other decides by qual-

<sup>6</sup> It may or may not be discussed inside each one of the chambers, depending on the attitude of the majority.

ified majority? This is the case of the US Congress if we consider that the Senate has to make important decisions by filibuster proof majorities (enabling a  $\frac{3}{5}$  majority to invoke cloture and end filibusters). This is also the case regarding EU institutions, because the Council decides by qualified majority or unanimity.

Figure 5: Winset by concurrent majorities and by unanimity in the upper chamber

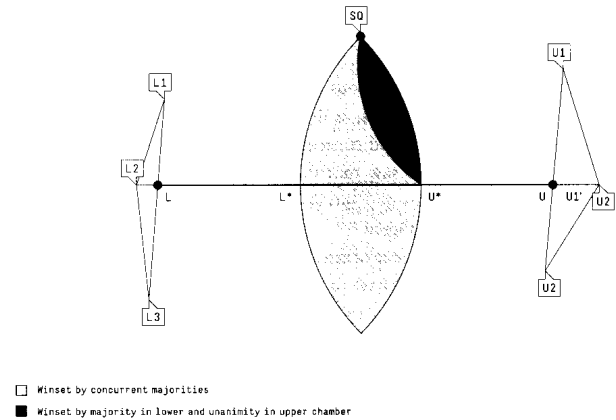


Figure 5 replicates Figure 3 with the only difference that decisions in the upper chamber are taken by unanimity. There are two major consequences of these more stringent requirements of decisionmaking in one of the two chambers as shown in Figure 5. First, policy stability increases (since the winset of the status quo shrinks). Second, outcomes shift in favour of the less flexible chamber (whether one considers the whole winset of the status quo or simply

the intersection with the core or the line connecting the centers of the two yolks – in the figure, of all the points  $L^*U^*$ , only one survives). I will use these results to analyse decisionmaking in the EU in section 4.

If we restrict the above analysis in one dimension, then the core of the bicameral system expands, and it is more difficult to upset the status quo. In particular, points between  $U_1$  (the projection of  $U_1$  on the bicameral core) and  $U_3$  that could be modified under congruent majorities, are now invulnerable under the new decisionmaking rule.

#### 4 Veto Players, Policy Stability, and Consequences

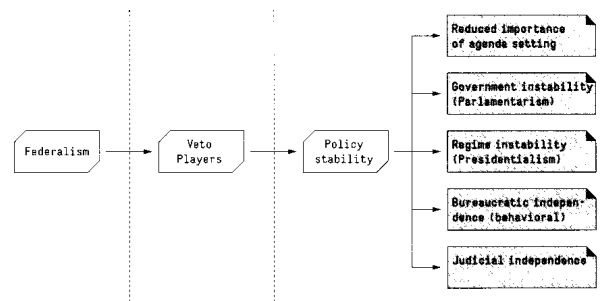
The argument I made in the previous section was that whether it is through bicameralism, qualified majorities, or their combination, federalism increases the number of veto players, and consequently increases policy stability in a political system. Indeed we saw that the core of federal systems expands, and the winset of the status quo shrinks as bicameral or qualified majority decisionmaking rules are adopted.<sup>7</sup>

Policy stability affects a series of structural characteristics of a political system. First, since agenda setters have to make proposals acceptable to the other veto players (otherwise the proposals will be rejected and the status quo will be preserved), they will select among the feasible outcomes the one they prefer the most. As a consequence, agenda setting powers are inversely related to policy stability: the higher policy stability (meaning the smaller the set of outcomes that can replace the status quo), the smaller the role of agenda setting. In the limit case where change from the status quo is impossible, it does not make any difference who controls the agenda. This analysis provides a reason for the powers of different chief executives in European countries: in the UK

<sup>7</sup> In addition, political institutions sequence veto players in specific ways in order to make policy decisions. The interested reader should consult Tsebelis (2002) on this issue. The specific veto players that present “take it or leave it” proposals to the other veto players have significant control over the policies that replace the status quo. I call such veto players agenda setters.

with one veto player, the position of the prime minister is extremely influential; in Italy or Belgium with multiple veto players the prime minister has a less pronounced role, because his initiatives have to be acceptable by the parties participating in the coalition government. In Switzerland, a federal country with a combination of bicameralism and qualified majority decisionmaking, the role of the President of the Confederation is even more reduced; in fact Swiss citizens may even ignore his name.

Figure 6: Effects of Federalism on Veto Players and other Institutions

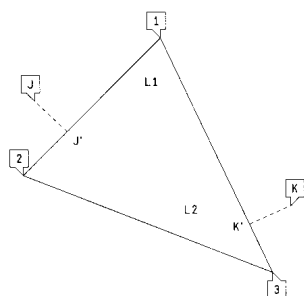


Second, the difficulty a government encounters in its attempt to change the status quo may lead to its resignation and replacement in a parliamentary system. This means that policy stability will lead to government instability as Figure 6 indicates. Governments are exhausting their legislative terms in France or the UK, while they are frequently replaced by alternative majorities in Italy or Belgium. Similarly, in a presidential system, the impossibility of the political system to resolve problems may lead to its replacement by a military regime.

Finally, the impossibility of changing the legislative status quo may lead bu-

reaucrats and judges to be more active and independent from the political system. The reasoning is simple: both the judiciary (when making statutory interpretations) and the bureaucracies can be legislatively overruled if they make choices that (legislative) veto players disagree with, so they are likely to avoid such choices. In fact, both the judiciary and the bureaucracy will try to interpret the law according to their point of view (or perhaps interests) while eliminating the possibility that they will be overruled. High policy stability will thus give more discretion to both bureaucrats and judge

Figure 7: Selection of a policy within the core by first mover (bureaucracy or judiciary)



- First mover outside core (J or K) selects closest point inside core (J' or K');
- First mover inside core (L1 or L2) selects own ideal point.

Let us assume that there are three legislative veto players. Triangle 123, which is defined as their core, is the set of points that they cannot agree to change. Consequently, if the bureaucrat or the judge (the actor who moves first in this game) selects one of the points of the core, there will be no legislative overrule. Figure 7 presents three different possibilities. In the first two cases the first movers' ideal points J and K are outside the legislative core and they select the closest core point to them (J' and K' respectively). Despite the fact that these two choices are significantly different from each other, the veto players are incapable of changing either of them. In the third case, the first mover is located

inside the legislative core but changes her mind and moves from point L1 to point L2. Since the first mover is inside the core she can select her own ideal point.

These idealized stories are close to political realities. In the United States – a country with three veto players – the Supreme Court decided on several extremely important issues that in most other countries would have been the prerogative of the legislative branch. Desegregation and choice come immediately to mind. But tobacco and guns may join the list of political decisions delegated to courts because the political system is unable to legislate on the issue.

As an example of the change in mind of the first mover consider the issue of sexual harassment where the burden of proof requirements changed. In the past the victim needed to show that as a result of the behavior of a superior or co-worker she was very disturbed, she lost days of work, she visited doctors, and so on. After the HARRIS v. FORKLIFT Systems (1993) court decision any behavior that would have disturbed an average person was defined as sexual harassment.<sup>8</sup>

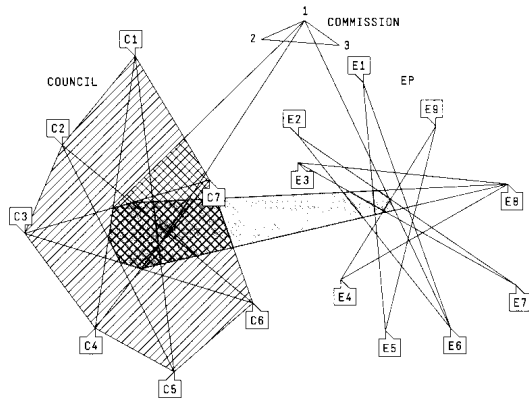
### 5 Veto Players Analysis of EU Institutions

The European Community fascinates observers and scholars because it is a unique object of study. Legislative decisions are made not by a simple bicameral institution but by a tricameral structure – the Council of Ministers, the European Parliament (EP), and most of the time the European Commission. Each of these actors decides with a different decisionmaking rule. After the Nice Treaty of 2001, the Council of Ministers uses a triple majority to make decisions: a qualified majority of the weighted votes of its members; a majority of the EU members; and a qualified majority of the population (62 percent). The European Parliament decides by absolute majority (which is a de facto qualified majority). The European Commission decides by simple majority. The Council of Ministers is appointed by the member countries; the European Parliament is elected by the peoples of Europe; and the Commission of the European Communities is appointed by the member countries and approved by the

<sup>8</sup> I thank Eugene VOLOKH for the reference.

EP. This political system is neither a presidential nor a parliamentary regime. It is sometimes unicameral, sometimes bicameral, and yet other times tricameral. In addition one of its chambers decides with multiple qualified majority criteria. Clearly, the EU is a blatant exception to all traditional classifications and is described frequently in the relevant literature as *sui generis*. Despite its exceptional and often complex nature, the veto player framework I described in the previous sections can very well analyse EU institutions, and it can do so by analysing the specific institutional provisions regulating European federalism from the Treaty of Rome up to the Treaty of Nice.

Figure 8: The core of EU legislative procedures



- ▨ Core of Unanimity voting in Council
- ▩ Core of Cooperation Procedure
- Core of Codicision I and II Procedures

In a summary way, the institutional provisions of the Treaty of Rome were never applied because of the Luxembourg compromise, which required unanimous agreement of the countries members – just like the German and Swiss federations of the seventeenth century. The Single European Act (1987) required agreement between the Council (by qualified majority of approximately  $\frac{2}{3}$ ), the European Parliament (by absolute majority), and the European Commission (by simple majority). In the absence of such an agreement the Council could decide by unanimity of its members. The Maastricht Treaty (1991) eliminated the requirement of a Commission agreement in decisionmaking. This provision survived both the Amsterdam and the Nice treaties. Finally, Nice introduced a triple majority requirement for decisions in the Council. Let us use the previous framework to study these institutional changes, and draw expectations about the most recent ones.

Figure 8 is a slight modification of a figure presented in TSEBELIS and GARRETT (2001) and shows the core of the EU under different institutional arrangements. The Council is represented as a seven-member legislature (since this way the qualified majority of  $\frac{2}{3}$  can be shown easily). The European Parliament is represented as a nine-member institution for reasons not presented here (see Tsebelis and Yatağan 2002) while majority decisions by the Commission can be captured by a three-member institution. I have located these three actors in distinct ideological positions in order to make the figure more comprehensible, but the argument would hold qualitatively the same if two out of these three institutional actors were closer to each other, or one of them was located between the other two, or even if all three were overlapping.

Under the Luxemburg compromise, decisions required unanimity in the Council, so the set of points that could not be upset by the prevailing unanimity rule were the whole heptagon defined by the Council members. The hatched area in Figure 8 (regardless of its shade) is thus the core of unanimity-based legislative procedures (and for treaty revisions). The Commission and the Court could therefore effectively implement or interpret a given piece of legislation (the status quo) in any way they wish – so long as the ensuing policy outcome remains within the core. This would be true even if the Commis-

sion's implementation or the Court's interpretation were inconsistent with the Council's intent when it passed the legislation.

The Single European Act introduced the cooperation procedure for legislative decisionmaking. In Figure 4 we identified the core of a parliament deciding by  $\frac{2}{3}$  qualified majority. Similar reasoning identifies the heavily shaded heptagon inside C1 to C7 as the qualified majority core of the Council.

The lightly shaded area of Figure 8 – connecting what turns out to be the decisive Commissioner (#1) with the #6 member of the EP and the Council's qualified majority core – is thus the core of legislation requiring a qualified majority in the Council, an absolute majority in the EP, and a simple majority in the Commission.

This is not the core of the cooperation procedure, however, since a unanimous Council can also pass legislation. The core of cooperation is thus defined as the intersection of the unanimity core of the Council (the hatched area) and the inter-institutional core (the shaded area). In the figure, the cross-hatched area denotes this cooperation core. Note that this area is always smaller than the Council's unanimity core.

If the Commission or the Court wants to make a decision that will not be overruled under the cooperation procedure, they can implement and interpret legislation anywhere within the cross-hatched area. How big this area is, of course, depends on the relative position of the Commission and the EP with respect to the Council (and the cohesion of individual actors' preferences in these institutions). If, for example, the Commission were located close to E3, the core would shrink. One may think that given the selection mechanism for the Commission (which requires approval by both the Council and the Parliament) that this is the most realistic position of the three actors most of the time. The core would expand, however, if the Council were located between the Commission and the EP.

Both versions of codecision – adopted by Maastricht and Amsterdam – specify that at the end of the legislative game an agreement by a qualified majority of the Council and an absolute majority of the EP can overrule other actors. In particular, they can bypass the Commission. Consequently, the shaded area of Figure 8 represents the core of both versions of codecision. The greater the

policy differences between the Council and the EP (and the greater the preference dispersion inside these institutions), the greater the size of the core, and hence the greater the discretion available to the Commission in policy implementation and the Court in statutory interpretation.

Figure 9: The core of EU legislative procedures before and after Nice

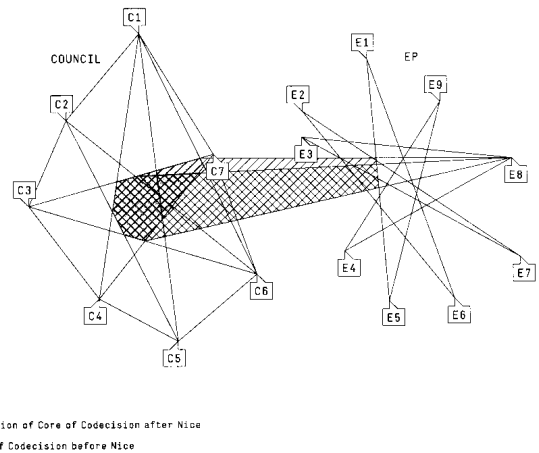


Figure 9 focuses on the effects of the Nice Treaty. Given that the qualified majority threshold slightly increased, and the preferences of the new countries are likely to be less homogenous than those of the current 15 members, the core of the Council is likely to increase. However, here I will focus on the other two modifications, the requirement that legislation be supported by a majority of the countries' members, and the requirement that winning proposals should

be supported by countries totaling at least 62 percent of the EU population. Figure 9 starts from the core of the co decision procedure before Nice (as presented in Figure 8), and compares it with the core after.

Because of the required triple majority in the Council, some of the qualified majority dividers under Amsterdam are replaced. For example, let us assume that C<sub>2</sub>C<sub>6</sub> in Figure 9 does not fulfill one of the two additional requirements. In order to calculate the qualified majority core of the Council, this line has to be replaced by the actual qualified majority dividers. Let us consider that these lines are C<sub>2</sub>C<sub>7</sub> and C<sub>1</sub>C<sub>6</sub>.<sup>9</sup> Recalculating the core of the Council under these assumptions indicates that it expands as Figure 9 shows. As a result, the core of the EU legislative procedures expands also, and so will the discretion of the European Court of Justice, as well as the Commission as head of the European bureaucracy.

There is one more expectation resulting from the Nice Treaty that we should underline. Because the core of the Council expands, policy stability in the Council increases, and consequently it is more difficult for the Council to change the status quo or its previous position. As I showed in Figure 5 the implication is that at the institutional level there is a shift of power towards the Council.

## 6 Conclusions

Federalism is designed to guarantee different territorial units that decisions will not be made against their interests. As a result, it uses constitutional designs – bicameralism or qualified majorities – that increase the number of veto players of the political system. Such institutions increase policy stability by mak-

<sup>9</sup> These lines should go further away from the center of the yolk in order to fulfill the additional requirements. It is possible that even these lines would not fulfill the additional requirements, and one would have to move to the lines C<sub>2</sub>C<sub>1</sub>, C<sub>1</sub>C<sub>7</sub>, and C<sub>6</sub>C<sub>7</sub>. In this case the difference between Amsterdam and Nice would be even more pronounced than the one I am about to describe.

ing changes to the status quo more difficult. Policy stability, in turn, leads to a series of other institutional features, like the independence of bureaucracies and the judiciary, the reduced role of agenda setting in politics, etc. I have analyzed these results and pointed out how and why changes in the legislative institutions of one particular federal polity, the EU, affected and are likely to affect other characteristics of the Union.

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REFORM- UND ENTSCHEIDUNGS-  
BLOCKADEN DES SCHWEIZER  
FÖDERALISMUS IM VERGLEICH  
ZU DEUTSCHLAND  
— DIETMAR BRAUN

Die Erklärung und die Bedeutung von Reform- und Entscheidungsblockaden zählen in der Politikwissenschaft sicherlich zu den prominenten Fragestellungen. Neoinstitutionalistische, akteursorientierte und ökonomisch inspirierte Ansätze haben sich dieser Fragestellung, insbesondere auch im Hinblick auf den Föderalismus, angenommen. Die folgenden Thesen über Reform- und Entscheidungsblockaden des Föderalismus in der Schweiz im Vergleich zu Deutschland versuchen einige der Erkenntnisse dieser Ansätze zusammenzufassen.

Eine *Vorbemerkung* ist angebracht: Eine Diskussion über Reform- und Entscheidungsblockaden sollte nicht normativ geführt werden. Nur zu schnell werden institutionelle Blockaden negativ besetzt. Dies hat mit einer gewissen technokratischen Vorstellung von Politik zu tun: Politisches Handeln ist analysieren, entscheiden und umsetzen – und dies so schnell wie möglich. Stillstand scheint angesichts einer sich verändernden Welt immer negativ zu sein, Reformen dagegen immer positiv.

Tatsächlich zeigt schon die vergleichende Politikwissenschaft, dass eine normative Betrachtung einen falschen Schein erweckt:

1. Es ist richtig, dass Mehrheitsdemokratien, die, wie Grossbritannien, durch auffallend wenige formale institutionelle Blockaden charakterisiert sind, Vorteile in der Schnelligkeit und in der Intensität der Anpassung besitzen.