Vibert’s European Union: A United Nations or a United States?

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Abstract. In his book, Europe: A Constitution for the Millennium, Frank Vibert explores every major issue that will arise in the design of a constitution for a European political union. Can the theoretical constructs of constitutional economics be used to aid in the practical design of a European constitution? This is what Vibert attempts to do in his book. This review contains a more detailed discussion and analysis of a few of Vibert’s main theses. In particular, it focuses on several key issues that will be the major determinants of whether the European Union will achieve lasting success.

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1. Introduction

What are the essential problems that must be overcome in forming a lasting European political union? Frank Vibert attempts to shed light on this important question in his book, Europe: A Constitution for the Millennium. Vibert explores every major issue that will arise in the design of a constitution for a European political union. This will undoubtedly be the most important constitution written since the formal development of the field of constitutional economics. Can the theoretical constructs of constitutional economics be used to aid in the practical design of a European constitution? This is what Vibert attempts to do in his book.

There are two aspects of constitutional design that Vibert stresses throughout his book. The first is a focus on processes rather than outcomes. The second is a stringent adherence to the non-coercion principle. Vibert’s emphasis on a process-oriented constitution is perhaps the major contribution of his book. Most constitutions focus on intended end-results or outcomes, something that Vibert believes “cannot provide any shortcut to the legitimization of a political order” (p. 21) because “no system of government can guarantee outcomes” (p. 21). A process-based constitutional order focuses on the structure of rules that govern political association. This is a preferable foundation for a constitution because, “rules about procedures provide a more stable basis for structure because the rules of association can remain constant even though political goals can change” (p. 19). In Vibert’s view, Europe’s constitutional structure should focus on establishing rules for decision processes, rather than on accomplishing specific outcomes.

The second feature stressed by Vibert is the minimization of the power of the European government to impose choice on individual member-states, the non-coercion principle. In Vibert’s view, the European Union should not have coercive power, it should not attempt to impose values, or to lessen the difference in values held across the member-states. Vibert
claims that this is one of the “crucial areas on which the success or failure of political union in Europe will hinge” (p. xvii).

To structure a government that achieves these features, Vibert suggests some specific organizational features. Among these are the ability of member-states to secede from the Union, complex decision rules involving weighted voting among the member-states, and express delegation of powers from the member-states up to the supranational body. In his book, Vibert also addresses the role of the existing treaties and governmental bodies in the evolution to a more expansive European Union.

Before beginning with my specific comments on Vibert’s theses, a few overall remarks seem worthwhile. First, the book was rather long-winded, at times going into much more detail than was needed. Vibert does an excellent job of presenting both sides of each argument, sometimes to the point of making it hard to understand which side he favors. Perhaps most unfortunate is that the book would be unreadable by exactly the persons who need to read it most. The individuals involved in the actual design of the European constitution need to have the ideas of this book presented in a way that is easier to understand. As the book stands, it is written at too low a level for most scholars familiar with the field, but written too high for the average policymaker. Perhaps most disappointing is that Vibert provides no sample constitution containing a formal and compact statement of his major points. I found the book to be more about the conceptual issues of the constitution, rather than their implication for the actual constitutional structure.

Despite these criticisms, Vibert’s book brings up every major issue of consideration in the writing of the constitution. A careful note taker could read this book and come up with a list of every issue that needed to be addressed at the European constitutional convention. The lack of an index in the back of the book, however, makes it very difficult to return directly to Vibert’s discussion of any specific issue. Still, many parts of this book remain essential reading for scholars interested in shaping the European constitution.

The following sections of this review contain a more detailed discussion and analysis of a few of Vibert’s main theses. In particular, I will focus on several key issues that I believe will be the major determinants of whether the European Union will achieve lasting success.

2. The Right of Secession

The first area I wish to address is the power of member-states to leave the Union through secession. Vibert believes that the right of member-states to secede is an essential feature of the Union that must be present to minimize the coercive power of the European government. There are at least three other historical instances of reference on this issue. The first is the American Civil War. In the early 1860s, many southern states seceded from the United States to form their own nation, the Confederate States of America. These states firmly believed that they had the right to leave the voluntary association of states formed by the U.S. Constitution. In fact, the first state to secede, South Carolina, did so through an act repealing its 1788 ratification of the U.S. Constitution, negating a previous act, rather than as a new act proclaiming their independence (as was done by colonies to begin the U.S. Revolutionary War).

The United States never recognized the right of these states to withdraw, and began the
civil war to bring these states coercively back into the Union. The words of Abraham Lincoln, the U.S. President at that time, are clear: "My paramount objective is to save the Union, and not either to save or destroy slavery." The success of the federal government in forcing these states back into the Union was a major defining point in American history. It was perhaps even a major contributor to the rapid centralization of the American system of government and the rapid growth in the coercive and redistributive powers of the U.S. federal government. I agree with Vibert that member-states should have the freedom to leave the European Union. However, an association where states can secede freely will have a much different structure than one where member-states do not have this power.

As a testament to the difference in power when members have the right of secession, one only needs to look at the United Nations and its predecessor, the League of Nations. In both of these organizations member-states can leave freely. The United Nations is organized so that member-states can withdraw from certain parts of the system while staying in other parts. An interesting case of this is the experience of UNESCO (United Nations Educational, Scientific, and Cultural Organization). In December 1984 the United States withdrew from UNESCO partially because of the organization's rapid budget growth and partially because of its anti-Western orientation. Several other major nations followed the United States by also withdrawing from the organization. These withdrawals severely hurt this organization; this is a case where the right of secession served as an effective punishment mechanism. The organization of the United Nations, being broken into many distinct sublevel organizations, helps make the process of secession work. In the European Union, however, this will be a bundled package, meaning that states can only withdraw from the entire organization. This bundling will make the right of secession less effective.

The right of secession comes at a cost to the power of an organization, however. In fact, it was one main reason that the League of Nations failed to prevent World War II. The League's attempts during the 1930s to settle disputes were met by withdrawals from both Germany and Italy. Today the right of secession remains a central reason for the popular belief that the United Nations probably could not prevent another major world war.

A government without the power to coerce cannot prevent war among its members as readily as can a government with this power. If a central reason for forming the European Union is to prevent future wars, the power of secession will undermine this ability of the Union. The lack of coercive and/or enforcement power will also jeopardize joint sanctioning efforts and other multilateral actions that are subject to free-rider problems. Vibert explicitly downplays the free-rider problem among the member-states, but it occurs quite frequently in other international organizations such as the United Nations, by the same nations who will be in the European Union.

Therefore, if the member-states are to retain the right of secession, the implications of this structure for European peace and multilateral actions need to be addressed more explicitly. The lack of coercive power and the right of secession could doom the European Union to be little more than a scaled-down United Nations. I do not mean with this claim to criticize. I believe that it would probably be good for the United States federal government to do as little as the United Nations does.

Vibert appears to be proposing a government for Europe similar to what would be espoused by an objectivist follower of Ayn Rand, constantly stressing the non-coercion principle.
Interestingly, other theories of government, such as Randall Holcombe’s (1994), consider the power of coercion as the defining feature of government. Can a European Union without the power of coercion be a government or will it simply be a smaller United Nations? Will it have enough bargaining power to be an active force in shaping the world political order? These issues remain unaddressed by Vibert.

3. The Constitutional Convention

Vibert’s emphasis on processes rather than outcomes in constitutional design is the important contribution his book makes to the policy debate. Interestingly, however, he disregards his own advice on the most important issue, constitutional design. Vibert’s book contains discussions of decision rules and other things that should be contained in some end-result document. His concentration on the resulting constitution, rather than the process by which it is achieved, is telling. Yet, how can a constitution’s provisions be judged without an analysis of the process by which the constitution was generated?

The constitutional convention and the associated procedures for the constitution’s adoption are more important than any feature of the document itself. In fact, the degree to which the European government gets coercive powers will be determined by the structure of the constitutional convention: what parties will be involved, who must approve it, by what majority, and so forth. Should each member nation be allowed to submit a proposed constitution and then each is voted on by the peoples of Europe to see which document achieves a plurality? Should only one compromise document be presented for approval? These are very important decisions that must be reached prior to decisions about the document itself.

The analysis performed in Charles Beard’s *Economic Interpretation of the Constitution of the United States* (1935) e.g. shows that the parties involved in the actual writing of the constitution significantly shaped the final document. A European constitutional convention would be especially complicated by the fact that there is no veil of ignorance surrounding future positions among the European member-states. If only one version of a constitution is presented as a take-it-or-leave-it proposal to the people of Europe, there will remain substantial room for manipulation of government structure by the bureaucrats involved in the actual writing of the document.

Admittedly, little work has been done in constitutional economics on the process of constitutional conventions. Most works discussing the formation of constitutional documents begin with a state of anarchy and proceed to show the benefits of such a social contract without explicitly dealing with the process by which the document is generated. Yet, this process is of the utmost importance. A constitutional convention composed of the heads of state will produce a different document than one written by a more representative sample of the peoples of Europe. While there is little question that the constitution itself should be adopted by unanimity, much additional work on the writing process itself seems warranted. Because the constitutional process will determine the outcome, Vibert should have attempted to discuss the structure of an efficient and equitable convention process that would result in a constitutional outcome similar to what he proposes.
4. The Power of Taxation

Vibert spends relatively little time on the issue of taxation. This is unfortunate because there will perhaps be no issue more debated than whether the European government should have the power of direct taxation. Again, this relates back to the coercive power of the Union. The Union could be financed either by direct taxation or by contributions by member-states. The latter would be similar to the structure of the United Nations, and to the structure in the United States under its first constitution, the Articles of Confederation. If the Union is to be financed by contributions, how will these be determined? Vibert does not address these questions adequately. Mechanisms must be put into place to safeguard against member government rent seeking over budget share allocations. Dwight Lee (1985, 1994) has proposed a system for funding a multi-tiered government that uses the free-rider incentive to improve the efficiency of government. If each member state is assessed a fixed share of the nation’s own government budget, any single state could gain by improving the efficiency of their own national spending. If the same level of national government output could be obtained at a lower cost, it would reduce the national budget and thus the nation’s contribution to the Union. Whether the budget shares are based upon national wealth, budgets, or population, they need to be firmly fixed in the constitution to discourage member-states from attempting to lower their own contribution rates.

If direct taxes are to be used, rather than member contributions, many additional issues become important. Research shows that having multiple levels of government tax the same tax base (i.e., state and federal income taxes) is suboptimal to having a division of tax bases to meet the separation norm. Even with this met, however, problems may still be present as tax bases such as income and sales are highly related and are not exactly separate bases in the economic sense. Additionally, following the Ramsey tax rule, different nations have different optimal tax rates, even on the exact same tax bases. Because the European Union would be constrained to levy the same tax rate across all member countries, it could not take advantage of the differing nature of tax bases. The member-states raising the revenue could do it more efficiently and effectively, and then supply the needed revenues to the Union from their own tax collections. Given the arguments, financing the European Union through member state contributions is probably preferable to giving the Union the power of taxation.

The decision about taxation will be one that must be made by the member governments at the time of the constitution’s writing. There is no doubt that it will be one of the most serious areas of conflict among the members. Nett (1995) discusses whether the European Union members would agree unanimously to giving the power of taxation to the Union, and concludes that many factors can contribute to different preferences on this issue. Heterogeneous states will be less likely to reach agreement on this issue. Similarly, giving the power of taxation to the United Nations has been an issue of debate in that organization for years. Many people believe that the current U.N. system provides a valuable constraint against unwarranted growth of the U.N. system, especially in the area of world income redistribution. If this is true, one must consider the possibility that giving the power of direct taxation to the European Union would have serious implications for its ability to
undertake redistributive programs. This single decision may determine whether the Union becomes another massive and growing welfare state.

Vibert states that “The burdens of the market can be recognized by a collective acceptance of income redistributive schemes financed through the tax system. This is the role of government” (p. 33). Given this sentiment by Vibert, giving the power to tax to the Union would be an important aspect of enabling it to fund its transfer activities. However, transfers of wealth require coercion, a power Vibert opposes.

5. A Competition Authority?—Calling in Public-Choice Theory

Vibert states that “within the European context, an independent competition authority will be an important and necessary part of the constitutional order” (p. 36). While Vibert does a remarkable job applying the theories of constitutional economics to the constitutional structure, he fails to recognize much of the relevant public choice theory. Establishing bureaucracies to monitor competition within the Union is one such example. There is a new and growing field named the new international political economy that focuses on applying public choice theory to international organizations. This area of research was pioneered in the book *The Political Economy of International Organizations* edited by Roland Vaubel and Thomas Willett. They explain that international organizations are more subject to government failure and special interest influence than national governments. This body of literature suggests that constitutional constraints would be more important at the European Union level than at the national level.

Bruno Frey (1991) extends Niskanen’s bureaucracy theory to the size of international bureaucracies. He proposes that the bureaucratic structure of most international organizations is much like that explained by Niskanen, only more severe because there is no central monitoring authority. Frey also explains that each member nation has relatively little incentive to reduce the budget of the organization, since they will capture only a fraction of the benefits. With bureaucratic problems more severe at the Union, strict constitutional rules are more necessary than at the national level.

Vaubel (1991) explains why international organizations will tend to supply more transfers to special-interest groups than will national governments. The general idea is that national governments will wish to pass their “dirty work” onto international organizations because doing so reduces the negative political consequences of providing special interest benefits. There are several reasons why it is less costly for politicians to supply special interest benefits at the Union level, rather than at the national level. First, taxpayer information costs are higher. Individual voters will be less aware of the goings on in the Union than in their own national government. Second, politicians would be able to sell the policies of the Union as international compromises. This would lessen the political losses associated with the provision of special interest benefits when they are done at the Union level. Because it is initially less costly for national politicians to supply special interest benefits through the international organization than through their national government, when they equate their political losses at the margin, the degree of special interest activity will be larger in the international organization than in the national government. Many authors have found that special interest activity has been growing among national governments in recent times.
As national special interest activity increases, it may be disproportionately passed on to international organizations, causing them to grow more rapidly than national governments. Given the research in this area, one must be wary of the Union’s potential for being another special interest machine. In fact, it takes little imagination to see that the European agricultural lobby will easily capture any European Union with the power to regulate competition and carry on income transfer activities.

6. Conclusion

Every scholar of constitutional economics dreams of having the ability to change a few aspects of their own national constitutions. While this opportunity will never likely be present, we do have the chance to shape the structure of the constitution for the European Union. Will our years of theoretical exploration yield results that can be applied to this real world situation? Frank Vibert should be commended for taking the first step in this direction. Simply calling attention to the issue of processes rather than outcomes, and other issues such as optimal voting rules, is a giant leap in the direction of constitutional progress. Many questions, however, remain unanswered. Will the Union be nothing more than a scaled down United Nations or will it be more like the U.S. federal government? The answer to this question lies in whether the coercive powers of the Union will be expanded or contracted under a new constitution. Vibert’s view is that the coercive power of the Union should be minimized, a choice that would have serious implications for the future stability of Europe.

I would call for future research in this area to focus on the process of the constitutional convention. This is the process that will determine the constitutional outcome for the Union. I would also suggest that Vibert write a version of the book aimed more specifically at policymakers. This book could be much shorter and contain a sample constitution for the European Union.

Notes

1. The source for this quote is Compton’s Interactive Encyclopedia for Windows (on CD ROM), 1995 edition.
2. See Sobel (1994b) for a more full discussion of the United Nations. Portions of this analysis are based upon the work in that volume.
4. Portions of this section are based on Sobel (1995).
5. This is distinctive from the public finance type analysis of international organizations, such as Mendez (1992). The public finance approach stresses market failure and tends to desire international governments with greater power.
6. The presence of mismanagement and bloated bureaucracies in the United Nations and its components is widely recognized. For a detailed analysis of the management problems in the United Nations Organizations see Beighder (1987). The Heritage Foundation has also published many articles relating to this problem.
References


