European Court of Justice, National Governments, and Legal Integration in the European Union

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ABSTRACT:

In order to determine when and under what circumstances the European Court of Justice would issue "adverse judgments" against member states of the European Union, we create a game-theoretic model. Three hypotheses are produced by the model. First, the less likely the Court is to base its rulings on the expected responses of member countries, the clearer the precedent set by EU case law. Second, the chance that a plaintiff government will abide by an ECJ judgement decreases as its domestic expenses increase, and thus, as the likelihood that the Court would issue such a ruling decreases. Third, the chance that respondent states would shift from individual disobedience to coordinated retaliation via new legislation or treaty changes increases with the ECJ's activity and the number of member nations negatively impacted by it. These theories are put to the test in light of three major categories of case law that are fundamental to ECJ jurisprudence: restrictions on agricultural imports, the application of the concepts of equal treatment of men and women to occupational pensions, and state responsibility for breaking EU law. The empirical study backs up our assertion that, in addition to considering previous cases, the ECJ also considers how member countries are likely to respond.

KEYWORDS:

Court, Government, Law, National, States.

I. INTRODUCTION

The development of European law has played a crucial role in the process of European integration as a whole. In contemporary international politics, the European Court of Justice's (ECJ) expansion of authority is undoubtedly the most obvious example of the transfer of sovereignty from nation-states to a supranational organization. The International Court of Justice, the dispute panels of the North American Free Trade Agreement (NAFTA), and the World Trade Organization (WTO) are more comparable to the U.S. Supreme Court than the European Court of Justice. The Court applies judicial review to national laws and customs inside member states and interprets EU treaties as though they serve as a de facto European constitution. Thus, the ECJ's job is to deem existing national laws and national government actions "EU-unconstitutional." Even more importantly from the perspective of traditional international relations, member nations often follow such judgments. The development and functioning of Europe's exceptional legal system may be seen from two different angles.

According to the legal autonomy theory, the European Court of Justice has been successful in advancing European integration despite opposition from certain member states [1], [2]. This argument holds that throughout the 1960s and 1970s, when the Court created a potent set of legal theories and co-opted the support of domestic courts for them, national governments paid inadequate attention to the Court's activities. Restricting the ECJ's authority had grown to be quite challenging by the time member countries finally understood that the Court was a powerful player in the 1980s. The political power perspective contends [that governments from EU member states] have not been harmed by the integration of European law. From this vantage point, the member states have granted the ECJ the authority to strengthen the ineffective agreements they have made with one another (i.e., the EU treaty foundation). In response, the judges of the ECJ are reluctant to issue judgements that governments disagree with since they understand that their authority ultimately depends on member states' consent [3], [4].

The ECJ is a strategic player who is considerate of the desires of EU member countries, despite rhetorical descriptions of it as either a "master" or a "servant," according to proponents of either stance. The strategic environment influencing interactions between the Court and national governments in the EU is examined by us

using a game theoretic perspective. This leads to three hypotheses that may be scientifically tested. First, the less likely it is that the Court would adjust its rulings to the expected responses of member nations, the clearer the precedent set by ECJ cases. Second, the chance that the government will abide by an ECJ judgment that negatively affects its interests and, thus, the likelihood that the Court would issue such "adverse" rulings decreases the higher the internal costs of an ECJ judgement are to a litigating member country [5], [6].

Our third supposition includes responses from governments other than the party bringing the lawsuit. Governments that are the subject of unfavorable rulings may unilaterally refuse to comply. They may also advocate for the adoption of new EU regulations or even the reform of the EU treaty's fundamental provisions. Although noncompliance may lower the costs of a negative ruling, it is less likely to control the ECJ's actions in the future than secondary legislation. It is obvious that treaty amendments place even greater restrictions on the Court. But greater collaboration between member countries is necessary for legislation and treaty changes. We thus expect that the risk that plaintiff nations' actions would change from individual disobedience to coordinated retribution increases with the ECJ's activity and the number of member governments adversely impacted by it. Naturally, the threat of coordinated replies will also make the ECJ more reluctant to rule negatively [7], [8].

These theories should make it obvious that the ECJ could encounter conflicting motives. The Court will attempt to avoid issuing judgements that it believes governments would reject in order to preserve its credibility. However, the Court must avoid giving the impression that it has given in to political pressure from interested parties in order to retain its position as an impartial arbitrator. Maintaining legal uniformity may require one choice, while avoiding member government resistance may call for another. The ECJ must consider the effects of both options before reaching a decision. Conflict with governments is more likely to occur in those situations when the Court is being cross-pressed. Up to this point, the participants in the legal politics discussion have attempted to bolster their claims by judicious reference of illustrative examples [9], [10].

We work to improve. Our case selection technique aims to minimize the costs of [this inherent] selection bias while capturing the analytical advantages of concentrating on unfavorable ECJ rulings that turn out to be contentious ex post (that is, provoking government replies). We have decided to examine large bodies of contentious ECJ case law where the Court frequently deals with the same legal concepts but in various settings. Keeping the legal principles, the same enables us to test our three hypotheses in this way. We concentrate on three case lines. The first relates to import prohibitions, where ECJ rulings were at the forefront of the fight between the EU's trade liberalization and agriculture protection agendas. The second series of cases deals with the application of equal treatment of sexes principles to occupational pensions, which has been one of the most divisive areas of ECJ activity in recent years due to its significant financial repercussions. Finally, we review court rulings concerning state culpability for breaking EU legislation. Since the early 1970s, the Court has made some of its most significant constitutional rulings on the interplay between national sovereignty and EU law in these most recent instances.

Each of our three hypotheses receives substantial support from empirical investigation of these lines of examples. Three components make up the article. We introduce our game theoretic interpretation of the strategic interactions between the ECJ and member states in the first part. The influence of home circumstances, domestic precedent, and EU coalitions on the conduct of litigant governments and the Court is the subject of our three hypotheses, which are presented in the second part. We test the empirical validity of our arguments against lines of instances including trade liberalization, gender equality, and state culpability in the third part.

II. DISCUSSION

The Legal Politics Game in the European Union

It is no longer debatable to assert that the ECJ uses strategy in its decision-making. The Court often has different views than member state governments in terms of how EU legislation should be interpreted. We see the interaction between the ECJ and the plaintiff government as a repeatedly played non-cooperative game in which participants discount the future at a fair rate. First, the ECJ rules on a national legislation or practice's compliance with European law as reflected in EU treaties, directives, regulations, and judgements taken in accordance with the treaties or earlier Court rulings. The status quo is not altered if the Court determines that the national legislation or practice is in accordance with EU law ("conciliation"' between the ECJ and the relevant government leads in payouts of Cc and Gc, respectively). However, if the ECJ invalidates an existing national legislation or practice, the affected member country must decide whether to follow the decision or not. Acceptance requires adapting national customs or laws to the decision's requirements or providing compensation to the party that has experienced losses as a consequence (rewards for this kind of "acquiescence" are Ca and Ga).

The administration has three options for action if it decides not to follow the ruling. The government may try to avoid the ruling in an overt or covert manner, it may push for new EU legislation to reverse the ruling, or it may advocate for changes to the constitutional basis of the Court by suggesting amendments to the EU treaty. The last round of the stage game focuses on how the other EU member states respond to one of them refusing to accept an ECJ ruling. The payoffs to the Court and the negatively impacted country are Cr and Gr if the other states assist their colleague by "restraining" the ECJ (through new legislation or treaty modifications). The negatively impacted member government will have to engage in solitary "defiance" if the other governments do not support nonacceptance (Cd, Gd). The stage game is now over, but with the next court ruling, the process will continue. The Court must determine whether to interpret EU legislation in a manner that is harmful to a member country. This is the same Court's strategic option. However, the Court considers the knowledge it acquired during the first play of the game when making its decision in the second round. The government that participates in the second round of the game may vary from the government that participated in the first round. The stage game is reenacted after the second ruling and responses from the litigant government and other EU members. The performers have updated their knowledge. The growth of the EU legal system is determined by the endless recurrence of this process.

We have now discussed the ECJ's and litigant countries' preferred ordering in the stage game of legal politics. The action of the EU member governments that are not parties to the current case determines the equilibrium result of the stage game. If they side with the litigating government, the ECJ would not rule against them since they would not be bound by their judgment. The ECJ would find against the plaintiff country, which would then accept the verdict, if the other countries, on the other hand, choose not to take any action. Additionally, the ECJ and litigant governments' actions will be impacted by changes to EU legislative regulations. The practice of qualified majority voting facilitates and increases the likelihood of mass opposition. This means that after the Single European Act was ratified in 1987, judicial activity should have reduced.

local politics, European Union alliances, and ECJ precedent

The theoretical framework described in the section above must produce comparative statics results that link variations in the particulars of a case to variations in outcomes including case law and governmental responses to decisions if it is to give us analytical leverage over the actual jurisprudence of the ECJ. We start this work off by talking about the variables that will affect the choices of the ECJ and member states as the legal politics game's dynamics change over time in relation to case law lines. The ECJ is quite concerned about the ECJ Legal precedent. All independent judiciaries are anticipated to base their judgments on legal standards. Although the grounds for such concepts are often spelled out in constitutions (or treaties in the case of the EU), they are usually updated in case law when judges claim authority or interpretations that are not clear in such fundamental texts. However, if a court's jurisprudence regularly changed from case to case, the court would certainly lose credibility. This is due to the fact that a court's authority ultimately depends on its reputation as an unbiased defender of "the law." This argument implies that, from the perspective of the ECJ, there will often be a conflict between the need for legal uniformity and the need to avoid rendering decisions that are detrimental to the interests of member nations. Following precedent may need one decision; avoiding member government dissent may demand another. Can the costs of consistency for the ECJ be quantified? The straightforward response is that these expenses depend on how well established precedent is defined. The costs of inconsistency will be lower when there are more contradictory cases on the books or where the EU treaties are more vague on a particular issue of law (for example, Articles 30 and 36 respecting "free movement").

More broadly:

H1: The risk that the ECJ will find against a litigant government increases with the clarity of EU treaties, case law, and legal standards supporting an unfavorable ruling. This hypothesis proposes that the ceteris paribus preference ordering of the Court as out in inequality (1) should be altered to reflect the clarity of the law. Imagine a situation in which case law precedent is clear and requires the ECJ to rule negatively against a member nation. This update has evident implications on the first branch of the game tree. Unambiguous precedent makes it more appealing for the ECJ to provide a ruling that the litigating government later accepts (widening the gap between Ca and Cc). The benefit the Court would get from the single defiance outcome in comparison to the scenario where the plaintiff government's defiance is backed by other ECJ governments should likewise rise as a result of clear precedent (thus, the difference between Cd and Cr would increase).

But what if the Court prefers an outcome where its (precedent-driven) decision ultimately causes the member governments to restrain the ECJ collectively to the scenario in which the Court does not make an unfavorable decision in the first place and thus does not trigger an intergovernmental response? This shift in the Court's

preferences would significantly alter the game of legal politics. No matter how the petitioner government and its other EU members acted, the Court would nonetheless find the existing national legislation or practice to be unlawful. In this extreme situation, the litigant country would have to decide between accepting the ruling (Ga) and attempting to rally the other member states to stop the Court (Gr). The desired result (Gc) of the litigant government would no longer be possible. However, restraint can only be done with the help of other member states (we analyze the circumstances that make this more probable with regard to H3). Litigant countries would always choose Gr to Ga.

Defending Government

International preferences for foreign policy by national governments undoubtedly include both internal and external components. Some people believe that their choices for the government are mostly determined by the constellation of domestic interests, maybe influenced by the institutional makeup of national polities. However, analysts of the EU often contend that at least some member countries prioritize sovereignty issues. By arguing that governments often cherish sovereignty because they see it as a need for success in domestic politics, one may reconcile these two points of view. Given domestic circumstances, distributive politics would often predominate among the incentives to boost overall prosperity due to the short-termism inherent in democratic politics. Decisions of the ECJ frequently carry the risk of imposing significant costs on various economic sectors, for instance by invalidating national regulations that serve as nontariff barriers to favor certain industries. The objectives of feminist, environmental, or other interest organizations may be harmed by other court rulings. The key issue for governments is how important these organizations are to their campaign for reelection.

However, ECJ rulings might also have negative effects on national governments in a more immediate sense, such as adding to their burdens or lowering tax revenues. Finally, the possibility that governments may be held accountable for breaking EU law raises the possibility that the Court could impose penalties on its own, such as ordering compensation for affected individuals and businesses. Our goal is not to create a complex algorithm for weighing these different aspects. Instead, we merely want to suggest the following: H2: The chance that a litigant government would uphold a negative ECJ judgement decreases as the domestic costs of the ruling increase for the government.

The most straightforward effect of H2 is that the cost of an unfavorable judgment to the government would grow, widening the gap between Gc and all other outcomes. In other words, it would become more desirable for the litigating government if the Court did not make a negative ruling. H2 also suggests that there would be a wider reward difference between the ECJ's collective restraint (Gr) and accepting a negative ruling (Ga). The crucial question, therefore, is how the litigating government's internal circumstances would impact its value comparison between disobeying the ECJ in isolation (Gd) and Ga. In the event that the government is really worried about the internal consequences of a poor choice, then GD. This would provide the plaintiff government a dominating tactic in circumstances when the ECJ renders a negative judgement, as was the case with the Court's decisional calculus. Regardless matter whether it believed other member nations would back its resistance, the government would not accept the decision.

Governments of other members

Revision of EU treaties is the most effective means for member countries to limit ECJ involvement without going against the fundamental principles of the EU legal order. The need for such a constitutional amendment is quite high unanimity among the governments of the EU member states, followed by ratification by national parliaments, national referendums, or both – even though this has sometimes been done see our discussions of the Barber protocol in the following section. The adoption of new EU legislation to mitigate the consequences of ECJ rulings is a simpler route for limiting judicial activity. Since the middle of the 1980s, many pieces of legislation simply need the approval of a qualified majority in the Council, greatly lowering the barriers to passage. However, it is obvious that there is a negative correlation between these techniques' ECJ restraining efficacy and their practicality.

Although secondary legislation is generally simple to enact, it cannot always be relied upon to limit the Court's activity in a particular field. The ECJ might simply reply by claiming that the new law is incompatible with the EU treaty foundation and that its interpretation is the only viable response. The Court, which sees itself as the custodian of the treaties, is ultimately constrained by treaty modification, which is far more difficult to do. When can we anticipate the EU countries working together to limit ECJ activism? Two circumstances stick out. First off, the possibility that more member states may band together to help a litigant country trying to overturn a negative ruling increases the more important a specific issue is to those governments. Second, the possibility of a social reaction to restrain the ECJ increases the more instances of a comparable field of law that the Court finds

injuriously. Thus, our third assumption is: H3: The likelihood that the governments of the EU member states will act jointly to curb EU activism increases with the potential costs of a case, the number of governments that could be adversely impacted by it, and the volume of unfavorable rulings the ECJ issues in related areas of the law.

A strategic history of ecj case law

A basic framework for examining EU legal politics and a set of theories on the dynamics of interactions between the ECJ and the litigant government have been created in the two parts before this one. This section evaluates the degree to which our theory and hypotheses accord with the actual history of ECJ case law using three lines of cases: nontariff agricultural trade barriers, gender equality, and state accountability for EU law violations.

Agriculture-related import restrictions

As part of the drive to establish a single market, the 1958 Treaty of Rome required that existing trade quotas among member states be eliminated during a transitional period ending on December 31, 1969 (Articles 8 and 32). The treaty's Article 33 laid forth a comprehensive schedule for gradually eliminating these quotas. In accordance with Article 38(4) of the treaty, the growth of the common market had to be accompanied by the adoption of a common agricultural policy among the member states. Deregulation at the national and EU levels was therefore coupled. However, member states had not adopted uniform policy for a few agricultural items by the conclusion of the transition period. A number of cases involving the impact of the Rome treaty on various goods were considered by the ECJ in the 1970s. In the Charmasson case, the French government's prohibition on importation of bananas on October 28, 1969, was challenged. Charmasson said that the quota broke the deadline under Article 33 for removing quantitative trade barriers. The French government argued that Article 33 did not apply since a national marketing agency for bananas was previously established in 1958. The French quota system might be seen as a national organization under the ECJ's ruling that the presence of a national marketing organization could prevent the implementation of Article 33. However, the Court stated that these marketing organizations may only defer the implementation of Article 33 for the duration of the transfer.

Whether or not the member states had created a community-wide marketing organization by December 31, 1969, Article 33 had to be put into effect. The Rome Treaty was interpreted liberally by the ECJ due to inconsistencies between an item on free trade (item 33) and the provisions relating to agriculture (Articles 38–46). National marketing organizations could not obstruct free trade when the transition period ended, according to the Court's strong pro-integration interpretation. Given the local sensitivity of the banana industry, the French government disagreed with this interpretation and was likely to challenge the ECJ (in line with H2). The Court's use of the traditional Marbury v. Madison strategy, however, served to considerably mitigate the prospect of instant French resistance. While establishing a principle that the government disagreed with Article 33 would be enforced after the conclusion of the transitional period, the ECJ ruled in favor of the French government in the issue at hand. However, the French government was probably going to be against dissolving its banana marketing company.

Why did the Court issue a pro-integration decision while being aware that it would probably result in French defiance? In line with H3, it was probably [extremely essential] that the ECJ had little cause to anticipate a coordinated reaction from the member nations. A treaty amendment seemed very improbable given the polarizing nature of banana politics in the EU and the fact that only a few other crops had not yet been included in the Common Agricultural Policy. The Court desired that the member nations establish a joint marketing organization for bananas, and this was a more likely collective reaction. The Charmasson precedent was then put to the test in a potato dispute. The Commission contested the national market structure of the United Kingdom in the Potato case. The precedent set in Charmasson increased the likelihood that the European Court of Justice would decide against the United Kingdom in the Potato case, which is exactly what happened.

The Sheep Meat case, in which the French government argued that it should be permitted to preserve its national market structure for mutton, was the next step in this body of ECJ law. The French government argued that local manufacturers would be unjustly disadvantaged in competition with British companies who received government subsidies during the interim between the repeal of its national regulations and the implementation of EU regulations. In addition, the French government said that it will continue to prohibit imports regardless of the Court's ruling. The Court still ruled that the French sheep meat regime had to end. This choice prompted a conflict that became known as the "sheep meat war." France argued that it would wait until there was a single market structure for sheep meat before acting in accordance with the Court's verdict.

The French government disobeyed the ECJ due to the domestic expenses of the Sheep Meat ruling (in line with H2). The Court could have decided not to find against France given the huge cost of an unfavorable judgement to French farmers and the government's clear refusal to abide by an unfavorable verdict. But in this instance, H1 and

H3 outweighed H2 in importance. On the one hand, the ECJ was aware that it would lose credibility as an impartial arbitrator in the eyes of other member nations if it disregarded its own clear and recent precedents in response to French pressure. However, the Court had little reason to think that the member nations would band together to challenge its ruling. The United Kingdom was known to oppose the French stance (since it was keen to sell sheep meat to France), while overturning the judgment would need approval from all member governments for a treaty modification. In this instance, the Court seems to have found it more expensive to give in to member government pressure than it did to tolerate lone French disobedience.

A single market structure for sheep meat was formed at the Council meeting in Dublin in May 1980, resolving the conflict over sheep meat in the way advocated by the French government. President Valery Giscard d'Estaing of France proposed that the member states work together to limit the ECJ's authority to issue "illegal decisions" at the same meeting, clearly alluding to the Sheep Meat case. Giscard proposed an institutional change that, like Roosevelt's 1936 attempt to cram the Supreme Court with New Dealers, would have added a fifth judge to the Court, representing the "big four" member nations. But in the end, no such adjustments were made. In conclusion, this series of examples lends some credence to each of our three possibilities. The European Court of Justice (ECJ) established a contentious precedent (H1) by using a disagreement between a free-trade clause (Article 33) and agricultural policy regulations (Articles 38–46). The Sheep Meat Case brought the dispute to a climax, and when it mattered most, the French government was unwilling to yield due to the huge costs to the country (H2). Because it did not believe that a restraint-invoking collective reaction from the member nations was likely (H3), the Court was ready to retain its combative approach.

III. CONCLUSION

The extant literature on legal integration in the EU presents a clear contradiction between two viewpoints on interactions between the ECJ and the government: the perspectives on legal autonomy and political authority. Unlike any of these viewpoints, the theoretical framework proposed in this article is more nuanced and impartial. Additionally, we have conducted empirical tests on our theory that are far less susceptible to the "sampling on the dependent variable" argument. Three distinct hypotheses regarding the tactical interactions between the Court and member states were produced by our theoretical approach. These hypotheses were then evaluated against a carefully chosen group of examples, in which we attempted to keep constant as many variables as we could, apart from those directly related to our hypothesis. Our theoretical study begins with the premise that the ECJ is a strategic actor who, in order to expand the scope of judicial review in the EU, must balance competing restrictions. On the one hand, the Court's ability to uphold the law impartially by abiding by precedent-setting principles depends on this perception. However, the Court cannot afford to issue rulings that the plaintiff nations reject or, worse, that spur a reaction from the EU governments to limit the Court's jurisdiction. Careful characterization of the political and legal circumstances in specific situations is necessary to understand how these competing limitations operate. Our three hypotheses received substantial support from the empirical study. First, the possibility that the ECJ will decide against plaintiff states increases with the clarity of EU treaties, case law, and legal standards supporting an unfavorable verdict. Second, the possibility that the plaintiff government would disregard an ECJ verdict increases the higher the costs of the ruling to significant domestic constituencies or to the government itself. Third, it's more likely that they will move together to curb EU activity through new secondary legislative amendments of the EU treaty foundation the more expensive the judgement is and the more EU member states it affects.

REFERENCES

[1] J. C. Teixeira, J. F. Bigotte, H. M. Repolho, and A. P. Antunes, “Location of courts of justice: The making of the new judiciary map of Portugal,” Eur. J. Oper. Res., 2019, doi: 10.1016/j.ejor.2018.06.029.

[2] N. Wiles, “The international court of justice,” in Legitimacy of Unseen Actors in International Adjudication, 2019. doi: 10.1017/9781108641685.002.

[3] A. Willems, “The court of justice of the European union’s mutual trust journey in EU criminal law: From a presumption to (room for) rebuttal,” German Law Journal. 2019. doi: 10.1017/glj.2019.32.

[4] A. Sarvarian, “Procedural economy at the international court of justice,” Law Pract. Int. Court. Trib., 2019, doi: 10.1163/15718034-12341396.

[5] B. C. H. Taporosky and A. A. D. Silveira, “The right to early childhood education in the courts of justice of Brazil,” Educ. Real., 2019, doi: 10.1590/2175-623680678.

[6] P. F. Martins, “Sharing economy, competition and regulation: the case of Uber in the case-law of the Court of Justice of the European Union,” UNIO – EU Law J., 2019, doi: 10.21814/unio.5.1.250.

[7] S. T. Helmersen, “Finding ‘the Most Highly Qualified Publicists’: Lessons from the International Court of Justice,” Eur. J. Int. Law, 2019, doi: 10.1093/ejil/chz031.

[8] A. Trklja and K. McAuliffe, “Formulaic metadiscursive signalling devices in judgments of the court of justice of the

european union: A new corpus-based model for studying discourse relations of texts1," Int. J. Speech, Lang. Law, 2019, doi: 10.1558/ijsll.36920.

[9] J. P. Díaz Fuenzalida, "A contribution to the protection of human rights in Latin America: The activity of the Criollo Ombudsman in courts of justice," Revista Brasileira de Politicas Publicas. 2019. doi: 10.5102/RBPP.V9I2.6029.

[10] K. Lenaerts, "Limits on limitations: The essence of fundamental rights in the EU," German Law Journal. 2019. doi: 10.1017/glj.2019.62.