

INTERNATIONAL LEGAL AND ECONOMIC ISSUES: GLOBALIZATION AND THE STRUGGLE FOR LOCAL CONTROL

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Contents

1. Introduction
 2. Theoretical Overview: Efficiency and Equity Concerns
 3. The Drive toward Legal and Economic Integration in Europe
 - 3.1. The Treaty of Rome
 - 3.2. Resolving the Tension Inherent in Integration
 - 3.3. Harmonization of European Laws
 - 3.4. Toward a Common European Political Identity
 4. The Drive toward Legal and Economic Integration in North America
 - 4.1. The Decision to Enter into NAFTA
 - 4.1.1. Canada
 - 4.1.2. The United States
 - 4.1.3. Mexico
 - 4.3. Toward a Common Political Identity in North America?
 5. A Contrast in Regional Integration Movements
 6. Relationship to Articles within this Topic
 7. Conclusion
- Glossary
Bibliography
Biographical Sketch

Summary

Nations throughout the world are becoming increasingly economically integrated with one another. The move toward global or regional integration is driven by diverse factors, including non-economic reasons such as environmental concerns or the desire to thwart nationalist ambitions that lead to wars. Economic integration invariably leads to a loss of sovereignty.

This paper focuses on the role that law plays in mediating the tension between: (a) the desire to preserve sovereign control over legal policy; and (b) the desire to reap economic benefits by entering into international agreements that restrict the ability of law to protect local values. A comparative analysis of regional economic integration within Europe and North America shows that, within broader forces of globalization, it remains possible for different regions to chart their own fates.

1. Introduction

An all too familiar scene plays itself over and over again in the global media. A global economic conference held in some major developed world city—Seattle, Prague, Quebec City, Davos, etc.—is followed by activists protesting the supposed harmful effects of “globalization”. This paper discusses the tension inherent in globalization as countries struggle to preserve sovereignty (defined as legal control over local values) while simultaneously attempting to reap economic benefits through enhanced economic integration with trade partners. This tension is at the heart of international law whose central goal is to promote global peace and prosperity (see *The Role of International Law and Institutions*).

The paper begins with a theoretical overview of this tension by discussing equity concerns surrounding the protection of local values through legal institutions as well as efficiency concerns where countries attempt to improve domestic standards of living through enhanced cross-border trade and investment. A comparative perspective on two regional economic integration efforts, the European Union and NAFTA, is subsequently offered. While the two regions share similar cultural histories, different concerns have led to the creation of two very different legal solutions to mediate the tension between sovereignty and economic integration.

2. Theoretical Overview: Efficiency and Equity Concerns

Karl Polanyi, an economic historian born in Vienna, suggested that a “double movement” propels modern society (Polanyi 1957). On the one hand, international market forces continue to expand and constrain governmental policymaking while, on the other hand, people react to the socially disruptive effects of these market forces by demanding protectionist measures. According to Polanyi, this tension between these two movements played and continues to play a central role in the ongoing development of international legal institutions.

This section provides a theoretical overview of the tension of globalism, where countries wish to reap economic benefits through enhanced economic integration while at the same time striving to preserve sovereign control over their domestic laws. , The dynamic tension of globalization is perhaps best depicted as an ongoing drama or clash between two values represented by the goddess of Equity and the god of Efficiency.

Equity is quite sympathetic to those who protest globalization. Equity understands that law can act as a powerful tool to protect local values. Under traditional principles of liberalism, democracies pass laws that are approved through the consent of the governed. For example, laws that impose tariffs on the import of agricultural goods seek to protect local values: by making imported goods more expensive, the laws protect domestic farmers along with a cultural way of life for these individuals. Alternatively, the country can pass laws that subsidize the production of agricultural goods in order to obtain a similar result. The tariffs or subsidies hence permit the electorate to exert control over their destiny and Equity supports the view that individuals should have a voice in determining what values exist within their communities.

But Efficiency must protest. He notes that these protectionist policies impose costs on the local population who passed the laws to restrict the import of foreign foods (or, alternatively, to subsidize the production of agricultural goods). First, local consumers

will probably have to pay more for their agricultural products if foreign competition is not permitted. Farmers might benefit, but other consumers will pay a steep price to protect these local values.

Second, Efficiency suggests that there are broader economic costs to the entire economy as a result of protectionism. In theory, free trade among nations works because resources get allocated to the country where they can be put to their most productive use. By protecting farmers against foreign competition, the farmers keep on farming despite the fact that the overall economy would be better off if these farmers became, say, software programmers (assuming that this is the efficient result in the hypothetical economy under scrutiny). As a result, protecting the farmers lowers economic growth and inhibits improvements in standards of living throughout the country.

Equity has heard these arguments before. She maintains that protectionism is necessary to maintain stability and social harmony. She acknowledges that protectionism—or any legal institution that strives to work against market forces and economic integration with foreign countries—carries economic costs, but these costs are acceptable if they protect values that are considered important by the human beings who must live their day to day lives under the rules that they set for themselves.

But Efficiency is not done yet. With respect to agricultural protectionist policies passed by developed nations, he notes there is one additional element of concern. Developing nations have a comparative advantage in the production of certain goods such as agricultural goods or textiles. But most international trade agreements permit developed countries to pass laws to protect their own domestic labor and business interests against foreign competition from developing nations in these areas. Efficiency indicates that these protectionist policies reap a terrible price on developing nations which would otherwise be able to improve their own standards of living through increased exports to developed countries.

Equity acknowledges that this is a serious problem. The protection of local values in the developed world harms the chances for many families within the developing world to live safe and prosperous lives. Equity acquiesces -- but only for this particular issue concerning agricultural tariffs or subsidies passed by developed nations. In other matters, Equity wins the day and Efficiency is left seething on the sidelines. Weighing the interests of the farmers in the developed world against the interests of farmers in the developing world, Equity decides that the latter should prevail because they are often struggling to survive simply due to the misfortune of being born in a poor country.

Agricultural tariffs or subsidies are but one example where the tension of globalization is being played out. Of course, both Equity and Efficiency have witnessed similar battles since the time when human beings crawled out of the primordial soup. These early humans were faced with similar questions: should they share resources with other communities or pursue a more solitary path? Sharing resources brings a chance for greater prosperity, but it is also risky and might lead to clashes with other communities or a dilution of the importance of local customs and practices.

As Polanyi indicated, modern societies continue to struggle with these decisions. To a certain extent, law can mediate the tension between the wish to reap economic benefits and the desire to maintain legal control over local values. This is evidenced by the creation of legal institutions to facilitate regional economic integration within Europe and North America.

3. The Drive Toward Legal and Economic Integration in Europe

The movement toward the formation of the European Union had to overcome significant sovereignty issues in order to develop into what stands as the most fully integrated regional economic union in the world. This section overviews the historical movement towards greater economic and political integration in Europe in the last fifty years. The focus here will be on identifying the tension between this movement and the loss of sovereign control by the countries that have participated in European regional integration. Elaborate analysis of European integration has been discussed elsewhere, and this section only attempts to touch on some areas that are relevant to identifying the tension noted previously.

3.1. The Treaty of Rome

In 1957, six countries in Europe (Belgium, France, Germany, Italy, Luxembourg and The Netherlands) successfully negotiated a customs union arrangement called the European Economic Community. Based on an earlier agreement involving trade in steel and coal, the legislation that governed this arrangement came to known as the Treaty of Rome. A number of other European countries subsequently joined the union by signing the Treaty of Rome. Denmark, Ireland and the United Kingdom joined the European Community in 1973. Greece joined in 1981 and Portugal and Spain joined in 1986. Sweden, Finland and Austria became members in 1995.

It has been said that the drive towards integration was influenced by factors beyond economic rationales and included real social and political concerns: the integration movement was viewed by its creators "as a meta-value in itself above any mundane cost-benefit analysis" (Abbott 1992). This meta-value arose from the recognition that some mechanism was required to thwart the nationalist tendencies that resulted in two devastating world wars in the prior half century. It was hoped that the Treaty of Rome would provide such a mechanism by allowing the countries of Europe to co-exist in a relatively peaceful fashion. The Treaty of Rome accordingly attempted to fulfill this political goal by creating inter-state political linkages such as centralized decision-making institutions. It was further hoped that economic integration would create the necessary economies of scale to accelerate the process of rebuilding Europe after the Second World War.

From its inception, integration in Europe has gradually deepened to the point where the Treaty of Rome has been recognized in a case by the European Court of Justice as "the basic constitutional charter" of the European Union (see the Parti ecologiste "Les Verts" case). In 1992, Europe was transformed from the European Community into the European Union under the *Single European Act* (more commonly known as the Maastricht Treaty) continuing the movement towards greater economic and social

integration with the potential for ultimately greater political union on the horizon. More recently, many EU states have adopted harmonized legal rules surrounding monetary policy as well as a common currency called the “Euro.”

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Bibliography

Abbott, Frederick M. (1992) Integration Without Institutions: The NAFTA Mutation of the EC Model and the Future of the GATT Regime, v.40 *American Journal of Comparative Law* p. 917 Berkeley: UC California Berkeley [Comparative analysis of NAFTA and the European Union]

Abbott, Frederick M. (1995) *Law and Policy of Regional Integration: The NAFTA and Western Hemispheric Integration in the World Trade Organization System* Dordrecht: M. Nijhoff Publishers [Discussion of NAFTA and the forces that led to the creation of this deal]

Cockfield, Arthur J. (1998) Tax Integration under NAFTA: Resolving the Conflict between Economic and Sovereignty Concerns, v. 34 *Stanford Journal of International Law* 39 Stanford: Stanford University.

Bulmer-Thomas, Victor, Nikki Craske and Monica Serrano (eds) (1994) Who Will Benefit? in *Mexico and the North American Free Trade Agreement Who Will Benefit?* New York: St. Martin's Press [Discussion of political environment surrounding NAFTA]

Earle, Robert L. and John D. Wirth (eds) (1995) *Identities in North America: The Search for Community* Stanford: Stanford University Press

Hirschman, Albert O. (1972) *Exit, Voice and Loyalty - Responses to the Decline in Firms, Organizations and States* Boston: Harvard University Press

Polanyi, Karl (1957) *The Great Transformation: The Political and Economic Origins of Our Time* Boston: Beacon Press. [Discussing the interaction between sovereignty and market forces]

Weiler, J.H.H. (1991) The Transformation of Europe, v. 100 *Yale Law Journal* p. 2403 Connecticut: Yale University

Wonnacott, Ronald J. (1994) Canada's Role in NAFTA: To What Degree Has It Been Defensive? in *Mexico and the North American Free Trade Agreement Who Will Benefit?* p. 163 Victor Bulmer-Thomas, Nikki Craske and Monica Serrano (eds) New York: St. Martin's Press

Biographical Sketch

Arthur Cockfield is a Professor at Queen's University Faculty of Law where he teaches tax, business and cyberlaw topics. He has degrees from the University of Western Ontario, Queen's University and Stanford University.