

Limited institutional change in an international organization: the EU's shift away from 'federal blindness'

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The European Union (EU) has been through many institutional transformations since the start of the integration project in the 1950s. While much of the literature has focussed on the more dramatic changes, less attention has been paid to instances of more limited institutional change. This article maps out and then accounts for the limitedness of the EU's departure from its original 'federal blindness' *vis-à-vis* regional actors. Theories of institutional change would lead one to expect that, as integration and regionalization heightened, endogenous pressures for change would trigger greater reform than that observed. Using a novel formula to estimate the EU's aggregate regionalization levels over time, the article demonstrates that it peaked between 1986 and 2003 but has since dropped to a level below that of the 1950s. Such a finding not only corrects a widespread assumption about regionalization levels in the European polity, but also provides an explanation for the pace and scope of the observed change as well as predictions about its future sources.

Keywords: endogenous institutional change; European Union; federal blindness; Lisbon Treaty; regionalization

Introduction

The continuous evolution of the European Union's (EU)¹ structures of government has been remarkable when compared with national institutions. Over the years, the European Council has been institutionalized and transformed, from informal gatherings of European leaders in the 1960s to more formal meetings from the mid-1970s to quarterly summits chaired by a permanent President since 2009. The European Parliament (EP) has likewise evolved from a nominated, consultative assembly to a directly elected co-legislator, while the European Court of Justice (ECJ) has seen its influence grow, thanks to the preliminary ruling procedure and the doctrines of direct effect (*Van Gend en Loos v. Nederlandse Administratie der Belastingen*, 1963) and supremacy (*Flaminio Costa v. ENEL*, 1964). Meanwhile, the

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¹ The term EU is used generically, also when referring to time periods relating to the European Coal and Steel Community (ECSC), European Economic Community (EEC), or European Communities (EC).

European Central Bank (ECB) has taken over from the European Monetary Institute (and the European Monetary Cooperation Fund before that) to become a fully fledged EU institution with extensive powers over monetary policy in the Eurozone.

One development that has not occurred, however, has been the reform of the EU's so-called 'federal blindness'. That term, coined by Ipsen (1966), describes the EU's lack of recognition of the powers, role, and activity of the levels of government beneath the member state. Though such federal blindness would today be better described as mere short-sightedness, its persistence is puzzling. Beyond path dependence and institutional apathy, one could have expected endogenous pressures to have triggered a greater departure from the *status quo* than that observed. Why have we not witnessed major institutional change in this area while ground-breaking evolutions have taken place in others?

This article sheds some light on the surprising persistence of the EU's original federal blindness. It is structured as follows. It starts by answering the 'so what?' question, outlining why one should care about the EU's federal blindness. It then maps the EU's initial federal blindness and gradual – if still limited – departure from it. The limitedness of such change is surprising because of the presupposed pressure exerted by two factors: (1) deeper EU integration and (2) widespread regionalization processes within the EU's member states. These phenomena were expected to spark demands for greater recognition and involvement of the sub-state level in EU policy-making. While some demands have been met, change has been less dramatic than expected. Whereas member states have transferred increasing power to institutions such as the EP, the ECJ, or the ECB and have allowed themselves to be outvoted by their peers through the extension of non-unanimity procedures, the sub-state level has not benefitted from such largesse at the EU level.

Prompted by the limited nature of the observed change, the article's second section questions the accuracy of the two factors assumed to exert pressure for change. While deepening integration is easy to verify, the regionalization of the EU's member states is trickier to test. Though member states tend to either devolve power to the sub-state level or preserve existing domestic distributions of power intact, measuring the aggregate level of regionalization within the EU at any point in time is less straightforward. To this end, a novel formula allowing the calculation of such an aggregate measure is proposed. Using publicly available data (Hooghe *et al.*, 2010), the scores returned by the formula show that while the EU was at its most regionalized between 1986 and 2003 it has since dropped to a level below that of its inception in the early 1950s. This counter-intuitive finding helps to shed some light on the persistence of the EU's federal blindness.

In association with explanations derived from theories of endogenous institutional change, this research helps explain the limited shift of the EU away from federal blindness. It predicts that while the last two enlargement waves have further emphasized the paradox of the EU's federal short-sightedness, they have also meant that further institutional reform is unlikely. Since endogenous pressures for change linked to the regionalization level of the EU are unlikely to

peak beyond levels reached in the 1990s and early 2000s, much will depend on how the reforms pushed through during that climactic period will be implemented. In this respect, inter-institutional relations and interstitial developments will largely affect the newly gained rights of the sub-state level and notably those embodied in the early warning mechanism and in the initiation of infringement proceedings before the ECJ.

The EU's federal blindness

The interaction between the sub-state level and the EU legislative process can be summarized under two headings. The first is paradox. The second is the persisting federal blindness of the EU political system. This section starts by outlining the nature of the sub-state paradox in the EU and maps out the EU's federal blindness and its gradual but limited departure from it. Finally, it details two sources of endogenous pressure, which one would have expected to provoke greater change than that observed.

Why should we care? The sub-state paradox in the EU

The paradox that the sub-state level represents in the EU is easy to grasp. It stems from the fact that, according to the Commission, 'about three quarters of EU legislation is implemented at local or regional level'.² Further, 'the European Commission considers that, on average, somewhere between 70% and 80% of *Community programmes* are managed by local or regional authorities in the Member States' (Committee on Constitutional Affairs, 2002: 24, emphasis added). However, if territorial authorities are deeply involved at one end of the EU policy process – implementation – they lack leverage at other stages of this same process and more particularly at the decision-taking phase.

This was stressed by a number of EU institutions and bodies such as the Committee of the Regions (CoR), but also the EP. The latter's Constitutional Affairs report³ spells out in unambiguous terms that 'the problems of transposing Community legislation are of concern not only to central government but also to the regional authorities. However, as the European Commission is not officially aware of the latter's existence, the number of problems involving the conception, application or transposition of Community law has recently increased' (Committee on Constitutional Affairs, 2002: 24). The detrimental impact of the EU's federal blindness has since been further highlighted by research on member state compliance with EU law. Consistent with the EP Committee's claim, a variety of studies have underlined

² See DG Regio, <http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&cid=be53bd69-0089-465e-a173-fc34a8562341&ism=be53bd69-0089-465e-a173-fc34a8562341> emphasis added [Last accessed 24/02/11].

³ The full report is accessible at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//NONSGML+REPORT+A5-2002-0133+0+DOC+PDF+V0//EN> [last accessed 24/02/11].

the negative relationship between regionalism/federalism and different dimensions of transposition and implementation (Mbaye, 2001; Jensen, 2007; König and Luetgert, 2009; Steunenberg and Toshkov, 2009; Borghetto and Franchino, 2010).

These concerns are all the more understandable when one considers the increasing overlap between the competences sent upwards by member states to the supranational level and those devolved downwards by these same member states to the sub-state level (Jeffery, 1997a; Bourne, 2003). Estimates of the overlap vary but generally range between 50% and 80% (see, e.g. Scottish Executive and CoSLA, 2002: 15). The paradox hence becomes double: not only do territorial authorities have to implement the vast majority of Community legislation and programmes in which they have hardly been involved, but their own competences are additionally encroached upon by that which member states have also devolved to the EU. Thus, regional governments have to implement decisions they have not taken themselves while the authority of the EU supersedes their own⁴ on a vast number of issues over which they are domestically and – more crucially perhaps – electorally supposed to have competence. Hence, the EU's federal blindness affects both output legitimacy (cf. compliance) and its obverse, input legitimacy (cf. lack of input by elected territorial authorities).⁵

Beyond this democratic paradox and interrelated compliance problem (Scharpf, 1999), the exclusion of territorial governments from the EU decision-making process is even more striking when one compares some of these territorial entities with some EU member states. Indeed, small member states such as Denmark, Finland, or Ireland have less demographic, geographic, and economic weight than some EU regions while comparison itself becomes difficult when one considers 'micro' states such as Luxembourg, Malta, or Cyprus. The last two EU enlargement waves have further increased the saliency of this sub-state paradox. As the 2002 EP report highlighted, the

forthcoming [2004] enlargement of the Union to include many small countries may raise political difficulties for large regions in the existing Member States. This is because it will create a situation in which entities with a few thousand inhabitants

⁴ According to the principles of 'direct effect' and 'supremacy'.

⁵ One could argue that the local level in the EU's member states suffers from a comparable 'blindness' as a third territorial level of government and administration implementing decisions taken two levels up. The parallel, however, is weak. Though not antipodal, these situations lack in comparability as the EU's individual states are both less contested and more stable political entities than the EU itself, the structure, existence, and legitimacy of which are challenged to an extent unknown to its members (Belgium excepted). While the EU's input legitimacy is regularly challenged in academic, practitioner, and media-political narratives, member state polities benefit from greater 'permissive consensus'. Member states' greater perceived legitimacy renders their third-level blindness less salient than that of the EU towards its regions. Finally, the parallel with the local level, despite many merits, is also limited since this level does not have primary legislative powers (as opposed to *Regleg* regions in the EU) while its degree of competence overlap with the EU is comparatively limited. Considering this level's lack of national shared rule, legislative powers, and limited competence overlap, the federal blindness argument does not extend well to it.

are entitled to be represented as such in the Union, each one having a minister and a right to vote in every formation of the Council, one Commissioner, a quota of Commission staff, and members of the European Parliament, as well as having its language recognised as an official language of Europe, whereas historic regions with several million inhabitants, which make a major contribution to the economic dynamism of the Union and to the funding of its budget would still be unrecognised by the European treaties (Committee on Constitutional Affairs, 2002: 24).

To illustrate the EP Committee on Constitutional Affairs's official claim, Table 1 below lists some 'historic regions' and some small and micro states as well as basic data on three variables: population (Eurostat), economic weight (Gross Domestic Product – GDP, Eurostat), and the number of Council votes that each territorial entity has.

This table displays the paradox the 2002 EP report highlights: that in a political system where the demographic weight of member states is one of the main determinants of their level of representation and hence influence over outcomes (Hosli, 2000), historical territories, some with fully fledged governmental structures, have an institutional representation *inferior* to that of micro states whose demographic and economic weight often corresponds to less than 10% of theirs.

The discrepancy between these regional governments and small/micro member states is even more striking when plotted together. If the territorial authorities listed in Table 1 were to achieve full statehood within the EU, a small region such as Corsica could expect as many as three Council votes (Malta), while North Rhine-Westphalia should at the very least benefit from equal institutional power to that of the Netherlands. Similarly, Baden-Württemberg and Bavaria should logically receive about 10 Council votes, in line with countries such as Greece or the Czech Republic, despite dwarfing them economically. Likewise, Lombardy perfectly matches Sweden on both demographic and economic variables, while regions such as Sicily, Piemonte, Scotland, Flanders, Rhône-Alpes, Catalonia, or Andalusia could comfortably claim equal treatment to Denmark, Finland, Ireland, or Slovakia (Figure 1).

The involvement of territorial authorities in the implementation of over three quarters of EU legislation and programmes, and the similarly high overlap between the competences of these authorities and that of the EU not only create a democratic conundrum domestically, but also supra-nationally when one considers the striking imbalance between small state leverage on the EU policy process and that of large regional authorities. Not only do EU decisions dictate the activities of democratically elected territorial levels of government, they are also formally hermetic to any kind of authoritative input they could have. Indeed, the EU is, by design, blind to the sub-state level.

Mapping change: from Parisian blindness to Lisbon short-sightedness

This institutionalized lack of recognition of the sub-state level prompted some early observers to coin a new term to describe it: *Landesblindheit*. This term

Table 1. Demographic, economic, and formal weight of some 'historic regions', and small/micro member states

Name	Eurostat code	Demography (thousands)	Economy (GDP million Euros)	Council votes
Vlaams Gewest	BE2	6161.6	183,141.4	0
Baden-Württemberg	DE1	10,749.8	337,515.9	0
Bayern	DE2	12,520.3	414,664.0	0
Nordrhein-Westfalen	DEA	17,996.6	505,727.3	0
Galicia	ES11	2735.1	50,394.9	0
País Vasco	ES21	2138.7	60,665.3	0
Cataluña	ES51	7238.1	184,034.8	0
Andalucía	ES61	8046.1	135,849.8	0
Bretagne	FR52	3118.5	77,977.3	0
Rhône-Alpes	FR71	6073.5	175,089.4	0
Corse	FR83	298.5	6619.8	0
Piemonte	ITC1	4401.3	120,184.6	0
Lombardia	ITC4	9642.4	311,701.6	0
Toscana	ITE1	3677.0	99,478.4	0
Sicilia	ITG1	5029.7	81,465.9	0
Wales	UKL	2972.9	71,275.2	0
Scotland	UKM	5130.6	157,713.0	0
Österreich	AT	8331.9	257,294.5	10
Belgique-België	BE	10,666.9	318,223.3	12
Bulgaria	BG	7640.2	25,238.2	10
Česka Republika	CZ	10,381.1	113,458.5	12
Denmark	DK	5475.8	218,341.4	7
Magyarország	HU	10,045.4	90,007.0	12
Kypros/Kıbrıs	CY	789.3	14,673.2	4
Eesti	EE	1340.9	13,104.3	4
Ελλάδα	GR	11,213.8	213,206.7	12
Suomi/Finland	FI	5300.5	167,009.0	7
Ireland	IE	4401.3	177,286.4	7
Lietuva	LT	3366.4	23,978.5	7
Latvija	LV	2270.9	16,046.7	4
Luxembourg	LU	483.8	33,921.1	4
Malta	MT	410.3	5101.2	3
Nederland	NL	16,405.4	539,929.0	13
Portugal	PT	10,617.6	155,446.3	12
Sverige	SE	9182.9	313,449.8	10
Slovenija	SI	2025.9	31,013.6	4
Slovenska Republika	SK	5401.0	44,566.7	7

GDP = gross domestic product.

originates from Hans Peter Ipsen who sought to describe the Community's blindness to the status and role of the German *Länder* in the early days of the integration process (Ipsen, 1966). It has since been expanded to describe the lack of recognition of regional governments by the EU political system. For example, when analysing a

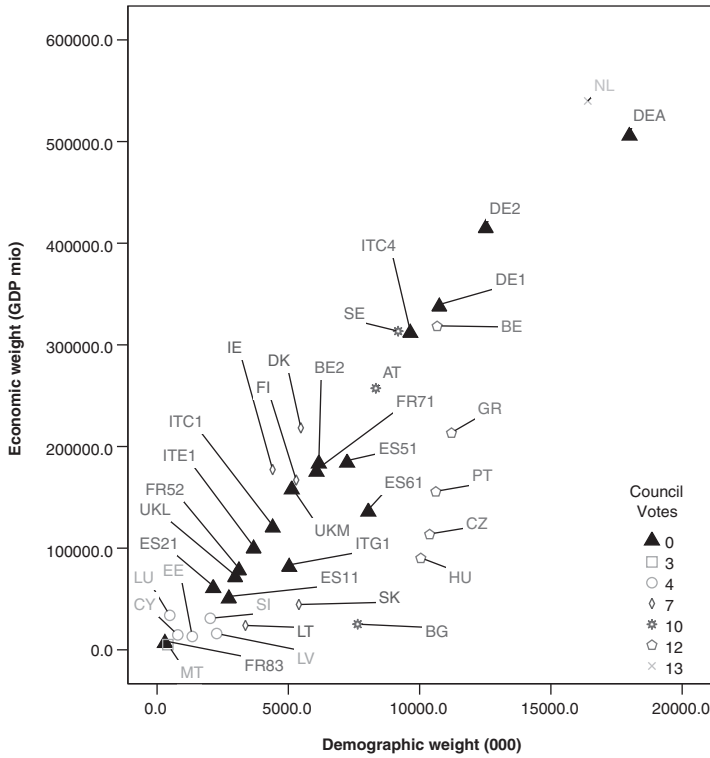


Figure 1 Demographic, economic, and formal weight of some ‘historic regions’, and small/micro member states. GDP = gross domestic product.

dispute between the Commission and the *Land* of Saxony, George describes *à la* Ipsen – though without referring to him – the EU’s ‘structural bias whereby different sets of institutional arrangements legitimize and empower different sets of actors’. Examining the Commission and Saxony’s conflict over state aid to Volkswagen, he highlights how ‘the Commission is blind to the role of the *Länder* in the German system of state aids. This blindness results in bitterness, because what the German actors consider to be proper behaviour is not followed by the Commission. It also leads to problems such as the German federal government being taken to the court by the Commission over an action by a *Land* which the federal government had neither been involved in nor approved’ (2004: 118). This sub-state blindness has been a constant throughout the integration process despite both the nature of the EU and that of its member states changing over time.

Indeed, the EU has massively deepened and widened since its creation in the 1950s but its constitutional blindness towards the sub-state level has evolved in a much less dramatic manner. Successive treaty revisions have gradually acknowledged the existence of such a level of government as well as its growing importance in various policy domains. But recognition has remained limited and formal

power and influence even more so. If one were to characterize change, the shift has been from complete federal blindness since the ratification of the Treaty establishing the ECSC in Paris in 1952 to mere short-sightedness since the ratification of the Lisbon Treaty in 2009. As summarized in Box 1, a number of (uneven) steps towards such an outcome were taken in between. These concern the creation and gradual enlargement of the consultative powers of the CoR as well as the evolution of its relations with some of the EU's institutions. Others concern the involvement of some regional governments at various stages of the policy process, from participation in Council negotiations to the implementation of the partnership principle in structural funds programmes.

Box 1. From Parisian blindness to Lisbon short-sightedness

- 1960:** 9 May, the European Parliamentary Assembly (the EP's predecessor) sets up a consultative committee on regional economies.
- 1988:** 24 June, in the wake of the Single European Act (1986), which stressed the importance of regional development for the single market, the European Commission set up the Consultative Council of Regional and Local Authorities.
- June–December, reform of the Structural Funds through a series of regulations adopted by the Council establishing the 'concentration', 'programming', 'additionality', 'co-financing', and 'partnership' principles.
- 1991:** 9–10 December, during the intergovernmental conference negotiations, the European Council takes the decision to establish the CoR.
- 1992:** 7 February, the signature of the Maastricht Treaty officially establishes the CoR and its article 198c requires the Council or the Commission to consult the CoR in five policy areas: economic and social cohesion; public health; trans-European networks in the fields of transport, energy, and telecommunications; education and youth; culture. Article 203 allows member states to include and/or be represented by regional ministers in Council negotiations. The subsidiarity principle also introduced in the Treaty does not, however, refer to the sub-state level.
- 1997:** 2 October, the Amsterdam Treaty adds five areas where the Council or the Commission must consult the CoR: employment policy; social policy; environment; vocational training; transport. It also allows the EP to consult the CoR through article 265.
- 2001:** 20 September, 'Protocol of Cooperation' signed between the Commission and the CoR.
- 2002:** 13–4 March, during the Convention on the future of Europe, the EP uses for the first time its right (already granted in Amsterdam) to officially consult the CoR.
- 2003:** 18 July, the Convention on the Future of Europe's draft Treaty fulfils a number of long-standing CoR demands, including a more detailed definition of the principle of subsidiarity and the right for the CoR to trigger proceedings at the ECJ on the basis of a breach of subsidiarity.
- 2004:** 29 October, the Treaty establishing a Constitution for Europe is signed by the EU's heads of state and government in Rome. In line with the Convention, it boosts the institutional status and political role of the CoR. It is never ratified.
- 2005:** 17 November, Cooperation agreement between the European Commission and the CoR.
- 2007:** 13 December, the Treaty of Lisbon is signed. It contains many of the reforms included in the Convention's constitutional treaty.
- 5 June, Addendum to the Protocol on the Cooperation arrangements between the CoR and the Commission.
- 2009:** 1 December, the Lisbon Treaty enters into force.

Much academic work has analysed and commented on these developments. More optimistic work focusses on the potential of these changes and the way in which they depart from the *status quo ante*. Others, with more scepticism (Hogenauer, 2008), specify their limits and outline a number of important caveats (for an overview see, among others, Hooghe and Marks, 2001; Keating and Hooghe, 2006). However, one fact is beyond doubt: the EU has gradually shifted away from complete blindness towards a greater recognition and involvement of the sub-state level through a variety of compulsory and optional measures. This shift has been uneven and irregular but unidirectional. Even if departure from federal blindness has been limited, it has nonetheless been clear and incontestable.

In many ways, the implementation of the Lisbon Treaty represents the most important step in that direction since the Maastricht Treaty established the CoR, article 203, and the subsidiarity principle. Lisbon implemented seven important changes. The first is that the treaty specifies that the Commission is obliged to consult with local and regional authorities as early as possible in the legislative process. The second is that compulsory consultation consequentially increases the weight of the CoR during the pre-legislative phase. The third is that, yet again, the policy areas in which CoR consultation is compulsory have been extended, adding civil protection, climate change, energy, and services of general interest to the list. The fourth is that the CoR's involvement has been extended beyond the issuing of an opinion on a Commission proposal. It is now also obligatory for the EP to consult the CoR. This gives the CoR an opportunity to comment on any changes made by Members of the European Parliament (MEP). The CoR now also has the right to question the Commission, the EP, and the Council if they fail to demonstrate consideration of its opinion and it can also call for a second consultation if the initial proposal is substantially modified during its passing through the other institutions. Hence, Lisbon constrains the EU's main three institutions to greater and more prolonged interaction with the CoR throughout the decision-taking process.

The fifth area of change concerns a remarkable departure from past practices in the definition of subsidiarity. The Treaty, for the first time, makes specific reference to local and regional governments – and therefore the principle of territorial self-government – in its specification of subsidiarity.⁶ Beyond such detailed specification of the subsidiarity principle all the way down to its regional and local levels, the Lisbon Treaty also breaks new ground by introducing a sixth important change: the 'early warning mechanism'.⁷ Through such a mechanism, not only the CoR but also national and a number of regional parliaments have 8 weeks to check compliance with the newly defined subsidiarity principle. Such a monitoring mechanism allows legislation proposed by the Commission to be scrutinized by these actors before the legislative process can move on. This mechanism has a clear impact for the sub-state level in that, beyond the CoR itself, 7 out of 13 member state upper chambers

⁶ See article 3b but also the new article 5 of the Protocol on subsidiarity and proportionality.

⁷ See article 7 of the Protocol on the application of the principles of subsidiarity and proportionality.

represent regional and local authorities. Additionally, in member states where regional parliaments have legislative powers, national parliaments will consult these bodies.⁸

The seventh change is perhaps the most striking. The CoR can now bring legal actions before the ECJ in two specific instances: to protect its mandatory consultative powers and to annul EU legislation which impinges upon regional and local competences and therefore violates subsidiarity. This gives the CoR some legal clout. Hence, whether it believes that it has not been correctly consulted by the Commission, the EP, or the Council, or that EU legislation breaches subsidiarity by violating regional or local competences, the CoR can now initiate infringement proceedings at the ECJ.⁹ Having requested this right for 15 years, the CoR decided, just days after the new EU Treaty came into force, that it will refer EU laws which infringe the subsidiarity principle to the ECJ by a simple majority vote, thereby reducing the likelihood of internal gridlock. In this way, from Paris to Lisbon, the EU has manifestly travelled some distance away from Ipsen's original characterization.

Though one should not belittle the observed magnitude of change, one should also keep it in perspective compared with the evolution of other EU institutions and particularly the EP. While the EP originates from similarly humble beginnings, as a nominated consultative assembly, its trajectory is incomparable to that of the CoR as, despite changes implemented through the Lisbon Treaty, the CoR falls well short of the power and influence currently wielded by the EP. While the departure from the *status quo* is significant, the EP's yardstick highlights that it remains limited.

Endogenous pressures, transaction costs, and actor preferences: the puzzle of 'limited' institutional change

Despite representing a clear departure from the *status quo ante*, the overall limits of institutional change are surprising (Hogenauer, 2008: 554; Mandrino, 2008: 533). How can the EU's 'federal myopia', to coin a new term, have been so persistent as to still constitute the dominant feature of the EU's legislative process? Indeed, one could have anticipated that, as 'European' policy gradually became 'domestic' policy (Jeffery, 1997a: 215–218) and as more and more countries decentralized powers across territorial levels, the EU would have adapted its institutional structures to grant some formal authority to its most potent regional governments. This hope has, in the main, been disappointed. Building on institutional apathy and on the path dependence of organizational designs (Pierson, 2000), a double answer can be formulated to explain the persistence of this federal blindness.

⁸ Each national parliament decides which regional parliaments and assemblies it will consult.

⁹ See article 8 of the Protocol on the application of the principles of subsidiarity and proportionality and article 230(b) as amended by the Lisbon Treaty.

The first is that the European project was initially closer to an international organization than the fully fledged polity it has now become by funnelling its components into an ‘ever closer union’. As some authors have commented, ‘remarkably, a treaty-based international organization has been transformed into a quasi-federal polity based on a set of treaties that are a constitution in all but name’ (Capoccia and Kelemen, 2007: 365). This development suggests that territorial governments may initially have had little interest in the European project and certainly had few claims for involvement in an integration process that resembled classical regional integration and concerned only a few policy areas. Their mobilization lacking during the Community’s infancy – its constitutive phase – territorial governments would have missed the train of supranational recognition for good. Subsequent opportunities in the form of treaty revisions demonstrated that, the initial train missed, it was difficult to jump on subsequent wagons. All the more so as member states lack any real incentive to share power in an area where many authors argue they have managed to successfully isolate themselves from domestic constraints (Putnam, 1988; Milward, 1992; Keating and Hooghe, 2006: 272) to both free their policy hands and indulge in electorally beneficial games of credit claiming and blame avoidance. In this sense, member state preferences coupled with institutional ‘stickiness’ would account for the persistence of the EU’s federal blindness.

The second is that, in the early days of European integration, the sub-state level was far less developed than it is today. Germany apart, the sub-state level was mostly weak and fragmented. Belgium was still a unitary country, Italy was not yet regionalized or only very asymmetrically so¹⁰ while Luxembourg, the Netherlands, and France were, and still are, unitary. However, since the 1950s most European states have decentralized or at least ‘deconcentrated’ some competences to the sub-state level. Belgium went all the way, becoming a federal state, Italy has gradually implemented its constitutional regionalism, Spain has generously granted *café para todos* in the form of successive statutes of autonomy to its various territorial communities, France has unleashed two decentralization waves culminating in the constitutional recognition of its decentralized nature (2003) while the United Kingdom has devolved vast powers to three of its four nations. Hence, one could expect that, as a result of the increasing regionalization of its member states, the EU would become more sensitive to the sub-state level despite its originally low saliency.

While both integration and regionalization levels explain the EU’s *original* federal blindness, they also make the *current* limited nature of its reforms puzzling. The combined effects of deeper integration and greater regionalization should, theoretically, have triggered greater institutional change. This argument is based on both assumed actor preferences and on the logic of endogenous

¹⁰ At that time, five Italian regions were granted ‘special autonomy’, as listed in Article 116 of the 1947 Italian Constitution. Regions with ‘ordinary autonomy’ were only created in 1970.

pressures for change. The preferences of these domestically empowered territorial governments would be for greater involvement (Marks *et al.*, 1996: 170; Hocking, 1997: 105) and they would exert escalating pressure for change (as a function of regionalization and EU deepening) both directly on the European scene and on their member states. Indeed, theories of endogenous institutional change stress the role played by ‘implementing/affected actors’ *vis-à-vis* ‘designing actors’ to account for institutional change (Héritier, 2007: 51). As Héritier specifies, one can shed some light on the dynamics triggering institutional change through a

structural perspective [which] relates to the *types of actors* involved in the rule-making: which actors are ‘designing actors’, that is formally responsible for the adoption of an institutional rule; and which actors are ‘implementing actors’ (or affected actors), that is charged with and affected by the daily application of the institutional rule? Institutional rules are the result of a process of collective choice of the designing actors, that impose their rules on the implementing actors (and affected actors) (...). A discrepancy between the designing actors of an institutional rule and its distributive implications and the implementing actors (and those affected by the rule in society at large) may constitute an important source of institutional change (2007: 9, emphasis original).

Hence, the concomitant deepening of the EU and the regionalization of its member states would create a discrepancy between designing actors (the member states) and implementing actors (territorial authorities), the latter having witnessed their policy competences increasingly encroached upon by European integration (Bourne, 2003, 2004).

Empowered territorial governments could then exert pressures for change through a variety of mechanisms, including linked-arena bargaining. Even in the absence of formal powers in one arena, a player may be able to provoke institutional change through its formal powers in another arena. This logic can be applied to the interaction between the above-mentioned implementing and designing actors in that ‘actor A, using a formal veto in one arena X, can create a leverage in another linked arena Y in which actor A has no formal vote’ (Héritier, 2007: 54). Such an endogenous theory of institutional change based on actor type (implementing vs. designing) and linked-arena mechanisms makes the ‘limitedness’ of the observed institutional change all the more puzzling in that some change *has* occurred, but it has remained limited.

One cause of lack of change despite endogenous pressures can usually be found in transaction costs. When too high, they hinder change. However, considering that change has indeed occurred – implying that the costly steps of intergovernmental conferences, treaty negotiation, and ratification have been taken – the transaction costs linked to agreement over a new or amended institutional set-up have been paid. These are proportionally greater as the outcome departs further from the *status quo*. However, the threshold price of engaging in institutional

change (be it to tinker and tweak or to dramatically reform, terminate, or create) having been paid, transaction costs alone cannot account for the limitedness of the observed change. Changing much is more costly than changing little, but if the pressure for change is sufficiently strong, not changing enough is, *in fine*, more costly than changing much or preserving the *status quo*.

Finally, assumed actor preferences are equally unhelpful in accounting for the persistence of the EU's federal myopia. While territorial governments should have a preference for greater recognition and involvement due to their regionalization and the EU's deepening (e.g. Bursens and Deforche, 2008), the member states, due to the possibility of arena-linking, might be constrained to endorse change despite contrary initial preferences (Farrell and Héritier, 2007: 409). Having dispersed power at the European level in the first place and subsequently in greater measures still to the EP, the ECB, and the ECJ, it is difficult to pinpoint why more powers should not be dispersed to other actors on the EU scene, namely the CoR and territorial governments, considering that these same member states are also devolving powers to territorial governments domestically. Equally, in terms of the perceived legitimacy of the European project, EU member states and institutions would certainly not harm their democratic credentials by better including 'grassroots' territorial governments. Brussels rhetoric has argued that such a move would enhance the 'quality' of governance and lead to 'better' regulation, thereby improving output legitimacy and leading to overall gains in both democracy and efficiency (Scharpf, 1999; European Commission, 2001).

While the initially (1) low level of integration and (2) weakness of the sub-state level across Europe go some way to providing an explanation for the original federal blindness of the EU, these two developments (deepening and regionalization) should also lead us to expect this same federal blindness to not survive long. Despite an inevitable time lag necessary for these changes to trigger an institutional response at the supranational level, it is puzzling that only limited change has occurred. As prime implementers of its policies, increasing deepening should eventually foster greater sub-state involvement in EU affairs, while the aggregate level of decentralization across the EU should be high enough for territorial governments to pressure their central governments and EU institutions for greater collective recognition at the supranational level. A reason for the lack of greater change, however, might lie in the (in)validity of the assumed monotonicity of the EU's deepening and regionalization. Since these two sources of pressure for endogenous change have not triggered the expected outcome, it is tempting to further prod and explore their empirical reality.

Sources of endogenous pressure for change

This section seeks to assess the empirical reality of two widespread assumptions about the EU polity. The first is that deepening has been, overall, unidirectional. The second is that the EU's member states, and therefore the EU as a whole, have

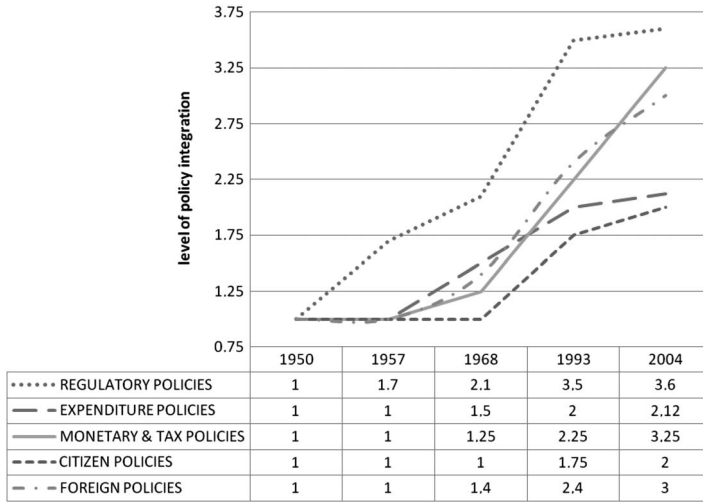


Figure 2 35 policy area scores aggregated for five policy sectors. *Source:* Hix (2005), author's calculations.

monotonically regionalized over time. If the first assumption underlying the deepening part of the endogenous diptych is easy to verify, the second assumption is trickier to assess.

The deepening assumption

The first expected pressure for change is that the nature of the EU has evolved over time, from an 'unidentified political object' (Drake, 2000: x), not dissimilar to an international organization, to one which has little in common with the ideal type. Testing for its validity is relatively straightforward: one simply needs to assess to what extent decisions are taken exclusively at the state level or at the supra-state level across policy areas and over time. If the trend toward supra-state decision taking over time and across policy areas is upwards then the deepening assumption would be substantiated. Simon Hix provides some data that, though he claims 'uses a variety of secondary sources, and is hence not exact science' (Hix, 2005: 19), are precise and reliable enough to test whether deepening has indeed occurred over time and across policy areas. Figure 2 is constructed from Hix's data (2005: 20–21)¹¹ where the level of decision taking for individual policy areas is coded on a 4-point scale: 1 indicates that *all* policy decisions are taken at the state level, 2 that *some* policy decisions are taken at the EU level, 3 that policy decisions are taken at *both* state and EU levels, and finally 4 that *most* policy decisions are taken at the EU level. The temporal points correspond to various integration steps, 1950 being

¹¹ Quasi-identical conclusions can be drawn from Börzel (2005).

before any treaties, 1957 corresponding to the EEC Treaty, 1968 to the Merger Treaty, 1993 to the Maastricht Treaty, and 2004 being the last point in time after the Nice Treaty.

In this graph, 35 policy area scores are aggregated and averaged in five broad policy sectors. The graph confirms that the trend is deepening, in the sense that an increasing number of decisions in an increasing number of policy areas are gradually being taken at the supra-state level rather than at the state level exclusively. It also confirms that European integration is a highly differentiated process with some policy areas integrating quicker and further while others lag behind or remain stagnant. For instance, regulatory policies are clearly an area where integration has gone deeper and been quicker. Meanwhile, expenditure policies and citizen policies (with an average close to 2) remain areas where only *some* policy decisions are taken at the EU level. Averaging around '3', foreign policies and monetary and tax policies are in an intermediate position with policy decisions taken at *both* the state and the central level.

The regionalization assumption

For the regionalization explanation to be operational, its level needs to have increased both over time and across countries. General impressions validate this assumption. As indicated earlier, Belgium, France, Italy, Spain, and the United Kingdom have all devolved large amounts of competences to the sub-state level while many unitary-centralized countries have decentralized or at least 'deconcentrated' some power to various territorial levels. To check the accuracy of this impression one needs to plot the level of sub-state autonomy across countries and over time to assess whether indeed such a trend occurs. The literature on federalism and territorial politics abounds with indicators and typologies, which have unfortunately tended to lack conceptual rigour, operational transparency, and replicability (for an overview see Tatham, 2008: 65–67). Though some more recent indicators are impressive in their precision and scope (Lane and Ersson, 1999; Arzaghi and Henderson, 2005; Bracanti, 2006), the Regional Authority Index (RAI) compiled by Hooghe *et al.* stands out as the most serious, encompassing and up-to-date indicator currently available (2010).¹²

The RAI is therefore used to test the assumption that the level of regionalization¹³ has increased both over time and across countries in the EU. For this test, the country scores were averaged for each time period between each enlargement phase, so as to represent the country's average level of regional authority during each period of EU-membership stability. Obviously, only the country scores during membership are of interest. They are summarized in Table 2.

¹² Beyond its more fine-grained nature (hence capturing greater variation), the RAI also comes across as highly reliable when pitted against alternative measures of decentralization (see Schakel, 2008).

¹³ As its name indicates, the RAI focusses on the regional level. It does not include the local level (Hooghe *et al.*, 2010: 38, 41, 50).

Table 2. RAI member state scores averaged per time period

	1951–1972	1973–1980	1981–1985	1986–1994	1995–2003	2004–2006	2007
Austria					18.00	18.00	18.00
Belgium	15.21	23.26	25.8	30.00	29.00	29.00	29.00
Bulgaria							1.00
Cyprus						0.00	0.00
Czech Republic						7.00	7.00
Denmark		10.12	10.20	10.20	10.20	10.20	10.20
Estonia						0.00	0.00
Finland					7.10	7.10	7.10
France	6.59	9.0	11.4	16.00	16.00	16.00	16.00
Germany	28.71	29.30	29.30	29.24	29.27	29.30	29.30
Greece			1.00	2.78	9.78	10.00	10.00
Hungary						10.00	10.00
Ireland		0.00	0.00	1.44	6.00	6.00	6.00
Italy	8.76	14.17	14.50	15.60	20.12	22.70	22.70
Latvia						0.00	0.00
Lithuania						4.00	4.00
Luxembourg	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Malta						0.00	0.00
The Netherlands	13.50	13.50	13.50	13.61	14.50	14.50	14.50
Poland						8.00	8.00
Portugal				3.50	3.61	3.70	3.70
Romania							10.00
Slovakia						6.00	6.00
Slovenia						0.00	0.00
Spain				21.20	21.90	22.10	22.10
Sweden					10.00	10.00	10.00
United Kingdom		9.00	9.00	9.20	8.18	9.60	9.60

RAI = regional authority index.

Source: Hooghe *et al.* (2010), author's calculations.

Two clear findings emerge from Table 2. The first is that many countries are time-invariant in their levels of regional authority. These time-invariant countries can be categorized in two sub-groups: those which have devolved no regional authority at all and those for which regional authority has been devolved but has not changed during the course of EU membership. Cyprus, Estonia, Latvia, Luxembourg, Malta, and Slovenia fall into this first group while Austria, Bulgaria, the Czech Republic, Finland, Hungary, Lithuania, Poland, Romania, Slovakia, and Sweden fall into the second group. The second finding is that there seems to be a trend towards greater levels of decentralization across countries with time-variant scores. For clarity's sake, these time-variant countries have been additionally represented in Figure 3. This graph illustrates that when there is variation it is towards greater territorial authority.

This evidence seems to confirm the assumption that the EU has seen its member states devolve more and more powers and competences to the sub-state level.

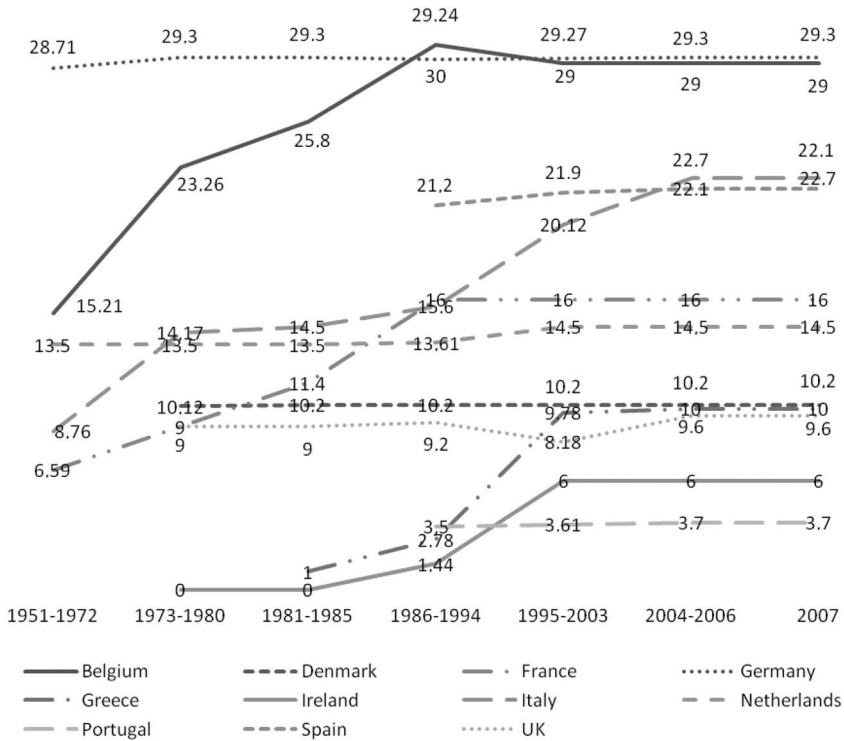


Figure 3 Non-stationary RAI member state scores.

In their present form, these data are, however, a misleading indicator of the EU’s aggregate level of regional authority. Indeed, it is only if time-variant countries devolve more powers to the sub-state level, all else being equal, that the assumption of the increasing regionalization of the EU holds. However, in the case of the EU the *ceteris paribus* clause is clearly violated.¹⁴ The EU has evolved: its membership increased from 6 to 27 member states and these 21 new entrants include both time-variant and time-invariant countries. Hence, the trend in *individual* regional authority is not a reliable indicator of the EU’s *aggregate* regionalization level over time.

To evaluate the veracity of the regionalization assumption within the EU, one needs to calculate an EU regional authority score. However, a simple addition of the country scores will not do: countries are not identical and Malta’s score, for example, cannot be treated in the same way as Germany’s. Country scores hence need to be weighted to reflect differences between countries within the EU. Since the purpose of the article is to explore and explain limited EU institutional change, rather than weighing country scores by population, geographical size, or GDP,

¹⁴ A point well made by Franklin regarding EP election turnout research (2001).

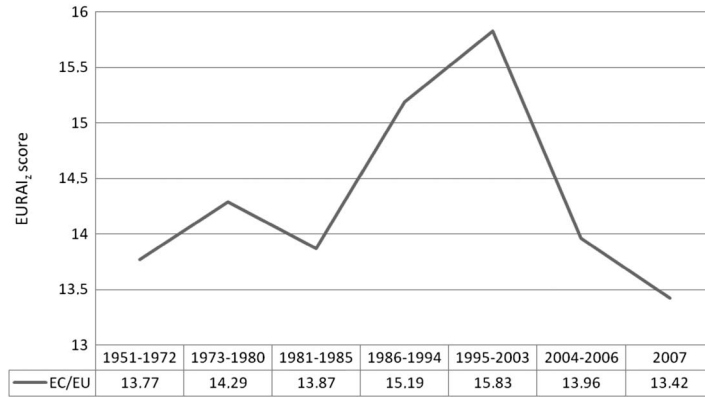


Figure 4 European Union regionalization level ($EURAI_z$).

I decided to weigh them by a measure of their *institutional leverage* within the EU political systems. Many indicators come to mind, ranging from the Banzhaf to the Shapley–Shubik power indices (Leech, 1990, 2002b). The validity and reliability of these indices have, however, been seriously questioned (Steunenberg *et al.*, 1999: 343–346; Gelman *et al.*, 2004). Considering their polemical nature, and that ‘the weights laid down by the Nice Treaty are approximately proportional to the voting power they represent’ (Leech, 2002a: 459–460), it is less contentious to simply use Council voting weights as a proxy for member states’ formal power in the EU decision-taking process.

The proposed formula is a simple one. To calculate an aggregate regionalization level for the EU, RAI scores were averaged out for each country i for each time period z , as displayed in Table 2. These \overline{RAI}_{iz} scores were then individually multiplied by their country’s voting weight CV_i for each time period z , hence reflecting shifts in voting weight distribution over time. For each time period z all weighted country scores were summed and divided by the total number of Council votes for the period. The formula is summarized in equation (1).

$$EURAI_z = \frac{\sum_{i=1}^I (\overline{RAI}_{iz} \times CV_{iz})}{\sum_{i=1}^I CV_{iz}} \quad (1)$$

The final $EURAI_z$ score measures the EU’s aggregate regional authority for each time period z taking into account the differential weight of each country consequent to successive enlargements and voting weight readjustments. These new data are represented in Figure 4.

This graph suggests a very different trend than Figure 3 did. While Figure 3 suggested an increase in the regionalization level of the EU, over time and across

countries, these data clearly demonstrate this is not the case. Indeed, the upwards trend of the time-variant countries is initially depressed and later even reversed by the inclusion – through successive enlargement waves – of time-invariant but weakly regionalized member states. The original level of regionalization of 13.77 increased to 14.29 in 1973 despite the accession of the United Kingdom, Ireland, and Denmark, but thanks to the recalculation of Council votes which gave greater weight to a federalizing Belgium, to the already-federal Germany, and to a regionalizing Italy. Hence, despite the accession of countries with a RAI score well below that of the EU average, the European polity nonetheless saw its aggregate score increase. It decreased back to its initial level, however, with the entrance of highly centralized Greece while all other voting weights remained constant. However, in 1986, while voting weights remained unchanged for old member states, the accession of highly regionalized Spain (with eight Council votes) as well as the continuing federalization of Belgium, the decentralization of France and the regionalization of Italy all contributed to raise the EU average to 15.19. This average further peaked at 15.83 in 1995 as voting rights remained unchanged for old member states while federal Austria joined the European project, Italy regionalized still further and Ireland and Greece also started to slightly raise their regional authority levels.

This upwards trend came to a sudden halt in 2004. Since then, all accession states have held RAI scores lower than the EU average and hence dragged its aggregate level of regionalization down. The EU aggregate score has plummeted to such an extent that it is now even lower than at its creation when Germany was the only federal state present. Germany is still there and federal, alongside Austria, Belgium, Italy, Spain, and relatively decentralized France and the Netherlands, but it is also surrounded by a plethora of countries, which have devolved very little power to the sub-state level. Paradoxically, if enlargement has in some ways increased the saliency of the federal myopia of the EU by granting full participation rights to small countries which are sometimes equal in size and sometimes substantively smaller than many regions, enlargement has also rendered the sub-state question far less pressing by decreasing the average level of regional authority. As a result of enlargement, the sub-state paradox is both more prominent and more marginal in the EU of today.

These findings indicate that one should reject the assumption that the level of regionalization has increased both over time and across countries in the EU. While this is true of individual member states – which have either remained time-invariant or have increased their levels of regional authority – it is not true concerning the EU understood as a weighted average of its growing number of member states. Though the EU became more regionalized from 1986 to 2003, it has become far less regionalized since 2004 and has seen its lowest level ever since 2007.

One out of two ain't enough

Though the deepening assumption was validated, the regionalization assumption has to be rejected and hence provides at least some explanation for the persistence

of the EU's federal myopia. There has been no linear, unidirectional regionalization of the EU. On the contrary, it has even been decreasing since 2004, reaching its lowest level in history with the accession of Bulgaria and Romania. In this light, it is perhaps not surprising that most reforms giving territorial governments a greater say in various aspects of EU politics and policies were drafted or implemented between 1986 and 2003 – when the EURAI_z was at its all-time high. The reform of the Structural Funds and the concomitant setting up of the Consultative Council of Regional and Local Authorities (1988) by the Commission, the Maastricht Treaty (CoR creation, subsidiarity principle, article 203), the Amsterdam Treaty (five new policy areas for the CoR), and the Treaty establishing a Constitution for Europe (extension of the subsidiarity principle, greater compulsory CoR consultation, ECJ infringement proceedings by the CoR) all occurred during this period. Hence, the EURAI_z measure helps to better understand the timing of these institutional reforms and gives credit to theories of endogenous pressure for change. It was when the EURAI_z peaked that most changes were either initiated or implemented.

As stated earlier, however, although these reforms represent a visible point of departure from past practices and institutional set-ups, they remain, *in fine*, rather limited. Such limitedness can be put down to a number of factors,¹⁵ which surely include the faltering level of aggregate regional authority in the EU. Another explanation is that, beyond its fluctuation, this aggregate score remained rather low overall. If one plots the EURAI_z score alongside that of its time-variant member states, it comes across as relatively low. As Figure 5 indicates, the EU score (fat line) peaked at a level close to that of decentralized France and is currently situated between that of the Netherlands (14.5) and Denmark (10.2). If the EU, understood as a weighted average of its member states, is as regionalized as Denmark or the Netherlands, then it is maybe not that puzzling that its decision-taking procedures have remained rather federal-myopic despite various waves of regionalization throughout Europe and deepening integration. In other words, not only did pressure for change (as a function of regionalization) rise and fall, it was also less pronounced than anticipated.

It is then rather unsurprising that many of the more powerful European regions have changed strategy. Rather than trying to achieve institutional change at the EU level directly, they have shifted towards pressuring their central governments

¹⁵ I do not argue here that the EU's aggregate regionalization level is the sole explanation. A number of other factors may have affected the scope, pace, and direction of change. For example, and as stated earlier, path dependent resistance to change (Pierson, 2000) or the lack of a clear 'regional' critical juncture (Capocchia and Kelemen, 2007) certainly provide additional context. However, the suggested causal mechanism here is that the EU's faltering aggregate regionalization level has decreased endogenous pressures for change. Though correlation certainly does not imply causation, the concomitance and strength of the association suggest that the relationship between EURAI_z and both the timing and scope of institutional change is not coincidental.

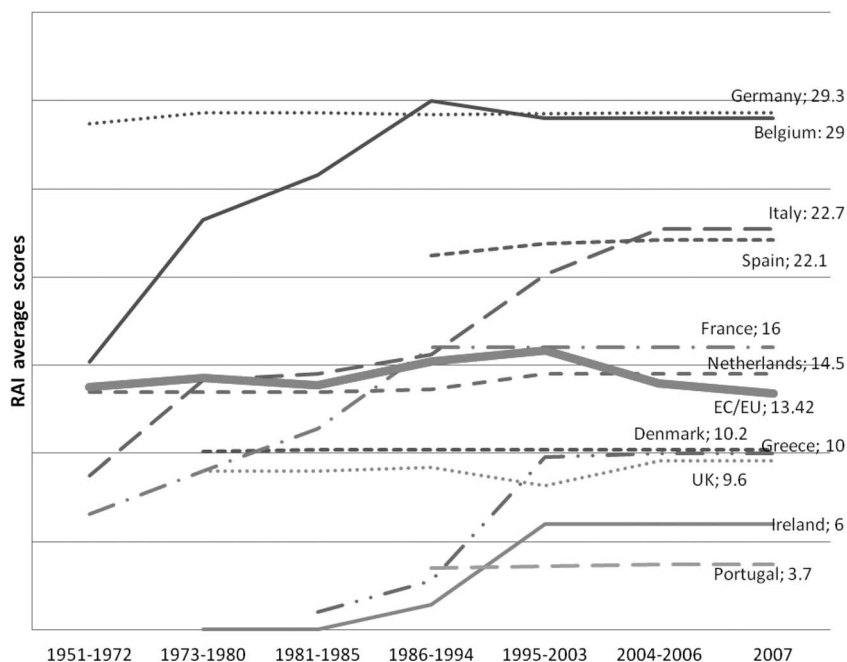


Figure 5 RAI-variant member states and EURAI_z.

for domestic change instead. In this sense, regional governments in Germany, Austria, Belgium, the United Kingdom, but also Spain and Italy have focussed much of their effort on remedying the EU's federal myopia through domestic rather than supranational solutions (Jeffery, 2007b; Michelmann, 2009). Hence, as linked-arena strategies proved unsuccessful, regional actors concentrated on the arena in which they were most powerful: the domestic one. As Jeffery points out, 'while regional governments set out 20 years ago with a transformative project designed to challenge the centrality of the member state in the EU, legislative regions have in the last few years come to endorse, even buttress the centrality of the member state' (Jeffery, 2007a: 1).

It is hardly coincidental that this shift intensified as EURAI_z dipped. Faced with the difficulty of achieving formal recognition and decision-taking participation rights at the EU level, stronger regional governments have preferred to channel pressure for change towards the more malleable and less remote central government level. This change of strategy through a change of arena in which regionalization pressures are exerted is congruent with arguments put forth by theorists of endogenous institutional change. Héritier indeed indicates that 'given a choice between different levels/arenas of decision-making, an actor, by opting out of one arena and shifting the decision to another, may improve his prospects of obtaining an institutional change according to his preferences' (2007: 30).

While institutional change was hoped for directly at the EU level, it was better accomplished by a number of regional governments at the national level (Jeffery, 2007a; Moore and Eppler, 2008; Tatham, 2011).¹⁶

Conclusions

This article set out to shed some light on both the origins and the persistence of the EU's federal blindness. This blindness – identified by Ipsen in the 1960s – has been remarkably persistent over time to the extent that it has not only been denounced by territorial governments themselves but also by EU institutional players such as the EP and the Commission, which have criticized the efficiency, legitimacy, and democratic deficits it causes (European Commission, 2001; Committee on Constitutional Affairs, 2002). Two factors have been put forward as both an explanation for the original institutionalization of such blindness and a source for change over time. The first concerned the deepening process and the second the regionalization of the EU's member states. Both were assumed to be initially low and to have increased over time, thus triggering endogenous pressures for change in the form of a widening discrepancy between designing and implementing actors and the possibility of inter-arena linkages. Hence the pressures produced by the EU's deepening and regionalization would explain institutional change towards greater recognition and involvement of the sub-state level in the EU decision taking.

Though such change has taken place, culminating with proposals set out in the Treaty establishing a Constitution for Europe (2004) and finally implemented through the Lisbon Treaty (2009), it has remained surprisingly limited. To extend the metaphor, while the EU is no longer federally blind, it remains largely short-sighted: it is finally able to see below the member state level, but such a vision is still rather weak, if not myopic. The CoR has not become a fully fledged institution and is certainly not on an equal footing with the EP or the Council. Its consultative powers have been significantly extended but nonetheless remain consultative. Meanwhile, both the *use* and *effect* of its newest tool, that of bringing cases before the ECJ, very much depend on actor constellations within and strategic interactions between institutions. In this light, change has been much more limited than the deepening and regionalization pressures have led us to expect.

¹⁶ As one reviewer suggested, this change of strategy could also be considered as a switch from the pursuit of one model of federalism to another: from the older and classical American model insisting on direct representative inclusion of the constituent members of a federation (often perceived as deficient from an output perspective since the third tier of government carries out many policy functions without representation) to a newer and perhaps European model relying on indirect representation where the regions let the member states do the bidding in Brussels as long as they gain sufficient intrastate authority over what that bidding is going to be about. For similar views see also Jeffery (1997b, 2007a, b) and Fabbrini (2005).

Exploring the empirical reality of deepening and regionalization further, this research has discovered that, contrary to expectations, the EU's aggregate regionalization score has significantly dropped since 2004 to a level that is now lower than at its inception, when it only included one federal state. This counter-intuitive finding is important, as the assumption that the EU has become more regionalized is commonly made but had never been rigorously tested before. Furthermore, it provides an explanation as to why institutional change gained most momentum between 1986 and 2003, when regionalization pressures were strongest. Also, it helps explain why many of the more powerful regional governments have pursued the complementary strategy of institutional change at the domestic level too since, even at its peak, the EU's regionalization level was not as high as imagined. Finally, these findings suggest that regionalization pressures are unlikely to provoke further institutional change. Having dipped to a historic low, they are unlikely to soon again reach a level high enough to trigger further reforms. Indeed, the possible accession of Croatia, Turkey, the Former Yugoslav Republic of Macedonia, or Iceland – which all have RAI scores well below that of the EU average – would further accentuate the current downwards trend.

If deepening and regionalization have provoked limited institutional change away from complete federal blindness towards mere myopia, further sources of change in this direction will have to come from elsewhere. Much will now depend on how the new procedures ratified through the Lisbon Treaty are utilized and more particularly the early warning mechanism and ECJ infringement proceedings.¹⁷ In this sense, strategic interactions between the EU's institutions and the CoR as well as interstitial developments (Farrell and Héritier, 2007) are likely to be the main source of future institutional change away from the EU's federal short-sightedness.

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¹⁷ In their work on the EP, Bergström *et al.* (2007) as well as Moury (2007) have suggested that once an EU institution has gained the right to delay or block the legislative process it then has much greater bargaining power to obtain further institutional changes in its favour (see also, for a similar argument, Hix, 2002). In this light, the CoR's freshly acquired power to initiate infringement proceedings at the ECJ could pave the way to further institutional empowerment.

References

- Arzaghi, M. and V. Henderson (2005), 'Why countries are fiscally decentralizing', *Journal of Public Economics* 89(7): 1157–1189.
- Bergström, C.-F., H. Farrell and A. Héritier (2007), 'Legislate or delegate? Bargaining over implementation and legislative authority in the EU', *West European Politics* 30(2): 338–366.
- Borghetto, E. and F. Franchino (2010), 'The role of subnational authorities in the implementation of EU directives', *Journal of European Public Policy* 17(6): 759–780.
- Börzel, T. (2005), 'Mind the gap! European integration between level and scope', *Journal of European Public Policy* 12(2): 217–236.
- Bourne, A. (2003), 'The impact of European integration on regional power', *Journal of Common Market Studies* 41(4): 597–620.
- (ed.) (2004), *The EU and Territorial Politics within Member States: Conflict or Co-ordination?*, Leiden: Brill.
- Bracanti, D. (2006), 'Decentralization: fueling or dampening the flames of ethnic conflict and secessionism?', *International Organization* 60(3): 651–685.
- Bursens, P. and J. Deforche (2008), 'Europeanization of subnational politics: the impact of domestic factors on regional adaptation to European integration', *Regional & Federal Studies* 18(1): 1–18.
- Capocchia, G. and R.D. Kelemen (2007), 'The study of critical junctures. theory, narrative, and counterfactuals in historical institutionalism', *World Politics* 59(April): 341–369.
- Committee on Constitutional Affairs (2002), *Report on the Division of Competences between the European Union and the Member States*, Strasbourg: European Parliament.
- Drake, H. (2000), *Jacques Delors: Perspectives on a European Leader*, London: Routledge.
- European Commission (2001), *European Governance: A White Paper*, Bussels: European Commission.
- Fabbrini, S. (ed.) (2005), *Democracy and Federalism in the European Union and the United States: Exploring Post-national Governance*, London: Routledge.
- Farrell, H. and A. Héritier (2007), 'Conclusion: evaluating the forces of interstitial institutional change', *West European Politics* 30(2): 405–415.
- Flaminio Costa v. ENEL (1964), European Court of Justice.
- Franklin, M. (2001), 'How structural factors cause turnout variations at European Parliament elections', *European Union Politics* 2(3): 309–328.
- Gelman, A., J.N. Katz and J. Bafumi (2004), 'Standard voting power indexes do not work: an empirical analysis', *British Journal of Political Science* 34(4): 657–674.
- George, S. (2004), 'Multi-level governance and the European Union', in I. Bache and M. Flinders (eds), *Multi-level Governance*, Oxford: Oxford University Press, pp. 107–126.
- Héritier, A. (2007), *Explaining Institutional Change in Europe*, Oxford: Oxford University Press.
- Hix, S. (2002), 'Constitutional agenda-setting through discretion in rule interpretation: why the European Parliament won at Amsterdam', *British Journal of Political Science* 32(2): 259–280.
- (2005), *The Political System of the European Union*, Basingstoke: Palgrave Macmillan.
- Hocking, B. (1997), 'Regionalism: an international relations perspective', in M. Keating and J. Loughlin (eds), *The Political Economy of Regionalism*, London: Frank Cass, pp. 90–111.
- Hogenauer, A.-L. (2008), 'The impact of the Lisbon reform treaty on regional engagement in EU policy-making – continuity or change', *European Journal of Law Reform* 10(4): 535–556.
- Hooghe, L. and G. Marks (2001), *Multi-Level Governance and European Integration*, Oxford: Rowman & Littlefield.
- Hooghe, L., G. Marks and A.H. Schakel (2010), *The Rise of Regional Authority: A Comparative Study of 42 Democracies*, Abingdon: Routledge.
- Hosli, M.O. (2000), 'Smaller states and the new voting weights in the council', *Instituut Clingendael* 1–35.
- Ipsen, H.P. (1966), 'Als bundesstaat in der gemeinschaft', *Festschrift für Walter Hallstein* 248–265.
- Jeffery, C. (1997a), 'Sub-national authorities and "European Domestic Policy"', in C. Jeffery (ed.), *The Regional Dimension of the European Union. Towards a Third Level in Europe?*, London: Frank Cass, pp. 204–219.

- (ed.) (1997b), *The Regional Dimension of the European Union. Towards a Third Level in Europe?*, London: Frank Cass.
- (2007a), 'A regional rescue of the nation-state: changing regional perspectives on Europe', Europa Institute Mitchell Working Paper Series 5, pp. 1–16.
- (2007b), 'Towards a new understanding of multi-level governance in Germany? The federalism reform debate and European integration', *Politische Vierteljahresschrift* 48(1): 17–27.
- Jensen, C.B. (2007), 'Implementing Europe: a question of oversight', *European Union Politics* 8(4): 451–477.
- Keating, M. and L. Hooghe (2006), 'Bypassing the nation-state? Regions and the EU policy process', in J. Richardson (ed.), *European Union: Power and Policy-making*, 3rd edn., Abingdon: Routledge, pp. 269–286.
- König, T. and B. Luetgert (2009), 'Troubles with transposition? Explaining trends in member-state notification and the delayed transposition of EU directives', *British Journal of Political Science* 39(1): 163–194.
- Lane, J.-E. and S. Ersson (1999), *Politics and Society in Western Europe*, 4th edn., London: Sage.
- Leech, D. (1990), 'Power indices and probabilistic voting assumptions', *Public Choice* 66(3): 293–299.
- (2002a), 'Designing the voting system for the council of the European Union', *Public Choice* 113(4): 437–464.
- (2002b), 'An empirical comparison of the performance of classical power indices', *Political Studies* 50(1): 1–22.
- Mandrino, C. (2008), 'The Lisbon Treaty and the new powers of regions', *European Journal of Law Reform* 10(4): 515–534.
- Marks, G., F. Nielsen, L. Ray and J. Salk (1996), 'Competencies, cracks, and conflicts: regional mobilization in the European Union', *Comparative Political Studies* 29(2): 164–192.
- Mbaye, H. (2001), 'Why national states comply with supranational law: explaining implementation infringements in the European Union 1972–1993', *European Union Politics* 2(3): 259–281.
- Michelman, H. (ed.) (2009), *Foreign Relations in Federal Countries (Global Dialogue on Federalism)*, vol. V. Montreal & Kingston: McGill-Queen's University Press.
- Milward, A. (1992), *The European Rescue of the Nation State*, London: Routledge.
- Moore, C. and A. Eppler (2008), 'Disentangling double politikverflechtung? The implications of the federal reforms for Bund-Länder relations on Europe', *German Politics* 17(4): 488–508.
- Moury, C. (2007), 'Explaining the European Parliament's right to appoint and invest the commission', *West European Politics* 30(2): 367–391.
- Pierson, P. (2000), 'Increasing returns, path dependence, and the study of politics', *American Political Science Review* 94(2): 251–267.
- Putnam, R. (1988), 'Diplomacy and domestic politics: the logic of two-level games', *International Organization* 42(3): 427–461.
- Schakel, A. (2008), 'Validation of the regional authority index', *Regional & Federal Studies* 18(2): 143–166.
- Scharpf, F. (1999), *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.
- Scottish Executive and CoSLA (2002), *Scottish Executive/CoSLA response to the Commission White Paper on European Governance*, Edinburgh: Scottish Executive and CoSLA.
- Steunenberg, B. and D. Toshkov (2009), 'Comparing transposition in the 27 member states of the EU: the impact of discretion and legal fit', *Journal of European Public Policy* 16(7): 951–970.
- Steunenberg, B., D. Schmidtchen and C. Koboldt (1999), 'Strategic power in the European Union: evaluating the distribution of power in policy games', *Journal of Theoretical Politics* 11(3): 339–366.
- Tatham, M. (2008), 'Conceptualisation, operationalisation, cumulation? Exploring the federalism variable in European politics research', *Il Politico, Rivista Italiana di Scienze Politiche* 73(3): 61–96.
- (2011), 'Devolution and EU policy-shaping: bridging the gap between multi-level governance and liberal intergovernmentalism', *European Political Science Review* 3(1): 53–81.
- Van Gend en Loos v. Nederlandse Administratie der Belastingen (1963), European Court of Justice.