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On the Analytical Importance of the National Interest in Theoretical Exploration of the European Integration Process

This article seeks to elaborate the theoretical discourse on different, competing explanations of the European integration, invoking the notion of the national interest that plays an essential role in the process. Despite increasing integration, the European interest remains quite different from the sum of the national interests of all Member States, and different theories, by presenting explanations of the integration process, raise or diminish its importance. The major premise of the intergovernmental theory is that the integration progress can be analyzed as an intergovernmental regime designed to coordinate the economic and political interdependence negotiated through bargaining. This implies that Member States' behavior reflects actions taken by their governments based on rational choice, limited only by the domestic social demands and external strategic international environment. According to intergovernmentalism this process, within which states' preferences are shaped, is in fact the process of national interest formation. In contrast, a second school of thought on integration, affiliated with supranationalism, has a more normative ambition, providing not only a description of the role of the national interest, but also bringing the ideas of its limitation, proposing changes on the mode of European governance aimed at shaping Europe in a more republican manner. Despite the dominant position of the national agents at almost every level of the European governance, for the supranational approaches, due to the multi-level structure of the European Union, controversy between national interest and European common good is rarely invoked. The assumption that one theoretical understanding and the assessment of the level of influence of the national interest as applied to the European integration can have profound legal and political implications, leads us to the conclusion that depicting the five most prominent attempts at capturing it theoretically remains essential for further analysis of the European structure and European legal order. Paradoxically, an unstable economic situation and its overreaching and predominant negative influence on all the Member States, might catalyze a redefinition of Europe and reinvigorate the discourse on both European common good and national interests.

Keywords: theory of European integration, national interest, European Union

1. Introduction

In the context of European integration, the notion of the national interest was recognized on a large scale as an applicative analytical tool for the very first time during the so-called ‘empty chair crisis’ in the 1960s. Subsequently, parallel to the historical development of the European integration project, a massive body of literature offered different and sometimes competing explanations of the European integration, in which the notion of the national interest played an essential role. For the purpose of this article, five critical moments in the theoretical discourse of political and legal science have been selected, during which the notion of the national interest gained a special importance and significance.

2. High and low politics

Stanley Hoffmann, parallel to the rationalist theory, has been first to offer a comprehensive theoretical account and evaluation of the course of events that took place during the above-mentioned political crisis of the empty chair.¹ The crisis that effected largely from the French policy of abstaining from the Council proceedings was later defused by way of the so-called Luxembourg compromise, facilitating *veto* in the European Council and protecting “a vital national interest” by the reintroduction of the principle of unanimity. From that moment the general scheme of integration was renegotiated, favoring the principle of intergovernmentalism. Hoffmann, despite his deep awareness of the importance and the opportunities offered by the integration experiment in Europe, assumed that states were and will be in future the basic units in the world’s politics and that the national interest performs a key role in shaping the state’s preferences. Even though Hoffmann’s understanding of the national interest differed from the traditional realist perspective, according to which the national interest results from the weighing of pros and cons, his state-centric orthodoxy was striking especially in the 1960s, when the supranational neofunctionalism became the dominant and most influential integration theory within the field of political science. It appears that his approach somehow anticipated later developments in the political and legal discourse, when the new “domestic politics” theory emerged in the early 1980s. Nevertheless, the main claim put forward by Hoffmann was that the neofunctionalism neglects context as it focuses only on the process as such. Hoffmann examined carefully Charles de Gaulle’s case, and its influence on the integration, making a general assumption on the dynamics of regional cooperation and the functional impetus in particular. His argument was based on the observation that the emergence of the international system, rooted in the self-determination principle, was more likely to result in diversity than in syntheses among the creating units. Accordingly, any given international system grows out of two parallel trends: the natural plurality and the unique nature of each state, leaning towards a centric-like structure. Thus, internal tensions manifested with the “empty chair crisis” could be better explained by the lack of consensus as to the location of the newly created supranational entity in the global order and also by a controversial supranational governance “spill-over” effect in the areas sensitive for the state. Stanley

¹ See S. Hoffmann, *The European Process at Atlantic Cross Purposes*, “Journal of Common Market Studies” 1964/2, pp. 85–101; S. Hoffmann, *Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe*, “Daedalus” 1966/3, pp. 863–915.

Hoffmann sought to solve this problem by making a distinction between the “high” and “low” politics. Negative integration, understood as the removal of barriers on the way to the creation of the internal market, falls into the category of “low” politics, because it does not pose any danger to the position of the national elites, understood as “a vital national interest”. In the areas critical to the state, Hoffmann claimed that “nations prefer the certainty, or self-controlled uncertainty, of national self-reliance, to the uncontrolled uncertainty of the untested blender”.² In Hoffmann’s framework “high” politics was far beyond the reach of the integrative influence. Twenty years after the war, the struggle between those two contradictory trends: integration and diversity was the most accurate way to describe Europe.

The above-mentioned trends were explored and described within two competing theoretical approaches. Firstly, an explanation in terms of functional logic was proposed, conceptualized by Jean Monnet and analyzed by Ernst Haas. In this approach, the necessity coming from interdependence was to cause the emergence of a new role of the supranational actors, gradually restricting the national interest to be substituted by the higher good of integrating Europe in the sphere of governmental decisions. The second explanation was based on the logic of diversity, which puts limits upon the spillover dynamics allegedly influenced by the actions of governments. The account of the logic of diversity stresses that areas of key importance for the national interest, already named “high politics”, constitute a sphere where certainty is by far preferred over the ambiguity caused by the integration process. The implication of the diversity logic is that the losses in areas vital to the state interest are not compensated by the gains in other spheres.³ For Hoffmann the functional ambiguity distracts the national consciousness as long as the expected benefits coming from the integration are high and the costs are low. Yet, according to Hoffmann, this logic could be successful only on the condition that benefits invariably prevail over the losses. In Hoffmann’s predictions, such a situation could only occur in economic integration and not in the sphere of high politics.

2.1. The goals, the method and the results

The logic of integration proceeds depending on three factors: the goals, the method and the results.⁴ The goals are unclear since the transnational integrationist had not agreed on whether the object of community-building ought to be the construction of a new super-state or a future full-fledged federation.

In the terms of the method, for supranational functionalists the sovereignty has already been eroded by the governments seeking European integration during which the dilemma of “having to choose between pursuing an integration that ties their hands and stopping a movement that benefits their people could be exploited in favor of integration by men representing the common good, endowed with advantages of superior expertise, initiating proposals, propped against a set of deadlines, and using for their cause the technique of package deals”.⁵ The main assumption of such a method was that for the greater interest the powers will harbor the smaller national interest. Of course, this could be possible only if governments of the Member States considered

² S. Hoffmann, *Obstinate...*, p. 882.

³ S. Hoffmann, *The European...*, p. 88.

⁴ S. Hoffmann, *Obstinate...*, p. 883.

⁵ S. Hoffmann, *Obstinate...*, p. 883.

their interests above the interests of the domestic groups, if the European institutions enjoyed superior power, the way the European Commission enjoys the monopoly, and if the governments of the Member States remained loyal to the integration project, acting as if they were the organs of the Community. The very idea behind the functional logic was that intergovernmental method – despite its design that reflects rather than corrects differences between the Member States of various economic and social potential – essentially moves the integration from administrative governance to a fully-fledged federation by providing tools and a forum for interstate dialog, where the executive branch is responsible to the representative body of the Parliament. Hoffmann remained very skeptical of the idea of linear progress towards the empowerment of supranational institutions, granting the governments of the Member States the position of key holders of the transformation, who may refuse or stop it unless the chosen destination or the reached results were satisfactory.

The result was the third and the last factor. The influence on the integration of units is measured by the level of the increase of the competences transferred towards new, common institutions of the integrating Europe, and by the dominance of “upgrading the common interest” over other types of agreements based on compromise. Additionally, the process of integration could also be measured by the increasing level of compatibility of previously different views shared by the Member States on external issues. According to Hoffmann, the failure of the European Commission’s effort to consolidate the outcomes of the upgrade of the common interest was shown throughout the empty chair crisis, so the authority of the common institutions remained limited in the areas vital for the nation-state. Hoffmann used the metaphor of the grinding machine to depict the limitations of the functional approach. The machine he described “can only work if someone keeps giving it something to grind”. As soon as the operators decide to stop providing the material to grind, such a machine is out of order. In Hoffmann’s view, the nation-states following their interests were not ready to accept the design of Europe as a federation and the functional model of integration. The model essentially relies on the information access enjoyed by the common institutions, used in order to advocate given policies and to define political goals that “decision makers are technically incapable of shaping”. This administrative model was a subject of Hoffmann’s profound criticism. Firstly, the model is built on the premise that the power of administrative expertise can always overcome political backlash or mismanagement. Secondly, the administrative model also depends on the assumption that a political decision-making process, formally established by the governments of the Member States, is controlled by the common institutions and can “be reached through the process of short-term bargaining”, delivering to the States the desired outcomes in the long-term perspective. According to Hoffmann, this model resembles the state of political arrangements with a weak executive akin to the French Fourth Republic.

In conclusion, Hoffmann presents his predictions on the future of the European integration project. First, he points out that the nation-state which follows its national interest will remain “the basic unit” of international relations, with everything beyond this unit being of much less importance. Hoffmann’s “less” is understood as any kind of international cooperation agreement with “a varying degree of autonomy, power and legitimacy, [with] no transfer of allegiance toward institutions, and [where] their authority remains limited, conditional, dependent and reversible”. Furthermore, the state is the ultimate political community, having the exclusive power and capacity to protect

its citizens, which is crucial for the state's resistance to either functionalism or federalism. Federalism, in Hoffmann's framework, proves the state's necessity and durability because the creation of a federalist Europe would mean in fact the creation of a larger nation-state and not of a new kind of entity placed beyond the state. Such a creation, according to S. Hoffman, is prevented by a lack of European *demos* in the context of imitated capacity of the common institutions to facilitate the process of nation creation. Despite Hoffmann's skepticism towards European integration, he sees Europe's usefulness in technical matters, while external issues will always remain in the sphere of the executive or the diplomacy of the Member States. Because of the diversity and the existing division between the states, as well as a different formulation of their national interests, the federalist model is doomed. On the other hand, the functionalist approach, despite the positive economic outcomes of such an armament, offers an unpredictable model, which is insufficient to politically unite all the Community members.

3. Interdependence

In the 1970s interdependence, a key element of international relations, also became a major concept through which scholars like Robert Keohane and Joseph Nye sought to challenge the dominant state-centric paradigm of realism.⁶ By depicting global order as an arena of different actors, including states interacting with each other, they proposed a new explanation of international relations. Supranational organizations like European Communities, international corporations, transnational non-governmental organizations, advocacy and interests groups, and subnational entities shaped international relations, thus blurring the distinction between domestic or national and international. The relations between those actors became transnational and international as well, thus in the interconnected world the relations between different entities had to face change from previous patterns. The interdependence theory was a challenge to the realist explanation of international relations based on power, force and the military. Keohane and Nye suggested that the growth of the interdependence phenomena requires the states to reevaluate the meaning of the national interest and its assessment. It should reach a sufficient level of convergence with the idea of building a common position with other states, since the process of interdependence motivates or even forces them to solve problems collectively.

The general interdependence theory applied to regional integration enables us to look beyond the intergovernmental or nonfunctional frameworks and think about the European integration as a product of a multi-actor system. In 1983 Carole Webb argued that interdependence theory may be applied to the European integration in two ways. Firstly, correlation and interconnection was a condition of the global economy that might result in regional integration. Secondly, according to Webb, there was no direct normative connection between the theory of interdependence and the formation of international institutions, what in fact was a pitfall for neofunctionalism as a theory strongly associated with the European model of integration.

The interdependence theory was free from particularism and ready to be applied to a given instance of international cooperation, while other theories were somehow tied up or restricted to the European Community, the fact justified with a *sui generis*

⁶ R.O. Keohane, J.S. Nye, *Power and Interdependence*, New York 2001.

argument of its political structure. Nevertheless, due application of the interdependence theory to the European integration phenomena in the 1970s, resulted in later developments in exploring the relations between the Member States characterized with the notion of “governance turn”. The concept was used on the empirical and institutional level in order to explain a sovereignty transfer from the Member States to the supranational European institutions.⁷ In theoretical discourse this type of research was characterized as concentrating on “trans-border cooperation and (...) regional interest representation in EU decision-making”,⁸ exploring configuration instruments and conditions of common policy formation in the context of “diversity of actor constellations”.⁹

4. State-centrism

Despite of the profound consequences of European integration in the creation of an ever closer union, the general presupposition of the state-centric approach is that the state retains its autonomy and superior authority over this process. The argument put forward by realists and intergovernmentalists, articulated by scholars like Clarence Mann, Alan Milward, Andrew Moravcsik and Wolfgang Steeck,¹⁰ is based on the observation that the extent of the integration depends on the will and is determined by the national interests of the Member States, whose representatives bargain among each other on the ground of the lowest common denominator. Thus, the product of intergovernmental negotiation in a series of consecutive Intergovernmental Conferences reflects the national interest and relative power of the integrating states. Furthermore, according to intergovernmentalism the ultimate influence on the integration process is exerted by the state, whereas supranational institutions perform a subsidiary role by providing a forum for bargaining and collecting information on the Member States’ preferences. Government’s executive power decides, at the most appropriate time, to transfer certain competences in order to achieve the desired policy goals. The states, according to the intergovernmental model, may not influence directly the decision-making process that occurs within the common institutions and may not control it in every detail, yet the creation of such supranational bodies helps them to achieve and enforce agreements, essential for their policy goals, made collectively with other states. Essential for the understanding of the role of the national interest in the rationalist and intergovernmentalist theoretical framework is the location of the state’s executive power in the center of the domestic political process. The strategic external behavior of each state is determined by the domestic (or national) political interest, where the state performs the role of channeling internal demands and transmitting them to the supranational level.

State centrism constitutes a big portion of European studies. Nevertheless, after the growth of literature challenging the intergovernmental thesis on state’s controlling power, a variety of intergovernmental analyses remain influential, seeking an answer

⁷ See M. Jachtenfuchs, *The Governance Approach To European Integration*, “Journal of Common Market Studies” 2001/2, pp. 245–264.

⁸ B. Kohler-Koch, B. Rittberger, *The ‘Governance’ Turn In EU Studies*, “Journal of Common Market Studies” 2006/s1, pp. 27–49.

⁹ B. Kohler-Koch, B. Rittberger, *The ‘Governance’...*, p. 33.

¹⁰ See: C.J. Mann, *The Function of Judicial Decision in European Economic Integration*, The Hague 1972; A. Milward, *The European Rescue of the Nation State*, London 1992; A. Moravcsik, *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*, “International Organization” 1991/1, pp. 19–56; A. Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, “Journal of Common Market Studies” 1993/4, pp. 473–524.

as to why the state decides to contribute to the integration which in turn results in the limitation of its autonomy. Intergovernmental approaches emphasize the interstate bargains and the national interest interplay, perceiving the common international institutions as agents and forums serving the states. Nevertheless, the question of how well intergovernmentalism can explain the changing institutional design remains valid. It seems that intergovernmentalism follows a particular understanding of the international process held by political actors, repeating after states' leaders the rationalization of their own actions.

Joseph Camilleri and Jim Falk¹¹ observe the omnipotence of "sovereignty discourse" that influences not only academic investigations but also governmental actors who build their self-image based on this depiction. This reflection opens a critique of two aspects of the integration theory. Where the theory is an attempt to shelter reality, the critique provides certain propositions that can be examined by empirical analysis. By making a choice on the character of their analyses, intergovernmentalists somehow anticipate their conclusions. Their question: how the agents of the national interest interplay within the institutional framework of the European Union, effectively prevented and excluded alternative answers, different than just the mere identification of the integration as a byproduct of such interactions. If the nation-states are perceived as the main agents in international relations, analysis of a multi-tiered entity like the European Union is somehow fixed on the way in which the national interest of the state is articulated, on how the state is represented and eventually on how the states interplay with each other. The outcome of such research, with a starting point determined in such a way, would always be that European integration is a consequence of intergovernmental negotiation. Paradoxically, the conclusion at this point is that intergovernmentalism is in fact a suitable theoretical framework only when used for better understanding intergovernmental negotiations, yet inapplicable to other identified engines of integration such as: institutional activism, regulatory incrementalism or the emergence of a transnational civil society. But the school of intergovernmentalism can also have a normative drive, being an ideology in the political realm, seeking for a rationalization of political actions on the European level. This assumption by intergovernmentalism may be subject to profound critique from the social institutionalist angle.

4.1. National preferences and intergovernmentalism

Intergovernmentalism is one of the most prominent theories of European integration. The theory of intergovernmentalism derives from a broader theory of rationalism or rationalist institutionalism in the science of international relations, as a particularly adapted theoretical approach to the process of European integration.¹²

Intergovernmentalism assumes that the process of European integration can be examined and explained with theoretical tools and the framework provided by the theory of international relations. Secondly, it points to the restoration of the central and autonomous position of the states, or heads of the states,¹³ which serve as main actors in the international realm and which act in the absence of the supreme authority that

¹¹ J.A. Camilleri, J. Falk, *The End Of Sovereignty? The Politics of a Shrinking and Fragmenting World*, Aldershot 1992.

¹² F. Schimmelfennig, B. Rittberger, *Theories of European Integration*, in: J. Richardson (ed.), *European Union: Power and Policy-making*, London 2001, pp. 74–93.

¹³ See W. Mattli, *Explaining regional integration outcomes*, "Journal of European Public Policy" 1999/1, p. 6.

could enact laws and enforce political decisions on them. The third supposition of intergovernmentalism is the adoption of an explanatory program and basic action-theoretic assumptions from the rationalist framework. This program calls for an explanation of actor preferences, collective outcomes and acknowledgment of rational choice as core theoretic assumptions where “actors calculate the utility of alternative courses of action and choose the one that maximizes their utility under the circumstances”.¹⁴

Intergovernmentalism generally assumes, in common with rationalist institutionalism, that the establishment and design of international institutions (here: the institutions of the European Union) reflects rational choices of the states and takes place in the context of the anarchy of intergovernmental bargains. The preferences of the states as strategic actors, according to the thesis of intergovernmentalism, are generally exogenous, that is they are shaped in the course of international bargaining or by international institutions established in order to facilitate and to provide a forum for negotiations among the states. Thus, intergovernmentalism accepts the paradigm of an international coordination of cooperation conducted to achieve mutual benefits, although it also notices the interrelated problems of international collective choice and situations where “non-cooperative behaviour is the individually rational choice but in the end leaves all states worse off”.¹⁵

It is a logical consequence of the state’s national preferences forming power that the success of international cooperation depends on the relative bargaining power of the actors due to the efficiency of international institutions. International institutions, apart from facilitating interstate negotiations, reducing the cost of transactions and providing sufficient information about the preferences of the states, perform one more additional function, namely effective monitoring and sanctioning of compliance with international legal rules. Behind the institutional choice to delegate sovereignty rests the state’s pure rationality, due to the difficulty of fulfilling the tasks of fair dispute resolution individually, e.g. in cases of problems with enforcement or distributional conflict. According to intergovernmentalists, in Europe the most powerful states exercise *de facto* a veto power over changes of the rules, and as a result “bargaining tends to converge towards the lowest common denominator of large states interest”.¹⁶

Bargain theory as such explains the vertical integration of states, which delegate some of their authority in order to benefit from international cooperation. The question arising here is how can we explain the ongoing process of vertical integration? We can address this question by turning to doctrinal opinions, where it has been pointed out that “when states integrate their markets and economies, they produce external effects for non-member countries (for instance, by diverting trade and investments) [and] third countries can also produce externalities for the integrated states”¹⁷ and exactly like in a voluntary club, membership can be limited because new members may be rivals in consumption, and so their accession can restrict old members’ access to goods. Thus, the key hypothesis posits that horizontal integration will expand only if the marginal cost benefits of membership equalize the costs of admitting new members. It seems that in this theoretical framework the veto power is somehow an indispensable attribute of old members, enabling them to control the positive utility resulting from integration.

¹⁴ F. Schimmelfennig, B. Rittberger, *Theories...*, p. 79.

¹⁵ F. Schimmelfennig, B. Rittberger, *Theories...*, p. 79.

¹⁶ A. Moravcsik, *Negotiating...*, p. 25–26.

¹⁷ F. Schimmelfennig, B. Rittberger, *Theories...*, p. 80.

Intergovernmentalism as a theory of European integration seems to suffer from several shortcomings. Neofunctionalist Walter Mattli pointed out that the bargain theory, focused only on incidental interstate bargaining, disregards ongoing social changes and creates a risk of bias in the selection of main decisions resulting from the convergence of states' preferences. A more demanding theoretical approach, instead of only focusing on fixed state preferences, would seek to elucidate the varying outcomes of integration and to show how changes of external factors affect integration. Concluding, only such an approach would explain shifts of preferences.¹⁸

4.2. Liberal intergovernmentalism and national interest

As has already been said, intergovernmentalism is an alternative approach to neofunctionalism originated from the political science theory. Aware of the weakness of the theses of intergovernmentalism, the most prominent representative of the intergovernmental school of thought, American political scientist Andrew Moravcsik, reinvigorated and developed a more sophisticated version of intergovernmentalism, termed "liberal intergovernmentalism".¹⁹ Moravcsik presented this new approach in the article *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach* published in 1993. Generally speaking, this new theory was in a sense a blend of neofunctionalism and intergovernmentalism. It shared the neofunctionalist emphasis on the economic forces of transnational character, but also agreed with intergovernmentalism on the perception that those forces are often domestically silent in the most important politically moments.²⁰ Unlike neofunctionalists who articulated the role of the Court of Justice in legal integration, Moravcsik represented a contrasting state-centric understanding that placed emphasis of the Member States' executives as the driving force behind that process. Moravcsik's liberal intergovernmentalist approach launches from the premise of the denial of the supranational Court's autonomy, treating its behavior as an "anomaly".²¹ The Court's action, characterized as active and autonomous, turns out to be an implementation of the State's national preferences and is regarded by A. Moravcsik as sanctioning the imperatives delegated by the States. In this view the Court is nothing more than an agent of the most powerful Member States of the European Community. This understanding of legal integration met with an accusation of failing to provide a fully satisfactory explanation of the active role of the Court of Justice in the 1960s and the 1970s, and the subsequent development of legal integration driven by the preliminary ruling mechanism under Article 267 TFEU.²²

4.3. The intergovernmental model of European integration

Andrew Moravcsik formulates three essential elements that build his theoretical model of integration. Those elements are: 1) an assumption of rational state behavior that Moravcsik borrows from intergovernmental institutionalism, 2) a liberal theory of the national preference (or interest), and 3) an intergovernmentalist analysis of interstate negotiation.

¹⁸ See W. Mattli, *Explaining...*, p. 6.

¹⁹ A. Moravcsik, *Preferences...*, p. 480.

²⁰ See L. Friedman Goldstein, *Constituting Federal Sovereignty: The European Union in Comparative Context*, Baltimore-London 2001, p. 145.

²¹ A. Moravcsik, *Preferences...*, pp. 473–524.

²² See P.L. Lindseth, *The Contradictions of Supranationalism: Administrative Governance and Constitutionalization in European Integration Since the 1950s*, "Loyola of Los Angeles Law Review" 2003/2, p. 386.

The first premise, regarding the rational state behavior, deserves special attention due to its reference to legal integration. Rational state behavior as a theoretical concept derives from the international relations theory and rests on the assumption that economic cost-benefit factors determine national interest preferences.²³ The governments in the European context take action reasonably, pursuing their domestically defined goals. The author notes that pursued national interests “emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form, and new policy alternatives are recognized by governments. An understanding of domestic politics is a precondition for, not a supplement to, the analysis of the strategic interaction among states”.²⁴

In sum, liberal intergovernmentalism, like neo-realism, relies on the international relations theory and on the functional logic to describe the negotiations among the Member States of the European Community. This model of European politics, that proceeds in two stages shaping the supply-and-demand functions for international cooperation, seems to ignore the Court of Justice as an actor. The first step is the analysis of the domestic sources of national preferences emerging through the mediation of domestic democratic institutions, and the second is the examination of the outcomes effected from intergovernmental negotiations carried out on the Community level.

In contrast to supranationalism, a later successor of the neofunctional theory, liberal intergovernmentalism does not credit the Court of Justice and other institutions of the European Union with any special powers, nor special qualities. Externalities of an economic character, according to intergovernmentalism, catalyze the change of state preferences. This aspect of intergovernmental theory is highly criticized in literature for its failure to fully clarify why the process of convergence takes place and why it leads to intergovernmental coordination and not to further integration.²⁵ Intergovernmental theory has been also accused of failing to explain the legal integration and construction of a constitutional legal order in general.²⁶ In the next paragraph we shall examine the most interesting example of such a critique.

4.4. Limits of the functional logic of the intergovernmental approach

Three years after Moravcsik’s announcement of the theory of liberal intergovernmentalism and one year after adding to it a new language of delegation,²⁷ American political and social scientist Wayne Sandholtz presented his assessment of the intergovernmental account applied to the European Union.²⁸ Sandholtz’s critique goes along the line of the ability of the European Union institutions, including the Court of Justice and the European Commission, to shape the outcomes of European integration. For him these institutions “seem to be more than bargaining tables”.²⁹ In order to verify such a statement he argues for an exploration in what context EU institutions affect European

²³ A. Moravcsik, *Preferences...*, p. 481.

²⁴ A. Moravcsik, *Preferences...*, p. 481.

²⁵ See D. Corbey, *Dialectical Functionalism: Stagnation as a Booster of European Integration*, “International Organization” 1995/2, p. 259.

²⁶ A. Stone Sweet, *Governing with Judges: Constitutional Politics in Europe*, Oxford 2000, p. 159.

²⁷ See A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca (NY) 1998.

²⁸ W. Sandholtz, *Memberships Matters: Limits of the Functional Approach to European Institutions*, “Journal of Common Market Studies” 1996/3, pp. 403–429.

²⁹ W. Sandholtz, *Memberships Matters...*, p. 407.

integration and in what ways the Member States' governments pursue their national interests.

Sandholtz identified three types of conduct by which European institutions shape European politics. The first way is through providing *autonomous enforcement mechanisms*. According to Sandholtz, and contrary to intergovernmentalism, European institutions possess genuine power that the Member States neither approved, nor can foresee or control. Secondly, the institutions of the EU by *building alliances* create a situation where different than purely international politics is possible. For instance, the European Commission becomes an object of direct lobbying and the Court of Justice can enforce rulings in cases brought by domestic actors against their own governments.

The last, third way European institutions shape outcomes affecting the Member States jointly is the *states' participation* in European integration itself. As Sandholtz noted, the outcome of such a participation is "not foreseeable from the perspective of functional, transaction-cost regime theory".³⁰

5. Multi-level governance

One of the most important and evident characteristics of governance in the European Union is the multi-level activity of different political and social actors. Presented in 1996 by Garry Marks, Lisbet Hooghe and Kermit Blank, the multi-level governance model of integration recognized actors different than states, asserted that "the state no longer monopolizes European level policy-making or the aggregation of domestic interests",³¹ and claimed that the supranational institutions of the integrating Europe, i.e. the European Commission, the Court of Justice and the European Parliament, exercise influence over policy-making "that cannot be derived from their role as agents of state executives".³² Furthermore, the decisions taken collectively by the Member States comprise a loss of controlling capacity over the process of integration. The lowest common denominator as a notion describing the process of achieving the consensus is "available only on a subset of EU decisions, mainly those concerning the scope of integration"³³ while other decisions involving benefits or losses for the individual Member States are enforced across the Union. The multi-level model assumes that domestic political arenas are crucial for national interest formation, yet the national public spheres are interconnected and subnational actions are not restricted to a single national or international arena. The most powerful observation made by the three authors is that states no longer enjoy the monopoly in providing transmitting channels between supranational and subnational arenas. Nevertheless, their role and competence in the political process within the European Union remains important.³⁴

The multi-level approach stands on the opposite side to the thesis that tends to describe the process of integration as a controlled process or a process of superficial sovereignty transfer. The authors decide to bring attention to two different understandings of the state. This disparity leads to different explanations of the phenomena of weakening

³⁰ W. Sandholtz, *Memberships Matters...*, p. 426.

³¹ G. Marks, L. Hooghe, K. Blank, *European Integration from 1980s: State-Centric v. Multi-level Governance*, "Journal of Common Market Studies" 1996/3, p. 346.

³² G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 346.

³³ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 346.

³⁴ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 347.

the state's sovereignty. The first definition refers to the state as an institution, as a complex of rules on which the authority is built. In the other, the state is identified with the executive branch of the government, the government as a whole, or with the state as a player in international relations. The second definition is characteristic for realism, where the state is autonomic in respect to other states in the international surrounding. Marks, Hooghe and Blank draw a straight line, making a distinction between the state's institutions and the state as a set of rules. It becomes clear that whenever in literature scholars refer to the state as an actor, they think about the branches of government, public administration or political leaders. Applying this perspective in the European context reveals the irrelevancy of the question why particular leaders of the national executives would change legal norms in order to transfer competences to the European Union. Meanwhile, for multi-level governance advocates, the actor's preferences reflect institutional goals to a very small degree indeed, while institutional structures can determine an "individual's life".³⁵ Furthermore, the tenure, the fact that politicians hold office for a limited time and that the implementation of their political goals depends on their future electoral success may explain why political leaders decide to transfer the center of the decision-making process towards the supranational level. The first motive behind such behavior would be the benefits that come from transferring competences to make political decisions. Marks, Hooghe and Blank call this strategy a "decisional relocation", which on the level of national governance means that politicians are able to lower the transactions cost "involved in formulating, negotiating and implementing collective decisions". Furthermore, politicians operate in a short time horizon and when sovereignty loss is at stake, defending it would constitute much weaker an incentive for political action than achieving political goals through meeting the desires of influential constituencies.

According to Marks, Hooghe and Blank, the second reason why political leaders may favor transferring competencies to the supranational level is to avoid responsibility for unpopular political actions and to become immune or to isolate themselves from political pressures.³⁶ Here we can draw an analogy with independent domestic agencies, i.e. governmental banking institutions, to which the national government decides to cede competences in order to hide risky political action behind the shroud of impartiality and autonomy of given institutions. This argument resembles to some extent Giandomenico Majone's administrative theory of integration.

What are then the sole limits of state power? For the authors of the multi-level theory, the crucial element having a decisional effect is a rule of qualified majority voting in the European Council. From the intergovernmental perspective, the collective decision-making in the Council works *de facto* to increase the executive power of the Member States because this process continues as long as the governments agree to engage, calculating whether their national interest is threatened. Of course if we agree with Hans Kelsen that legal sections and the monopoly of coercive power constitute law and authority, then since the Member States have such competence over their territory, they retain the ultimate sovereign power. On the other hand, if we look at the power as an ability to reach given political goals, we could come to the conclusion after Marks, Hooghe and Blank that "a successful national government in a federal European state

³⁵ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 348.

³⁶ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 349.

has more control than a less successful national government in a confederal state".³⁷ Hence, an often raised argument of the Luxembourg veto, which is more of a negative than positive legal instrument used to reject rather than select particular political outcomes. To some extent we may argue that the multi-level governance model grew out of the principal-agent theory.³⁸ The difference rests on the identification of the principals who control the actions of their agents. For Marks, Hooghe and Blank there is no single principal, i.e. Member State government, but there are numerous principals competing with each other to exercise control over European institutions.³⁹ If the factors of the lowest common denominator and rule unanimity are joined together, the situation which emerges from such a configuration gives the agent, i.e. the European Commission acting as a coordinator, the possibility to choose from which Member State it needs support, widening its room for strategic action in order to sustain its privileged position as a source of influence.

Are the national interests and state sovereignty threatened by the ongoing European integration process? Under the Treaties, control over the limits of European integration is vested in the Member States which define the role of the European institutions, the European Parliament as a legislative, the European Commission as an executive or the Court of Justice as a judiciary, and which have the right to correct their actions. Although we should remember that within the process of integration, the transformation of Europe's legal order continues from a relationship binding upon *status quo* states towards an integrated legal order that confers rights and obligations also on private parties and one in which the control and exercise of public power are similar in nature to those found in the Member States. This process of erosion of the state's control that pushes the European project towards the constitutional order takes place through the increasing power of the European Parliament to legislate, especially after the Lisbon Treaty came into the force. Additionally, more and more European policy decisions, including competition, trade, agriculture, transport, freedoms of movement, are made under the qualified majority voting procedure, where the Member State pursuing its own national interest can be outvoted. Of course, the Luxembourg compromise procedure can be invoked by a Member State whenever its interest is at stake, but since the empty chair crisis it has not been used much because of the states' reluctance. Furthermore, since the introduction of the Luxembourg Compromise in 1966, the procedure was altered significantly in 1980, when the defense of a "vital national interest" by the Member State became dependent on the compliance with other Member States governments. Thus, since that moment the compromise has not been a means to define when and to what extend the vital national interest was at stake. All the instances of the use this instrument by the Member States that took place in the 1980s and 1990s continue to prove that in order to function effectively the Compromise had to be applied to decisions that meet the features presented by Marks, Hooghe and Blank: 1) a direct link to the vital national interest, 2) a risk of possible damage for the Member State, 3) a possible threat to general European Union action. Although under the Luxembourg Compromise, the national interest remained valid, its use was no longer unilateral nor

³⁷ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 351.

³⁸ See M.A. Pollack, *Delegation, Agency, and Agenda Setting in the European Community*, "International Organization" 1997/1, pp. 99–134.

³⁹ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 354.

arbitral. What is even more important, its assumption was to protect and defend the national interest and not to defend the state's sovereignty.

6. European Council and national interest influence

Regardless of the central, in the terms of political importance, and, according to the intergovernmental account, protective function for the national interest, the European Council has not been brought to a specific attention in the theoretical discourse. Miguel Maduro has been one of few scholars who upheld the role and significance of the national interest and protection of the constitutional tradition within a deliberative process established by the European Council aimed at the creation of the Charter of Fundamental Rights.⁴⁰ He observed that this process differs from interstate bargaining in the sense that the Member States, debating on the constitutional future, seek to harmonize their national interest with each other, because of the provided formula of the Convention method. According to Maduro, constitutional deliberation unlike intergovernmental bargaining was immune to a greater extent from the pressures coming from the intention to secure the national interest. Firstly, because participants of the Convention were detached from the political actuality. Secondly, the created forum was stable and concentrated on the long-term outcomes supported by a higher degree of mutual trust. Thirdly, participants were much more independent and thus more committed to the idea of common good because the diversity of representatives made them free from the “pre-defined national interest”. The fourth reason was the higher transparency requiring that participants tackle issues under discussion with universal arguments that had to be placed above the protection of the national interest.⁴¹ The Convention method despite its many shortcomings (the undesired power of the EU technocracy), created a situation where the national interest did not play an essential role in shaping the constitutional scheme of the EU. In addition to the above analysis that focused on the specific case of the Charter of Fundamental Rights, it should be emphasized that so called great theories of the European integration have not depicted in great detail how the preferences of the Member States are expressed in the Council. This issue seems to be tackled in a greater extent by the doctrine of the European law.

According to the multi-level governance theory, controlling powers of the European Council have been weakened thorough the process of integration.⁴² The influencing factor behind these dynamics might be the growing competences of the second legislative body of the European Union – the European Parliament. In terms of legislative power, over the course of the 1980s and 1990s, the Parliament's competences were growing steadily. Initially, according to the Treaty of Rome, the European Parliament held only the power to be consulted on the legislation. Change came in the 1970s, together with the introduction of the budgetary adoption procedure, in which the Parliament was taking part. Both the Council and the European Parliament determined annual expenditure with a fixed amount set forth by the Member States. The next legislative empowerment of the Parliament happened by an establishment the “cooperation

⁴⁰ M. Maduro, *The Double Constitutional Life of the Charter of Fundamental Rights of the European Union*, in: T. Hervey, J. Kenner (eds.), *Economic and Social Rights under the EU Charter of Fundamental Rights*, Oxford–Portland (Oregon) 2003, pp. 269–299.

⁴¹ M. Maduro, *The Double Constitutional Life...*, p. 275.

⁴² G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 364.

procedure". This procedure provided for by the Single European Act (1987) was again designed in a similar way to the national state constitutional arrangements, granting the right of participation in agenda-setting politics, by introducing two readings in the legislative process and reducing the influence of the Council on the legislative process.⁴³ The Maastricht Treaty (1993) replaced the cooperation procedure with the co-decision procedure, under which the Parliament obtained the absolute *veto* power. Whenever the Council and the European Parliament are not able to reach a consensus they work through committees wherein both bodies are represented. However, even if the position reached under the co-decision procedure is closer to what would be more preferable by the Council, it does not reflect the Council's preferences entirely.⁴⁴ For Marks, Hooghe and Blank, the procedure of co-decision created for the Council a "complex relationship of co-operation and contestation with the other two institutions. This is multi-level governance in action, and is distinctly different from what would be expected in a state-centric system".⁴⁵

6.1. Bargaining power

Both the multi-centric governance and state-centric approaches see the European Council as an institution of core importance. Surprisingly, despite its central role in both theories, the Council was subject to only limited study. In 2008, Jonas Tallberg presented a new and long-awaited theoretical analysis regarding the bargaining power of the Member States in the Council. He divided the sources of the Member States' power to pursue their national preferences into three categories: 1) state sources of power, 2) institutional sources of power, and 3) individual sources of power.⁴⁶ Additionally, drawing from the institutional and negotiation theory he identified two main institutional factors that greatly influence the bargaining power of the Member States: 1) the access to the *veto*, and 2) the rotating Presidency. The importance of the rotating Presidency however, has been diminished with the introduction of Article 15 into the Treaty on European Union in the Treaty of Lisbon, which set forth that the European Council appoints a full-time president for a two-and-a-half-year term, with the possibility of renewal once. Because the governments enjoy equal status, under the unanimity principle, it is important to stress whether the formal competencies and authority of state's representatives in the European Council accord with the extent of their influence over the political outcome.

According to Tallberg, the first category, state sources of power, refers to two dimensions: 1) the aggregate structural power, and 2) the issue-specific power. The aggregate structural power is a "state's total amount of resources and capabilities – its territory, population, economic strength, military capabilities, technological development, political stability, and administrative capacity".⁴⁷ These aggregate capabilities can be used by the given Member State in order to successfully pursue its national interest, using threats and promises towards other fellow Member States. The influence Member

⁴³ S. Hix, A.G. Noury, G. Roland, *Democratic Politics in the European Parliament*, Cambridge 2007.

⁴⁴ See, G. Garrett, G. Tsebelis, *An Institutional Critique of Intergovernmentalism*, "International Organization" 1996/2, pp. 269–299.

⁴⁵ G. Marks, L. Hooghe, K. Blank, *European Integration...*, p. 365.

⁴⁶ J. Tallberg, *Bargaining Power in the European Council*, "Journal of Common Market Studies" 2008/3, pp. 685–708.

⁴⁷ J. Tallberg, *Bargaining Power...*, pp. 688–689.

States can get is a function of their multiple capabilities. This argument is illustrated by the example of Italy which, despite its economic and social potential, does not exercise influence akin to that of other “big” Member States, such as France or Germany. Italy’s important disadvantage is its instability, which prevents this state from using its bargain potential to full effect. Although, it is also important to stress that the aggregate structural power is not a measure of direct influence, it is rather that the “asymmetries in aggregate structural power matter indirectly”.⁴⁸ The conclusive element for the bargaining power from the catalogue of aggregate state powers is the size of the home market, which makes the Member States influential in economic negotiations. The dissimilarities in the structural potential are believed to affect the legitimacy to invoke the *veto* power; it is said that Luxembourg can issue a veto once in a decade and Britain once per week. One important implication of the structural power is the ability of larger Member States to set the framework for European Council negotiations.

The second category of the state source of power identified by Tallberg is the issue-specific power. This source is determined by the Member State’s resources on the particular issue. The source reflects the State’s dedication and the intensity of preference to resolve a problem or to bring attention on a given issue. This factor is relative in nature and determines the state’s ability to deploy the resources on the particular case (e.g. France and the UK in the EU’s foreign security policy, Italy’s low bargaining power on economic issues despite a sizable GDP because of long-running budget deficits and growing debt).

6.2. The veto power

The rule of unanimity established the key element of the negotiating process within the Council’s institutional framework. Taking decisions unanimously requires that all the parties of the agreement equally give consent, while the majoritarian rule entails in practice that only the stronger have their voice heard. General findings in the international relations show that the *veto* power reinforces the position to negotiate for weak parties or encourages them to build coalitions. Additionally, the rule of unanimity supports consensual decision-making where states are “bought off through side-payments and favors are exchanged through package deals”.⁴⁹

The question is: why is the *veto* power not invoked by the States frequently? Tallberg provides a sufficient answer, pointing out that the *veto* is a legal measure of last resort and the issue in question has to be critical to the national interest, seen as the *veto* brings political risk of the loss of credibility. Following Tallberg, as a final point, it should be stressed that the *veto* does not conclude the decision-making process, although long-term budgets and treaty reform process are often the subjects of *veto*.

6.3. Presidency

Access to the presidency creates an advantageous situation for small and medium-sized Member States that otherwise cannot exercise their influence because of their limited structural power. The chairmanship of supranational bodies constitutes the forum

⁴⁸ J. Tallberg, *Bargaining Power...*, p. 690.

⁴⁹ J. Tallberg, *Bargaining Power...*, p. 694.

facilitating the different actors' access to forming political outcomes of intergovernmental bargaining in favor of their own national preferences. The privilege of agenda-setting for the Council by the rotating presidency impacts on which issues get to be discussed even though most of the agendas are predetermined as an effect of "pre-program[ming] forthcoming meetings in order to achieve greater policy continuity".⁵⁰ In a situation where representatives of the Member State executives cannot reach a satisfactory agreement, they rely on two practices of the *tour de capitales* and the confessional, both granting the presidency a privileged position. Here, we should mention after Tallberg a series of instances of successful presidency management; France's finalization of the Nice Treaty in 2000, Denmark's conclusion of the enlargement negotiations in 2002, the agreement with Ireland on the Constitutional Treaty in 2004, and the Dutch deal on accession negotiations with Turkey in 2004.

7. Conclusion

The main claim of this article is that in the descriptive context, the national interest plays a special role in the negotiations among the Member States. On the theoretical level, the multiplicity of concepts, including high and low politics, interdependence, the state-centric approach of intergovernmentalism, multi-level governance, and the specific inquiries over the bargaining power in European institutions, arising out of different assumptions, presents different normative conclusions on the role of the national interest and the nation-state in European integration. Yet, the national interest retains its role as an explanatory tool of the relations between the Member States and European institutions, although its understanding cannot leave aside the historical, institutional, and political context.

⁵⁰ J. Tallberg, *Bargaining Power...*, p. 697.

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