Comment

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INTRODUCTION

What are the contents of this chapter? The authors attempt to analyse the problem of entry to the EU from an economic perspective, using several economic models, but especially looking at it from the angle of constitutional economics.

Their goal is to contribute to the literature by providing a critical analysis of the constitutional economics approach à la Buchanan. In addition the authors attempt to provide hints for the procedural rules that should be applied when decisions concerning entry are made.

First the authors discuss the status quo and the basic possibilities to come out of this status quo (section 2). The basic message of that section is that a choice will have to be made between the so-called enlarging or the deepening of the EU. Achieving both at the same time, meaning both more member states and more competences for the Union, does not seem to be possible.

Next, the authors analyse the effects of enlarging the union and present several analytical frameworks to analyse the question of entry. Their conclusion is that enlarging the Union with new member states will increase its heterogeneity. A second major conclusion of the chapter is that a decision on entry should be based on a referendum because of the principal–agent problems between politicians and citizens in the member states (see section 3).

SOME GENERAL OBSERVATIONS

1. A first general problem is that the authors merely analyse the problem of entry from a procedural perspective. Their conclusion that a strong case can be made in favour of a referendum to control the principal–agent problem in member states, is obviously not only appropriate for entry decisions. Many authors in the fields of constitutional law and economics and public choice have advocated referenda, so this conclusion hardly comes as a surprise.

2. A more fundamental question is whether it is possible to discuss the desirability of either enlarging or deepening of the EU without providing a theoretical framework regarding the principal question of whether centralisation within a European framework is needed at all for specific topics. The authors use the theory of Clubs to discuss entry. It seems, however, only possible to discuss the optimal size of the Club if one first establishes why the members want the Club in the first place. Only if the common goals and advantages of cooperation via a Club are known, useful comments can be made concerning the optimal size of the Club. If one does not address this fundamental question first, one will unavoidably be left with a rather superficial analysis of the possible budgetary effects of enlarging the Union that says very little about the qualitative benefits or disadvantages of the Union as such.

Therefore the authors should have first looked into the economics of federalism that addresses the question under what circumstances centralisation may be desirable. Only if such a theoretical framework is used, may it be possible to design the scope of an optimal legal area for a specific subject matter that has to be regulated. Moreover, van den Bergh has recently provided an interesting analysis of the subsidiarity principle from a law and economics perspective indicating that centralisation, for example, via the European Union could be desirable in order to control transboundary externalities and to remedy prisoners’ dilemmas. Only if first the fundamental question is answered why a European Union is needed in the first place and for what kind of topics, can a useful analysis be provided concerning the optimal size and necessity of enlargement.

3. The authors point to both an enlargement of the market and the creation of military stability (section 2.2.b). However, these goals can easily be reached without the need for a total market integration, which the European Union achieves at this stage. Once more this shows that inevitably first the question will have to be answered what topics will be dealt with before the question of enlargement can be decided.

4. The authors assume that the larger the Union will be, the greater the heterogeneity will be. Although this statement seems intuitively correct, the question, however, arises whether this is necessarily the case. First, one should point at the fact that already within the existing
European Union a large amount of heterogeneity, generally speaking, exists. For instance, environmental problems in Greece or Ireland are totally different. Nevertheless, European directives impose similar emission standards for all member states. If heterogeneity is an argument in favour of referenda, as the authors seem to suggest, they should consequently argue that already now member states should have the right to vote via referenda on every new directive coming from Brussels. Second, one can not decide on the question of heterogeneity either before or after enlargement without focusing on the topics that the EU should regulate. Indeed, if the number of topics to be regulated is small and if with respect to these topics a similar approach would be followed in all member states there thus should not be a large degree of heterogeneity.

This leads to the conclusion that the authors’ finding that one can not combine an enlargement with a deepening must not necessarily be true. Again, this seems at first blush intuitively correct. The larger the Union the more preferences might differ. However, it might well be the case that in a number of specific areas new entrants may have a legal regime that complies very much with existing legislation within the Union so that an enlargement does not necessarily lead to more heterogeneity. In sum, whether there will be more heterogeneity as a result of an enlargement can only be answered if the topics to be regulated by the European Union are designated first.

A FEW SPECIFIC POINTS

Following these general comments a few additional specific points can be made.

1. In section 2.3.a Streit and Voigt discuss budgetary effects of a possible enlargement, arguing that, for instance, France, Germany and the Benelux might have to contribute a lot more if East Europeans joined the EU. However, one can not simply look at the costs of enlargement without also looking at the benefits. If one were to use a theoretical framework of centralisation indicating that one of the reasons to have a European Union in the first place would be the control of transboundary externalities, the fact that some Eastern European countries were to join the Union may well have substantial compensating benefits, for example, because they would be forced to comply with European environmental directives. This could lead to a substantial reduction of environmental damage precisely in the Benelux, France and Germany. If curbing externalities is indeed seen as one of the goals for centralisation, one way to look at the territorial scope of the Union would be to examine what the scope of the externality to be regulated is.

2. A related point is advanced in section 4.3.a, arguing that from the perspective of the constitutional economics, the central question with regard to entry is: what procedure would a group of rational individuals agree upon? One could wonder whether this procedural question is indeed the fundamental one. The more fundamental question that individuals should first ask is what kind of tasks or topics they want to regulate at the central level, at the local level or in FOC. An institutional framework should then be worked out to determine what is to be regulated at the various levels. The question of scale would be then automatically answered depending upon the topics to be regulated. Thus it would automatically be clear whether it would be efficient to have more entries into the Union.

3. For the reason discussed above, I have difficulty with the authors’ assumption that every entrant makes the Club more heterogeneous (4.3.a). This seems to be based largely on the non-motivated feeling that a Hungarian may be different than a Belgian. From a legal point of view the question of heterogeneity obviously depends on the topic that has to be regulated within the Club. If the entrants’ law is quite similar to the average of the already included legal systems, the entry will not lead to more heterogeneity. The remainder of the authors’ analysis rests on the non-motivated assumption that every entry provides more heterogeneity, which I believe to be doubtful.

4. Finally the authors, still in the same section, seem to be quite enthusiastic about the current competences attributed to the EU, since they assume that the amount of collective action currently assigned to it is optimal. This statement can certainly be attacked from a law and economics perspective. Given the influence of pressure groups, there is a serious risk, and some empirical evidence, that too many competences are attributed to the European Union. Pressure groups will obviously choose the level of government where their influence is largest. Given the low degree of transparency, lobbying by the industry might be a lot easier in Brussels than at the local level where a countervailing power by, for instance, non-governmental organizations exists. The basic problem with the chapter is therefore that the authors apparently incorrectly assume that the current working of the EC is efficient. Literature has, on the contrary, demonstrated not only that more competences than would be efficient are attributed to the
European level, but also that the competences are used in a way which lead to overregulation.12

CONCLUDING REMARKS

The authors provide a lot of interesting material and information on the question of entry. The chapter also contains an interesting overview of the literature in that respect. My only doubt concerns the fact that I do not believe that one can analyse the question of entry without looking at the fundamental questions related to the economics of federalism which indicates what an optimal legal area to regulate a specific problem is. The chapter does not address the probably more interesting and inevitable question, being: if you want to say anything about entry, should you not first focus on the question of how large in general a unity or organization that sets rules for different topics should be?

In sum, I do not believe one can usefully discuss entry or enlargement of the European Union if one does not analyse what competences should be attributed to it in the first place.

NOTES

1. See, for example, B.S. Frey (1983), and J. Rouke, R. Elkes and C. Zitzkadeh (1992).
2. See, for example, with respect to fiscal federalism R. Innan and D. Rubinfeld (1994).
4. See the inauguration address of R. van den Bergh (1994b), and R. van den Bergh (1994b). See also van den Bergh’s contribution on the meaning of the subsidiarity principle for competition law (Chapter 6 of this volume).
6. See B.S. Frey and B. Schmitthenner, Chapter 7 of this volume.
7. See E. Noone (1982).

REFERENCES