

Economic Integration and Sovereign Law at Crossroads: Poland and the EU

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Abstract: The dire need for economic wellbeing may lure states into economic integration amidst a somewhat passive agreement. This paper aims to isolate the crossroad between the EU economic integration and sovereign law. The prior conceptual basis is on economic utility and passive agreement. The approach is conceptual and applies discourse analysis using the recent unprecedented Poland's court ruling, which challenges the EU's supremacy. The paper uncovers a central point of conflict, which is the desire to retain national legal sovereignty and the quest for higher economic utility. Therefore, the paper highlights an intractable crossroad between target economic wellbeing and the supremacy of national sovereign law. This paper contributes the first utility analysis following the recent Poland's court objection of EU's supremacy. It is therefore a good reading for university business schools. The economic and ideological contexts of the paper provide practical insight for economic policy makers on economic integration issues. Further research may check if an achievement higher economic utility may reduce the pursuit of national sovereignty amongst integrated member states.

Keywords: Sovereign law; economic integration; EU supremacy; economic utility; economic growth; passive agreement

1. Introduction

There is an inherent synergy between economic process and the law; this accounts for numerous researches, which seek the correlation between law and order and countries' economic development. There is no cause to be puzzled about this apparent correlation, reason being that in the absence of strong laws and the enforcement thereof, there cannot be effective and efficient economic or

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commercial contracts. Hence, corporate empires around the world prefer to locate their businesses in countries or regions with good legal order. In the same vein, global and regional economic integrations or associations thrive better under a respected codified rule of the game, for instance the World Trade Organisation may not have stood the test of time without a binding legal order. Similarly, regional economic integrations such as the EU achieve sustainable cohesion through some binding legal doctrines (ECJ, 2021). Irrespective of the cluster of integration, it is important for members to understand the existence of inherent natural limitation to forbearance by member states – especially considering apparent loss of sovereignty implicit in agreements. Notwithstanding the original unanimous avowal to the binding rules – the passage of time and the gradual fading of expected maximum utility from economic integrations may give way to manifestations of agitations mixed with bottled dissatisfaction, which existed obscured from the beginning or somewhere along the course of the union (see example BBC, 2021).

The exuberance in what appears to be one of the most stable and robust economic integration of the 21st century – the European Union (EU), is apparently undergoing startling tests of stability and supremacy. The Brexit and the current Poland's challenging of the EU's legal supremacy is a gradual insignia of a potential wobbly future of the currently powerful economic union of the century. Recent developments around the steadfastness of member states raises important legal-economic thought, which is, the importance of early consideration of legal tolerance and legal similitude when entering into inter-country economic amalgamations. This is important because legal interest and economic interest are mutually inclusive; whilst economic physiognomies may be more prone to commonality across countries, the law of states are more intricately ingrained in culture, custom, values, and norms that are often distinctive to the uniqueness of states – irrespective of closeness of borders. Notwithstanding the power of imperialism, the pride of every nation is often rooted in its unique culture, which is ingrained in its laws – this makes sovereign somewhat sacrosanct. Consequently, there are implicit values and common interest that keeps a country or state united as a sovereign state. Hence, whilst an economic block serves a common interest, an oversight of the naturally delicate and unique nature of individual state laws may be tantamount to complacency. The sentiment here echoes the words of Burley and Mattli (1993) wherein they opine that the EU supremacy of law is a mask of reality and a protective shield against any political apathy on the legal supremacy of the EU. Indeed, the writings of Burley and Mattli (1993) is resonating now with the

pragmatic realities of recent clashes and/or apparent affront on the supremacy of EU's law over individual state sovereignty by some member states. It also points to the fact that an economic or legal reality masked may not often be indefinite – a crack can occur along the trajectory and a disruptive hot larva may erupt to indicate the non-definite pretentious adherence to uncomfortable integration. The Brexit and the current Poland case is an example of such discomfort and disruption.

Therefore, the problem of this brief paper hinges on the brewing hesitancy to acquiesce in totality the supremacy of EU's laws over sovereign state laws after many years of strong integration. The recent case of Poland possesses a scholarly research question namely is economic integration at crossroad with legal sovereignty. Therefore, the objective of this paper is to provide a current snapshot discourse analysis on the ongoing Poland's legal clash with the EU's law and to elevate a caveat on the need for economic and regional integration advocacy to understand the influence of unique laws and culture of a sovereign on sustained economic integration.

2. Method

This is an initial paper that slants on the recent objection of the supremacy of the EU's law. The approach is thus conceptual and discursive using very recent developments arising from current Poland's court ruling on EU's supremacy. The discourse analysis unveils a crossroad between economic integration for economic benefits and protection of sovereign national law.

3. Economic Integration and Legal Sovereignty

Economic pursuits function effectively and efficiently under the guide and guardianship of codified legal doctrines of economic and commercial treatise. Although, the need may arise for a moderate limit in the exercise of sovereignty to accommodate some international treatise Maftai (2015), it is apposite to maintain and, where possible strive to grow the envisaged economic utility, which necessitates the marginal surrender of certain level of national sovereignty along the trajectory of integration. The utility growth is important because it may not be assumed that human utility is static, rather economic utility does grow from one level to the other (Loewenstein, O'Donoghue & Rabin, 2003). Therefore retaining a continuous cohesion of member states in a regional economic integration such as

the EU requires continuous effort in enhancing the economic utility growth for member states. Such effort in growing the economic utility should be solid enough to compensate the surrender of legal sovereignty, any slack or potential for slack has the tendency to ignite apathy, deviance, and resentment. These developmental spates of apparent rejection on the supremacy of the integration treatise is currently becoming evident. For instance, recently, the UK government began a soft withdrawal from early-agreed protocol about Northern Ireland, wherein the European Court of Justice was to oversee. The BBC (2021, p. 2) reports on UK government's rejection of ECJ's oversight on Northern Ireland protocol as follows:

“The government said it had only agreed to the ECJ's role because of the “very specific circumstances” of the protocol negotiation; it now wants a new governance arrangement in which disputes should be “managed collectively and ultimately through international arbitration”.

The above is only an iota of how legal agreements of economic integration may falter along the way if not carefully evaluated from the onset. Although it is often easy to cast aspersions when parties begin to drag their feet on legal agreements, but human psychology does show that human thought, yearnings and decisions does fluctuate naturally with uncontrollable economic stimuli, which swings economic utility to a differently higher order (Simon, 1986). Herein lays the need for parties entering into economic integration to consider carefully the issues of legal sovereignty before binding the members to an apparently initial weak compliance, which gets short-lived.

The reluctance to continue with the ECJ's supremacy goes back to the early days of UK's budding agitation regarding the application of EU's laws on rulings inside the UK (BBC, 2021), hence the “take back control” jingle during the campaign for Brexit (Ringeisen-Biardeaud, 2017). Therefore, it was clear from the early days of Brexit campaign that the UK was no longer willing to surrender a portion of its legal sovereignty for economic integration reasons. This is why the former prime minister of UK was vocal in saying *“We are not leaving (the EU) only to return to the jurisdiction of the European Court of Justice. That is not going to happen.”* (BBC, 2021, p. 2). This is not surprising because the UK treasures its constitution, which lays emphasis on its parliamentary sovereignty, and as such, an outside intrusion will never be acquiesced.

The burgeoning signs of objection to ECJ's supremacy as demonstrated in the Brexit and recently the Polish court ruling brings to the fore the quandary whether the passive acceptance of economic treaty actually meant ideal acceptance. This

apparent puzzlement is discoursed and elucidated the more by Garrett (1995), wherein he opines that –

“The ECJ exercises judicial review not only over interactions between member states but also over the behaviour of governments within their national boundaries” (Garrett, 1995, p. 171).

The above analysis finds rooting in the European Union Treaty of 1993, which in the words of Garrett (1995) functions as a de facto constitution for the member countries with a somewhat authority that pares member countries sovereignty. One can imagine that the cosseted penchant for economic gains derivable from the Union may have caused a massive economic euphoria that beclouds the sustainable tolerance of implicit tampering with legal sovereignty – analogous to a ‘*honey moon*’ aphorism. A stretched scenario analysis may imagine a passive acceptance of the economic treaty by the elite representatives, which stood a slippery chance of being challenged somewhere in the future by think tanks in member countries who are outside the representative elite groups. This scenario has begun to surface given the Brexit and current court ruling in Poland – which appears to object ECJ’s supremacy. Hence, this paper’s thinking that the envisaged economic utility that attracted and cemented members’ interest to the union may be crossing the angle point of sustained forbearance regarding the initially accepted trespassing of sovereignty in substitution with mutual economic advantage. This is why, in their essay, Smith and Wanke (1993) raises the sentiment that member countries’ sustained support for EU requires a fair and sustained distribution of economic gain. They forecast that this might determine the level of continued support for the integration:

“While the overall Community may gain, how will the benefits-and costs that will result from this program be distributed across the member states? Who wins, who loses, and how might that affect support for continued integration?” (Smith and Wanke, 1993, p. 531).

4. Recent Objections – the Poland Instance

What appears to be the latest apparent objection to ECJ’s supremacy is the recent ruling by the Polish Court. This has begun to create a rift between the EU government and the Polish government. It echoes a practical reality of how passive agreements may cause a crack somewhere along the trajectory of a respected economic union.

On Thursday October 7, the highest Court in Poland's ruled that certain parts of the EU treaties are not compatible with the constitution of Poland as a sovereign. In his ruling, Judge Bartłomiej Sochanski said:

"the EU Treaty is subordinate to the Constitution in the Polish legal system (and) like any part of the Polish legal system, it must comply with the Constitution" (Central European Times, 2021, p. 1)

This ruling received immediate reproachful response from the president of European Parliament:

"Today's verdict in Poland cannot remain without consequences. The primacy of EU law must be undisputed. Violating it means challenging one of the founding principles of our Union. We call on the EC to take the necessary action" (Central European Times, 2021, p. 1).

The above quotes attest to the growing fault lines between Poland and the EU, which centres on once agreed treatise of ECJ's supremacy. It does seem that some Polish group of elites are feeling that Poland's legal sovereignty is not worth relinquishing even for economic reasons of the cherished treatise. Whilst Poland's continuing interest in the EU is not arguable, the crossroad is the developing quagmire between being in the EU for economic protection and continuous acquiescence to the European Union's legal supremacy, and the preservation and exercise of national legal sovereignty by Poland. This is now an embryonic quandary with uncertain future. Poland is in dire need for economic recovery fund, but the nascent affront on the ECJ's supremacy would mean that the EU will now set their terms regarding submission to the EU's law and release of the earmarked economic recovery fund of 57 billion Euro or 48 billion Pounds for Poland. For the EU's parliament, they want to be sure that the recipients of their economic recovery fund are states they can control with their laws to be sure that the fund's management will align with the dictates by the EU's laws. The sentiment raised by a top member of the European People's Party echoes the above analysis:

"EU states must not stand by idly when the rule of law continues to be dismantled by the Polish government". "Neither can the European Commission. Our money can't finance governments which mock and negate our jointly agreed rules. By declaring that the EU treaties are not compatible with Polish law, the illegitimate constitutional tribunal in Poland has put the country on the path to Polesxit," The Guardian (2021, p. 2)

The European Parliament members are already contemplating on negative economic consequences for Poland; the irony is that it is economic security that catalyses decisions to join economic integrations such as the EU. However, it does seem that if the current spate of objection continues, the same economic security that necessitated membership may be jeopardised. From all ongoing legal and economic commentaries by the EU economic and legal experts, it does seem that the only remedy that would guarantee the disbursement of Poland's economic recovery fund by the EU is willingness by Poland to adhere to the terms and conditions of the EU's rule of law. Whilst this issue is developing, it is perhaps important for scholars to keep the watch on economic implications of this crossroad as it unfolds. Although the economic giant – the EU has its solid stand and may impose fines and other economic sanctions, but the crossroad is also a warning regarding the need to have a relook on some of the clauses that may crack the globally revered economic integration. The protection of this union is not only vital for economic wellbeing of member states especially the economically weaker states, but any crack on the integration would have an attendant huge economic implication for many economies of the world. It is never too late to relook the drawing board and it is never a sign of weakness to conduct self-introspection. What further research should consider is what has actually caused a sudden objection to the EU's supremacy by Poland.

On the part of Poland, given that a core aim of joining an economic integration is economic benefit, a snapshot of Poland's economic growth since joining the EU in 2004 shows a steady economic growth since 2004 (represented by GDP per capita) (see Figure 1). Hence, it may not be ideally concluded that Poland's sudden objection to EU's supremacy is based on non-economic gain, rather it appears to be ideological and the quest for higher order economic utility. The government has begun to feel that its cultural values and norms – hence sovereignty is jeopardized by the Union, and economically, its economic utility had grown further from achieving economic growth to a higher economic utility of assuming a big trading center in Europe through the auspices of the Union – but this higher economic ambition appear to have remained unattainable given the dynamics of the integration. This sentiment is echoed by Buras (2017) as follows:

“Poland's efforts to distance itself from the EU are motivated by both ideological and economic concerns. Ideologically, PiS believes that the country's values and identity are threatened by the EU, and economically, PiS feels that its ambition to

become one of Europe's big trading centres is limited by its current position in the EU value-chain" (Buras, 2017, p. 1).

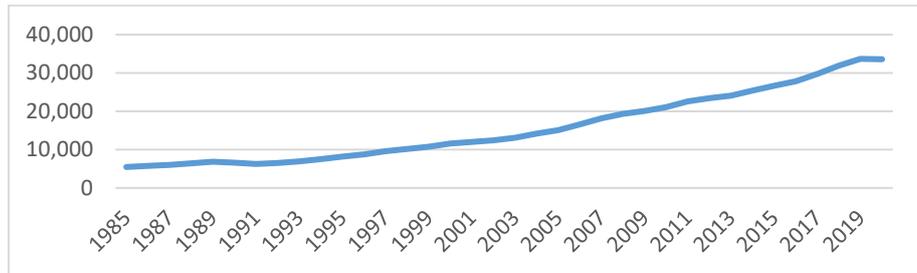


Figure 1. Poland's GDP per Capita Growth since Joining the EU in 2004

Source: Author's graph with data from (IMF, 2021)

5. Conclusion

The preceding sections of conceptual discourse presented an initial thought on the crossroad between the EU economic integration and legal sovereignty of member states. This paper anchors on the ongoing legal squabble between Poland and the EU. It sheds light on the apparently budding objection to some aspects of the EU's supremacy of law – an old age agreement by member states. The realisation of the need to have the national sovereign as supreme is chief amongst the slogans that orchestrated the withdrawal of UK from the EU. Currently, a semblance of the early UK's sentiments about sovereignty is beginning to surface in Poland, hence the current Poland's court ruling, which aims to hoist the supremacy of Poland's law. This crossroad has an impending huge implication for economic wellbeing of Poland and as well an implication for a continuous strong EU. These developments indicate that membership of an integration, as a solution for economic security should be well thought-out from the beginning to weigh the balance between economic benefits and surrendering of sovereignty. The pain and nostalgia implicit in loss of sovereignty might itself have economic and social cost – these deserve a concerted consideration and inclusive opinions before a country's final decision to join an economic integration. Hence, the burgeoning objection by Poland appears to be anchoring on both ideological and higher order economic utility objectives. Practically, the paper sheds light on how passive acceptance of loss of sovereignty for economic benefits may not be sustainable. Further research may expand this paper by check the possibility that achieving envisaged higher order of economic utility may quieten the desire to regain national sovereignty. This paper contributes by being one of the first research discourse analysis following the recent Poland's

court objection of EU's supremacy of law. It is therefore a good reading paper for finance, economics, and business law classes in university business schools. The ideological and economic issues raised in the paper provide practical guides for economic policy makers on economic integration policy decisions.

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