

A constitutional amendment for an Economic Supreme Court

The economic record of this century may be judged with mixed feelings. Much has been achieved, but much has gone wrong too. The bad part in the record has not been caused by economic science but by economic policy making. The structure of economic policy making gives too much room for political distortion. Since this problem is equal across nations and across time, we may look for common factors, and one of them is the Trias Politica structure of our democracies. Especially since the future seems precarious, it could be wise to restructure the current division of powers. The paper drafts a constitutional amendment to create an Economic Supreme Court with a limited but vital role, for a 'high definition democracy'.

Preamble

The economic record of this century may be judged with mixed feelings. Much has been achieved, but much has gone wrong too. The bad part in the record has not been caused by economic science but by economic policy making. The structure of economic policy making allows politicians, bureaucrats and special interest groups to distort the contribution of economists. Also, projections for the future indicate risks that could be avoided if we change the structure of economic policy making.

Here we only indicate the evidence, and do this by means of three quotes:

“War has several causes. Dictators and others such, to whom war offers, in expectation at least, a pleasurable excitement, find it easy to work on the natural bellicosity of their peoples. But, over and above this, facilitating their task of fanning the popular flame, are the economic causes of war, namely the pressure of population and the competitive struggle for markets. It is the second factor, which probably played a predominant part in the nineteenth century, and might again, that is germane to this discussion.”

John Maynard Keynes, “The General Theory of Employment, Interest and Money”, 1936:381-382

“In his biography of Keynes, Sir Roy Harrod reports a widely acclaimed speech delivered by his subject to the House of Lords in 1946, the year of his death. ‘But Keynes had been talking in this style ... for some twenty-seven years. Why had his words not been listened to ?’ (...) Unemployment as a problem in economic theory may have been sufficient to produce a revolution in the discipline; unemployment was not a sufficient problem to society to produce a revolution in political ideas. If it was not the prolonged experience of mass unemployment that finally broke the hold of nineteenth-century ideas, what was

it ? A strong case can be made out for war. 'Normal' life could coexist with unemployment; it could not with modern war."

Robert Skidelsky, "The reception of the Keynesian revolution", in *Milo Keynes*, "Essays on John Maynard Keynes", CUP 1975:89 & 102-103

"The Global Crisis scenario (...) explores the risks and dangers of a neglect of, and late response to regional and global challenges (...) the world may end up in the throes of widespread distress, an eco-crisis, which can only be corrected at high cost. The policy message conveyed by this scenario is abundantly clear. Dismissing this scenario as unduly gloomy and pessimistic is in our view, absurd; such a statement would be tantamount to a complete denial of large segments of twentieth-century history."

Centraal Planbureau, "Scanning the future", SDU 1992:211

The world has suffered mass unemployment in the Great Depression of the 1930s and in the Great Stagflation of 1970-1996+. The problem occurs over nations and over time, and we may search for common factors. The problem very likely resides with the Trias Politica structure of our democracies, the division of government across the legislative, executive and juridical branches. The present checks and balances are imperfect. Let us face it: This structure appears to allow too much leeway for forces that are detrimental to the economic well-being of the population at large.

In the past there have been two steps towards more independence and more checks and balances in the management of the economy. First there was the independent Central Bank, and then the separate Council of Economic Advisors to the government.

We need to go one step further, and create a scientific Economic Supreme Court (ESC), safeguarded within the Constitution as an equal partner next to the three of the Trias Politica. The political philosophy of Montesquieu would be enhanced into a High Definition Democracy.

We need to move some power from the political muscle to the brain of the economy experts. The argument is not that politicians could not be qualified in economics. The argument is the balance of power. Having an ESC increases democracy, since it improves the quality of the checks and balances. It caters to the civic right of good government and to the right to know.

It would suffice for the ESC to have the power to veto the national budget if the stated information is scientifically incorrect. The information and statistics only. The ESC will focus on the statement of the size of the deficit and the national debt, since all errors accumulate in those figures. Parliament of course keeps the power to decide on the budget and on policy. Parliament would lose the power to make misleading statements as judged by the court.

As an economic expert I advice a parliamentary investigation and a public debate on this issue. It are the present powers in government that must grow convinced of

the need for a better balance of power. The evidence will likely convince them, if only they study it.

The following is a text that may serve as a concept for a constitutional amendment. The text assumes the common Trias Politica. It uses the term “Parliament” for the legislative branch (e.g. US Congress), and “President” for the executive branch (e.g. the UK Cabinet). It then adds the ESC. The given size, terms and other properties of the ESC seem optimal for group decision making, openness, stability and change.

A constitutional amendment

The nation has an independent and scientific Economic Supreme Court of equal status next to parliament, the President and the Supreme Court.

1. The task of the court is to scientifically check the economic data, assumptions, analyses and projections underlying the draft of the government’s budget and its draft statement, and then possibly veto the official adoption and publication of the budget, if the court finds that the information used and presented, and in particular the estimates for the deficit and national debt, are not scientifically correct.
The court will publish its findings both for parliament and for the scientific community.
2. Members of the court are appointed by the court itself, subject to a veto by a normal majority in parliament.
The court will inform parliament about the name and credentials of the candidate for appointment. Parliament will have 50 days to discuss and possibly veto an appointment. The appointment of the candidate becomes effective when parliament does not veto the appointment.
3. The court consists of 7 members. Term rules are:
 - a) Each member serves a term of 7 years. Each year the member with the longest term resigns, and a new member is appointed.
 - b) Terms run from May 1st till April 30st, 7 years later. If a member resigns before the end of the term, then the replacement will concern only the remainder of the term.
 - c) Members may only serve for two terms, which terms need not be consecutive.
 - d) All 7 members participate in the selection of a candidate for appointment.
 - e) The court chooses its chairperson from among its members. Non-eligible are the newly appointed and the resigning member, so that only 5 members are eligible.
 - f) The court determines its modus operandi further by itself.
4. The means of the court are as follows:
 - a) The court can appoint a staff of maximally 150 persons. Minimally 50% of the staff shall have an appointment as scientist, and they

shall operate under both common scientific standards and a special statute that has precedence. This special statute shall be established and published by the court.

- b) The court can instruct the President to provide information. The President may refuse information only if national security is at stake. Information that the President regards as confidential will be treated as confidential by the court and its staff too, unless the same information can be received via independent other channels too.
- c) When State governments within the Federation install their own Economic Courts, then possible disputes shall be settled by the Economic Supreme Court.
- d) The court can install a council of economists and other specialists from the academia. The court can install chambers of special competence.
- e) The court shall have a budget that compares favourably to the average budget of scientific research institutes of the same size.

A note

One is advised to read my analysis on unemployment too. As an economist working for the Dutch Central Planning Bureau (CPB) - the counterpart of the US Council of Economic Advisors - I found that I was not allowed to even discuss and eventually publish my analysis on unemployment. The CPB of course does not have a sufficient base in science. This in itself is an empirical “existence proof”, that there is a problem with economic advice within the policy making process. Or, stated differently, the problem has not gone away since the time of Keynes.

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