The Politics of Decision-Making in the European Court of Justice: The System of Chambers and Distribution of Cases for Decision

Matthew Gabel

University of Kentucky
On Leave Fall 2003, Nuffield College, Oxford University
Mjgabe1@uky.edu

Prepared for Presentation at the 2003 Meetings of the European Consortium for Political Research, Marburg, Germany

The politics of the European Court of Justice (ECJ) has attracted considerable attention in the past twenty years. In particular, a variety of scholars have examined how the ECJ, through interaction with national courts and private litigants, has established a supranational legal order that arguably exceeds what the Member States of the European Union (EU) desired (e.g., Alter 2001; Stone Sweet 1998; Mattli and Slaughter 1995, 1998; Garrett 1995). The political issue here was how the ECJ, pursuing a pro-integration agenda, was able to develop a legal system whereby its legal interpretations of the Treaties and the legislation of the EU gained the force of law in national legal systems. In so doing, the ECJ was able to make itself both a venue for dispute resolution and, in effect, a legislative institution (Stone Sweet 2000; Rasmussen 1986).

Given that ECJ decisions now affect policy in a broad array of areas, it is surprising that so little research has addressed how the ECJ decides cases. In particular, I am aware of no research that has examined how the internal organization of the Court affects decision-making. Standard descriptive treatments of the Court usually mention briefly that the Court often assigns cases to subsets of judges, called Chambers, who rule on the case. No study of ECJ decision-making or the politics of the Court, however, makes mention of this feature of decision-making. Yet previous research on this type of division of labor in other courts—such as the Supreme Court of Canada and the Circuit Court of Appeals in the United States—indicates that the distribution of cases among subsets can have significant effects on the decision of the Court (Van Wrinkle 1997; Heard 1991). And, given that judges on the ECJ come from different national legal systems with varying experiences with different areas of EU law, we might expect that

the distribution of cases to Chambers would also have an important influence on ECJ decision-making.

In this paper I examine the use of Chambers in the ECJ to evaluate whether this feature of decision-making can influence the decisions made by the Court. With very little prior research on the system of Chambers, this paper starts at a very basic level. I first describe how the system of Chambers has developed over time and provide some evidence regarding its use. In particular, I focus on the limitations imposed by the Treaties governing the formation of the Court and the Court's Rules of Procedure on which types of cases can be heard in Chambers. I will then consider whether this system of Chambers can be dismissed as irrelevant to understanding the outcomes of ECJ decision-making. Admittedly, this is a very modest research agenda. Even if this question is answered in the negative, we would still lack a story about how and under what conditions the system of Chambers affects the decisions of the Court. However, given that there are reasonable arguments for answering in the affirmative and the limitations of the data currently available, I consider this a necessary first step in this area of research. I conclude by presenting evidence from an original dataset that allows us to examine the relationship between a case's assignment of Chamber and its Treaty base and issue area. These data give us an impression of whether the Court's gain in efficiency by this division of labor might come at the price of consistent decision-making.

The System of Chambers in the European Court of Justice

The internal organization of the Court is largely ignored in scholarship and legal commentary on the Court. I am aware of only one article on the history of the Chambers

system of Chambers, and that was published before several changes in the 1990s (Guillaume 1990). Thus, before discussing how the Chambers system might affect ECJ decision-making, I provide a brief over-view of the Chambers system and its historical development. I will emphasize two lines of change in this system. First, the system has increased in complexity in terms of the number of chambers and therefore the diversity of the sets of judges that might decide a case. Second, the type of cases, both in terms of legal basis of appeal to the Court and in terms of issue area, heard by Chambers have changes dramatically over time. While essentially no cases of legal import could be assigned to Chambers at the origin of the EEC, the Court now has the prerogative of assigning almost any case to Chambers. Tables 1 and 2 summarize chronologically changes in the relevant articles in the Treaties creating the European Economic Community and the Rules of Procedure of the Court of Justice.

The Rome Treaty creating the European Economic Community created the European Court of Justice and permitted it to sit in Chambers. Specifically, the Court, then composed of seven judges, was allowed to create Chambers composed of three or five judges (Article 165, EEC). After the completion of the written procedure, the reporting judge for that case recommended the case be assigned to a specific chamber or to the full Court, who then decided its assignment. But the Treaty did not permit the Chambers to hear cases either submitted to it by a Member State or by one of the institutions of the Community or involving preliminary questions submitted under Article 177. Table 3 provides a brief description of the principal sources of cases heard by the Court. For actions from brought under these Treaty articles, the Court was to sit in full plenary. In response to the Treaty, the Court established two Chambers of three judges

that heard only cases regarding Community personnel (Article 24, Rules of Procedure, 1959; Brown and Kennedy 2000: 39).

The Member States modified Article 165 of the EEC Treaty in 1974 to broaden slightly the use of Chambers. The revised Treaty allowed the Court to hear preliminary reference requests in Chambers so long as the Rules of Procedure of the Court permitted. Very shortly thereafter, the Court adapted its Rules of Procedure to allow Chambers to hear preliminary reference cases that were of "an essentially technical nature or concern matters for which there is already an established body of law."[1] The Court heard the first such case in Chambers in 1976 (Brown and Kennedy 2000: 39). However, the Court also created exceptions to this rule. If the Members State or States that were party to a case consented to a decision by Chambers or if an institution did not request that the case be heard in plenary, then the case could be heard in Chambers.

In 1979, the Court amended its rules once more to allow a much broader set of cases to be assigned to Chambers. Essentially, the Court allowed Chambers to hear any case except infringements proceedings (Article 169) against a Member State. This reform extended the use of Chambers to most cases brought before the Court. By 1977, for example, the court had decided 665 cases, with 445 under Article 177, 100 under Article 173, 31 under Article 169, and 12 under Article 175. Thus, the vast majority of cases could now be assigned to Chambers, provided no relevant Member State or Community institution objected. Furthermore, the 1979 reform modified the exception for cases involving Member States. The new rules stated that if either a Member States or a Community institution that is party to a proceeding wanted the case heard by the full

[1] See, *Official Journal of the European Communities*, December, 28, 1974, 350/29, and *Rules of Procedure of the Court of Justice*, 1975, Article 95 (Brussels: Office of Official Publications of the European Communities).

Court, it would need to make such a request. In other words, the default was now that a case could be assigned to Chambers, with the burden on the Member State or Community institution to request the case to the full Court.

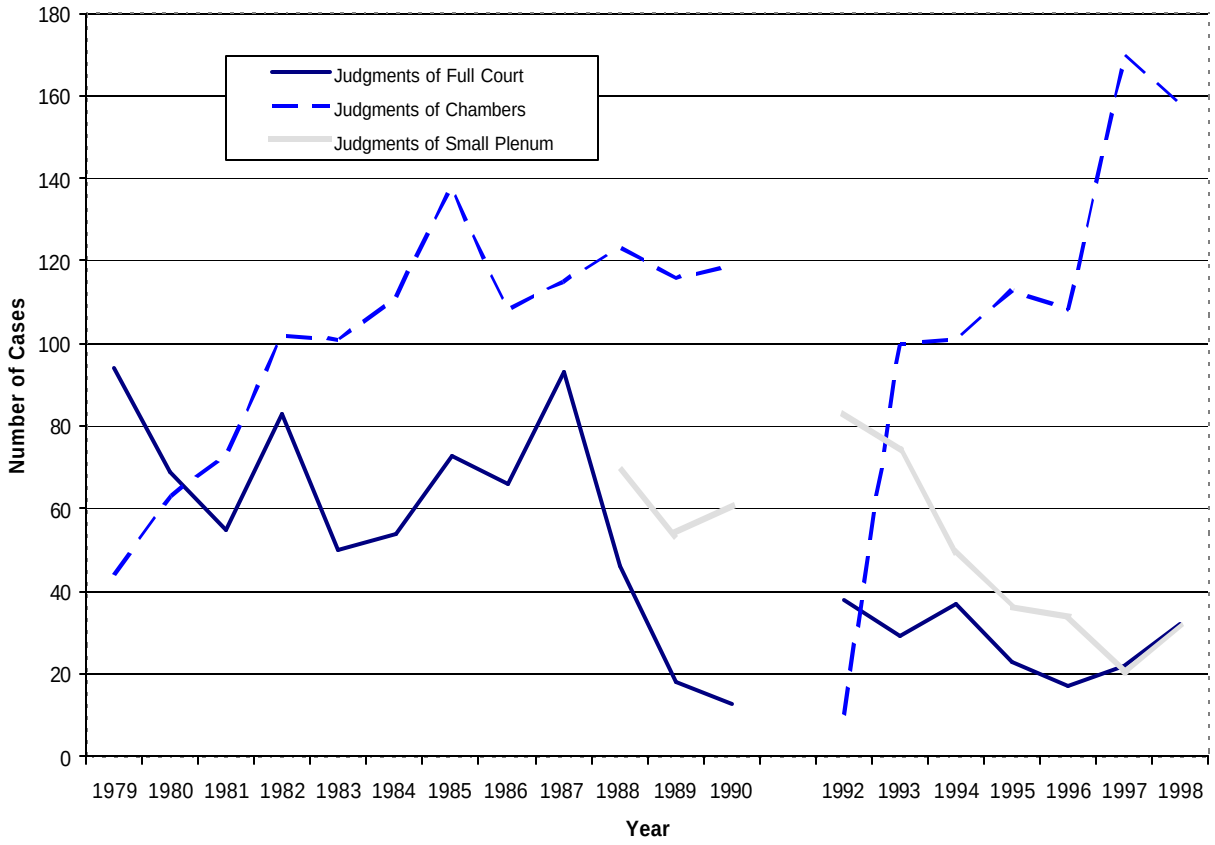
As Figure 1 indicates, by the mid-1980s the Court was deciding many more cases in Chambers than in full plenary. The Court had also developed a more complicated system of Chambers. In 1986, the Court, preparing for enlargement to thirteen members, created six Chambers: the first, second, third and fourth chambers consisting of three judges; the first and third combining to create the fifth chamber and the second and fourth chambers combining to create the sixth chamber.[2] And, in 1986 the Court began to sit in a "Small Plenum" of seven judges, which was the quorum for decisions by the full Court. Effectively, this allowed the Court to assign cases to a subset of judges without formally assigning the cases to Chambers. As a result, the actual use of the full Court, including all fifteen judges, became a rare event. By the mid-1990s, less than twenty per cent of ECJ decisions were made by the full Court.

The Court's revisions of its rules of procedure in 1991 further broadened the latitude of the Court to assign cases to Chambers. Except when a Community institution or a Member State involved with a case expressly requested the case be heard by the full Court, the Court had complete discretion as to which subset of judges would decide the case. This exception was removed in 2003, with the Nice Treaty. The Treaty leaves the assignment of cases to Chambers completely at the discretion of the Court's rules of procedure. The Treaty also formally recognized the use of the Small Plenum.

[2] Because the EEC Treaty permitted only Chambers of three or five judges, the fifth and sixth chambers sat with only five of the six members of their constituent lower Chambers.

Figure 1: Trend in the Numer of Judgments by the Full Court and the Chambers

*(*Source: *Synopsis of the Work of the Court of Justice of the European Communities*, various years*)*



In sum, by the late 1970s over half of the Court's decisions came from subsets of judges, sitting in Chambers. From that point on, the Court decided the bulk of its cases in Chambers. In addition, by the early 1990s the Court had the prerogative of assigning any case to Chambers, absent a request from a Member State or Community institution to have the case heard in plenary. Thus, the internal organization of the Court into Chambers certainly allows for a large number of ECJ cases brought under a variety of legal bases to be decided by only subsets of judges sitting in Chambers.

2. Why Might the Assignment of Cases to Chambers or to Reporting Judges Affect Decision-Making?

When cases are assigned to different subsets of judges, there is the opportunity for this assignment to affect the outcome of the case. Indeed, Advocate General Francis Jacobs has expressed concern about the very possibility. According to Stasser (1995), he noted that the three-judge chamber "does not always lead to a consistent practice," and predicted that the five-judge chamber will likely become standard practice, with the more important cases being heard by the full Court. "Few of our cases are really so trivial," Jacobs has remarked, "that they can really...be entrusted to a three-judge chamber."[3]

But clearly the case assignment process could have no discernable effect on ECJ decision-making. If the judges all have the very similar preferences regarding how to interpret the EU law and the policy consequences of ECJ decisions, then the assignment of cases should have no effect on policy. This may be true, for example, if, due to a common strong deference to precedent and clear legal guidance in earlier Court decisions, judges are sufficiently constrained in their judgments so as to adopt similar conclusions. This is basically the claim of Mattli and Slaughter (1995: 187), who contend that the Court decides based on, "… prior cases, directives, and treaty texts, supplemented by the AG's technical, detailed, and often masterful opinions, as well as a wealth of academic commentary. Even if a judge has a fixed political destination in mind, how far she or he can advance toward it depends on her or his skill as a lawyer." Because of this, these scholars identify the preferences of the Court of Justice as "to

[3] Cited in Stasser, Sarah E. "Evolution and Effort: The Development of a Strategy of Docket Control for the European Court of Justice and the Question of Preliminary References." Jean Monnet Working Papers, NYU, http://www.jeanmonnetprogram.org/papers/95/9503ind.html. These quotes are from Andenas (1994: 111-112).

promote its own prestige and power by increasing the effectiveness of EU law and developing a constituency for EU law of litigants and national courts; to advance the objectives of the Treaty of Rome" (Mattli and Slaughter 1998). Alternatively, judges may be politically sensitive in how they rule, but they may all share the same sensibilities. This is consistent with the work of Garrett on the Court (e.g., 1995), where he assumes that judges interpret EU law so as to satisfy the preferences of the most powerful Member-States. Indeed, it is difficult to find any work in the literature that explicitly claims that judges at the ECJ vary in their preferences regarding EU law or policy. Thus, before examining how the case assignment system might influence ECJ decision-making, I must first contend with these extant claims regarding preferences of judges.

It is also important to note that, even if judges vary in their preferences over EU law or EU policy, the distribution of cases may not allow this variation in preferences to affect Court decisions. For example, if judges diverge significantly in how they interpret EU law with respect to equal treatment of men and women, but all such cases are heard by the same set of judges on the full Court, then the assignment process can have no effect on decisions.[4] Thus, in order to reject a claim that the system of Chambers does not affects decisions, I need to demonstrate that (a) judges vary in their preferences over how to interpret EU law and over the policy consequences of Court decisions and (b) the case assignment process allows this variation in preferences to affect ECJ decisions. In the next sections, I address these two issues.

---

[4] And, since the Court decides by majority-rule, even over time changes in the composition of the Court might have no effect on decisions, as the median voter's preferences could be stable.

a. The Preferences and Voting Behavior of Judges

In apparent contrast to previous research, I contend (a) that judges have preferences regarding the appropriate interpretation of the EU law and the policy consequences of ECJ decisions that can vary for systematic reasons and (b) that the institutional context (including legal doctrine) of ECJ decision-making allows for judges to express these preferences in their vote decisions. I expand on both of these contentions below. [5]

Demonstrating that judges vary in their voting behavior or in their preferences regarding cases is impossible to show from voting records or any established data set on past ECJ decisions. The European Court of Justice decides by majority-rule, but the published decisions report neither the individual votes of judges nor any dissenting opinions. Consequently, we cannot observe any variation in voting behavior across judges. However, we might question why any court where judges share preferences would need to use majority-rule. Furthermore, I am aware of no evidence from interviews with ECJ judges, Advocate Generals or any other historical research that suggests that the Court always decides cases unanimously. Thus, certainly the existing research on the Court provides no evidence that judges all share the same preferences, as expressed through their voting behavior.

[5] It is important to note that I am not claiming every case before the Court taps important conflict among judges and that therefore all cases are contentious and sensitive to case assignment. Clearly, the interpretation of the Treaties in some cases is obvious and straightforward and in some cases the legal or policy question at issue may be uncontroversial. But, on average, I expect cases before the Court to generate some conflict in judge's preferences over EU law.

Why might judges vary in voting behavior? For one, the selection process for appointment to the Court promotes appointments who share some or all of the political and national interests of the appointing national government. The EEC Treaty and subsequent revisions never included any provision for judges to represent national governments. The Treaty simply stated that a certain number of judges (originally, seven) would be appointed by common accord of the governments of the Member States for six-year renewable terms. The Treaty also stipulates that the judges must be chosen from among "persons of indisputable independence who fulfill the conditions required for the holding of the highest judicial office in their respective countries or who are lawyers of a recognized competence" (EEC Treaty Article 167 (1)). In practice, however, each Member State proposes one judge and these choices have never been overturned by the other Member States.[6]

According to some scholars, this has injected some political considerations into the recruitment process (e.g., Dehousse 1998: 7).[7] For one, the Member State governments, who have policy and electoral goals that might be affected by decisions by the Court, have an incentive to select judges who, in addition to meeting the standards of the Treaty, also share their policy goals and views on EU law. In addition, the opportunity for re-appointment each six years provides national governments with the opportunity to replace judges. This may be attractive to a government when it considers re-appointment of a judge that was appointed originally under a different government. It

[6] In periods with an even number of Member States, the Court included an extra judge to ensure an odd number. That additional member was agreed by common consent of the Member States.
[7] Unfortunately, we know very little about the details of the selection process by national governments. See Brown and Kennedy (1995) for some related discussion.

may also serve as a means by which a government can punish/reward a judge for the decisions of the Court.

It is important to recall that the votes of individual judges are not published, so Member States cannot monitor the voting behavior of its judges. Furthermore, explicit evidence of governments exerting pressure on judges is rare. Dehousse (1998: 12) notes the Judge Zuleeg, appointed by the West German government, felt pressure from West German Chancellor Kohl of ECJ rulings regarding social security for migrant workers in 1990. Thus, the appointment process provides some incentives for judges to pay attention to the preferences regarding EU law of Member State governments, but admittedly the national government cannot easily control the behavior of its judge.

However, the appointment process can affect the preferences of judges in another way. Even if governments cannot monitor and punish judges for their voting behavior, they can choose judges who share their preferences over the interpretation of EU law and the policy consequences of Court decisions. One might counter this point by noting that governments are not, in practice, free to choose anyone they please. Governments have followed at least the spirit of the Treaty and limited their appointments to lawyers or judges who have served or are eligible for selection to the highest judicial office in their country. This includes judges on constitutional courts and lawyers/academics with the potential to do so. These candidates are hardly typical party politicians, practiced in following government directions, or legislators.

While this is true, the recent history of EU national governments in selecting members of constitutional courts points in the direction of politicized ECJ judges. National governments, or their party members in the legislatures, generally have the

opportunity to select members of constitutional courts in the EU Member States. Evidence from the behavior of judges on constitutional courts indicates that national governments are able to use these appointments to place judges who share their political leanings on the bench. Since these are the same national governments who appoint judges to the ECJ, it seems reasonable to assume they can also select judges for the ECJ that share their political goals regarding EU law and meet the qualifications demanded by the Treaty. [8] In addition, evidence from the behavior of constitutional courts indicates that once appointed to the bench, these judges often behave as "legislators", using their rulings to affect public policy outcomes (Stone Sweet 2000). The same pool of candidates that staff constitutional courts with such policy-conscious judges is also the pool from which the ECJ judges are drawn (Volcasnek 1992; Stone Sweet 2000). Consequently, we should expect ECJ judges to have policy preferences and to understand how to write decisions that reflect them.

In short, the selection process leads to two predictions about what sorts of concerns will define the preferences of judges in interpreting EU law. First, I would expect judges to share the policy preferences on the socio-economic issues relevant to the appointing government. Depending on the partisan make-up of government across the EU, this may vary across Judges more in some periods than others. Second, I would expect judges to be sympathetic (relative to the other judges) to their national government's position when it is party to a proceeding.

I should note that I am not claiming that judges on constitutional courts (or on the ECJ) are pure policy-makers. As many judicial scholars have notes (e.g., Stone Sweet

[8] On the appointment of members to national constitutional courts, see Stone Sweet (2000). The role of the national government varies from country to country, but the legislative parties that form governments usually play a central role in the selection of judges.

2000, Gibson 1983), judges must express their policy preferences within the constraints of legal doctrine, such as *stare decisis*. Obviously, this limits the amount of discretion they can exercise in interpreting EU law. However, there is ample evidence that the Treaties related rulings allow some flexibility in interpretation of EU law. The discussion in Stone Sweet (2000: 178-190) describes a variety of rulings by the Court in particular policy areas where the judges clearly enjoyed some latitude in the interpretation of the Treaty and secondary legislation. Consequently, I expect judges, within these limits, to express their preferences for interpreting EU law in their decisions.

Finally, I want to return to my initial statement in this section. I had noted that my contention regarding the preferences of judges is in "apparent" contrast to that of previous work. As I mentioned earlier, previous studies of the politics of the legal integration in the EU has depicted the ECJ as a unitary actor, either pursuing greater EU authority and prestige (e.g., Mattli and Slaugher 1998) or the interests of the most powerful Member States (Garrett 1995). While none of these studies specified an individual-level story to account for their aggregate assumption regarding the Court's preferences, one could certainly do so using my contentions above. Even with some variation among the judges in their preferences over the extent of EU authority, for example, we could imagine that a large majority of them preferred a greater level than that of the most powerful Member States during the 1960s. In addition, most past studies have focused on explaining ECJ decisions that defined the authority of the Court and the character of the legal system in the EU. These decisions are hardly typical and may be the sort where judges converge more than usual on their preferred decision. Thus, the

story I have told about the source of judge's preferences is not necessarily inconsistent with the assumptions about the Court's preferences in previous research.

b. The System of Chambers and ECJ Decision-Making

Even if one were to accept my contention about preferences and voting, the system of case assignment to Chambers may have no significant effect on the decisions of the Court. For case assignments to matter, they would need to vary across cases according to the areas of EU law upon which judges' preferences diverge. That is, if all cases where a national government is a defendant are heard by the full Court, then the concerns of the national government on these cases will not be represented differentially across cases heard by a common set of judges. On the other hand, if some of the cases involving the government of France assigned to a small Chamber including the French judge, then we might expect the decisions on these cases to vary with the case assignment process. Similarly, if cases involving issue areas that are relevant to national or partisan politics (e.g., social policy or state aids) are never assigned to Chambers, then the assignment process would have no influence on ECJ decisions in that area. Put simply, to establish that the case assignment process can affect outcomes, we need to show that cases assigned to chambers involve issues where these differences in preferences are relevant.

Importantly, we might not expect case assignments of this sort. Past studies identify important norms on the Court designed to keep national influence out ECJ decision-making. For one, cases of political importance to the Member State governments are generally decided in full plenum. If this is in fact true, then the system of case assignment may serve an important efficiency goal without any implications for

the character of ECJ decision-making. But we have no evidence whether the Court does indeed distribute cases in this way. The ensuing data analysis is designed to shed some light on this issue.

Data Analysis of Case Assignments

As part of a large-scale data collection process, I am collecting information about all judgment of the ECJ. Below I will present data from 1993-1995, which was selected simply because these data are the first part of the dataset that has been sufficiently completed to address the questions of this paper. Obviously, given the development in the use of Chambers, we would like to observe case assignment over a longer time period. But these data do provide some relevant information for the research questions at hand. Specifically, I am interested in whether cases are distributed to chambers in such a way as to avoid the preferences of judges affecting the decisions of the Court:

-Are cases involving national litigants kept out of Chambers, leaving these cases to the full plenary and impervious to the distribution of cases to chambers?

-Are cases involving policy areas fundamental to national political interests assigned to chambers? If so, are there patterns across issues areas?

For each case decided by the ECJ from October 1992 to October 1995, I coded the following information from the *Reports of the Court*:

1. Case Assignment (Full Court, Small Plenum, or Chamber Number)
2. Issue Area (first word/phrase in issue area section on first page of decision)
3. Treaty Base of Action
4. Type of Litigant (National Government, EC Institution, or other)

Table 4 shows the composition of the Court during this period and the Chamber assignments. Table 5 shows the distribution of cases to Chambers according to Treaty base. Interestingly, only 2 of the 82 infringement proceedings were decided by the full Court. In addition, 21 of these cases were assigned to Chambers of five judges. The remaining cases were decided by seven judges in the Small Plenum. Thus, clearly cases are assigned so that the variability in judge's national preferences across Chambers could come into play during the decision.[9] Similarly, only a small per cent of Article 177 cases are decided by the full Court. The Chambers heard the majority such cases. But, after checking each of the infringement cases heard in Chambers, I found that the judge from the nation whose court referred the case is seldom a part of decisions by the Chambers. Thus, the system of Chambers largely prevents national preferences of judges from affect ECJ decision-making.

Table 6 shows the distribution of cases to Chambers according to the issue area. The table does not present all issue areas. I have focused only on those issue areas that had a substantial number of cases and that raise policy issues of salience with national governments. Again, I expect judges to share the ideological policy concerns of their appointing government as well as concerns for national interests regarding EU policy. These policy areas generally tap these two concerns. The table shows that at least some decisions in every policy area are made by Chambers. Also, the full Court decides a very small number of these cases. The vast majority of decisions regarding agriculture and social security for migrant workers are made in the six Chambers. The Small Plenum is the most common venue for decisions in the areas of free movement of goods and

[9] Many of the cases assigned to the Small Plenum, chamber five and chamber six include a judge from the country of the national government that is a party to the case.

persons and in the area of state aid. For the remaining areas, the majority of cases are decided in Chambers. Thus, there are a large number of opportunities for judges' policy preferences to influence decision-making through the Chambers system.

It is also interesting to note that the decisions are not randomly assigned to Chambers by issue area. For example, of the four three-judge Chambers, the third and fourth chambers decided a disproportionate share of case involving agriculture while the first and second Chambers decided a disproportionate share of cases involving social security for migrant workers. Descriptive studies of the Court consistently state that no such specialization occurs in the distribution of cases to Chambers. Thus, this finding is very interesting, particularly since such specialization could have an important effect on how the Court rules in particular policy areas while providing legal specialization to the Court.

3. Conclusion

This paper was designed to provide the first examination of how the system of Chambers in the European Court of Justice might affect ECJ decision-making. On the one hand, we might expect the use of Chambers to affect the decisions of the ECJ simply because it allows a subset of cases would seem to be a recipe for inconsistent decision-making. On the other hand, the assignment of cases to Chambers could be structured in such a way as to ensure that subsets of judges only consider cases where they would make the same decision as the full set of judges. In such a scenario, the Court would gain efficiency in decision-making by delegating cases to chambers but lose nothing in terms of the consistency or character of decisions. Given the historical limitations on the use of

Chambers to decide cases, we might well believe that the former story is accurate. Thus, this paper set out to examine the claim that the assignment of cases to Chambers does *not* affect ECJ decisions.

If one is willing to believe that judges appointed to the Court vary in their preferences over how to interpret EU law and that they encounter cases that allow them to express this variation in their votes, then the case assignment system potentially provides a vehicle for inconsistent decision-making. That is, if cases where judges have heterogeneous preferences are decided by subsets of judges, then the outcome will be determined in part by the assignment process. But if only cases where judges basically agree are assigned to Chambers, then the assignment process should have no effect on the Court's decisions. I presented evidence about the assignment process that helps us evaluate whether the system of Chambers has no effect.

The evidence presented here suggests that a great deal of the Court's decision-making takes place in Chambers and that the assignment of cases likely has an effect on ECJ decision-making. By the mid-1980s, only a small fraction of cases were decided by the full Court and cases across a broad range of issue areas and legal bases were assigned to Chambers. For the ECJ decisions from 1993-1995, the assignment of cases to Chambers avoided conflicts of interest based on nationality. That is, judges were rarely allowed to in a Chamber considering a case involving their country. However, many cases involving policy areas that are relevant to national governments' policy agendas were assigned to small Chambers. Also, cases appear to be assigned to Chambers in a non-random fashion across issue areas. This distribution of case assignment certainly provides a means by which variation in judges' preferences can lead to inconsistent Court

decisions, which would be a function of the case assignment process. Thus, I conclude that the case assignment process can shape the decision-making of the Court. How and under what conditions the case assignment process matters is an issue for future research.

Bibliography

Alter, Karen J. 2001. *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. (Oxford: Oxford University Press).

Andenas, Mads (Ed.). 1994. *Article 177 References to the European Court—Policy and Practice*. (Butterworths: London).

Annual Review of the Activities of the Activities of the European Communities, various years. (Luxembourg: Office of Official Publications of the European Communities).

Brown, L. Neville and Tom Kennedy. 2000. *The Court of Justice of the European Communities, 5th Edition.* (London: Sweet and Maxwell).

Garrett, Geoffrey. 1995. "The Politics of Legal Integration in the European Union." *International Organization* 49 (1): 171-181.

Gibson, James. 1983. "From Simplicity to Complexity: the Development of Theory in the Study of Judicial Behavior." *Political Behavior* 5:7-49.

Guillaume, Gilbert. 1990. "Le Subdivisions Internes des Jurisdictions Internaionales: Le Cas de la Cour de Justice des Communautés Européenes." *Revue Internationale de Droit Comparé*, 2: 729-736.

Heard, Andrew. 1991. "The Charter in the Supreme Court of Canada: The Importance of Which Judges Hear an Appeal." *Canadian Journal of Political Science* XXIV: 2.

Mattli, Walter and Anne-Marie Slaughter. 1995. "Law and Politics in the European Union: A Reply to Garrett." *International Organization* 49 (1).

Mattli, Walter and Anne-Marie Slaughter. 1998. "Revisiting the European Court of Justice." *International Organization*. 52 (1).

Rasmussen, Hjalte. 1986. *On Law and Policy in the European Court of Justice* (Boston: Martin Nijhoff Publishers).

Rasmussen, Hjalte. 1998. *European Court of Justice. (*Arhus: Gadjura).

Stone Sweet, Alec and Thomas Brunell. 1998. "Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community." *American Political Science Review* 92: 63-81.

Stone Sweet, Alec. 2000. *Governing with Judges*. London: Oxford University Press.

Synopsis of the Work of the Court of Justice of the European Communities, various years. (Luxembourg: Office of Official Publications of the European Communities).

Van Winkle, Steven. 1997. “Dissent as a Signal: Evidence from the U.S. Courts of Appeals.” Paper Presented at the Meeting of the American Political Science Association, August, 29, 1997, Washington, D.C.

Figure 1.Trend in the Numer of Judgments by the Full Court and the Chambers

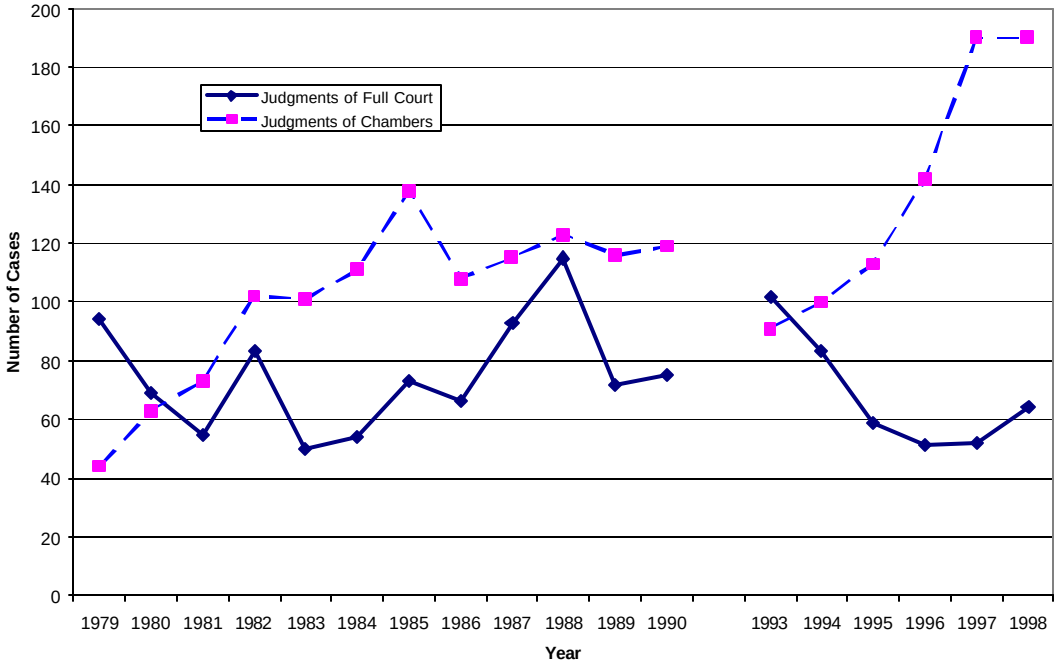


Table 1: Rules of Procedure of the Court Relevant to Use of Chambers

Date	Chambers	Limits on Assignment of Cases to Chambers
1959	Two chambers of three judges	Only cases regarding Community staff and personnel
1974		(1) Cases referred for a preliminary ruling under article177 may be assigned by the Court to Chambers. This provision shall apply to cases which are of an essentially technical nature or concern matters for which there is already an established body of case law. (2) a case may not be so assigned if a Member State has exercised its right to submit a statement of case or written observations, unless the state concerned has signified that it has no objection, or if an institution expressly requests in its observations that the case be decided in plenary session.
1979	Three chambers of three judges	(1) The Court may assign to a chamber any reference for a preliminary ruling or any action instituted under articles 172, 173, 175, 178, and 181, in so far as the difficulty or the importance of the case or particular circumstances are not such as to require that the Court decide it in plenary session. (2) a case may not be so assigned if a Member State or an institution of the Communities, being a party to the proceedings, has requested that the case be decided in plenary session.
1986	Four chambers of three judges; Two chambers of five judges	
1998	Addition of "Small Plenum" (seven judges)	
1991		(1) The Court may assign any case before it to a Chamber insofar as the difficulty of the case or particular circumstances are not such as to require that the Court decide it in plenary session. (2) same.
1995	Small Plenum (nine judges); Two chambers of seven judges; Two chambers with four judges; Two chambers with three judges	

Source: *Annual Report on the Activities of the European Communities*, various years; *Rules of Procedure the Court of Justice*, various years.

Table 2.Treaty Constraints on the Composition of the Court and the use of Chambers

Date	Article	Number	Provisions for size of Chambers	Limits on use of Chambers
1958 (EEC Treaty)	165	7	"It may, however, set up chambers, each consisting of three and five judges…"	"The Court of Justice shall, however, always sit in plenary session in order to hear cases submitted to it by a Member State or by one of the institutions of the Community or to deal with preliminary questions submitted to it pursuant to Article 177."
1973	165	9		
1974	165			"Whenever the Court of Justice hears cases brought before it by a Member State or by one of the institutions of the Community or, to the extent that the chambers of the court do not have the requisite jurisdiction under the Rules of Procedure, has to give preliminary rulings on question submitted to it pursuant to Article 177, it shall sit in plenary session."
1981	165	11		
1987	165	13		
1993	165	13		"The Court of Justice shall sit in plenary session when a Member State or a Community institution that is party to the proceedings so requests."
1995	165	15		
1999	221	15	"It may… form chambers each consisting of three, five, or seven judges…"	
2003	221	1 per member-state	"The Court of Justice shall sit in chambers or in Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice"	"When provided for in the Statute, the Court may also sit as a full Court."

Table 3: Principal Sources of Actions before the ECJ by EEC Treaty Article

Article 169	Infringement Proceedings: Commission pursues Member State for failure to act
Article 173	Annulment Proceedings: Council, Commission, European Parliament, Member State, or relevant person challenges the legality of an act of EU institution
Article 175	Failure to Act: Member States, the Council, the European Parliament, Commission, or relevant legal person pursues an EU institution that fails to adopt an act it was legally bound to adopt
Article 177	Preliminary Rulings: National court or tribunal requests preliminary ruling regarding point of EU law relevant to case before it.

Table 4.1 Composition of 1993, 1994 Court (year beginning October 7, 1992)[10]

Judge	Nation	Chambers
De Almeida	Portugal	3rd , 5th
Due	Denmark	President
Edward	United Kingdom	1st , 5th
Grévisse	France	3rd ,5th
Iglesias	Spanish	1st, 5th
Joliet	Belgium	1st , 5th
Kakouris	Greece	4th , 6th
Kapteyn	Netherlands	4th , 6th
Mancini	Italy	2nd , 6th
Murray	Ireland	2nd , 6th
Schockweiler	Luxembourg	2nd , 6th
Velasco	Portugal	4th, 6th
Zuleeg	Germany	3rd, 5th

Table 4.2 Composition of 1995 Court (year beginning October 10, 1994)[11]

Judge	Nation	Chambers
De Almeida	Portugal	3rd , 5th
Edward	United Kingdom	1st , 5th
Gulmann	Denmark	3rd ,5th
Hirsch	Germany	2nd, 6th
Iglesias	Spanish	President
Joliet	Belgium	1st , 5th
Kakouris	Greece	4th , 6th
Kapteyn	Netherlands	4th , 6th
Mancini	Italy	2nd , 6th
Murray	Ireland	4th , 6th
La Pergola	Italy	1st , 5th
Puissochet	France	3rd , 5th
Schockweiler	Luxembourg	2nd , 6th

[10] *1992 General Report of the Activities of the EC* (Brussels 1993), p.380; *1993 General Report of the Activities of the EC* (Brussels 1994), p. 364.

[11] *1994 General Report of the Activities of the EU* (Brussels 1995), p. 421.

Table 5. Judgments by the Court, 1993-1995, by Chamber and Treaty Base

	Article 169	Article 173	Article 175	Article 177
Full Court	2	5	0	21
Small Plenum	61	12	0	73
1st	0	0	0	17
2nd	0	0	1	14
3rd	0	0	0	22
4th	0	0	0	21
5th	10	9	0	49
6th	11	6	0	63
Total	84	32	1	280

Table 6. ECJ Judgments 1993-1995, by Chamber and Issue Area[12]

	Agriculture	Common Customs Tariff	Competition Policy	Free Movement of Goods	Free Movement of Persons	Social Policy	Social Securit Migran Worke
Full Court	2	0	4	4	1	6	1
Small Plenum	10	0	11	16	15	14	4
1st Chamber	3	4	1	0	0	0	4
2nd Chamber	5	1	0	0	0	1	5
3rd Chamber	9	4	0	1	0	0	2
4th Chamber	9	6	0	1	2	1	0
5th Chamber	11	4	4	8	3	5	7
6th Chamber	10	0	4	10	3	9	7
Total	64	19	24	40	24	36	3(

[12] This is not a comprehensive list of issue areas.