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# *L'intégration européenne*

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*Entre émergence  
institutionnelle  
et recomposition de l'État*

sous la direction de  
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# Chapitre 5

## INSTITUTIONAL ANALYSES OF THE EUROPEAN UNION

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**I**t is quite frequent for empirical analyses to start by describing two theoretical approaches to the study of the European Union, inter-governmentalism and neofunctionalism, and then to proceed by stating that neither of them can capture the reality of the phenomenon studied (see Cameron [1992] and Lange [1992] as examples). I want to discuss a third theoretical approach, institutional analysis, and suggest that if the other two do not describe well what we see before us, we may want to turn to institutional analysis to understand micro and macro phenomena of integration.

In this chapter I will present the logic of institutional analysis, explain its differences from other approaches, and present some important phenomena in the history of the EU that can readily be understood on the basis of such an approach. First, at the risk of oversimplifying a little, let me outline the main differences between the three approaches. For inter-governmentalists, governments are the ultimate decision-makers in the EU, they define the process of integration and set its limits; as a consequence, their study of the EU focuses on the defining moments of integration, the signature of treaties [Moravcsik, 1998]. For neofunctionalists, governments are not the only important actors in the EU. The focus shifts to the process “whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new and larger center, whose institutions possess or demand jurisdiction over the pre-existing national states.” The quote comes from Haas [1961, p. 366] and if the reader thinks it is too broad and imprecise she will not find any objection here. Several attempts have been made to apply neofunctionalist principles as well as elaborate on them [Burley and Mattli, 1993; Stone Sweet and Sandholtz, 1997].

For institutional approaches, the main focus is on the institutional structure of the EU. Why do institutions take such a preeminent role as opposed to, say, ideas, identities, processes, national interests, spillover effects, or other concepts that could or have been the starting point of the analysis? Let us start from the simplest possible understanding of human interaction. In such an understanding, there are three necessary concepts: the *players* (individual or collective) involved in the interaction, their *strategies* (which jointly determine the outcome), and the *payoffs* that they receive at the end of their interaction. In fact, in game theory these three concepts are enough to describe of any game.

If we look closer at the concept of “strategies” we will see that it depends on the sequence of moves that define the game, on the set of choices and information that each player has at the moment that is called upon to move. These parameters are determined by the institutional structure of the situation. Formal institutions specify that legislation starts with the Commission introducing a draft directive or regulation to the Parliament, and ends with approval by the Council. Formal institutions specify what is permitted and what is not: for example, treaties specify that environmental issues are within the jurisdiction of the EU today (but not in the sixties). Formal institutions also specify what the set of choices is for each of the actors: for example if the EP wants to move a paragraph from one point of a bill to another, it has to introduce two amendments, one deleting the original text, and the second reintroducing it in the new position.

Since institutions determine the choices of actors, the sequence of moves, as well as the information they control, different institutional structures will produce different actor strategies, and different outcomes of their interactions. Consequently, one can study institutions in order to see how they are systematically associated with specific outcomes. The study can be theoretical, (on the basis of formal or informal models) or empirical (association of observed frequencies or patterns of interaction among different actors). Studies like Cederman and Schneider [1994], Crombez [1996, 1997], Garrett [1992, 1995], Garrett and Tsebelis [1996], Moser [1996], Streunenberg [1994], Steunenber *et al.* [1996], Tsebelis [1994] fall in the first category. Studies like Kreppel and Tsebelis [1999], Tsebelis and Kalandrakis [1999], Tsebelis *et al.* [2000] in the second.

Table 1. *Three Theoretical Approaches to European Integration*

	Intergovernmentalism	Neofunctionalism	Institutionalism
Are governments the only (important) actors?	YES	NO	NO
Unintended consequences?	NO	YES	NO (complete information)

Table 1 presents a summary comparison of the three different approaches I have discussed. There are two significant dimensions of differences. The first is whether governments are the only significant actors for understanding the EU. The second is whether integration can be understood only or mainly as the propagation of unintended consequences from one area to another. It is obvious that each of the three approaches has different characteristics and none of them can be subsumed by another, although these differences can be minimized when some particular subject is selected for study. For example, there would be no theoretical difference between institutionalism and intergovernmentalism if the question were: how did particular institutional solutions get adopted in Maastricht or in Amsterdam?

Studying EU institutions in order to understand the results they produce is very similar to what other branches of comparative politics do. For example, being in the country of Duverger, I do not need to elaborate on the effect of electoral systems on party systems in different countries, or, coming from a country where the influence of committees on legislative outcomes has been studied exhaustively, I do not need to discuss this subject either. It is sufficient to claim that both these areas of investigation are part of the same conceptual approach, institutional analysis.

Once the importance of institutions as a starting point is established, there are two different ways one can proceed to study them: use them either as independent variables (study their effects) or as dependent variables (study their origins). The first approach, using institutions in order to explain patterns of outcomes is logically prior to, and easier than explaining why certain institutions were adopted. So, I will start with institutions as independent variables.

## — Institutions as Independent Variables

The *modus operandi* of the study of the effects of institutions in rational choice theory is equilibrium analysis: actors are assumed to be rational, trying to maximize the achievement of their goals (or their payoffs), subject to institutional constraints and to what other actors are doing. If all actors are maximizing, the outcome is the best that each one of them can do, given the choice of the others, which is the essence of equilibrium analysis: no actor can unilaterally improve his situation (because, since he is rational, he has selected the best choice given the choices of others). As a result, observed equilibrium outcomes are the consequences of the prevailing institutions, which shape the actors' strategies (as well as their rationality). In other words, rational choice provides a natural interpretation of why institutions are at the origin of the behaviors and phenomena we seek to explain. How can we place these theoretical ideas in the analysis of the EU? I will present theoretical analyses and empirical findings related to three different phenomena: 1. The role of the EP in different legislative procedures. 2. The role of the Commission in the production of legislation. 3. The role of the Commission as a bureaucrat and the ECJ as an adjudicator.

### *The EP as legislator*

Let us now focus on the "democratic deficit." While different analysts mean different things by the term, one common concern is the role that the EP plays in decision-making in the EU. What is this role? Again, institutional analysis can identify a series of parameters that increased the role of the EP over-time. The first would be the isoglucose case in which the ECJ ruled that the Council would have to wait before making a decision until the EP gave its consultative opinion. The Court used the fact that the EP was directly elected as the foundation of its reasoning. What difference does it make in the influence of the EP if it is directly elected, or if the Council has to wait for its consultative opinion? A series of bargaining models have demonstrated the importance of delaying in shifting outcomes towards the ideal point of the actor that can introduce these delays [Tsebelis and Money, 1997]. As a consequence, the isoglucose procedure marks a significant shift in the role of the EP, despite the fact that the consultation procedure was not officially modified. But there are more significant changes.

The Single European Act endowed the EP with the power of a conditional agenda-setter [Tsebelis, 1994]; Maastricht introduced codecision I

which gave the parliament veto power (while taking away conditional agenda-setting) [Tsebelis, 1997]; and Amsterdam turned the EP into a co-equal legislator with the Council through codecision II [Tsebelis and Garrett, 2000]. These institutional changes have as a result increased the overall power of the EP.

Let us discuss each one of these steps theoretically, and then present empirical evidence to assess the validity of different theories. The general impression about the EP in the literature in the late 1980s and early 1990s was that it was a weak parliament with low impact on legislation. The literature was late in identifying what had changed in EU institutions that was enabling the EP to play a significant role in legislation. This was probably because the specific institutions that were adopted in the Single European Act were formally identical to the ones described in the Treaty of Rome, and these institutions had led to a stagnation of integration throughout the 1960s and 1970s. Yet, on the basis of both Rome and the SEA, the Commission could make proposals to the Council that required qualified majority to be adopted but unanimity to be modified. The Single European Act offered the same privilege to the EP. What difference does it make if it is easier to accept than to modify proposals from the institutions that share European orientation?

Figure 1

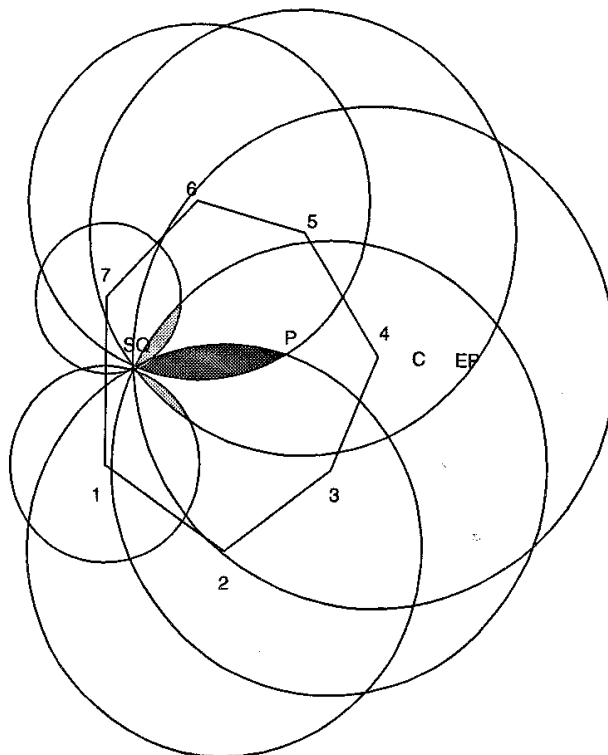


Figure 1 gives a simple graphic representation of the strategic properties of the structure, which was named "conditional agenda-setting." [Tsebelis, 1994]. Consider that the policy space includes two different axes, the first of which (horizontal) is integration. The EP and the Commission have similar positions, while the different countries in the Council are divided along both axes. Consider also for simplicity reasons that qualified majorities in the Council require 5/7 majorities (62/87 is not very far away).<sup>1</sup>

The EP can apply the following reasoning: "if I make a proposal that is accepted by the Commission and makes 5/7 of the Council better off than anything they can do on their own, then my proposal will be accepted." If (as in Figure 1) the status quo is located inside the heptagon 1234567, then there is nothing that can defeat it by a unanimous vote, and consequently any proposal inside the shaded area will be accepted by a 5/7 majority. A rational Parliament would make proposal X, which is as close to its own ideal point as possible. This is the reasoning a strategic actor would make on the basis of the institutions that regulate his interaction with the other actors. However, there are a series of objections to this reasoning.

First, can we apply this simple reasoning about a "strategic parliament" when the EP is composed of dozens of nationalities and ideologies? The simple answer to this question is that a parliament with the committee structure of the EP can be approximated by a single strategic player reasonably well [Tsebelis, 1995].

Second, what if the Commission does not go along with EP proposals? The answer to this one is simple: then the EP does not have conditional agenda-setting powers. Some theoretical models have mistakenly questioned the agenda-setting powers of the EP on the basis of the Commission's behavior [Moser, 1996; Steunenberg, 1994; Crombez, 1996]. Their argument is that if the Commission agrees with the EP amendments it will include them in the initial proposal. If it does not, it will not include them at all, so that, *in equilibrium* no parliamentary amendment will be accepted. The theoretical problem with this argument is located in the complete information assumptions [Tsebelis and Kalandrakis, 1999]. Suffice to argue here that in opposition to this argument

1. I am presenting here a skeletal model. The interested reader can look at the following texts to see more interesting questions such as multiplicity of policy dimensions, or incomplete information: Tsebelis [1994, 1996], Moser [1996], Crombez [1996, 1997], Streunenberg [1994].



the Commission does side with the EP around three-quarter of the time if one trusts the aggregate statistics published by the EP.

Third, what if the Council is unanimous? Again, conditional agenda-setting powers disappear. However, we have to pay close attention to the Council's unanimous votes. In some cases, the Council is truly unanimous, such as when the EP asks to increase its own institutional powers. But this does not exhaust the universe of cases. Look at the following quote:

"Informal votes are often held which reveal whether a qualified majority exists. If it does, the Council Presidency may simply say that a decision will be deemed to be taken unless anyone objects. Equally, *within the Council, significant efforts are often made to secure the widest measure of agreement*, to accommodate states, which may not be able to stop a proposal being adopted but have strong concerns about particular points. *Everyone has a vested interest in a divisive vote being avoided*. As a result, few formal votes occur. However, without the certainty that a vote can be taken at the end of the day, there would be very little impulsion towards agreement." (Infodoc, Dec. 1995; emphasis added.)

What this quote indicates is that what appears to be a unanimous vote may in fact be an uncontested vote: no country wanted to underline its disagreement with the decision. The discussion in the Council and the identification of points of disagreement enables the members of the Council to converge on a focal point, that is, on a point that *could* command a qualified majority if need be.

In the codecision procedure introduced by the Maastricht treaty, the EP loses its conditional agenda-setting role, and is endowed with an unconditional veto power. Indeed it can abort legislation even against the will of the Council and the Commission. However, agenda-setting reverts to the Council which, in the final round, if a joint committee fails to reach an agreement, is permitted to present to the EP its common position (reached in the previous round). Failure of the EP to reject this proposal by absolute majority leads to its adoption.

Table 2. *Acceptance rate of EP amendments under cooperation and codecision (EP data)*<sup>2</sup>

	400 Cooperation 1/7/1987-July 1997	82 Co-decision 1/11/93-July 1997
1st reading	Commission 54% (+ 6% in part)	Commission 52.5% (+ 3.9% in part)
	Council 41% (+ 4% in part)	Council 42.7% (+ 3.7% in part)
2nd reading	Commission 43% (+ 4% in part)	Commission 61% (+ 1.9% in part)
	Council 21% (+ 3% in part)	Council 46.9% (+ 12.5% compromise text)

Conciliation Committee Progress Report 1996-1997. Annex II. Part B (<http://www.europarl.eu.int>).

Most of the literature concluded that the *legislative* powers of the EP had increased in Maastricht. The basis of this assessment was the data published by the EP, and replicated here in Table 2. According to these data, the probability of acceptance of amendments was higher under codecision than under cooperation. The reader can refer to Scully (1997) and Jacobs (1997) for the presentation of additional arguments. Geoffrey Garrett, and George Tsebelis independently and collectively made the argument that conditional agenda-setting is more important for the EP than veto, because in conditional agenda-setting the EP can select among a series of alternatives the one it prefers.

The publication of a dataset that covers 5,000 EP amendments<sup>3</sup> enables us to assess the legislative impact of the EP as a conditional agenda-setter and as a veto player. What follows repeats the analysis of Tsebelis *et al.* (2000).

2. These data do not specify the overall acceptance rate. If we assume that second round amendments are approximately 33% of first round amendments, these numbers provide approximately an acceptance rate of at least .37 for cooperation, and .46 for codecision (these calculations assume that all second round amendments are new). The baseline result is that the difference is 9 percentage points in the acceptance rate in favor of codecision.

3. See <http://www.sscnet.ucla.edu/tsebelis>

Figure 2. Cumulative overall rejection rates of EP amendments under cooperation (x) and codecision (o) procedures in real time

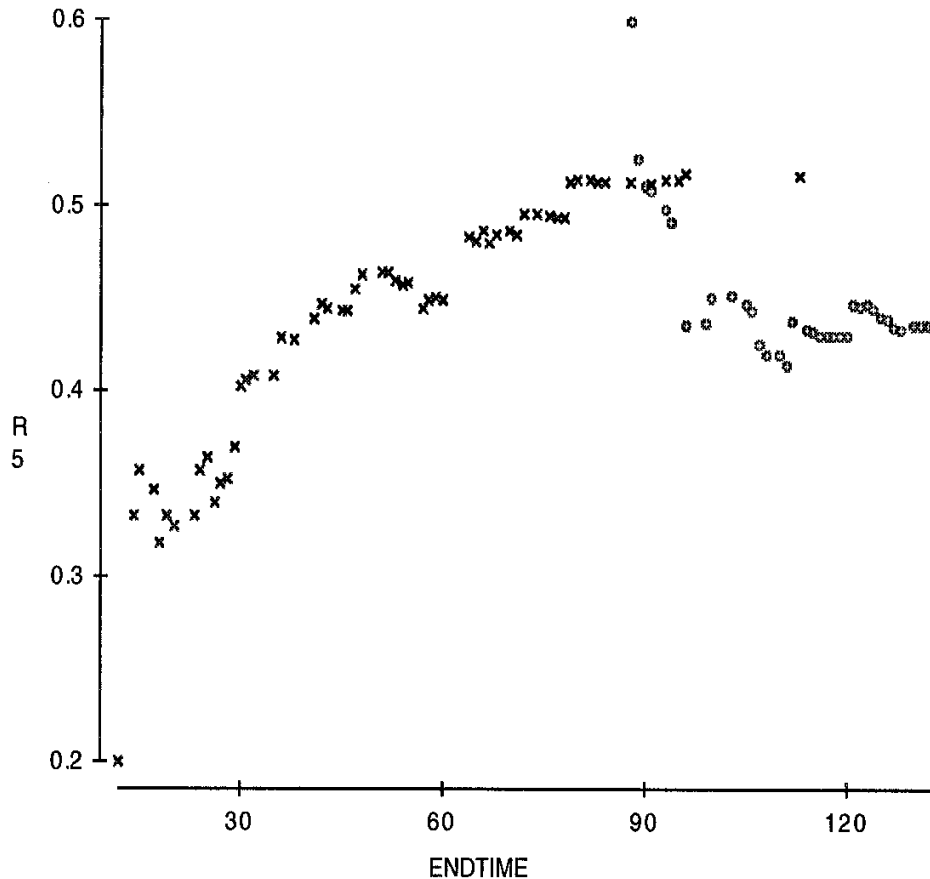


Figure 2 presents the cumulative rejection rate of amendments over-time. Cooperation procedure data are represented by x marks, while codecision data by o marks. What we observe is that the cumulative rejection rates of cooperation start low and rise constantly (although at diminishing rates). Conversely, codecision data indicate that rejection rates start at high levels, and fall over-time. The flattening of both curves is to be expected, because the data are cumulative.<sup>4</sup>

Over time the EP has taken snapshots of this process, and presented the cumulative data, which have become the undisputed basis for political inferences about the significance of different procedures and the role of EU institutions in legislative decision-making. The most recent observation from our data would correspond to a comparison between

4. It is easy to alter the initial observations, which represent some months of data, but once the observations represent the average of several years of legislative activity further modifications become difficult.

the last *x* and the last *o* in the Figure. We have already reported that these two points provide a difference of nine percentage points in favor of codecision.

Figure 3. *Cumulative overall rejection rates of EP amendments under cooperation (x) and codecision (o) procedures in overlapping time*

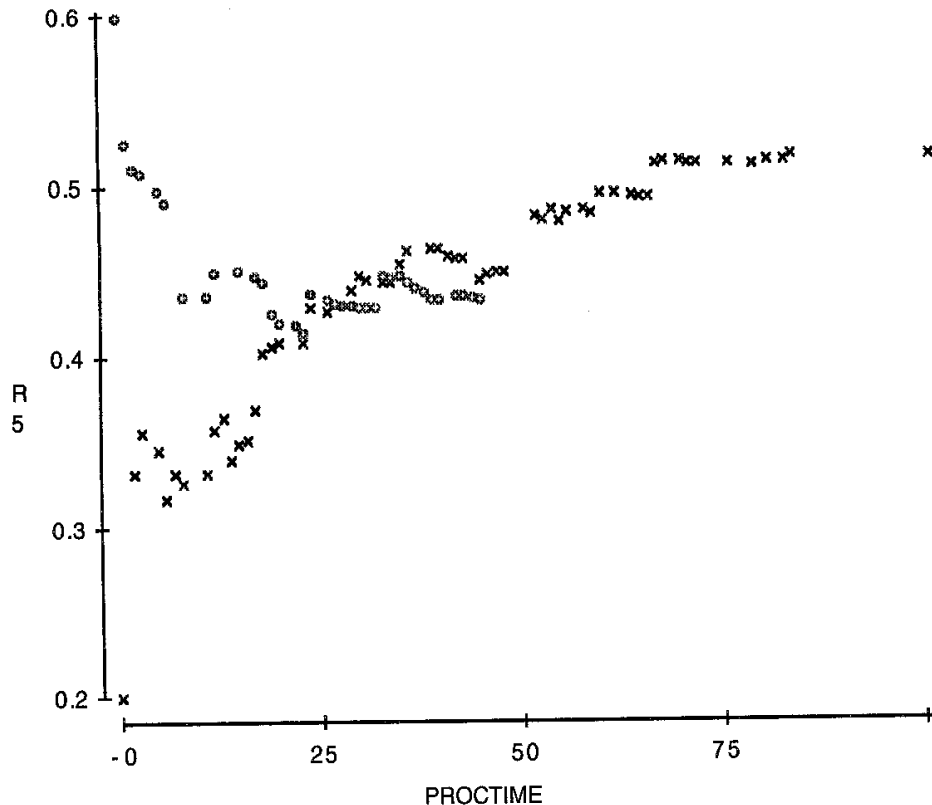


Figure 3 presents the rejection rates per procedure as a function of time that the procedure has been applied. The figure demonstrates that while the two procedures started very differently (codecision with many rejections and cooperation with few) they reached similar rates of rejection two years (more precisely 20 months) into their application.<sup>5</sup> The middle part of both procedures is quite flat and the differences are minor (the last point in codecision has .43 rejection rate, while the corresponding point in cooperation reads .44). If one speaks about non-

5. This is the point made by Tsebelis and Garrett [1997] when they compare the acceptance rates of the two procedures controlling for time by measuring from the beginning of the application of each procedure. Our results here mirror their findings that two years after the relative initiation of the procedures acceptance rates were similar.

acceptances instead of rejections, the numbers are reversed in favor of cooperation: .55 non-acceptance in cooperation, .58 in codecision, but again the differences are minor.

Figure 4. *Cumulative rejection rates under conditional agenda-setting (x), and veto power (o). (Rejection of EP amendments under cooperation is conditional upon non-rejection by the Commission.)*

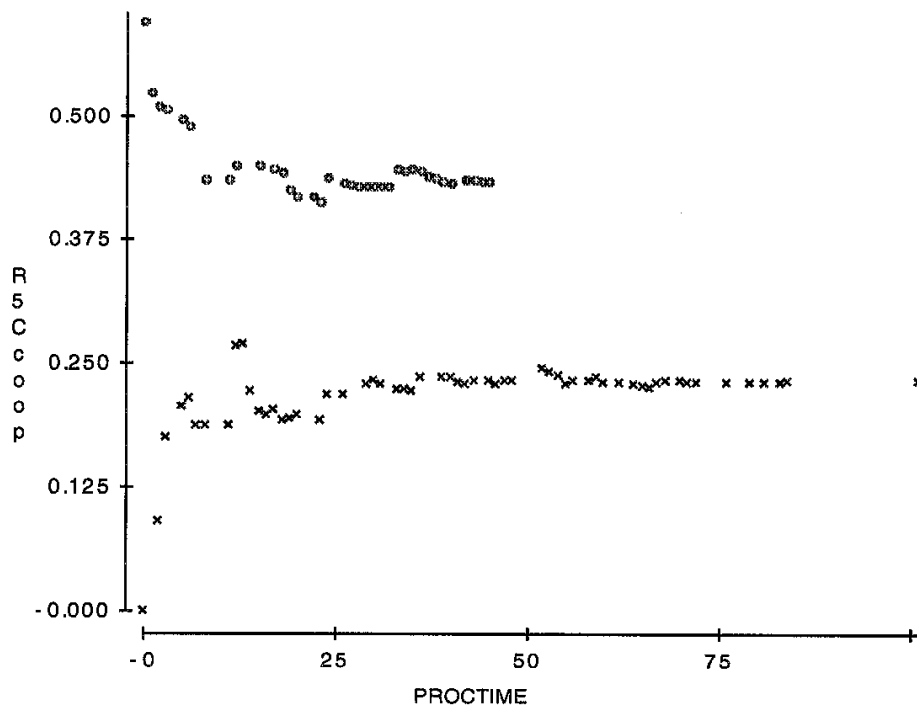


Figure 4 compares the rejection rate of amendments controlling for acceptance by the Commission under cooperation, but not under codecision. This is because acceptance by the Commission is a condition for conditional agenda-setting but not for veto powers. Consequently, Figure 4 performs a test of conditional agenda-setting (the cooperation procedure) *vs.* veto power (the codecision procedure). As the Figure demonstrates, there is a very substantial difference in favor of conditional agenda-setting. The EP is considerably more influential when it exercises conditional agenda-setting (that is, when it has the Commission on its side under cooperation). The difference is of the order of 20 percentage points. Closer inspection of Figure 4 suggests another conclusion. The acceptance rate curve under conditional agenda-setting is much flatter than under codecision. This observation indicates that what we identified as differences between the two procedures may be due primarily to the behavior of the Commission.

Figure 5. *Cumulative rejection rate of EP amendments conditional upon non-rejection by the Commission under cooperation (x) and codecision (o)*

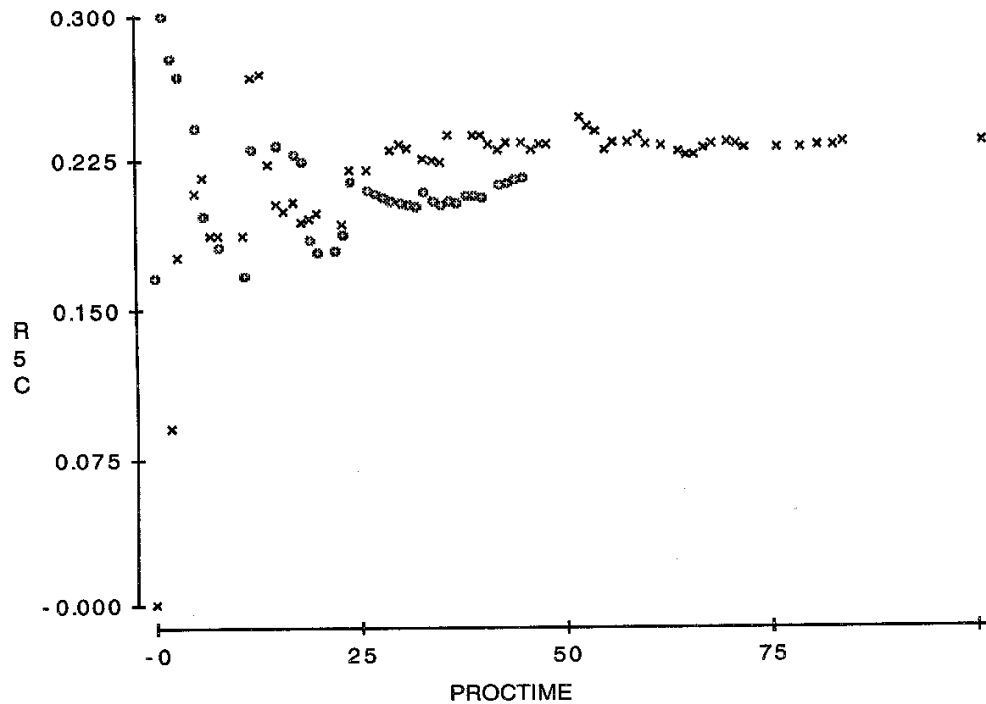


Figure 5 controls for acceptance by the Commission in both procedures. The two procedures flatten very soon around practically the same values (.23 in cooperation, .21 or .22 in codecision). The most interesting feature of Figure 5 is not that the two procedures produce identical results once we control for time and the behavior of the Commission. It is that the curves flatten out, indicating equilibrium (i.e. no change over-time).

Given that the rejection rates assuming non-rejection by the Commission are the same (as Figure 5 indicates), it is logical to conclude that the apparent differences in rejection rates between the two procedures are due to either one or both of the following factors: 1. There is an over-time difference in the frequency of Commission rejection of EP amendments. 2. There is an over-time difference in rejection rates conditional upon rejection by the Commission. The next section investigates these conjectures using more sensitive "spot time" data instead of the aggregate data.

### *The Commission as a legislator*

The same theoretical models of EU legislation lead to the conclusion that the role of the Commission as a legislator steadily declines over-time. How about the role of the Commission? The Commission introduces legislation in all legislative procedures, but the reason that it has been very powerful is that in the conciliation and cooperation procedures the Council decides on a Commission proposal and can accept it by qualified majority and modify it by unanimity. This asymmetry between accepting and modifying the Commission proposal was the source of Commission power [see Tsebelis and Kreppel, 1998]. However, in the co-decision procedure (both versions I and II) the Council and the Parliament can agree between then in the last rounds of the procedure and overrule Commission objections. This modification has the result of reducing the importance of the Commission in legislation [Garrett and Tsebelis, 1996].

At the empirical level Tsebelis et al. demonstrate that “all the action (in the difference of acceptance rates between cooperation and codecision) is in the behavior and the importance of the Commission”.

They call  $p$  the rejection rate of amendments when the Commission rejects it, and  $q$  the rejection rate of amendments when the Commission accepts it. If we call  $R5$  the rate of rejection and  $RRC5$  the rate of rejection by the Commission, by definition

$$R5 = p \cdot RRC5 + q \cdot (1 - RRC5) \tag{1}$$

by rearranging terms,

$$R5 = q + (p - q) \cdot RRC5 \tag{2}$$

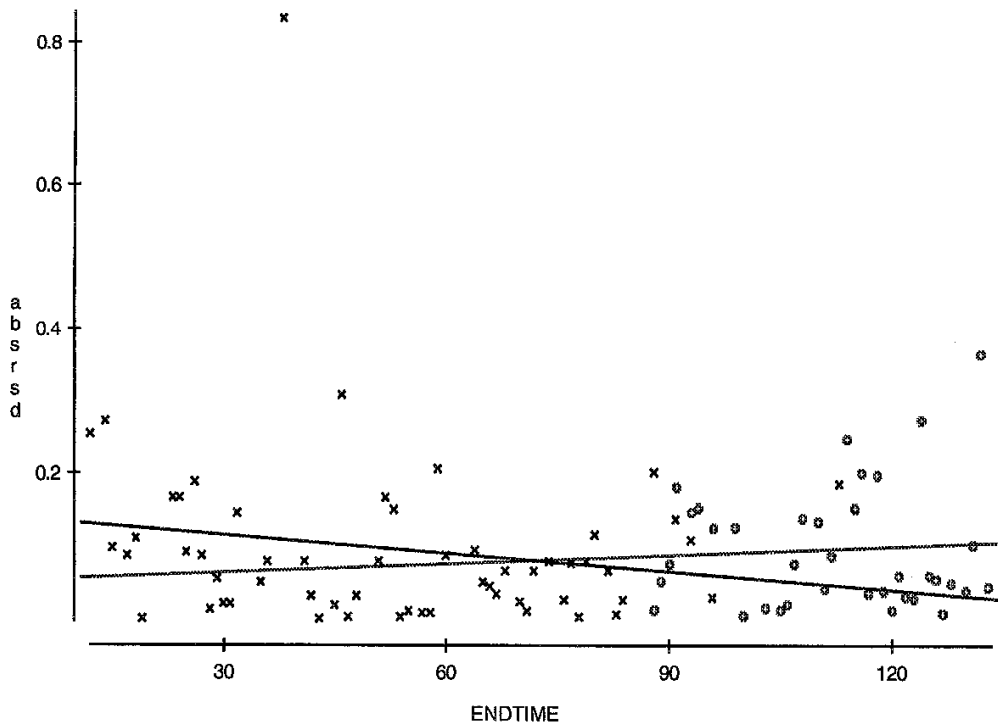
Table 3. *Percentage of rejections as a function of Commission rejections (p) and non-rejections as a function of Commission non-rejections (q) per procedure*

	Rejections as % of Commission Rejections	Non-rejections as % of Commission Non-rejections
Cooperation	.88	.83
Co-decision	.67	.73

Table 3 translates the estimators in a readily interpretable format: The role of the Commission is significantly higher under cooperation than under codecision. Indeed, under cooperation, once the Commission rejects an amendment the probability that it will be rejected is .88,

while if the Commission accepts the probability that it will be accepted is .83 (=1-.17). Under codecision, when the Commission rejects the probability of rejection is .67, while when the Commission accepts, the probability of acceptance is .73 (=1-.27). In other words, the Commission's behavior predicts the overall fate of an amendment 85% of the time under cooperation and 70% of the time under codecision.

Figure 6. *Residuals (absolute value) of regression of overall rejection of EP amendments on Commission rejection. (Cooperation [x]; codecision [o])*



The success rate of the Commission per procedure does not remain constant over-time. *Under the cooperation procedure, the influence of the Commission increases over-time, while under codecision it decreases.* The reader can verify this statement by observing Figure 6. This figure presents the absolute value of the residuals of a GLS regression of overall rejections as a function of rejections by the Commission. The size of the residuals is larger at the two ends of the Figure, indicating that the behavior of the Commission explains less during these periods.

All the variance in the rejection rates (over-time and by procedure) can be explained on the basis of three factors, all having to do with the



Commission. First, the Commission is more influential under cooperation than under codecision. Second, within each procedure the influence is highest towards the middle of the period our data cover (early 1990s). Finally, the Commission rejects more EP amendments during the same period.

### *The ECJ*

There are a series of institutions that have played an important role in the evolution of the EU. Here I will discuss the role of the ECJ, although similar arguments can be made about the Commission as a bureaucracy (as opposed to its legislative role examined in the previous section). The ECJ established with a series of decisions the supremacy of European law over national law, the direct effect of European legislation, the principle of mutual recognition, which established the common market in practice. All these decisions were made in the late sixties and in the seventies. However, one would be hard pressed to find decisions of equal importance in the late eighties or in the nineties. Why?

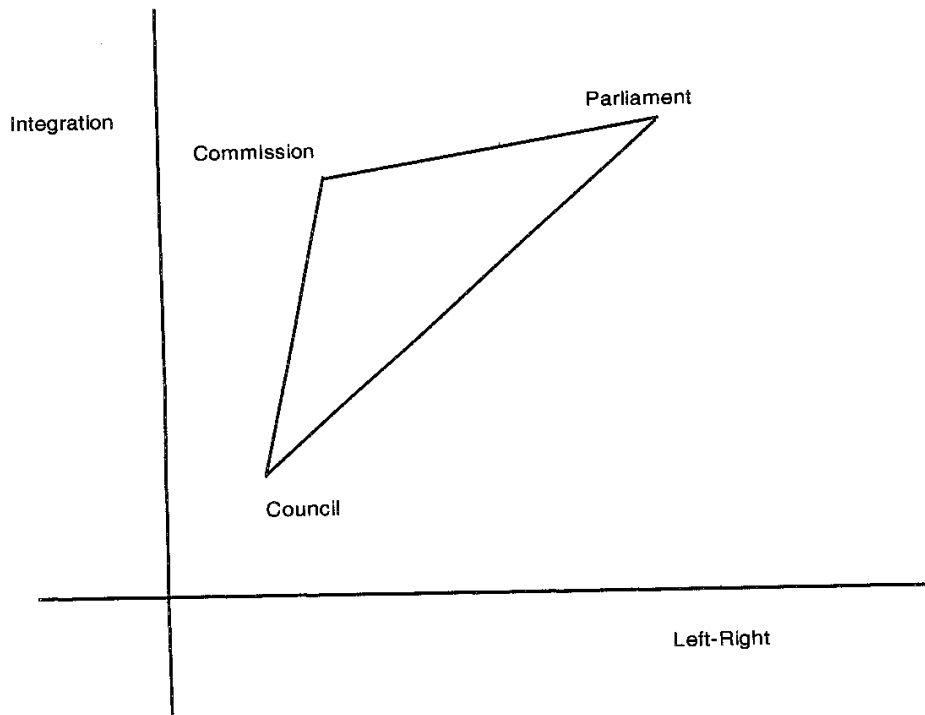
There is a very simple explanation in institutional terms: the Luxembourg Compromise had forced unanimity in European decision-making before the Single European Act. At that time (1987) new institutions were introduced. These institutions prescribed two things: first, that decisions in the Council would be made by qualified majority, second, that the proposals would originate with pro-European actors (the Commission and the Parliament). These new rules made it possible for European institutions to make decisions on important issues like the establishment of the single market, through the introduction of hundreds of directives and regulations.

The following model comes from Tsebelis and Garrett [2000b] and gives precise meaning to the previous paragraphs. Tsebelis and Garrett use a two-dimensional policy space (see Figure 2) for at least two reasons. On the one hand, many results from one-dimensional spatial models do not hold in policy spaces of higher dimensions. For example, there is almost never a median voter in the Council when preferences are arrayed on two dimensions.<sup>6</sup> On the other hand, many important policy disputes in the contemporary EU appear to take place in a two dimensional issue space – one dimension describes their preferences for more regional integration; the other is more akin to a traditional left-

6. The exception to this rule is when preferences are perfectly symmetrical around a single point.

right cleavage (most notably on regulatory matters) [Kreppel and Tsebelis, 1999].

Figure 7. *EU Institutions in two dimensions*

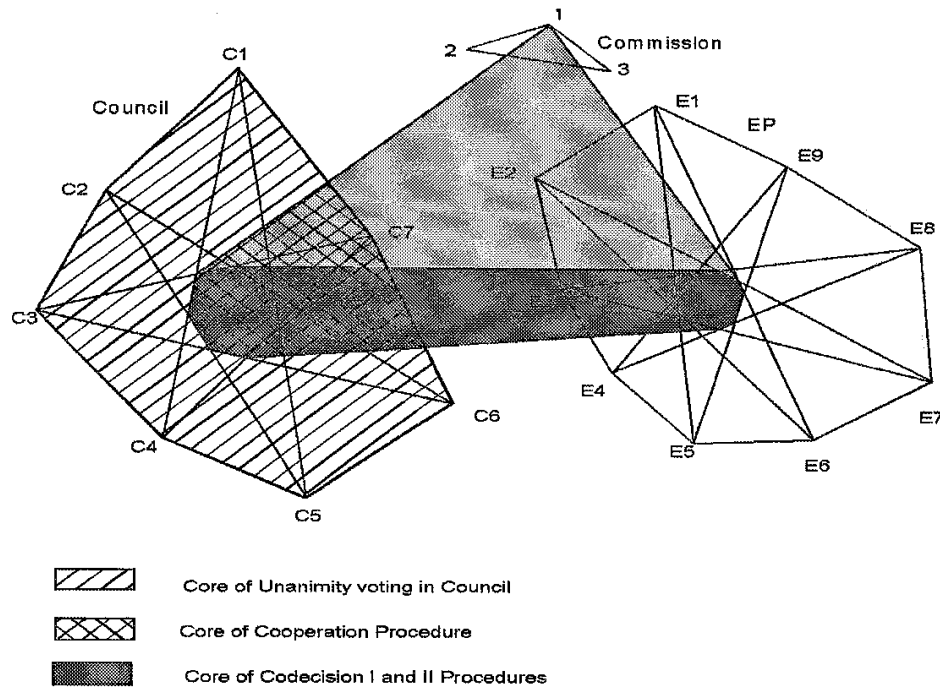


The locations of the actors in Figure 7 represent plausible general preference configurations in these two dimensions.<sup>7</sup> In both cases the Council and the Parliament are likely to be the more “extreme” actors, whereas the Commission is likely to be positioned somewhere in between them. On the left-right dimension the Commission is more likely to be closer to the national Governments that appoint the Commissioners; on the integration dimension, however, the Commission and the EP are likely to be allied as pro-Europe actors.<sup>8</sup> What emerges from these assumptions is that the locations of the three actors represent the corners of a triangle. Theoretically, this is the most general representation of all cases in which the three actors can have any position with respect to each other – except where two of them have identical positions, or where one of them is located exactly on a straight line connecting the central points of the other two. It should be emphasized,

7. In the graphic the first dimension is left-right, and the second is integration.  
8. The justification for these preferences is elaborated in more detail in Tsebelis and Garrett [2000].

therefore, that the analytic thrust the analysis would hold so long as the preferences of no two of the three legislative actors had identical preferences in two (or more) dimensions.

Figure 8. *The core of EU legislative procedures*



Let us now rotate Figure 7 by 45 degrees,<sup>9</sup> and make the above scenario more realistic by incorporating the fact that the all three actors are multimember groups deciding by simple or qualified majorities, rather than individuals (Figure. 8). We array the preferences of a Parliament made up of 9 members to characterize what we consider to be the de facto super-majority threshold for voting in the Parliament. In the second reading of legislative bills, the Parliament votes by absolute – not simple– majority. Moreover, absenteeism is very high by national standards. Assuming a 75% attendance rate [Kreppel and Tsebelis, 1999], the de facto threshold for passage in the Parliament is 50/75, or 6 of the 9 members of our hypothetical Parliament. We use a seven-member Council where five of its members represent the required qualified majority for decision-making. Finally, we use a three-member Commission deciding by majority of its members (two out of three) since this is the formal decision rule for the College of Commissioners.

<sup>9</sup> The reasons for this decision are to produce a better graphic.

The central feature of Figure 8 is its description of the “core” of the EU’s legislative institutions under the various QMV-based legislative procedures. The core of a legislative rule is the set of outcomes that cannot be overruled by the application of that rule. For our purposes, the concept of the core has a vital role in the legislation-discretion game. The core of the EU’s different legislative procedure describes the discretionary space available to the Commission in the implementation of legislation and the Court in statutory interpretation. The propositions we derive generalize to more than two dimensions, so long as the core exists.<sup>10</sup>

Let us begin by reinterpreting the Luxembourg compromise. In this period, a unanimous decision by the Council was required for a change in the legislative status quo. Any point inside the C1... C7 heptagon (the singly hatched area) cannot be modified by unanimity because at least one member of the Council would object to any change in the status quo. The hatched area is thus the core of the Luxembourg compromise. Turning to discretion, the Commission and the Court could therefore effectively implement or interpret a given piece of legislation (the status quo) in any way they wish – so long as the ensuing policy outcome remains within the core. This would be true even if the Commission’s implementation or the Court’s interpretation were inconsistent with the Council’s intent when it passed the legislation.

The final observation we should make by way of introduction concerns *ceteris paribus* qualifications. It is obvious that convergence in the preferences of actors (e.g. if C1-C7 were clustered more tightly) would reduce the core and hence the scope of discretion in implementation and adjudication as well. Increasing heterogeneity could have the opposite effect. In the context of the EU, there are at least three factors that might change the spatial location of preferences. First, adding new members to the EU might be expected to increase heterogeneity in some cases (the southern accessions and, in the future, those from Eastern Europe), but decrease it in others (Austria, Finland and Sweden, on many issues). Second, some argue that the preferences of existing actors have converged over-time [Moravcsik, 1998]. Finally, changes in

10. It can be demonstrated, that if one increases sufficiently the underlying policy dimensions the core ceases to exist, that is, policy becomes so complicated that it is always possible to find a new coalition to upset any status quo. In the case the core does not exist, Tsebelis [1995] has demonstrated propositions similar to the ones presented here on the basis of “veto players” (concept and operationalization defined in the article).

the actors that participate in the legislative game will also affect the size of the core (in concert with changes in the procedures that aggregate their preferences). It is the last point to which we devote most attention.

*Cooperation.* Legislation can pass under the cooperation procedure in two ways. A decision can be taken with an agreement of an absolute majority of the EP (decisions by the EP require an absolute majority of its members in the second round), the Commission (strictly speaking, a majority of the Commissioners), and a qualified majority of the Council. Alternatively, a unanimous Council can overrule the other actors. We have already calculated the unanimity core of the Council. What constraints does the alternative rule (agreement of three actors) impose on policy discretion?

Recall that we are assuming that the combination of the absolute majority requirement and high rates of absenteeism in the Parliament creates a de facto supermajority threshold of about two-thirds. In Figure 8, the six-ninths core of the EP can be identified by connecting each EP member with another so that 3 other members are on one side of the line and the other 4 members on the other side. Such lines are the pairs E1E5, E1E6, E2E6, E2E7, etc. Each one of these lines has a two-thirds majority on one side of it. These lines define a nine-sided polygon inside E1... E9. This is the Parliament's core under absolute majority. We will call this specific intra-institutional core the two-thirds EP core. It is obvious that the EP cannot modify anything located in that core – even if it decides alone. The reason is that there is a two-thirds majority against moving away from any particular point of this nine-sided polygon. Similarly there is an intra-institutional core for the Council when it decides by five-sevenths QMV. As Figure 3 indicates (and for similar reasons as for the Parliament) this core is a heptagon located inside C1... C7.

The lightly shaded area of Figure 8 – connecting what turns out to be the decisive Commissioner (#1) with the extreme points of the EP's two-thirds core and the Council's five-sevenths core – is thus the core of legislation requiring a qualified majority in the Council, an absolute majority in the EP (assuming 25% absentee rate) and the Commission. This is an inter-institutional core, and obviously its size depends on the difference of the preferences among the three actors. Reducing these differences in Figure 3 will produce a smaller inter-institutional core. But this is not the core of the cooperation procedure because a unani-

mous Council can also pass legislation. The core of cooperation is thus defined as the intersection of the unanimity core of the Council (the hatched area) and the inter-institutional core (the shaded area). In the figure, the crosshatched area denotes this cooperation core. Note that this area is always smaller than the Council's unanimity core (defining the room for policy discretion under the Luxembourg compromise).

If the Commission or the Court wants to make a decision that will not be overruled under the cooperation procedure, they can implement and interpret legislation anywhere within the crosshatched area. How big this area is, of course, depends on the relative position of the Commission and the EP with respect to the Council. If, for example, the Commission were located close to E3, the core would shrink. The core would expand, however, if the Council were located between the Commission and the EP this area is going to increase.

*Codecision before and after Amsterdam.* The major characteristic of both versions of codecision is that at the end of the legislative game, an agreement by a qualified majority of the Council and an absolute majority of the EP (which, we remind, in our examples is a de facto qualified majority of two-thirds) can overrule other actors. In particular, they can bypass the Commission. Recall that we have argued that the legislative influence of the Council and Parliament is different under the original and reformed versions of the procedure. Under the Maastricht rules, the Council had effective agenda-setting power, whereas the Parliament is the Council's true coequal under the post-Amsterdam rules. This should influence where in the codecision core legislation is passed, but it is irrelevant to the discretion available to the Commission and the Court.

The heavily shaded area of Figure 8 that connects the two-thirds EP core and the five-seventh Council core thus represents the core of both versions of the codecision procedures. The greater are the policy differences between the Council and the EP, the greater the size of the core, and hence the greater the discretion available to the Commission in policy implementation and the Court in statutory interpretation. Up until the present, most analysts have assumed that the distance between Council members and MEPs is significant. But this may change over-time, either because European citizens come to hold their MEPs more accountable or because party organizations linking both institutions become more pronounced [Tsebelis and Garrett, 2000]. If and when either of these changes takes place, the codecision core would shrink

—and with it so too would the policy discretion of the Commission and Court.

Figure 8 shows that the core of the codecision procedure is likely to be larger than the cooperation core. This is not, however, necessarily always the case. It is possible that the two-thirds core of the EP is located inside the five-seventh core of the Council (the EP and the Council have very similar positions). This would result in similarly sized cores of the cooperation and codecision procedures. But in general it is reasonable to describe the discretion available to the Commission and Court as having been a concertina in the history of the EU. Under the Luxembourg compromise, the discretionary space was large (the unanimity set of the Council). The core shrank appreciably with the introduction of cooperation, and has (most likely) expanded again since the innovation of codecision. The role of the ECJ as an adjudicator and the Commission as a bureaucrat is correlated with the size of that core.

The three parts of this section of the chapter made one important point clear: that changes in institutional structures had as results shifts in power among the different actors, as well as shifts in the visibility of these actors. These questions that arise naturally inside an institutional analysis framework are existent neither in intergovernmentalism nor in neofunctionalism. Now we will turn to the other side of the institutional story.

## —Institutions as Dependent Variables

Understanding how institutions operate is the first step to performing a successful institutional change. The EU has undergone institutional changes very frequently (three significant changes in the past twelve years). These changes were performed with specific targets in mind, and presumably previous performance was measured against the targets before the next change was undertaken. For example, the role of the Commission and the role of the Parliament were part of the institutional debates, and each constitutional revision of the EU had targeted the increase in the power of the Parliament and the decrease in the power of the Commission. There are two different ways of studying institutional change: one is to replicate of the principles of the analysis above (rational choice institutionalism) and the other is historical institutionalism. Space constraints will restrict me to what I consider the major difference between the two. Interested readers can read chapters 2 and 4 from *Nested Games* [Tsebelis, 1990] and Pierson's analysis [1996] to have a more extensive and precise understanding of the differences.

In my view the fundamental difference between rational choice and historical institutionalism is that rational choice performs equilibrium analysis, while historical institutionalism does not. In equilibrium analysis the designers of the new institutions try to study or guess as best they can the properties of the existing institutional structures as well as the plausible alternatives, and select the one that is in their interest. This is the reason why, as I said, the study of institutions as independent variables is logically prior to the study of institutional change. The fact that different actors try to do their best and the selected institution is what commanded the required majority (simple, qualified or unanimous) does not mean that all the consequences of different structures were completely anticipated.

In a very thorough study of the intergovernmental bargaining and the signature of the different Treaties, Moravcsik [1998] identifies the preferences of the major participants, and the compromises they reached. The overall conclusion is that the major countries are maximizing their goal achievement through the signature of these treaties, and they are quite effective in achieving their goals. By contrast, Pierson [1996] shows cases where unintended consequences have been the rule.

In a study on the adoption of conditional agenda-setting, Tsebelis and Kreppel [1997] find little evidence that most of the participants knew what they were getting into (although people like Hallstein, Spaak, and de Gaulle had an accurate understanding).

Studying the institutional changes in Amsterdam, Simon Hix [2000] addresses the following question: why did governments eliminate the last stage of the codecision procedure increasing the power of the EP and reducing their own power? His answer involves a very accurate understanding not only of the formal institutional rules, but also of the de facto changes in these rules introduced by unilateral action of different players. Hix's analysis is worth repeating here.

The codecision procedure introduced in Maastricht required a joint committee to convene if there was not complete agreement between the EP and the Council, in order to resolve the differences and submit a final text to both the Council and the EP. According to the Maastricht Treaty if this committee could not reach an agreement the initiative reverted to the Council and it could make a take it or leave it offer to the EP (see discussion in this paper above). The EP had been asking for the elimination of this last step of the codecision procedure, and it was able to obtain it in the Amsterdam Treaty.



The reason that the EP was so successful according to Hix is that it had already imposed its own preferences in a *de facto* way. Indeed, it had voted its own internal rule 78 according to which if there was no agreement in the joint committee and the Council reintroduced its own previous position the EP “would invite the Commission to withdraw its proposal and invite the Council not to adopt under any circumstances a position pursuant to Article 189b (6)” if the Council would decline this request, paragraph 3 specified that “no amendments may be tabled to the Council text” and paragraph 4 made it even clearer: “The Council text as a whole shall be the subject of a single vote. Parliament shall vote on a motion to reject the Council text.”

So, according to Hix’s account, there was no difference between the *de facto* interpretation of the Maastricht Treaty and the official text of the Amsterdam Treaty. In both cases the Council had already lost its power to make take it or leave it proposals to the EP.

These contradictory findings take us back to the discussion in the beginning of the paper: some approaches expect unintended consequences to be the rule, others to be the exception. The jury is still out in this respect. However, what all analyses share is that they start just like this article with institutions as independent variables, study their consequences and then apply the findings to issues of institutional design.

To conclude, institutional analysis disagrees with intergovernmentalism with its fundamental belief that national actors (governments) alone determine the development of the EU. In terms of the importance of unintended consequences (another major difference between neofunctionalism and intergovernmentalism), institutional analysis (of rational choice variety) claims that unintended consequences will exist only under conditions of incomplete information. If information is complete, governments will take the results of institutional analyses as input in their bargaining over institutions. In this respect, under conditions of complete information (or some reasonable approximation) institutional analysis has to be used as the basis of intergovernmentalism. Under conditions of incomplete information, institutional analyses will lead to unintended consequences and will look similar to neofunctionalist analyses, with one significant difference: the rules of what constitutes a rational choice explanation are explicitly stated, and therefore explanations can be easily tested against data, while neofunctionalist arguments are so vague that are almost impossible to falsify.

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