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INSTITUTIONAL ANALYSES OF EUROPEAN UNION

BY

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It is quite frequent for empirical analyses to start by describing two theoretical approaches to the study of the European Union, intergovernmentalism and neofunctionalism, and then to proceed by stating that none 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 note 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 important differences between the three approaches. For intergovernmentalists, governments are the ultimate decisionmakers 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 forthcoming). For neofunctionalists, governments are not the sole 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: 366) and if the reader thinks it is too wide 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 sufficient for the description 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 introduction of a draft of a directive or a regulation by the Commission to the Parliament, and ends by the approval by the Council. Formal institutions specify what is permitted and what is not: for example, the treaties specify that environmental issues are today (but not in the sixties) within the jurisdiction of the EU. 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

strategies of the actors, 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 a formal or informal model) 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), Steunenberg et. al. (1996), Tsebelis (1994) fall in the first category. Studies like Kreppel and Tsebelis (forthcoming) and Tsebelis and Kalandrakis (forthcoming) in the second.

Studying EU institutions in order to understand the results they produce is very similar to what other branches of comparative politics do. For example, studying the effect of the electoral system on the party system of a country (Duverger's law) or of the influence of committees on legislative outcomes is part of the same conceptual approach, institutional analysis.

Once the importance of institutions as a starting point is established, there are two different ways that one can proceed in their study: use them either as independent variables (study their effects) or as dependent variables (study their origins). The first approach, of 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, and 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). How can we place these theoretical ideas in the analysis of the EU?

There are a series of institutions that have played an important role in the evolution of the EU. Let us take the European Court of Justice for example. 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 decisionmaking 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.

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 decisionmaking 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. These institutional changes have as a result the overall increase of the power of the EP.¹

How about the role of the Commission? While 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 codecision procedure (both versions I and II) the Council and the Parliament can agree between them in the last rounds of the procedure and overrule Commission objections. This modification

¹ The jury is still out in term of the comparison between conditional agenda setting and unconditional veto

has the result of reducing the importance of the Commission in legislation (Garrett and Tsebelis 1996).

So, changes in institutional structures had as results shifts of 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.

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 the last 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 as target the increase of the power of the Parliament and the decrease of the power of the Commission. There are two different ways of studying institutional change: one is the replication 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

(see Tsebelis and Garrett (1997) Garrett and Tsebelis (1997) and Scully (1997)).

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 exiting 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 the one that commanded the required majority (simple, qualified or unanimous) does not mean that all the consequences of different structures were anticipated. In a study on the adoption of the 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).

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 neo-functionalism 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 neo-functionalist 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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