Gemeinschaftsgüter: Recht, Politik und Ökonomie

Formal and Informal Institutions under Codecision: Continuous Constitution Building in Europe

von
Henry Farrell and Adrienne Héritier

Formal and Informal Institutions under Codecision:
Continuous Constitution Building in Europe

Henry Farrell and Adrienne Héritier

Abstract

Current approaches examining the effect of institutions on policy processes have difficulty in explaining the results of the legislative process of codecision between European Parliament and Council within the European Union. The formal Treaty changes which gave rise to codecision have in turn given rise to a plethora of informal institutions, in a process which is difficult to understand using dominant modes of analysis. This article provides a framework for analyzing the relationship between formal and informal institutions, showing how the two may be recursively related. Formal institutional change at a particular moment in time may give rise to informal institutions, which in turn may affect the negotiation of future formal institutions. The article applies this framework to the codecision process, showing how the codecision procedure has led to the creation of informal institutions and modes of decision making, which in turn have affected subsequent Treaty negotiations. Through strategic use of the relationship between formal and informal institutions, Parliament has been successful in advancing its interests over time, and increasing its role in the legislative process.

farrell@mpp-rdg.mpg.de
heritier@mpp-rdg.mpg.de
Max Planck Poject Group – Common Goods: Law, Politics and Economics
45, Poppelsdorfer Allee
Bonn 53115
Germany

Section I – Introduction

The codecision process, in which the European Parliament and Council work together in the legislative process, poses important puzzles for political scientists.[1] On the one hand, codecision is the subject of a burgeoning body of theoretical literature, which seeks to analyze the effects of the Treaty articles governing codecision from the perspective of game theory[2]. On the other hand, the empirical literature and accounts by practitioners (Shackleton 2000, 2001; Corbett 2000, 2001) provide a picture of the codecision process which is quite different to that presented by formal modelers. Empirical evidence suggests that the Treaty articles governing codecision and other legislative procedures only provide a beginning point for interactions between Parliament and Council. A profusion of semi-formal, quasi-formal and informal procedures has sprung up around the codecision process, which seem to have important effects on the behaviour of these collective actors and their relationships (Shackleton 2000).

In this article, we seek to understand the dynamic interaction between formal and informal institutions which has led to this, and which, we argue, has important consequences for legislative outcomes and the relative decision-making power of European political actors. These developments are not only of considerable empirical and practical relevance, but also throw new light on theoretical debates about European integration. In recent years, there has been an important shift in the center of gravity of European Union (EU) studies, from a debate between intergovernmentalists and neo-functionalists, to one between rational choice scholars and constructivists (Jupille and Caporaso 2000) and/or historical institutionalists (Pierson 1996, 1998). This realignment is only partial, but has led to the creation of theoretically distinct approaches to the study of the European Union.

Scholars from different perspectives have created competing frameworks to explain the workings of the EU's institutions. Rational choice scholars have turned to the explanatory power of non-cooperative game theory, and have sought to explore how particular institutional structures may consistently produce certain equilibria in one shot games. Constructivists, for their part, have sought to examine the importance of identity as a factor affecting institutional change (Checkel and Moravcsik 2001), and the longer term, reflexive processes in which inter-governmental negotiations are embedded (Christiansen and Jørgensen 1999; Christiansen, Falkner and Jørgensen forthcoming). Finally, historical institutionalists have sought to borrow from both approaches (Hall and Taylor 1996) to explore the evolution of specific aspects of the European Union over time. They have emphasized the extent to which decisions taken at time t may have unforeseen consequences in $t+1$ and later (Pierson 1996).

In this paper, we seek to build upon important assumptions and claims of game theory- but come to rather different conclusions than those of one shot approach. We suggest that the relationship

---

1   The European Commission also plays a role in the codecision process; for purposes of simplicity we only provide a cursory discussion of the Commission in this article.

2   See in particular Tsebelis (1994); Tsebelis and Garrett (2001); Moser (1996), Crombez (1997), Crombez (2000).

between formal rules and informal institutions seen in the codecision process cannot properly be understood through a focus on one shot interactions. Instead, it is necessary to turn to "folk theorem" results, and mechanisms of equilibrium selection such as bargaining power (Knight 1992) to explain how the formal rules governing the codecision process have led to the creation of informal institutions, and how these in turn have affected the course of constitutional change. We argue that this may offer important insights about integration in the European Union, which has been undergoing a process of "continuous constitution building" since its inception, gaining momentum since the Single European Act. Formal institutional changes made at the Treaty level lead to processes of informal institution building among legislative actors, which may in turn affect future formal Treaty changes. In this article, we seek to provide specific examples of this happening in Parliament-Council relations. We discuss how this may lead to a more important role for Parliament than one-shot examinations of Parliament-Council relations would suggest, and an increase in this role over time. While we build up from the basic concepts of rational choice in this paper, we seek to incorporate historical institutionalism's insistence that actors may not take account of the long term consequences of their actions,[3] and constructivism's emphasis on reflexivity. Specifically, we seek to show how institutional change is not driven by the preferences of actors who remain off stage, but rather results from a dynamic process of bargaining, in which the creation of formal institutions cannot be examined in isolation from a continous process of re-iterated social interaction between the relevant actors

We begin this paper by providing an account of our theoretical framework. We seek both to show how informal institutions may affect outcomes and to provide a more general account of institutional change, illustrating a mechanism that links both formal and informal levels of institutionalization together.

We then seek to test our theory against empirical evidence. In particular, we examine whether our hypotheses are supported or disconfirmed by evidence from the introduction and subsequent evolution of codecision. We note that codecision is almost certainly the area of EU decision making most frequently studied by proponents of the one shot game approach (see FN 1). While their claims have already been subjected to vigorous criticism (Corbett 2000, 2001; Rittberger 2000), we seek to advance on the work of these critics by applying an alternative model, with testable implications, to the available empirical information on the consequences of the codecision procedure for the legislative process. Insofar as the mechanisms which we identify provide a more complete account of the consequences and evolution of the codecision procedure than the competing one shot approach, and further incorporates a dynamic element, our model provides an advance in the debate. We show how the formal rules governing codecision under Maastricht gave rise to a process of informal institutionalization, which then affected the next round of formal institutional revisions in the Amsterdam negotiations. We also show how the changes at

---

3   Insofar as rational choice accounts which take account of these factors may be considered to fall under the rubric of historical institutionalism (Pierson 1996), our account may be identified as a variant of historical institutionalism.

Amsterdam are in turn leading to a new phase of informal bargaining, in which both Council and Parliament seek to secure their long term advantage.

Section 2.1 – Theoretical Beginnings

As stated in the introduction, we adhere to the basic microfoundations of rational actor theory in this paper. Thus, we share a key set of assumptions with the more widely employed structure-induced equilibrium approach about the nature of human action. While we recognize that these assumptions are restrictive, and sometimes inaccurate, we contend that they may still provide useful insights about social behaviour.

Where we differ is in our account of the specifics of the strategic setting within the European Union – we suggest, in contrast to the vast majority of game theoretic work on the subject, that this setting is better considered as a set of infinitely iterated games than as a set of disconnected one-shot interactions. Many current accounts assume that interactions in codecision are one shot games, so that they can derive clear hypotheses as to the effects of institutional structures on actors' behavior. However, as Keith Dowding notes, actors "play the codecision game repeatedly, … so backwards induction in a one-shot game does not represent the reality of bargaining between them in any single legislative debate."[4]

In such situations, "folk theorem" results, which suggest that virtually any "reasonable" equilibrium is possible in infinitely repeated games with sufficiently low discount rates, provide a better picture of social interaction.[5] The problem with these results is their indeterminacy; it is not possible to discern the same precise relationship between institutional structure and outcomes that is present in many one-shot games. As Keohane (2001) pithily describes it, equilibria multiply like rabbits in Australia, and are about as useful.[6]

Thus, we suggest that it is necessary to turn outside game theory proper in order to discover mechanisms of equilibrium selection, which would allow falsifiable predictions to be made about outcomes. There are many such mechanisms in the literature, including power (Knight 1992), cultural beliefs (Greif 1994), "fuzzy" commitments (Kreps 1990b; Miller 1992) and focal points (Schelling 1960; Sugden 1995). In this article, we focus on one of these mechanisms – power – and seek to explore how it affects institutional evolution and, thus, outcomes.

---

4   P.131, Dowding (2000)
5   Osborne and Rubinstein (1994).
6   Efforts to create more refined equilibrium concepts that would narrow down the field of possible outcomes have borne little fruit (Kreps 1990a).

Section 2.2 – Institutional Change in the European Union

Building from the foundations described above, we seek to make two key arguments about institutional change. First, we argue that *informal institutions* may emerge from repeated interactions, and may have an important impact on institutional outcomes. These informal institutions may be influenced by the formal framework in which actors operate, but they will not be determined by this framework. This means *inter alia* that it will be extremely difficult for actors (in the European Union context, the member states) to predict *ex ante* the *ex post* effects of formal institutional changes that they introduce.

Second, we argue that under certain circumstances, one can identify a *recursive relationship* between formal and informal institutions. When informal institutions come into being, they represent a new status quo, which affects subsequent Treaty negotiations. Actors such as the Parliament, which have relatively little direct influence over formal Treaty negotiations, may thus have an important indirect influence insofar as Treaty changes reflect informal institutions which the Parliament has bargained over. Linkages of this sort are more likely in polities such as the European Union where the constitutional dispensation (the Treaties) are subject to frequent revision (Héritier 2001a). The "continuous constitution building" process in which the Treaties have been revised every few years by member states in Inter-Governmental Conferences (IGCs) gives actors which are formally excluded from the inter-state bargaining process incentives and opportunities to shape the constitution of Europe through informal institutional bargaining on the ground.

To develop these points, we seek to define more clearly what we mean by formal institutions and informal institutions. We adhere to the frequently stated distinction between organizational actors – sets of actors united in pursuit of a common goal – and institutions – sets of rules which structure social interaction (North 1990).[7] In the European context, the European Commission, the European Parliament and the Council of Ministers, may for our analytical purposes, be seen as organizational actors, and the rules which structure their interactions as institutions. One may further distinguish between formal institutions – written rules enforced by a third party – and informal institutions, which are enforced by the actors themselves (Knight 1992).

In the context of the European Union, as in many national legal systems, ultimate legal authority descends from a constitutional document, the Treaty of Rome, and the interpretation of this constitution by specialized judges (Stone Sweet 1999, Moral Soriano 2001). Thus, there is a body of law – or formal institutions – which provide a basic starting point for interaction between parties. In particular, the Treaty texts lay down the specific responsibilities of the various actors – the European Commission, the Council of Ministers, the European Parliament and the European Court of Justice, stating their specific competences. While the Court of Justice plays a vital – and

---

7   While this distinction is commonly made in the theoretical literature, it is less common in the literature on the European Union, where bodies such as the Commission are often referred to as institutions (Héritier 1999). Given our specific goals in this paper, we feel it appropriate to draw a clear distinction between the two concepts, and to state this in order to avoid confusion.

often creative – role in interpreting the Treaty texts, it is the member states who are responsible for creating and revising the Treaty in Inter-Governmental Conferences (IGC's), which have taken place every few years since the mid-1980's. This has led some scholars to argue that the member states are effective principals, who set the constitutional bounds within which actors such as the Commission operate, and constrain them to behave as reasonably faithful (if sometimes resentful) agents on the member states' behalf (Moravcsik 1995; Garrett 1992).

However, basic results from social choice theory suggest that the kinds of formal institution laid down in the titles of the Treaty, or descending from them, *cannot* lead to efficient outcomes reflecting the interests of the principals who have created the constitution under reasonable assumptions (Miller 1992). As Gary Miller and Thomas Hammond describe it, "there [are] built-in logical contradictions which limit the ability of a constitution to reconcile the conflicting interests of political actors and economic efficiency."[8] Further, contracting theory suggests that it is impossible to create institutional arrangements which will provide precise guidance for all contingencies in complex social situations; this is all the more so with texts (such as the Treaties) which use relatively broad language. Insofar as power is delegated to actors with differing interests, there will necessarily be ambiguities in the constitutional framework governing these actors, which actors will seek to exploit for their own specific purposes. We predict that because of these ambiguities, the Treaties will not be "the basis of all actors' behavior" as Garrett and Tsebelis (356:2001) argue. Instead, the Treaties will provide an initial basis for bargaining between Council (as the most direct representative in the policy making process of member state interests), and Parliament without determining the results of the bargaining process.

As we have suggested, Parliament-Council interactions are best treated as infinitely repeated games, which actors will perceive as being linked to each other. The bargaining processes within these games are likely to give rise over time to informal norms and rules of procedure, as repeated interactions lead to expected regularities in behavior.[9] How do these informal rules come into being? In this article, we follow Jack Knight (1992, 1995; Farrell and Knight 2001) in arguing that power differentials may have a decisive impact in shaping those informal institutions that have distributional consequences.[10] In the specific context of the European Union, several important factors may affect the relative power of actors to achieve the institutional outcomes that they prefer. These factors all affect the ability of actors to make credible threats of action that others will find deleterious to their interests (primarily, threats to block or slow legislation). As we illustrate, apart from the formal institutional framework, there is *prima facie* reason to believe that these factors work in favor of the Parliament in bargaining situations.

---

8   p. 7, Miller and Hammond (1994).
9   Indeed, there is already substantial empirical evidence that such informal institutions have an important effect on interactions between the Parliament, Commission and Council (Héritier 1999, 2001; Stacey 2001).
10   Rules which simply serve to lubricate decision making, without implications for the balance of power between actors (see also the distinction made by Stacey 2001), are of no interest to us here. Knight suggests that the problem of equilibrium selection in infinitely repeated games, where different equilibria have different distributional consequences, may itself be treated as a mixed-motive coordination game, in which power differentials are likely to dictate the equilibrium chosen.

(1) The formal institutional framework. While formal institutions (and in particular the Treaties) do not decisively determine the relative power positions of actors, they may have an important influence upon them. Formal institutions grant general competences to actors, and have a substantial effect on their ability credibly to threaten specific kinds of action. Formal institutions' actual effects do not necessarily reflect the intentions of their designers, both because it is impossible to predict all contingencies that these institutions must deal with in advance,[11] and because the European Court of Justice, which provides definitive interpretations of these institutions when they come into dispute, has considerable autonomy from the member states (Stone-Sweet 1999; Moral Soriano 2001).[12] Further, particular formal institutions, such as the unanimity rule, which give the right of veto to every single decision-making participant, invite the emergence of informal institutions to avoid deadlock situations (Goodin 2000; Héritier 1999).

(2) Differing time horizons. Different actors have different priorities over legislation – some actors take a longer view than others (Pierson 1996). The rotation of the chair of the Council of Ministers every six months may mean that Council chairs have shorter time horizons than other legislative actors such as the Commission or Parliament; much of the chair's prestige is vested in its ability to bring legislation through successfully in the six month period of office. Shorter time horizons may make actors vulnerable to pressure; other actors may be willing to delay legislation for long periods, or to threaten such delay, if this serves their particular interests.

(3) Differing sensitivity to failure. Some actors may be less affected by failure to reach agreement on a specific item of legislation (or legislation in general) than others because of their relative indifference. These actors will be better able to make credible threats with regard to this item (or items) of legislation, in order to enhance their overall position in the legislative process. Parliamentary elections are second-order elections (Hix forthcoming), so that Members of the European Parliament face less pressure from their electorates than the national governments of member states, and the European Parliament is less vulnerable to many policy failures than the member states.

(4) Differing levels of resources. Some actors are less well endowed with organizational capacity (specialized staff and other resources) than others. These actors will be more vulnerable to threats to draw out legislative negotiations insofar as they may find themselves without the organizational means to cope with lengthy discussions. Thus, under the new codecision procedure, the chairman of COREPER has to deal with a wide range of codecision issues,

---

11   One of the basic claims of the literature on contracting is that it is impossible to write "complete contracts" which specifies every contingency in advance for reasonably complex social relationships.

12   There is evidence of legislative actors strategically referring issues to the European Court of Justice in order to obtain interpretations of the Treaty that suit their interests. See for example, the discussion of how the Parliament chose to go to the European Court of Justice with the Isoglucose case in order (successfully) to secure a ruling that would affirm its ability to delay legislation indefinitely (and thus win concessions) under the consultation procedure in Corbett, Shackleton and Jacob (2000). The Council in its turn strategically chose a case that would allow it partially to reverse the effects of the *Isoglucose* ruling, and successfully brought this to court. Interview with Council Official A, October 2001.

with relatively limited specialized staff, while its negotiating partner in the EP, the relevant committee, can concentrate on one area. This means that COREPER prefers to avoid long drawn out negotiations, where it has to expend substantial organizational resources.

The four factors discussed above are likely to have important – and differential – impact on the ability of actors to shape terms of interaction which are favourable to them. Over time, a basic *modus vivendi* is likely to be hammered out, consisting of informal rules which provide a basic structure to interactions between actors by coordinating expectations. These rules will reflect the differential power of actors to make credible threats that other actors must take account of. This process of informal institutionalization is likely to affect outcomes in two main ways: (1) informal institutions may modify or even supersede formal procedures. (2) substantive issues may be instrumentalized to establish informal institutional gains. First: when informal institutions have arisen, they will structure the legislative process. They may have implications for legislative procedures, affecting the practices through which legislation is drafted and amended, effectively modifying, or in extreme cases replacing, the formal institutions governing inter-institutional relations. Second: while actors struggle over informal rules, they may seek to demonstrate their power by delaying or blocking individual items of legislation that are important to others, so as to demonstrate that they are willing to endure breakdown, and thus increase their perceived bargaining strength.

Not only may formal institution-building affect informal institution creation, but informal institutions may recursively lead to changes in formal institutions in subsequent time periods. The main processes of formal institution creation (IGC's) do not take place in a vacuum, but in the context of an iterated relationship, where member states know that Treaty rules will have to be applied in the context of their relationship with other actors in the legislative process. Thus, member states are likely to take account of the interaction between the formal Treaty changes that they propose, and the informal institutional rules that have come into being as a result of previous Treaty changes. First, we predict the *confirmation of informal institutions* – member states will sometimes wish to formalize bargains that have been made at the informal level, in order to give them increased certainty, thus improving their ability to coordinate action (Carey 2000). Second, Treaty change may consist of *closing loopholes*; in some instances, member states will seek to redress the balance of bargaining, through foreclosing possibilities that allowed unexpected results ("closing loopholes").[13] However, their power to do this is limited by the unanimity requirement for treaty changes and the virtual impossibility of ever developing a "complete contract". Third, and most interestingly perhaps, formal institutional change may seek to *extend upon informal institutions*; member states may bring through changes in the Treaty that are intended to respond positively to the cooperative opportunities arising from informal institutionalization even if this implies a redistribution of competences. As previously stated, informal institutions, even when they shift the balance of power away from member states, may also carry considerable efficiency gains, insofar as they stabilize cooperation between Parliament and Council,

---

13   Hix (forthcoming) gives the example of the so-called "Ken Collins" amendment, intended to block a tactic frequently employed in codecision by the chairman of the Environment Committee.

and thus mitigate the risk of opportunistic blockages in the legislative process, speeding it up. Once informal institutions have become established, member states may be prepared to make Treaty changes that are intended to develop these processes of informal institutionalization still *further*, even if these changes further shift the balance of power away from the Council and towards other actors.[14] The secondary processes of informal institutionalization that these give rise to may in turn lead to yet further Treaty changes, in a recursive process.

Thus, our arguments offers an account of the recursive relationship between formal and informal institutions which seeks, in contrast to the more prevalent one shot approach, how formal institutional change may become imbricated with processes of informal institutionalization. For convenience, we seek to derive four hypotheses (1 … 4) from our approach.

(1) Actors (the Council and Parliament) will behave as if different instances of the codecision process are linked, conditioning their cooperation on their past experience of, or future expectations regarding, the behavior of others in codecision, as well as, or even instead of, the specific issues involved in any item of legislation. Specifically, actors will be prepared to forego short term gains in a specific instance of codecision, in order to "threaten" or "punish" other actors, and so achieve more attractive payoffs over the long run.

(2) As actors interact in iterated rounds of the codecision process, and bargain with each other over the terms under which the legislative process is conducted, informal institutions will be likely to come into being, which affect actors' behavior independently of the formal institutional framework, and indeed will likely modify the effects of this framework.

(3) Informal institutions will reflect the relative bargaining power of actors, which in turn is a function of their power to make credible threats to block or retard the legislative process. Their relative power will be determined by formal institutions, time horizons, sensitivity to failure, and differential levels of resources.

(4) Informal institutions which arise from a given set of Treaty changes may affect subsequent rounds of Treaty negotiations where (a) member states seek to formalize informal bargains to improve their coordinative capacity, (b) member states seek with more or less success to block loopholes that have increased the informal bargaining power of other actors, or (c) member states wish to take advantage of the improved possibilities for cooperation offered by informal cooperation by introducing new formal institutions. Where (c) is true, member states may be prepared to trade power in the decision making process against improvements in efficiency.

---

14   Here our predictions are at variance with Hix (forthcoming), who argues on the basis of one-shot games that member states will only formalize informal gains at the Treaty level when two conditions are fulfilled; (a) there are efficiency gains to so doing, and (b) there are no implications for the distributional balance of power. If, in fact, member states and other actors, (in our example, the Parliament) are engaged in an iterated relationship, this simple result does not necessarily hold. Instead, member states may *have* to make concessions to other actors in order to achieve efficiency, insofar as efficiency involves Parliament refraining from blocking the legislative process. See below.

Section 3 – Assessing the Case for Informal Institutionalization

In this section, we seek to assess the theoretical arguments made above. Were legislative actions linked together by actors in the policy making process? Did bargaining give rise over time to informal institutions? Did such informal institutions reflect the bargaining power of actors over multiple iterations? How do formal institutional rules, time horizons, sensitivity to failure and differential level of resources affect the outcomes in terms of informal institutions ? Or – alternatively – were agents (member states) effectively able to use intergovernmental negotiations to control outcomes? We seek to examine these questions in light of the evidence provided by the codecision procedure. We begin by giving a brief outline of the codecision procedure under both Maastricht and Amsterdam. We then go on to examine the impact of the introduction of codecision and show that it gave rise to bargaining processes, which in turn led to informal institutional rules, that structure the interaction between Council and Parliament. We conclude by discussing the current wave of informal institutionalisation and its likely results.

The legislative codecision procedure was introduced in the Treaty of the European Union (TEU) (Art 189b) in 1993. In its first incarnation, it applied to 15 policy areas, including the free movement of workers, the freedom of establishment, services, the harmonisation of the common market, mutual recognition in the common market, education, trans-European networks, public health, culture, consumer protection, research and technology and the environment. The formal procedures of codecision are well documented in the literature.[15] Under this procedure the EP delivered its opinion on the Commission proposal before the Council adopted a common position. In a second reading the EP could then amend the common position of the Council. If the Council did not approve all the amendments of the EP, a Conciliation Committee (CC), comprised of 15 members of the Council and the EP respectively, was convened (EP Activity Report May 1999:3/4). The CC had six weeks to draw up a 'joint text' which is then submitted to the EP and the Council. If this failed to meet approval, the act was not adopted. If the CC failed to reach an agreement, the Council could confirm its common position, and EP could then reject the act in plenary with an absolute majority (EP Activity Report May 1999). In the first 5 years of application of the codecision procedure there were 165 codecision procedures, of which 66 (40%) were subject to conciliation procedures. In 3 cases no agreement was reached (EP Activities Report May 1999:4).

The Amsterdam Treaty changed the codecision procedure in important ways. It made "early agreement" possible in codecision; the EP and the Council could conclude the decision-making process at first reading without the Council having to adopt a common position. Furthermore, where no agreement is reached in the CC, the draft act now falls and the Council cannot reintroduce a common position. The Amsterdam Treaty also more than doubled the number of areas subject to codecision from 15 to 38. Every phase – except the first reading in the EP – from adoption of the common position by the Council to approval of an agreement in conciliation, is subject to a time limit.

---

15   See, for example, Corbett, Jacob and Shackleton (2000).

Section 3.1 – Bargaining and the Formation of Informal Institutions after Maastricht

While codecision, as it was introduced in Maastricht, clearly aimed to give the Parliament a new say in the legislative process, the extent of Parliament's new role, and the implications for Parliament's relations with the Council and Commission, were left undefined in important respects. Initially, the Council saw the Parliament's new role as primarily consultative; a cosmetic enhancement of the Parliament's previous, somewhat exiguous role in the legislative procedure.[16] COREPER functionaries sought to maintain an effective veto over the legislative process, refusing to engage in bargaining, and merely indicating to the Parliament those amendments that it was prepared to accept, and those amendments that it would reject; the latter naturally being rather more substantial than the former.[17] On one reading, the treaty articles describing codecision would have allowed the Council to do this, effectively maintaining its dominant role in the legislative process. Parliament, for its part, interpreted the provisions governing codecision in a maximalist fashion. It perceived codecision as just that; decisions taken jointly by two co-equal legislative actors. It further sought to extend the lessons of codecision into the vexed area of comitology (the complex system overseeing the implementation of legislation), where the Council predominates. The Parliament held that the introduction of codecision meant that it should enjoy an equal role in comitology; after all, it was supposedly just as much a principal as the Council.

The profound differences in interpretation of what Maastricht actually meant led to tensions between the Council and Parliament (EP Activities Report, May 1999, 5). The Council refused to engage in substantive negotiations with Parliament, and thus sought to keep Parliament's role at a minimum, while Parliament for its part sought to use the threat of blocking or slowing legislation to win concessions. Parliament threatened to hamper the legislative process as much as possible in order to win concessions, and to a very great extent carried through its threat (Bergström 2001). In the words of one MEP: "I warn the Council that...if the (Council) working group continues to be so restrictive on Parliament´s rights to intervene [in matters where comitology impinges upon the legislative sphere], then there will be no agreement and we will .... – codecision procedure after codecision procedure – ... go all the way to conciliation " (Richard Corbett quoted in Bergström 2001:69).

The result was deadlock; Parliament, however, had less reason to cave in than the Council and COREPER and carried through on its threat to impede legislation. Despite its nominal role as the "democratic" element of the European Union, it faced less pressure than the member state governments, especially the Council Presidency, to legislate on key issues, and was demonstrably quite willing to obstruct specific items of legislation in order to assert principles.[18] Parliament

16   Interview with Council officials A, B, October 2001
17   Shackleton (2000), interview with Commission official, September 2001.
18   The need of member state governments to see legislation on key issues has in many instances worked to Parliament's advantage, member state governments are more directly exposed to electoral pressures, and thus more sensitive to failure. Furthermore, differing time horizons have played a role; individual Council Presidencies have typically adopted legislative priorities for their six months in office, which has had the effect of

clearly established linkages between nominally unrelated items of legislation, insofar as these items, and the Council's handling of them, had negative implications for Parliament's role in the decision-making process.

This culminated in the ONP Directive on Voice Telephony in 1994, the first (and only) instance where the Council re-introduced its common position after a failure to reach agreement in conciliation. While it would not have been difficult to negotiate a compromise on the issues at hand (Corbett 1998), the Parliament voted down the Directive. This had two aims. First, it demonstrated Parliament's ability to block legislation and thus to render the Council's formal power to reintroduce a common position ineffective (Hix forthcoming). The Parliament had introduced an internal rule of procedure, Rule 78 (Corbett 2000, Hix forthcoming) which was designed specifically to back up Parliament's threat to vote down the Council's common position if it were ever re-introduced. As it transpired, Council never attempted again to reintroduce a common position. Second, Parliament sought to underline its demand to share the "powers of political supervision" in comitology, launching "an offensive which was to lead to a more than one year long breakdown in institutional co-operation" (Bergström 2001:33).[20]

The result of this first stage of bargaining after Maastricht was a gradual recognition on the part of the Council, that the successful operation of the codecision procedure required Parliament's cooperation. Over the 1994-1995 period, it gradually came to accept Parliament's role in the process, and to seek common ground with Parliament on how the legislative process should operate, so that sensitive items of legislation could go through with a reasonable degree of speed and certainty (EP Activities Report, May 1999).[21]

Increasingly, informal meetings were held between the vice-presidents of the EP, the Council presidency, the rapporteur, the chairpersons of the committee concerned and the EP delegation and the Council working party in order to mitigate conflicts and negotiate compromises These meetings, called trialogues or trilogues, were originally introduced after the second reading, but before conciliation, so as to allow negotiation outside the (unwieldy) CC structure.

> [After] the rather dramatic first conciliations we had. ... COREPER and Council had to recognize that Parliament had the role of co-partner in legislation. The confidence building really started with the introduction of the informal trialogues. Because the in-

---

weakening their bargaining power. Clearly, this has varied over issues, but in many issues, the Parliament has been able to use the time-sensitivity of member state governments to extract concessions. For example, in the Local Loop Directive (Com (2000) 394; 2000/0185 (COD)) the perceived urgency of the matter allowed the Parliament's negotiators to extract important concessions in the teeth of opposition from powerful member states such as Germany. Interview with MEP A, October 2001.

19   The Parliament has blocked or explicitly sought to block legislation under codecision only in a relatively small number of instances, in nearly every instance in order to protect perceived institutional prerogatives (EP Activities Report, 1999). The main exceptions are the Biotechnology Directive, which failed in plenary because of ethical worries among many MEPs, and the Takeovers Directive of this year.

20   We note that Parliament was only partially successful in its demands; we intend to address the complex saga of comitology in future joint work with Fredrik Bergström.

21   Interview with Council officials A, B.

formal trialogues enabled both sides to speak more frankly, and to explain more in detail what the underlying reasons are.[22]

The negotiating members of the trialogues have explicit mandates from the EP and COREPER delegations. Step by step the trialogues became established as normal practice, so that they were sometimes even initiated before the second reading (EP Activities Report May 1999:6). "Apart from a few extremely formal encounters, we have reached the point of almost weekly informal meetings." (EP Activities Report, May 1999:7/8). Joint working documents for the informal meetings and EP committees are drawn up alternately by EP and the Council (EP Activities Report May 1999:7).

As described by an official of the Parliament,

> [t]his institutional innovation has … served to generate a variety of procedural norms and shared beliefs about how the parties should behave which can be described as 'rules of engagement.' By the end of the Maastricht era, they had become so self-evident that no one contested them (Shackleton 2000; 334)

These norms involve the expectation that trialogues themselves should take place, the rules under which both sides seek agreement on points of contention, and the willingness of negotiators on each side to seek to make deals stick with the bodies that they represent. At a semi-formal level the Council and EP have negotiated six important new interinstitutional agreements involving new procedural rules (Stacey 2001:39, 47) alongside with less important rules that were necessary to add specificity to vague provisions (Stacey 2001:37). These clearly represent a concession by the Council to the need to involve Parliament in direct, informal negotiations, in which the Council may have to modify its negotiating stance substantially to reach agreement.

Section 3.2 – From informal institutions to Treaty changes in Amsterdam

The initial phase of informal institutionalisation had important consequences for the formal changes to the codecision procedure which were made in the Treaty of Amsterdam. As we have stated, two important changes were made to the procedure. First, the Council's ability to re-introduce its common position was removed. Second, the possibility of early agreement between Council and Parliament was introduced. Both of these changes can be traced back to the bargaining and informal institutions which emerged after Maastricht.

The first of these effects has been well documented in recent scholarly discussions of codecision. Parliament's credible threat to vote against common positions when reintroduced, as manifested in the ONP Voice Telephony Directive established an informal expectation that the Council would not seek to use its formal third reading ability to reintroduce a common position after conciliation had failed; it knew that any common positions thus introduced were likely to be voted down. The effects of this threat on the subsequent Amsterdam negotiations have recently re-

---

22   Interview with Council official B.

ceived considerable discussion (Corbett 2000, Garrett and Tsebelis 2001, Corbett 2001, Hix forthcoming). Garrett and Tsebelis (356:2001) argue, following Moravcsik and Nicolaïdis (1999) that member states' decision to increase the powers of Parliament was largely a consequence of left wing victories in France and Germany. Thus, they imply that Parliament's efforts to remove from the path of play Council's right to reintroduce its common position was irrelevant to the later decision by the member states at Amsterdam formally to remove it. However, in making this argument they appear to be in a minority of two. Corbett (2000, 2001) finds that the Parliament's success in changing everyday practice "paved the way" for the subsequent Treaty revision. In a detailed analysis, Hix (forthcoming) treats the Parliament's success in altering the application of rules on the ground as clear evidence of how the Parliament may successfully affect IGC negotiations.[23] The European Parliament, in its submission to the Amsterdam IGC argued that the provision had only been used once, unsuccessfully, so that formally removing the possibility would not affect the balance of power between legislative actors. Further, the Parliament argued that removing the procedure would improve the efficiency of decision-making. While some figures on the Council secretariat were opposed to change,[24] member states, after some initial reluctance, were persuaded formally to remove the possibility. Hix interprets the decision to change the third reading procedure in the light of one-shot games played by Parliament and Council and points to member state revisions at Amsterdam that sought to forestall future creative interpretations by Parliament of treaty rules.[25] However, this may more readily be seen as evidence of an *iterated* process of constitutional change in which the original Maastricht provisions on codecision were themselves in part the product of previous rounds of informal rule-making. [26]

Second, the informal institutional arrangements created around the conciliation procedure under Maastricht, the trialogues, and informal rules covering relations between Parliament and Council, had an important influence on negotiations at Amsterdam. Here, it was not the Parliament so much as the Council secretariat which pushed for formal changes on the basis of informal institutions which had been hammered out between Council staff and Parliament. The creation and success of the trialogues had fostered the perception among influential members of the Council secretariat that new modes of interaction with the Parliament were possible. However, the emphasis on conciliation, and on formal, frequently cumbersome procedures meant that decision making was still awkward in many instances. The Council, which was relatively understaffed, anticipated increasing difficulties in dealing with codecision, especially in a context where the number of areas covered by the procedure was expanding considerably (Shackleton 2000). They were consequently prepared to trade off a faster and more effective decision making process against increased reliance on informal modes of decision making, and, by extension, a greater

---

23   The following discussion is primarily based on Hix (forthcoming).
24   Interview with COREPER representative, October 2001.
25   His example of such a rule, the "Ken Collins" amendment, is, like the removal of the third reading, a formalization of an informal rule of practice that Parliament and Council had worked out at a previous juncture. Interview with Commission official, September 2001.
26   Conciliation itself, as set out in the Maastricht Treaty, is based on an earlier quasi-formal agreements between legislative actors, the 1975 conciliation procedure, introduced primarily to mitigate budgetary conflict. See Corbett, Jacobs and Shackleton (2000).

role for Parliament in setting the legislative agenda. Accordingly, staff on the Council Secretariat proposed to the IGC that the Treaty provisions covering codecision be amended to allow a legislative "fast track."

> As conciliation rather prolonged the procedure, this was the compensating measure, and introduc[ed] the possibility of a first reading agreement. This was a proposal that came initially from the Secretariat in the Council[27]

Early agreement, if it was to work, clearly required the kinds of informal cooperation that had come into being under the process of informal institutionalization following upon Maastricht.[28] Council officials anticipated this in their original proposal; indeed, without such informal links, early agreements would have been impossible. They would require early and continual contacts between Council and Parliament,[29] in which the Council clearly made important long term concessions, insofar as involved MEPs could exercise a new, and sometimes decisive role, influencing discussions within the Council before the Council had adopted a common position.[30] In the words of a Council official;

> [I]n former times, we practically always had our common position ready when Parliament finished its first reading. And ... it was politically too complicated to change this ... almost existing political agreement, so nothing of Parliament's amendments was taken on board. And then Parliament reconfirmed most of the amendments in second reading, and we had most of the amendments in conciliation. So this was the usual, this comes from the old times when Council could always overrule Parliament. Since the new procedure, since the Amsterdam Treaty, since we had this possibility to come to agreement on the first reading, ... the Council is respecting this very thoroughly.[31]

Section 3.3 – Bargaining over informal institutions after Amsterdam

The change in the formal rules of codecision made in Amsterdam have led to a second round of adaptation by Parliament and Council. Amsterdam has both expanded the number of procedures subject to codecision and shortened the legislative timetable (EP Activities Report May 1999). A new joint statement by Parliament, Council and Commission on practical arrangements for the new codecision procedures of 1999 (replacing the 1993 agreement) declares that "the institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that wherever possible acts can be adopted at first reading" (Joint Declaration 1999:....). As a result between August 2000 and July 2001 of the 66 codecision dossiers 19 or 29% were concluded at

---

27   Interview with Council official B.
28   Ibid.
29   Interview with Parliament official, March 2001; with Council officials A, B; with COREPER representative.
30   Interview with MEP A. This is especially so in briefs with a high degree of time urgency, where the Council is especially concerned to bring agreement through in the first reading. As another MEP describes it, under these new procedures it "is not as open … to the national delegates of Council to play their preferences in the way they might have done." Interview with MEP B. We note however, that while this increases the agenda-setting power of Parliament, it also presents problems for Parliament in terms of democratic legitimacy; see below.
31   Interview with Council official B.

first reading, 27 or (41%) at second reading and 20 or (30%) went to conciliation. The respective figures for the period between 1999 and 2000 were 13 (20%), 35 (54%), and 17 (26%) (EP Activity Report 2000/2001:8/52).

Amsterdam spurred the Council to press for an extension of trialogues so as to make the early agreement system workable. Council, immediately after the Amsterdam revisions were introduced, sought to extend the trialogue system "backwards," to the first and second readings.

> Under the last Spanish presidency, ... we developed the method of informal trialogues. This informal trialogue system then made its proofs, and when the Amsterdam Treaty entered into force, from the Council side, we immediately saw the chance to extend it to the first and second reading.[32]

Immediately after Amsterdam the Finnish Presidency went to see the committee chairmen of the Parliament to propose informal meetings. While the issues involved were "very delicate," the chairmen "were very flattered, too".[33] Now the presidencies regularly draw up a calendar categorizing the sequence and urgency of codecision files and exchange views with the Parliament on whether first reading agreements seem feasible.[34] Commission proposals are discussed on a parallel basis in the two institutions, and are accompanied by regular contacts and negotiations in order to develop early agreements. This enables the EP to produce amendments at first reading which take into account the "revealed preferences" of Member States before the Council has formulated a common position.[35] And vice versa: "Since the Amsterdam Treaty we look at what Parliament thinks and try to incorporate this. We [delay] political agreements if Parliament is not ready."[36] As a member of the Council Secretariat describes it :"When it comes closer to voting in the EP committee, we exchange possible compromise texts to test them in the EP Committee and the Council working group and subsequently in COREPER".[37] To this end, the Council carefully develops contact networks in the EP "You need to know your Parliament. …You have to develop your contacts with key persons and big groups.... such as the spokespersons of the Socialists and the Christian Democrats. You have to have them on your side, .. . they are the people with the numbers."[38]

The Council has thus increasingly come to rely on informal relationships with actors within the European Parliament in order to avoid the prospect of conciliation, which would overstrain its resources.[39] While COREPER 1 has to deal with all codecision matters, its decision-making counterpart in the EP, the rapporteur(s) and chairperson(s) of the competent committee(s) are

---

32   Interview with Council official B.
33   Interview with Council official B.
34   Interview with Council official B.
35   p. 2, Cortes (2000). An MEP prominent in inter-institutional discussions also describes how Council has to disclose its "set of revealed preferences" in order to facilitate decision making under the new rules. Interview with MEP B, March 2001.
36   Interview with Council official B.
37   Interview with Council official B.
38   Interview with Council official A.
39   Shackleton (2001), Interview with Council official B.

engaged with only a limited range of issues. "Here, MEPs have built up an expertise which is quite formidable...and was quite unexpected by the Council..."[40]

Further, the possibility of concluding legislation at first reading offers the Council Presidency (as distinct from the Council as a whole) an opportunity to set the political agenda. It can more easily influence the progress of a dossier and seek to accelerate proposals that it would like to see enacted during its six months in office (Shackleton 2001:7).

Nonetheless, disagreements between Council and Parliament over the status of these new modes of informal cooperation are leading to a new round of bargaining over Council-Parliament relations, which may over time be expected to lead to a new round of informal institution creation.[41] The Council has pushed for a further multiplication and intensification of trilogues and technical meetings. It argues that it is easier for COREPER to be open about the range of views in Council in negotiations when it deals with a small number of people in informal meetings (Shackleton 2001:13). While it wishes to exchange information with key figures in the Parliament, in order to facilitate decision-making, and ensure that Parliament does not vote down items of legislation, it wishes to do so in a fashion that has minimal impact for its own internal (consensual) forms of decision making, and which does not create any precedent for Parliament-Council relations at the broader level.

Parliament, in contrast, has a much more ambivalent view of the proliferation of trilogues and informal contacts in the early stages. On the one hand, it perceives that these create new, and important, agenda-setting powers for the Parliament in the early stages of decision-making, before the Council has reached a common position. On the other hand, this increase in influence carries a price in terms of democratic legitimacy and openness (Héritier 2001b), and may exclude smaller parties from the decision making process. Perhaps even more pertinently, Council's need to engage more directly with the Parliament in early decision making creates new political possibilities, that Parliament seeks to take advantage of. Most particularly, Parliament sees this as an opportunity to make Council more directly accountable to Parliament, by obliging Council representatives (ministers, if possible) to come to Parliamentary committee meetings in order to present Council's case, and negotiate concessions on behalf of Council. As described by a Council official, senior figures in Parliament acknowledge,

> "yes, we have this strategy, we want Council to come before Parliament and answer to Parliament." That's their legitimate political aim. And we're finding it quite difficult to battle against this, because the battleground is in Parliament, and that's where the public arena is … If I had to make a prediction, I would say that we will lose out over time[42]

---

40   Interview with Commission official.
41   These bargaining processes are taking place within the Council and Parliament as well as between them; we will discuss the interaction between intra-Council/Parliament and inter-Council/Parliament bargaining processes in forthcoming work.
42   Interview with Council official A.

In its latest report the EP clearly sets out its strategy : "The Parliament should not develop informal contacts unless the Council is first prepared to make a greater effort to explain its views in committee" (EP Activities Report 2000/1:29/52). And: "on the basis of active Council participation in committee meetings, committees should decide what kind of contacts they are willing to agree to outside this framework e.g. trialogues" (ibd. Appendix V). Thus, Parliament seeks to build upon Council's increased need for informal contacts with MEPs in the legislative process, by making such cooperation conditional on the Council effectively acknowledging that it is answerable to Parliament. If Parliament is successful in bringing Council to do this, it will establish a far-reaching precedent for the more general relationship between Council and Parliament which can then be formally consolidated in a future round of Treaty revision.

Actors within the Parliament have also sought more subtly to leverage the informal institutions established under codecision to extend the reach of codecision procedures beyond those policy areas which it is formally reserved for. Perhaps the most prominent example of this phenomenon may be seen in the area of agricultural policy. Falkner and Nentwich (2000), in a detailed examination of the Amsterdam negotiations, discusses the efforts of Parliament representatives to persuade member states to extend codecision to certain areas of agricultural policy. Their efforts were unsuccessful; the majority of decision-making in agriculture takes place only under the consultation procedure. However, on the ground, Parliament decision-makers have been successful in reshaping the policy process, so that decisions in this field and others are increasingly taking place "as if" under codecision, according to the informal rules of decision-making and discussion which have come to structure codecision interactions. As described by a senior Council official, codecision

> …doesn't apply in agriculture or in a couple of other sectors. But Parliament´s presentation now of their views on everything, follows … the presentation patterns that you have in codecision. And their line of dialogue with Council follows the lines that you have in codecision. ... They are using all the practices and the procedures on the codecision side, and in that way, pushing that door open a bit further. … What you have from the Council´s side is ministers and officials, engaging in regular discussions with members of Parliament on codecision dossiers. In another dossier, which is, shall we say, somewhat similar but not under the codecision procedure …, the same people are involved, and …and you´d automatically engage in the other dialogue mode.[43]

In short, MEPs are establishing procedures on the ground that they failed to win at the Amsterdam IGC level.

Insofar as new, informal modes of decision-making become established, Parliament decision makers, may, in their interactions with Council officials, increasingly blur the formal Treaty bases on which formal Parliament-Council relations are supposed to operate. As previously stated, these new, less formal modes of interaction require close personal contact between sets of actors in both Parliament and Council, who deal with each other on a repeated basis, and who trade favours in order to get legislation through. But this reliance on personal contacts and "de-

---

43   Interview with Council official A.

formalization" of relations has clear implications for the policy process. It also potentially facilitates new Treaty revisions in the future; as policy areas which are now under consultation become increasingly treated in practice "as if" they were under codecision, it will become increasingly easier for Parliament to persuade member states of the benefits of formal Treaty revisions that recognize the *de facto* state of affairs.

Section 4 – Conclusions

In the previous discussion, we have sought to detail the rich web of informal institutionalisation that has sprung up around the codecision process, and the complex relationships between formal and informal institutions that have been created in this process. We suggest that these processes provide support for our main hypotheses. The introduction of codecision in Maastricht had complex, rather than pre-determined results, in terms of its effects on the respective roles of Council and Parliament in the legislative process. This led to a phase of bargaining, as our theory would have predicted, in which each side sought to ensure that the resulting dispensation favoured its interests. The bargaining strengths of actors were not fully determined by existing formal institutions, and indeed the formally "weaker" body, the European Parliament succeeded in getting important concessions. It did so by linking together legislative actions, and by demonstrating its willingness to bring down specific items of legislation which were important to the member states, in order to secure its overall institutional position. Parliament won most of the concessions that it sought; its bargaining position was enhanced by its relative insensitivity to failure (its willingness to bring down items of legislation or block them), its different time horizons (it was more prepared to delay legislation than Council) and its possession of strategic resources (MEPs were better able than the understaffed Council to deal with tortuous conciliation procedures).

These processes of informal institutionalization support our claims. Parliament and Council did not treat each piece of legislation as a one shot game, as many current accounts suggest. Instead, individual items of legislation were linked together through a protracted bargaining phase, in which both Parliament and Council struggled over the general terms under which they would interact in the legislative process.

Further, the bargaining phase gave rise to informal institutions, "trialogues" and associated sets of rules, which reflected Parliament's success in securing a say in decision-making, and which have provided a *modus vivendi* for the two bodies in the legislative process. These institutions have had direct effects both on the possibility of cooperation in the legislative process, and on the division of the benefits of that cooperation. Under the trialogues, Parliament receives a much greater role in the legislative process than the Council was initially prepared to grant it. These informal institutions in turn led to important changes in the codecision procedure in the Amsterdam Treaty. Not only was the Council's ability to reintroduce a common position removed (Hix forthcoming), but a new set of arrangements, designed to facilitate "early agreements" were introduced, in large part because of the kinds of informal agreement which had proved possible

under trialogues, and the wish of the Council to extend these informal agreements to earlier stages of the codecision process.

A new phase of bargaining has begun in the wake of the Amsterdam changes to the codecision procedure, in which Council and Parliament are again struggling over the terms under which they should work together. While Council wishes to limit its direct cooperation with the Parliament to informal forms of dialogue, the Parliament is eager to use these new forms of decision making as the basis for a redefined relationship between Council and Parliament, in which Council representatives are obliged to come to EP committees. While it is too early to discern the final likely outcome, Council officials are clearly pessimistic about their ability to prevent Parliament further increasing its powers vis-à-vis the Council. As one official describes it, "Parliament wants to be ´top-dog`. They are constantly building, piece by piece, brick by brick, and the trend has been over recent Treaties to give them more powers, to give them a greater role."[44] This is the result of deliberate strategic action on the part of Parliament, which seeks to establish informal institutions and then leverage them into formal change. "When you get an informal procedure established with Parliament, they want to concretize it in the Treaty, or in an inter-institutional agreement."[45]

Finally, we note that insofar as our model has empirical bearing, it potentially provides important insights into the European integration process, by illustrating a new set of mechanisms whereby European integration may take place. Our account has some similarities with recent work from neo-functionalist[46] and historical institutionalist (Pierson 1996) perspectives. However, by more precisely setting out the relationship between informal institutions and formal institutions, it provides new insights into the circumstances under which supranational actors (such as the Parliament) may come to play an increasingly important role in the EU legislative arena. As relations between the Parliament and Council become more and more dominated by informal rather than formal arrangements, the bargaining weight of the Parliament naturally becomes greater than it would have been in a political process entirely dominated by the member states. This is not to say that informal institutions will benefit the Parliament (or other supranational actors) under all circumstances. One may imagine circumstances under which member states manage to seize back decision making powers that they have lost over time, through seeking to change the terms of informal bargaining.[47]However, we predict that as long as those factors affecting bargaining power which we have identified tend to prevail in the direction of the Parliament, one may expect that informal arrangements will tend to favor Parliament more than Council. Continuous constitution-building, when it is considered in terms of the iterative relationship between formal

---

44   Interview with Council official A.
45   Interview with Council Official A.
46   See especially, Stone-Sweet, Sandholtz and Fligstein (forthcoming). Our work provides a practical example of the "institutionalization of European space" that has many features in common with theirs, although it emphasizes dyadic disputes rather than triadic dispute resolution (Stone-Sweet 1999) as a causal factor.
45   Alternatively, the Council may ask the ECJ to specify what constitutes non-essential features of legislation, thus removing issues from the codecision procedure and hence from the Parliament´s reach (Bergström 2001).

and informal institutions, may favour actors such as Parliament, which are relatively weak in the formal Treaty negotiations over the longer term.

Reference List

Bergström, F. 2001 The Development and Operation of Comitology, Thesis Manuscript, Florence.

Carey, J. M. 2000. Parchment, Equilibria, and Institutions. *Comparative Political Studies* 33:735-61.

Checkel, J. T., and A. Moravcsik. 2001. A Constructivist Research Programme in EU Studies? *European Union Politics* 2:219-49.

Christiansen, T., G. Falkner, and K. E. Jørgensen. Forthcoming. Theorising EU Treaty Reform: Beyond Diplomacy and Bargaining. *Journal of European Public Policy*

Christiansen, T., and K. E. Jørgensen. 1999. The Amsterdam Process: A Structurationist Perspective on EU Treaty Reform. *European Integration Online Papers* 3.

Corbett, R. 1999. Committee on the Rules of Procedure in debates of EP, 5 May 1999, OJ 1999/C279.

———. 2000. Academic Modeling of the Codecision Procedure: A Practioner's Puzzled Reaction. *European Union Studies* 1:73-81.

———. 2001.Response to Garrett and Tsebelis. *European Union Politics* 2

Corbett, R., F. Jacobs, and M. Shackleton. 2000. *The European Parliament*. Fourth edition. London: John Harper.

Cortes, C. 2000. *Codecision : The Recent Developments*. Brussels : General Secretariat of the Council.

Crombez, C. 1997. The Co-Decision Procedure in the European Union. *Legislative Studies Quarterly* 22:97-119.

———. 2000. Codecision: Towards a Bicameral European Union. *European Union Studies* 1:363-68.

Dowding, K. 2000. Institutionalist Research on the European Union: A Critical Review. *European Union Politics* 1:125-44.

European Parliament. 1999. *Activity Report. 1 November 1993 – 30 April 1999.* Brussels: European Parliament

European Parliament . 2000. *Activity Report. 1 May 1999 – 31 July 2000.* Brussels: European Parliament

European Parliament. *Activity Report. 1 August 2000 – 31 July 2001*. Brussels: European Parliament.

Farrell, H., and J. Knight. 2001. *Trust, Institutions and Institutional Evolution: Industrial Districts and the Social Capital Hypothesis*. unpublished paper.

Garrett, G. 1992. International Cooperation and Institutional Choice: The European Community's Internal Market. *International Organization* 46:533-60.

Garrett, G., and G. Tsebelis. 2000. Legislative Politics in the European Union. *European Union Politics*. 1: 9-36.

Goodin, R. 2000. Institutional Gaming. *Governance* 13:523-33.

Greif, A. 1994. Cultural Beliefs and the Organization of Society: A Historical and Theoretical Reflection on Collectivist and Individualist Societies. *Journal of Political Economy* 102:912-50.

Hall, P. A., and R. C. R. Taylor. 1996. Political Science and the Three New Institutionalisms. *Political Studies* 44:936-57.

Héritier, A. 1999. *Policy-Making and Diversity in Europe: Escaping Deadlock*. New York: Cambridge University Press.

———. 2001a. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation. *Journal of European Public Policy* 8:825-852.

———. 2001b. Composite Democratic Legitimation in Europe: the Role of Transparency and Access to Information. Preprint 2001/6. Max Planck Project Group: Law, Politics and Economics, Bonn.

Hix, S. forthcoming. Constitutional Agenda-Setting through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam. *British Journal of Political Science* .

Jupille, J., and J. A. Caporaso. 1999. Institutionalism and the European Union: Beyond Comparative Politics and International Relations. *International Review of Political Science* 2:429-44.

Keohane, R. O. 2001. Governance in a Partially Globalized World. *American Political Science Review* 95:1-13.

Knight, J. 1992. *Institutions and Social Conflict*. New York: Cambridge University Press.

———. 1995. Models, Interpretations and Theories: Constructing Explanations of Institutional Emergence and Change. in *Explaining Social Institutions*. eds. J. Knight, and I. Sened. Ann Arbor: University of Michigan Press.

Kreps, D. M. 1990a. *Game Theory and Economic Modelling*. Oxford: Clarendon Press.

———. 1990b. Corporate Culture and Economic Theory. in *Perspectives on Positive Political Economy*. eds. J.E. Alt, and K.A. Shepsle. Cambridge: Cambridge University Press.

Miller, G. J. 1992. *Managerial Dilemmas: The Political Economy of Hierarchy*. Cambridge: Cambridge University Press.

Miller, G. J., and T. Hammond. 1994. Why Politics is More Fundamental than Economics: Incentive-Compatible Mechanisms are Not Credible. *Journal of Theoretical Politics* 6:5-26.

Moral Soriano, Leonor. 2001. Public Services: The Role of the European Court of Justice in Correcting the Market. In *Creating and Correcting Markets: The Regulation of Utilities in Europe*. eds. D. Coen and A.Héritier. manuscript under submission

Moravcsik, A. 1995. Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies* 33:611-28.

Moravcsik, A., and K. Nicolaïdis. 1999. Explaining the Treaty of Amsterdam: Interests, Influence, Institutions. *Journal of Common Market Studies* 37:59-85.

Moser, P. 1996. The European Parliament as a Conditional Agenda Setter: What Are the Conditions? *American Political Science Review* 90:834-38.

North, D. C. 1990. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.

Osborne, M. J., and A. Rubinstein. 1994. *A Course in Game Theory*. Cambridge, Massachusetts: The MIT Press.

Pierson, P. 1996. The Path to European Integration: A Historical Institutionalist Analysis. *Comparative Political Studies* 29:123-63.

Rittberger, B. 2000. Impatient Legislators and New Issue Dimensions: A Critique of Garrett and Tsebelis' "Standard Version" of Legislative Policy. *Journal of European Public Policy* 7:554-75.

Schelling, T. C. 1960. *The Strategy of Conflict*. Cambridge, Massachusetts: Harvard University Press.

Scully, R. M. 1997. The European Parliament and the Co-Decision Procedure: A Re-Assessment. *Journal of Legislative Studies* 3:58-73.

Shackleton, M. 2000. The Politics of Codecision. *Journal of Common Market Studies* 38:xx.

———. 2001. *Codecision since Amsterdam: A Laboratory for Institutional Innovation and Change. Paper presented at ECSA Seventh Biennial International Conference. 31 May – 2 June 2001, Wisconsin, Madison.*

Stacey, J. 2001. Constitutional Re-engineering in the European Union: The Impact of Informal Interinstitutional Dynamics. Paper presented at ECSA Seventh Biennial International Conference. 31 May – 2 June 2001, Wisconsin, Madison.

Stone Sweet, A. 1999. Judicialization and the Construction of Governance. In *Comparative Political Studies* 32:147-184.

Stone-Sweet, A. 2000. *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.

Stone-Sweet, A., N. Fligstein, and W. Sandholtz. 2001. The Institutionalization of European Space. In *The Institutionalization of Europe.* eds. A. Stone-Sweet, W. Sandholtz, and N. Fligstein. Oxford: Oxford University Press.

Sugden, R. 1995. A Theory of Focal Points. *The Economic Journal* 105:533-50.

Tsebelis, G. 1994. The Power of the European Parliament as a Conditional Agenda-Setter. *American Political Science Review* 88:128-42.

Tsebelis, G., and G. Garrett. 1997. Agenda Setting, Vetoes and the European Union's Co-decision Procedure. *Journal of Legislative Studies* 3:74-92.

———. 2000. Legislative Politics in the European Union. *European Union Politics* 1:9-36.

———. 2001. The Institutional Determinants of Intergovernmentalism and Supranationalism in the European Union. *International Organization* 55:357-90.

Henry Farrell is a Senior Researcher at the Max-Planck Project Group in Bonn, Germany. He has a Ph.D. from Georgetown University, and Masters degrees from Georgetown and Universitz College Dublin. He has previously published in *International Organization*. A full curriculum vitae, in addition to details of his current research, is available at www.henryfarrell.net.

Adrienne Héritier is Co-Director of the Max-Planck Project Group on Common Goods in Bonn. She is also part-time professor at the European University Institute in Florence. She has published extensively, including several monographs and a large number of articles and book chapters on comparative policy making and European public policy.