

Continuous Institutional Change in Europe

Adrienne Héritier
EUI Florence

- Institutional change not only as deliberate, salient reform,
- but also between big institutional designed reforms
- More concrete:
- Specific formal institutional rule adopted at t1
- Has changed at t2in course of its application

- ...begs question:
- What drives these *interstitial* changes?
- Underlying processes theorized in different ways
- We (Farrell and H eritier 2001,2003,H eritier 2007a; Bergstr m, Farrell and H eritier 2007)
- Power based bargaining theory

- Based on assumptions
- Boundedly rational actors who seek to maximize their institutional power;
- Which in turn allows for influence over policy outcomes
- - Imperfect information
- - Transaction costs of collecting information and bargaining rules
- ...Incomplete contracts

- *Formal* Institutional rule adopted in treaty reform at t1
- = incomplete contract
- Needs to be adjusted in case
 - - of new exogenous events
 - - ambiguities in provisions of rule
- ...gives rise to *informal* institutional rule

- How does adjustment occur?6
- Referring to assumption that actors seek to maximize their institutional power
- Contest for institutional power is zero-sum conflict,
- Position goods (Hirsch)
- If one actor gains, other(s) lose

- We claim that actors seek to implicitly re-negotiate existing formal rules
- in order to increase their own institutional power
- (at the detriment of the other involved actors)
- Who wins out?

- Distributive power-based bargaining theory submits that actor with better fall-back position wins out in redefining institutional rule
- Re-bargained informal institutional rule reflects preferences of more powerful actor

- Bargaining weight or power is determined
- On players - patience /time horizon
- Ability to make offers at strategically important times
- *H1: Formal rules/incomplete contracts are re-bargained and give rise to informal rules reflecting interests of most powerful actors*

Alternative explanations

- *Functionalist explanation:*
- Redefinition of existing formal rule in order to increase efficiency of decision-making
- ...In order to save transaction costs
- ...all involved actors gain by introducing more efficient decision-making rule

- *H2: Formal rule in daily application leads to informal rule that saves transaction costs*

- *Sociological institutionalist explanation*
- Institutional change follows rules of appropriate behaviour;
- Emulation of other actors' behaviour

- *H3 Formal rule is changed and adjusted to prevalent new institutional rule*

Empirical cases

- *Codecision*
- *and early agreements under codecision*

Codecision/early agreements

- *Maastricht Treaty*:
- Cooperation to co-decision
- If Council and EP do not agree in two readings,
- Conciliation procedure;
- If conciliation fails, Council resubmits its common position

- *Amsterdam Treaty*
- Extending areas of co-decision;
- Council's right to resubmit its position in case of failed conciliation abolished
- *Nice Treaty*
- Further expansion of co-decision
- *Lisbon Treaty*
- Further expansion of co-decision

- *Puzzle:*
- With co-decision expanding competences of EP
- Simultaneously
- Increasing seclusion of co-decision:
- Trialogues
- Early agreements or fast-track legislation

Agreements under first reading

- 1999 5 (36)
 - 2000 13 (43)
 - 2001 21 (53)
 - 2002 18 (59)
 - 2003 31 (71)
 - 2004 43 (75)
 - 2005 35 (53)
 - 2006 53 (76)
 - 2007 41 (52)
 - 2008 97 (113)
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- (Tallberg and Naurin 2009)

- 1999 22% of all co-decision items
- 2000 18%
- 2001 33%
- 2002 21%
- 2003 36%
- 2004 45%
- 2005 64%
- 2006 57% (EP Activity Reports)
- 2008 86%

- Codecision all the way to conciliation:
high transaction costs
- ...therefore introduction of trialogues
- Early agreements at first reading
- Before Council adopts formal common position
- Before EP provides official Opinion
- Simultaneity of decision-making of Council and EP

- Theoretical and empirical interpretation: (Farrell and Héritier 2003; Farrell and Héritier 2004; Héritier 2007a; Farrell and Héritier 2007b, Stacey and Rittberger 2003)

Functionalist hypothesis

Hyp „Early agreements are efficient,
save political transaction costs, allow to
faster adopt legislation“

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- Pushed by Council,
- In particular Council Presidency
- After Maastricht quick emergence of large number of trilogues and early agreements
- Small circle of decision makers:
- Council Presidency, Coreper 1, EP rapporteur/shadow rapporteur, Commission

- *H1: Formal rules/incomplete contracts are re-bargained and give rise to informal rules reflecting interests of most powerful actors*

Who wins, who loses?

- Council: Presidency benefits,
- national parliaments lose

- Commission: danger of being circumvented

- EP: Rapporteurs win
- Coordinators of large political groups win

- Normal committee member loses
- Plenary loses
- Small political groups lose

- Debate within EP:
- Early agreements a danger for democratic legitimation
- Agora function of EP
- Rules of procedure within EP

- Implicit negotiations about change of rule of early agreements led to no change
- - presidency of Council
- - rapporteurs
- - large political group coordinators maintained their key role

Formalization of informal institutional rule?

- Early agreements concluded before 1999
- Why formalized under Amsterdam Treaty?
- Functionalist argument:
- Because transaction cost saving, efficiency enhancing...all concurred in formalization

Formalization of informal rules

- *H4* When all member states agree that the informal institution in question has positive consequences, they will unanimously agree to formalize it
- When all member states agree that the informal institution in question hurts their interests, they will abolish on the basis of unanimity
- If member states disagree with respect to the benefit of an informal institutional rule, they will not formalize it, but the informal rule will remain as an informal rule

- H5 Actors which have a limited formal role, or no formal role in the negotiation of Treaty changes may still have informal influence through their formal role in making lower-order rules,
- i.e. withholding cooperation at the lower level of rule-making
- or by withholding cooperation in a different higher-level rule-making arena where they do have formal competences.

- EP forced Council to renounce to resubmit its common position after failed conciliation procedure

Conclusion

- Continuous institutional change
- In view of institutional rules = incomplete contracts unavoidable
- Whether subsequent formalization depends on specific conditions as defined above
- Empirical examples in all institutional rule systems

- Under European treaties
- Described in OUP 2007 book
- - EP under comitology
- - EP and Investiture of Commission