Continuous Institutional Change in Europe

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• 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 t2 ....in course of its application
• ...begs question:
• What drives these *interstitial* changes?
• Underlying processes theorized in different ways
• We (Farrell and Héritier 2001, 2003, Héritier 2007a; Bergström, Farrell and Héritier 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?
• 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
• \textit{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)

- (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“
• 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
• Pushed by Council,
• In particular Council Presidency
• After Maastricht quick emergence of large number of trialogues 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 inevitable
• 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