

ALL ROADS LEAD AWAY FROM ROME?

A Theory of Institutions in (European) Decision Making

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Abstract:

Scholars and politicians alike agree that the EU is the epitome of modern international cooperation – and is a triumph of formal institutionalism in international relations. Yet, at its very core lies a troubling puzzle: governmental behavior in decision-making bears little resemblance to its formal rules. Does this mean realists are correct when they view institutions like the EU as phony? What, if not formal rules, explains patterns in EC decision-making? My central thesis is that the behavior we observe has been largely induced by informal institutions, which governments construct around formal rules according to informed, issue-specific imperatives. They are functional in nature, even when they are informal and adaptive. I shall argue that these informal institutions solve the dilemma of uncertainty, that is, the increase in domestic uncertainty in response to international economic cooperation – a trade-off that may confront governments with domestic recalcitrance and induce non-compliance. These informal institutions permit governments to close gaps of political support by regularly accommodating legitimate preference outliers in expectation of equal treatment. In short, the seemingly imperfect deviations from formal rules are in fact optimal in that they sustain the EU's self-enforcing domestic conditions in such a way that formal rules do not permit. The result of this diffuse reciprocity is a solid basis of political support, low levels of non-compliance, and a subsequent deepening of cooperation that is without equal.

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A Theory of Institutions in (European) Decision Making

Mareike Kleine¹

1. Introduction

Scholars and politicians alike agree that the EU is the epitome of modern international cooperation – and is a triumph of formal institutionalism in international relations. Yet, at its very core lies a troubling puzzle: governmental behavior in decision-making bears little resemblance to its formal rules. The treaties stipulate that proposals should be prepared by an independent supranational secretariat, the European Commission. The rules also state that member states decide on these proposals by majority voting, and may only change them unanimously. Yet, what we observe is that in preparing proposals the Commission needs to draw heavily on governmental expertise, that member states almost never vote and seek unanimous agreement instead, and that the Commission frequently changes its proposals during the course of intergovernmental negotiations.

This is troubling not just to students of the European Union: if even in the EU states do not abide by the treaty, then functional regime theory, the very cornerstone of our understanding of international cooperation, is called into question. Are realists therefore correct when they view institutions like the EU as phony?² Have scholars of European integration that meticulously analyze formal decision-making procedures misunderstood how they work for half a century? There is a solution to the puzzle, one that vindicates the EU as an effective organization and illuminates the workings of international organizations more generally: my central thesis is that the behavior we observe has been largely induced by informal institutions, which governments construct around formal rules according to informed, precise and issue-specific imperatives. In short, the institutions in European decision-making are functional in nature, even when they are informal and adaptive.³ The principal goal of this project is to assess the causal importance of this two-step process, the design of institutional norms around formal rules and decision-making within those norms. The results apply to international politics more generally.

The thesis gets to the core of political and academic debates on European integration: It directly challenges the claim that forms the basis of studies in the neo-functionalist tradition and Euro-skeptic critique alike, namely that states' inertia results in institutional pathologies and supranational autonomy. The overall result of European integration, the argument of the skeptics goes, is consequently a loss of national problem-solving capacity and democratic legitimacy.⁴ The contestedness of such a claim notwithstanding, the question whether governments are able to retain control over institutional design has remained surprisingly understudied. This neglect is not least due to the standard approach to institutions as explicit arrangements,⁵ which excludes the possibility of functional institutional adaptation from the outset. The corollary of this definition is the common indictment of Euro-enthusiasts and the realist null hypothesis: when states do not abide by the treaty, cooperation has failed.

¹ This paper is an outline of the first case study of my Ph.D. project on *Interstate Institutions in European Decision Making*. I thank Christina Davis, Todd Hall, Tobias Heider, Derrick Lambert, Mark Pollack, Duncan Snidal, and Jonas Tallberg for comments on a previous version. I am particularly indebted to Jessica Green, Bob Keohane, Andy Moravcsik and Thomas Risse for their critical read of the many, many drafts of this paper. The project has greatly benefited from numerous discussions and collaboration with Andy Moravcsik. Comments welcome: makleine@zedat.fu-berlin.de.

² See e.g. Mearsheimer 1994-95, 7.

³ The process is therefore an instance of what Ernst B. Haas (1990, 3) called "institutional adaptation."

⁴ Scharpf 1999, 83. See also Barnett and Finnemore 1999, 707-710, Pierson 1996, 142-147, 2000, 260-262.

⁵ Koremenos, et al. 2001, 762. The project therefore goes back to the original formulation of regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actor's expectations converge in a given areas of international relations." See Krasner 1982, 185.

Contrary to both popular beliefs I contend that the seemingly imperfect deviations from formal rules are in fact optimal in that they are induced by informal norms that sustain the EU's self-enforcing conditions in such a way that formal rules do not permit. They do so by solving the dilemma of uncertainty: On the one hand, the management of uncertainty is an institution's principal *raison d'être* in that it enables cooperation by creating stable expectations about behavior. On the other hand, however, cooperation increases a countries' sensitivity to structural trends and shocks. In other words, cooperation entails a trade-off between international and domestic uncertainty. Governments may consequently find themselves confronted with domestic recalcitrance, which induces non-compliance and ultimately even undermine its own basis of political support.⁶ I shall argue that informal institutions solve the dilemma, because they help sustain the regular accommodation of legitimate preference outliers facing domestic recalcitrance. This norm of diffuse reciprocity consequently harmonizes integration with domestic uncertainty. The result is a solid basis of political support, low levels of non-compliance, and a subsequent deepening of cooperation that is without equal.

To study this thesis I go beyond the formalism that prevails in institutionalist studies and center my analysis on the notion of institutions as equilibria, that is, as set of norms and rules that together generate a regularity of behavior. By specifying actors' motivations to follow norms and rules, I am able to generate several observable implications and unveil otherwise invisible institutions at the level of behavior. A thus gained thorough understanding of the workings of institutions is then the *sine qua non* for any further explanation of treaty revision.⁷ The analysis therefore starts with the EC's formative years from 1958 to 1970. Drawing on hard primary sources,⁸ a variety of practitioners' reports and contemporary analyses, this paper directs the attention on practices in day-to-day decision-making that evolved in pursuance of the treaty's objectives. It proceeds in two steps: First, I deduce the patterns of behavior we would expect to arise on the basis of formal rules and describe how the governments' regular decision-making practices began to deviate from them. In a second step I lay out my theory as well as an alternative explanation that may account for the observed behavior, but which generate further distinct observable implications that permit us to discriminate between these alternatives in the subsequent empirical analysis. I demonstrate that in most issue-areas except Agriculture a norm of diffuse reciprocity evolved during the 1960s, which proved remarkably stable throughout the decade even in the face of severe crises and supposedly embittered negotiation atmospheres. As a consequence of this functional institutional adaptation, in particular by means of involving governmental experts in decision-making, the EC's institutional balance shifted dramatically from supranational institutions to the governments. I conclude with a few remarks on the practical and normative implications of my theory.

2. The Puzzle in Detail: Patterns in the Deviation from Formal Rules

To what extent do the provisions of the Rome Treaty describe governmental behavior in decision-making? This section deduces patterns of behavior that we would expect to arise from formal rules on the pooling of sovereignty and the delegation of authority in primary legislation. These patterns are subsequently juxtaposed to the behavior we observe in reality.⁹ I demonstrate below that actual decision-making practices during the 1960s differed substantially from initial expectations: in particular, the involvement of govern-

⁶ See e.g. Downs and Rocke 1995, 130-138, Milner and Keohane 1996, 22, Downs, et al. 1996, 399, Rosendorff and Milner 2001, 832.

⁷ A recent exception is the *West European Politics* (30:2) special issue on institutional change and Héritier 2007.

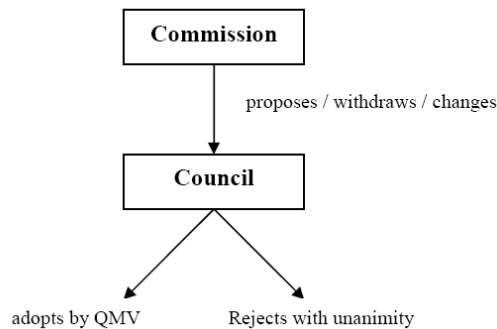
⁸ Material from the following archives has been used: Bundesarchiv Koblenz (BAK): Bundeswirtschaftsministerium (BAK/B102), Bundeslandwirtschaftsministerium (BAK/116); Auswärtiges Amt Berlin (AA): Europäische Integration (AA/B20), Ständige Vertretung (AV/Neues Amt); Council of Ministers Archives Brussels (CM2); European Commission Historical Archives Brussels (ECHA).

⁹ King, et al. 1994, 41, 56.

mental experts – a phenomenon that has been depicted as co-optation¹⁰ or *engrenage*¹¹ – resulted in a radical transformation of the EC’s decision-making practices.

For the EC’s formative years, the pooling of sovereignty and delegation of authority translates into “Community Method,” that is, the stepwise removal of a formal veto by allowing for decisions to be taken by a qualified majority (QMV) and the Commission’s exclusive right of initiative. The Council is therefore only able to act upon a Commission proposal, adopt it on the basis of a qualified majority, but change it only unanimously against the will of the Commission.

Figure 1: The “Community Method”



Since governments may face rational incentives to renege on previous agreements, the decision to pool sovereignty allows governments to commit credibly to a certain course of action in the face of uncertainty. They do so by accepting the risk of being outvoted on an individual matter in future streams of decisions.¹² Precisely due to uncertainty, which leads to the removal of veto, majorities have a strong incentive to call votes. Hence, if majority decisions are the rule, we expect votes to be cast frequently and openly, because governments in the minority are thus able to signal their negotiation efforts to domestic constituencies and shift the blame to Brussels.

The literature on agenda-setting mentions three distinct, although not mutually-exclusive logics behind the delegation of an exclusive right of initiative to an agent: information, efficiency gains from acceleration, and credible commitment. First, decision-makers face constant demands for policy-relevant *information* about the state of the world. Under such circumstances legislators delegate power to an agent, which is assumed to provide expertise, thereby improves the quality of regulation and reduces the workload of legislators and their staff.¹³ To that effect we would expect the Commission to draw on independent expertise for the preparation and execution of European policies. Second, when a proposal is easier to adopt than to amend, legislators reap efficiency gains from an acceleration of decision-making. The reason is that a well-informed agenda-setter will anticipate the location of knife-edge majoritarian win-sets and tailor its proposals in a way that they can be adopted without being altered.¹⁴ We would therefore expect Commission proposals to remain unaltered by the Council. Third, governments are able to *commit credibly* to a certain course of action. The reason is that multidimensional issues may also generate multiple majorities, and alternative majorities have an incentive to bring already agreed-upon decisions back on the agenda (issue-

¹⁰ See Coombes 1970, 99 drawing on Altiero Spinelli.

¹¹ Lindberg (1963, 284) expects national experts to become socialized at the European level. A more pessimistic assessment of *engrenage* can be found in Lindberg and Scheingold (1970, 93), who put emphasis on the bureaucratization and lack of leadership on part of the Commission.

¹² Moravcsik 1998, 485-489 and Pollack 2003, 153.

¹³ This argument follows Keith Krehbiel’s (1991, 76) explanation of the Congressional Committee system. See also Pollack 2003, 29.

¹⁴ For Baron and Ferejohn (1989, 1199) gains from acceleration of decision-making is one of the major reason for closed rules decision-making.

cycling).¹⁵ An agent whose proposals are easier to adopt than to amend is therefore critical in stabilizing one among several possible majorities and, thus, a particular course of cooperation, when it is able to bar minorities from putting an issue back on the agenda. To that effect we would expect the Commission to decide on the timing of its proposals, that is, to determine both the composition of items on the agenda as well as the Council's long-term schedule.

In sum, formal rules in equilibrium should generate the following observations: voting takes place frequently and openly; the Commission draws on independent policy expertise; its proposals remain unaltered during the course of negotiations; it exclusively determines the timing of proposals.

Are votes cast frequently and openly?

The conventional wisdom goes that after 1966 the so-called Luxembourg compromise¹⁶ imposed a persistent veto culture on decision-making.¹⁷ This extralegal document primarily stated a disagreement among France and her counterpart about the use of majority voting in the event that it jeopardized important interests, and it required the Commission to contact COREPER before adopting and publishing important proposals. Whether this "veto culture" really existed remained largely obscure as both the proceedings of Council meetings and the governments' individual positions in decision-making were supposed to be secret. The Council General Secretariat did not even keep a record of the number of majority decisions.¹⁸ Archival material reveals, however, that the Council had hardly ever taken majority decisions before. QMV was supposed to be phased in in two steps until 1966. It was thus already intended for 88 cases in 1965¹⁹ and was supposed to be extended to ten further articles on Agriculture and trade policy. And yet, during the first eight years since the inception of the Communities only a total number of four to ten decisions had been taken against a minority, most of them on budgetary and procedural issues.²⁰ Practitioners accordingly spoke of a *horror majoritatis* governing decision-making in the Council in the first half of the decade.²¹

France's attack on majority voting during the "empty chair crisis" in 1965-66 was accordingly widely perceived as a pseudo debate on a problem that was "plus théorique que réel."²² The German Permanent Representative to the EEC acknowledged: "The rule has always been in practice that decisions are unanimous even in cases where the treaty provides for majority voting. We simply usually negotiate until

¹⁵ See Shepsle 1979. The equilibrium is now structurally-induced: it is detached from the issue under consideration and contingent on the institutional rules detailing the sequence of moves, the thresholds for the amendment and adoption of the proposal, and the preferences of the agenda-setter. See Pollack 2003, 29.

¹⁶ The Luxembourg compromise resolved the so-called "empty chair crisis" in 1965-66, that is, the blockage of decision-making through France's retreat from the Council. This extralegal document *inter alia* stated the disagreement about how to proceed in the event that majority voting jeopardizes a member state's very important interests. It furthermore listed several behavioral instructions for the Commission as for instance a regular consultation of COREPER prior to the publication of proposals.

¹⁷ Teasdale 1993, 570. In response to a supposedly too federalist proposal on the CAP, France withdrew its representatives from the Council and thus precipitated what would later be known as the "empty chair crisis." While France insisted that the search for a unanimous agreement should go on indefinitely in this instance, her partners only conceded for the endeavor to continue within a reasonable time. See Loth 2001, Palayret, et al. 2006, Newhouse 1967.

¹⁸ Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1965a. On the secrecy of deliberations in the Council see Buerstedde 1964, 191-195.

¹⁹ See Bundesministerium für Landwirtschaft 1965, Ophüls 1966, 193, Torrelli 1969, 94-96.

²⁰ Depending on whether procedural issues are counted. Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1965a. The Commission Executive Secretary-General, Emile Noel, counts twelve majority decisions. See Lambert 1967, 396.

²¹ Houben 1964, 112-115.

²² Représentation Permanente de la Belgique auprès des Communautés Européennes 1966: "In reality, the French fear of being minorized on an important question was tenuous: the Six fought a battle over a faux problem." [Translation from French by the author]. See also Auswärtiges Amt 1965, Rutten 2006.

we have reached consensus.”²³ Qualitative evidence furthermore suggests that the practice was not discontinued by the Luxembourg compromise: the search for consensus remained the general rule in the Council throughout the 1960s, but majority voting was nonetheless used infrequently, mainly on budgetary and agricultural issues.²⁴ In short, consensus-seeking and not majority voting was the informal rule for decision-making throughout the decade. As a result of this practice, the Commission’s formal agenda-setting power was largely curtailed as it had to anticipate a much narrower win-set and tailor proposals accordingly.

Does the Commission draw on independent policy expertise?

In the course of the 1960s the Commission was delegated more and more secondary legislative and administrative tasks,²⁵ which in turn created a high demand in expertise for the better preparation and smooth implementation of decisions.²⁶ It led to the growth and bureaucratization of the Commission’s administrative apparatus. Yet, initial hopes that it would become the nucleus of a European civil service based on competitive examination of merit and ability were disappointed, because senior positions in the Commission were distributed roughly proportionate to budgetary contributions. Member governments and individual commissioners consequently took a close interest in the selection as well as preferment of the highest officials, and they did not shy away from using relations to fellow countrymen to assert national interests.²⁷ Certain posts in the service thus remained reserved for particular types of candidates, on grounds such as nationality or party affiliation.²⁸

Yet, an increasing bureaucratization alone did not suffice for coping with delegated management tasks. Before drafting proposals, the Commission consequently adopted the custom of consulting groups of experts drawn from national administrations.²⁹ In addition to this, the Council itself instituted management committees to closely monitor the implementation of policies by the Commission.³⁰ As a consequence, the total number of government officials involved in Community decision-making heavily proliferated during the 1960s as the following figure on the Commission’s consultation of governmental experts shows.³¹

Figure 2: Commission’s Reliance on Governmental Expertise³²

²³ Auswärtiges Amt 1965 [Translation from German by the author]. See Alting von Geusau 1964, 190, Pryce 1962, 35.

²⁴ See, for instance, the assessment in of the former German Permanent Representative Lahr 1983, 227. On majority voting in the early 1970s see Sasse 1975, 136, Noël 1976, 41, Ungerer 1989, 98 and Grant 1997, 173.

²⁵ Cassese and Cananea 1992, 88-89.

²⁶ Scheinman 1966, 758-762.

²⁷ Bundesministerium für Landwirtschaft 1967c.

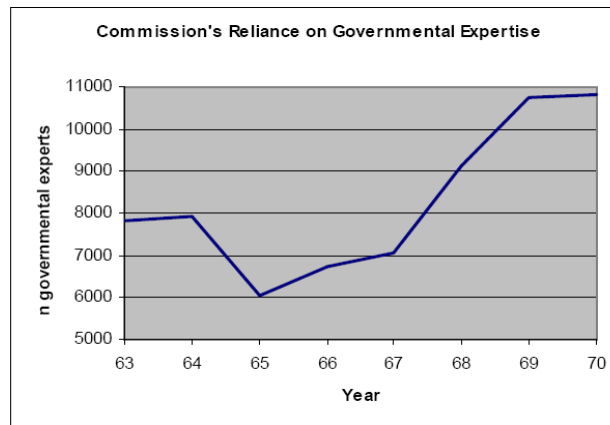
²⁸ See the discussion in Coombes 1968, 20-22, 1970, 131, Wallace 1973, 57, Clark 1967, 67. For a description of the practice see Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1967, 2, Lemaignen 1964, Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1965b, 68.

²⁹ Lindberg 1963, 57-62.

³⁰ Bertram 1968, 267 and Lasalle 1968.

³¹ Pouillet and Deprez 1976, 117, Institut für Europäische Politik 1989, 43, Maurer, et al. 2000, 34-40. N.B.: The gap in 1965-66 is explained by the “empty chair crisis”.

³² Data from Pouillet and Deprez 1976, 117.



In sum, the growth of the administrative apparatus and the bureaucratization of its work notwithstanding, the Commission did not possess enough independent policy expertise that would enable her to draw up proposals and implement them without having to rely on governmental expertise.

Do proposals remain unaltered during the course of negotiations?

The custom of consultation of governmental experts substantially affected the entire decision-making process as they instead of the Ministers became the Commission's principal counterpart. The reason is that after the Commission had officially submitted her proposal, the Council instantaneously returned it to its own groups of governmental experts and refused to discuss them without proper preparation. Proposals were hence passed through an ever growing substructure with the Council of Ministers at the top, permanent and ad-hoc (sub-) Working Groups (WGs) on the bottom, and the Committee of Permanent Representatives (COREPER) in-between.³³ These intergovernmental groups, the number of which heavily proliferated during the decade, normally comprised exactly the same governmental experts that had already been consulted by the Commission for the preparation of the proposal.³⁴

Although governmental experts did not possess any formal decision-making powers, they increasingly prepared decisions in a manner the next higher level was willing to adopt them without further discussion. From 1962 on, these preliminary decisions reached in WGs and COREPER appeared as one item on the Council's agenda. The so-called A-Points were then usually adopted *en bloc* while contentious questions, the B-Points, were most often referred back to the preparatory groups after discussion and further instructions.³⁵ As a consequence, the different stages in decision-making largely blurred.³⁶ Some contemporary authors described this process as an inter-institutional dialogue while other spoke more bluntly of genuine pre-negotiations that heavily curtailed the Commission's formal agenda-setting powers.³⁷

Figure 3: Days spent in Council negotiations³⁸

³³ For an early description of this practice see Noël 1963, 21, Bähr 1963, 92-100.

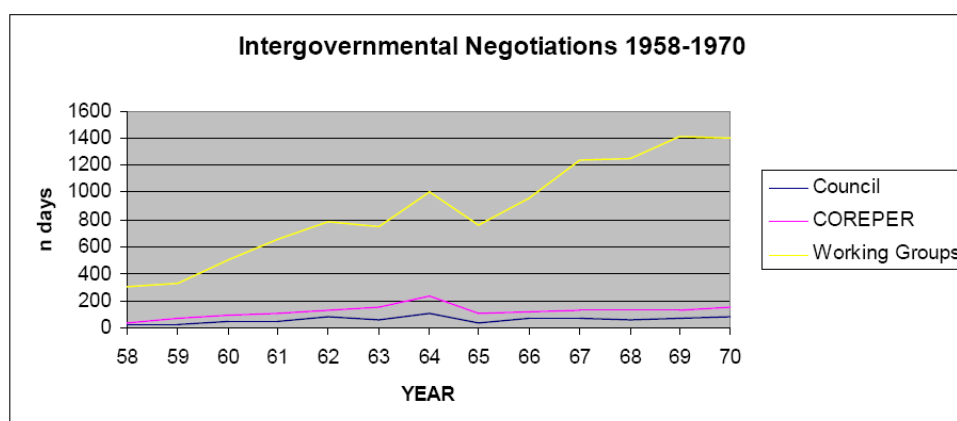
³⁴ For a description of the decision-making practice in general see *inter alia* Lindberg 1963, 53 ff., Houben 1964, 97 ff., Noël 1963, Alting von Geusau 1966, 235-240.

³⁵ Noël 1967a, 248.

³⁶ Bundesministerium für Wirtschaft 1961.

³⁷ See Lindberg 1963, 79, Mayne 1968, 33-34 on the one hand, and Houben 1964, 99, 105, Alting von Geusau 1964, 197 on the other hand. For a very critical assessment see Gazzo 1974, 128.

³⁸ Generalsekretariat des Rates der Europäischen Gemeinschaften 1970.



As it was usually confronted with a laboriously reached compromise at the point of formal discussion, the EP demanded a clearer distinction between the decision-making sequences.³⁹ Also the Commission argued that the practice of pre-decision constituted a violation of the treaties. The Commission President, Walter Hallstein, augured already in 1958:

“The first danger is that the responsibilities, which the Treaty unequivocally confers to the Ministers, slip to functionaries to whom they do not belong. (...) The structure of our Treaty would consequently find itself visibly denatured. (...) The second danger is that (...) there is a reallocation of powers to the detriment of the supranational element. As a result of a newly developing habitude we run the risk that an administration develops within COREPER that assumes tasks that –according to the treaty – belong to the supranational organ, that is, to the Commission.”⁴⁰

In short, it was thus demurred that Ministers had shifted their responsibilities to an unaccountable *Aeropagus* of civil servants that rivaled the staff of the Commission.⁴¹ To depict this ongoing undermining of the Community method, the German term *Ständige Vertreter* (permanent representative) was in the first half of the decade perverted into *Ständiger Verräter* (permanent traitor) of the spirit of the Rome Treaties.⁴²

In order to retain its position as the centre of communication within the Community, the Commission initially refused to send high-level delegates to COREPER meetings. The Commission also reserved the right to demand a debate on a par with the Ministers on A-Points on which unanimous agreement had already been reached.⁴³ But since the Commission, too, increasingly faced solid intergovernmental compromises at the point of discussion among Ministers, it changed its strategy, embraced COREPER and tried to regain its institutional position from within the Council substructure.⁴⁴ In both the WGs and COREPER, however, the Commission encountered the Council Presidency which had outgrown its role as a mere organizer of meetings. With the support of the Council General Secretariat, the Presidency acted as a mediator that sought to attain a complete view of the national positions. On that basis it would come forward with compromise suggestions, which in the early 1960s became known as “presidency compromises.”⁴⁵ As these

³⁹ EP debates, cited in Altling von Geusau 1964, 138-139.

⁴⁰ Walter Hallstein before the European Parliamentary Assembly on 24 June 1958, cited in Virally, et al. 1971, 712. [Translation from French by the author].

⁴¹ On the criticism on part of the Commission see Lemaigen 1964, 85. See also Maas 1960, 133-136, Pryce 1962, 33.

⁴² See the discussion in Bähr 1963, 64.

⁴³ Rat der Europäischen Wirtschaftsgemeinschaft 1962.

⁴⁴ Noël and Étienne 1971, 433. For a critical review of the decision-making practice and its effect on the Commission’s institutional position see Houben 1964, 104-107.

⁴⁵ On the presidency’s role as a mediator, see in particular the exposé by the then-Commission Executive Secretary and representative in COREPER Emile Noël 1966, 33-34, 48 and the Belgian Permanent Representative Van der Meulen 1966, 11-13. This practice is already mentioned in *Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft* 1964a, 1965.

were “particularly suggestions some distance away from the Commission’s original proposal,”⁴⁶ the commission’s traditional role as mediator was heavily impaired.

In sum, the need to consult governmental experts and the governments’ general search for consensus within the Council substructure obscured the distinction between the stage of proposal and the stage of negotiations. As a result, and as the Commission representative to COREPER, Emile Noël, explained: “It would be an exception if a decision was taken on the basis of a Commission Proposal *ne varietur* [not negotiable, M.K.], that is, that it remained unaltered from the beginning until the end of the debate.”⁴⁷ Both the EP’s and the Commission’s formal powers were consequently largely curtailed.

Does the Commission exclusively determine the timing of proposals?

Due to the involvement of governmental experts in the decision-making process and the Ministers’ refusal to deal with issues that had not been previously discussed within the Council substructure, the Commission lost the ability to determine the timing of negotiations and act as a genuine “motor” of integration. It became increasingly dependent on the government representatives’ work rhythm. The rotating Council Presidency, whose task it was to organize meetings, was able to prioritize single items and let other issues slide.⁴⁸ The control over the composition of the agenda as well as the Council’s long-term schedule thus became more and more the Presidency’s prerogative. It became custom that it would present its six-month program at the beginning of its term.

The Commission’s powers to do so were in turn actively constrained by the governments. It soon became a norm that the Commission would not publish important proposals without prior contact to COREPER.⁴⁹ The EP, whose formal powers had likewise suffered as a result of governmental decision-making practices constituted a natural ally for the Commission. But the Commission’s attempts to circumvent informal restrictions of its agenda-setting power by securing the support of the Assembly and the public through advance publication were kept in check.⁵⁰ In 1960, for instance, Hallstein tried to confront the Council with a *fait accompli* by leaking its proposal on the acceleration of the customs union to the press and encouraging the EP to schedule a debate before the governments had the chance to discuss the proposal.⁵¹ The Commission was immediately rebuked for its behavior.⁵² Also, the Commission’s proposal that constituted the point of contention in the 1965 “empty chair” crisis had been aired to the EP before submitting it formally to the Council – an instance that was widely regarded as a clear “breach of etiquette,”⁵³ a violation of an established norm in decision-making.⁵⁴ This norm would subsequently become part of the Luxembourg compromise.

In sum, the involvement of governmental experts in Community decision-making largely curtailed the Commission’s monopoly of initiative and its role as the “motor of integration.” Due to its task of orga-

⁴⁶ Noël and Étienne 1971, 438, Noël 1967b, 42.

⁴⁷ Noël and Étienne 1969, 47 [Translation from French by the author] and Noël 1966, 40-42. A critical view of the Council Presidency from the Commission’s perspective provides Ponzano 2002, 50 : “The Commission’s initially very important role continuously eroded to the benefit of the Council Presidency, which had assumed the autonomous capacity to suggest compromise solutions (...).” [Translation from French by the author].

⁴⁸ See the assessment of the PermRep van der Meulen (1966, 12): “All these Working Groups in fact constitute a considerable machinery that risks being paralyzed if it was not for the vigilant attention of the President.” [Translation from French by the author]. For the end of the 1960s/beginning of 1970s see Sasse 1972, 88, Wallace and Edwards 1976, 540.

⁴⁹ Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft 1964b.

⁵⁰ See the discussion in Alting von Geusau 1966, 238.

⁵¹ Räte der Europäischen Gemeinschaften 1960.

⁵² Rat der Europäischen Wirtschaftsgemeinschaft 1960a, 24-27, Auswärtiges Amt 1960.

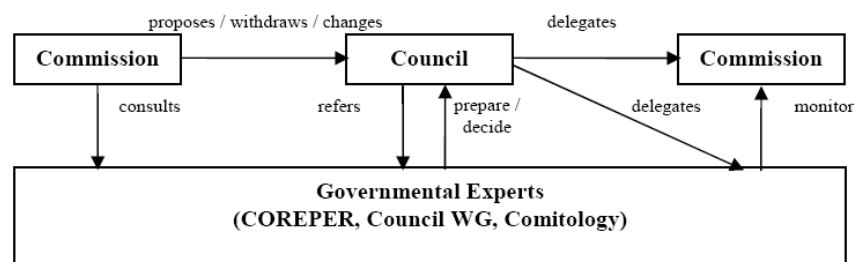
⁵³ von der Groeben 1985, 185.

⁵⁴ See Spaak 1969, 570-576, Newhouse 1967, 84, Camps 1966, 48-49, Lambert 1966, 198, Ludlow 2006, 76. For a different point of view see Lindberg 1966, 238.

nizing the meetings within the Council substructure, it was able to influence both the composition of items on the agenda as well as the Council’s six-month work program. The impulse for decision-making therefore increasingly shifted to the Council presidency. The “motor” came under further attack from yet another side: member states increasingly put forth their own timetables and work programs while the Commission’s effort to do so remained largely unnoticed.⁵⁵ Meetings of the heads of state and government became more frequent and would ultimately result in the institutionalization of the European Council.

To sum this section up, the actual behavior in decision-making stands in stark contrast to what we would expect to arise from formal rules: we expected that votes be cast frequently and openly; the Commission to possess independent policy expertise; its proposals to remain largely unaltered during the course of negotiations; and that the Commission exclusively determine the long-term agenda. In reality, however, member governments almost never vote and strive for a consensus instead; the Commission lacks independent expertise; its proposals are regularly changed during the course of negotiations; and it is not able to determine the timing of proposals. These patterns in behavior had already arisen in the first half of the decade and were primarily a result of an increasing involvement of governmental experts at every single stage in decision-making. As a consequence, supranational institutions’ formal powers were strongly curtailed, if they had not become void. The decision-making practices are depicted in the following figure.

Figure 4: The *de facto* decision-making process



3. An Analytical Approach to the Study of Institutions

How can we make sense of behavioral deviations from formal rules? Did governments fall back into nineteenth century-style bargaining that was not governed by any institution at all?⁵⁶ I contend, on the contrary, that emergence of these patterns of behavior was induced by informal institutions, which governments constructed around formal rules on the basis of their informed, issue-specific imperatives. But how are we to study informal institutions? This section introduces an analytical approach that centers on the notion of institutions as equilibria. I first lay out the general argument about functional institutions as well as the realist Null Hypothesis, and subsequently show how the problem of endogeneity has so far impeded a thorough understanding of European decision-making. I finally explain how by multiplying the number of observable implications my approach can overcome this threat to inference.

Argument: Functional Institutions in Decision-Making

Regular patterns of behavior in interaction – the dependent variable of this project – can be conceived of as equilibrium, that is, as interaction where no actor is better off individually choosing a different course of action. Under the ever-present condition of uncertainty about the future, norms and rules can be critical in helping sustain such regular behavior as they create stable expectations about other actors’ behavior and

⁵⁵ See Ludlow 2003, 24, 2006, 39.

⁵⁶ Rosenthal and Puchala 1978, 62.

inform one's own choice of strategy.⁵⁷ From a functional perspective, this is ultimately the reason for an institution's existence: actors create institutions because they anticipate them to be instrumental in capturing gains from cooperation by creating stable expectations in interaction. *Institutions can hence be defined as sets of explicit and implicit norms and rules that together generate a regularity of behavior among actors by manipulating the distribution of information among them.*⁵⁸ Norms are standards of appropriate behavior defined in terms of rights and obligations. Rules specify this behavior through prescriptions or proscriptions for action.⁵⁹ Both institutional elements influence behavior when actors are motivated to follow them.

Institutions in equilibrium, or self-enforcing institutions, are consequently equilibria where an individual's motivation to follow rules and adhere to regular patterns of behavior is endogenously provided. Institutions therefore constitute intervening variables⁶⁰ that allow actors to attend to common issue-specific interests, the principal independent variables. They persist when no actor is better off in individually departing from this strategy. To foreshadow the argument below, I conjecture that the European governments' main motivation and principal micro-mechanism for the design of norms and rules and decision-making within them is joint gains from vote exchanges under the condition of domestic uncertainty and incomplete information.

Working Hypothesis – Functional Institutions in Decision-Making: Deviations from formal rules are induced by functional institutions that governments construct around formal rules on the basis of their informed, issue-specific imperatives. The *motivation* underpinning equilibrium is gains from vote exchanges under the condition of uncertainty.

Accordingly, the Null Hypothesis states that regular behavior in interaction is not induced by any institution at all. Although cooperation may produce joint gains, problems of incomplete information and domestic uncertainty render cooperation difficult. The possibility of ending up as the “sucker” induces actors to pursue different strategies.

Null Hypothesis – Decision-Making in an Institution-Free Environment: Decision-making is not governed by any institution, formal or informal, at all.

State of the Art and the Problem of Studying Institutions

Studying the effects of institutions as intervening variables, that is, as simultaneously objects of state choice and constraints on behavior, is tricky. First, controlling for preferences as the principal independent variables is difficult as they are not directly observable. Second, inferring an institution's effect on the basis of individual observations is likewise inconclusive: since usually multiple equilibria are sustainable in repeat interaction, a single institution's observable element can *ceteris paribus* just as well be generated by a completely different equilibrium. To put it simply, neither preferences nor institutions are directly observable so that the study of institutions highly susceptible to the problem of endogeneity.⁶¹ This difficulty to identify institutions and exclude alternative explanations plagues most empirical studies and impedes a thorough understanding of the workings of (European) institutions.

Figure 5: The Problem of Endogeneity in the Study of Institutions

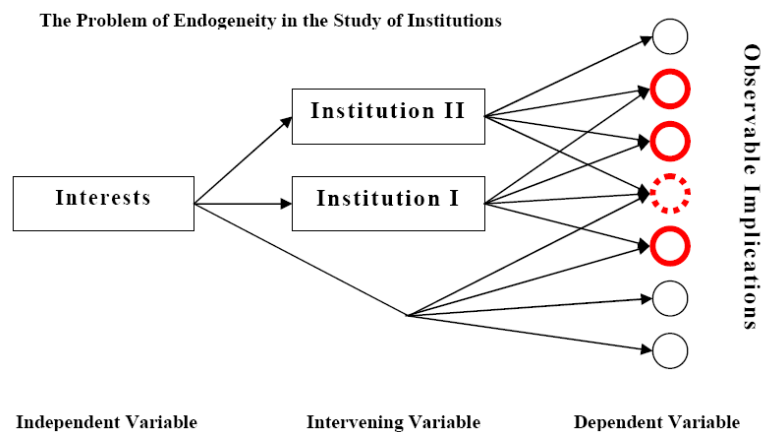
⁵⁷ See the discussion in Weingast 2002, 691, 669-675.

⁵⁸ For a similar definitions see Greif 2006, 30.

⁵⁹ Krasner 1982, 186.

⁶⁰ See already Krasner 1982, 189 as well as Keohane 1984, 64.

⁶¹ Greif 2006, chap. 11.



A first generation of scholars tried to demonstrate institutions' constraining effects and regarded them as independent variables that are *exogenous* to interaction. Because of the difficulty to measure preferences directly, it resulted in an inconclusive debate about whether or not institutions are merely endogenous to interests and thus epiphenomenal.⁶² In an effort to overcome the ensuing circularity, scholars increasingly approached institutions explicitly as *endogenous* motivations that states create in pursuit of their common goals. Conceiving negotiating actors as being well informed about the choices they have, the rational design research agenda defined them as "explicit arrangements"⁶³ and turned variation in institutional design into the primary dependent variable. Yet, treating formal rules as an institution's one-to-one observable element is questionable as it presupposes an institution's effect by definition. Given, however, that institutions are always designed under the condition of uncertainty, this would be a logical fallacy. With a view to reinserting "agency into the institutionalist literature,"⁶⁴ the *Principal-Agent* (P-A) approach tries to combine the best of both worlds. It conceives of institutions as contracts, formal or informal, through which a principal (states) grants authority to an agent (international institution). It focuses both on the design of these contracts and their operation in practice. What falls by the wayside, however, is the regular interaction that constitutes the "principal" in the first place. But when this interaction is being ignored, and the analysis only focuses on a narrow set of observable implications, it is difficult to theorize about the exact micro-mechanisms underlying the act of delegation to begin with.⁶⁵

But when it is difficult to uncover equilibria, it is likewise difficult to identify and assess institutional change. *Historical institutionalism* (HI) and its neo-functionalist cousin try to specify the scope conditions under which states' inertia in the face of uncertainty leads to unanticipated institutional effects and equilibrium change.⁶⁶ States are thereby depicted as sorcerers' apprentices that are unable to keep the spirits they summoned in check. However, these approaches face exactly the same problems as institutionalists in

⁶² See Mearsheimer 1994-95, 7, Keohane and Martin 1995, 46. For the EU see Burley and Mattli 1993, Garrett 1995, Mattli and Slaughter 1995.

⁶³ See Koremenos, et al. 2001, 762. In EU studies this turn was sparked by the series of EU treaty revisions in the 1990s. Institutional choice represents, for instance, the final step in Moravcsik's work on the history of treaty revisions. Yet, he does not regard final treaty provisions as caved in stone; they rather "set the agenda for a period of consolidation, helping to define the focus and pace of subsequent decision-making." See Moravcsik 1998, 2 and the critique by Garrett and Tsebelis 1996, 270.

⁶⁴ Hawkins, et al. 2006, 6-7.

⁶⁵ In his analysis of the delegation of authority to supranational actors, for instance, Mark Pollack conducts case studies in order to demonstrate the Commission's hypothesized autonomy in practice. Yet, he finds that the *de facto* regular behavior among governments differed substantially from what formal rules stipulated. The Commission's (agent's) real function and autonomy in equilibrium is consequently largely cast into doubt. See Pollack 2003, 387: "...the formal agenda-setting powers of the Commission were weakened by the Council's informal norm of consensual decision-making." The same holds true for Jonas Tallberg's case study on the powers of the Council presidency, which are replete of norms in interaction that the presidency violated in the cases under study. Tallberg 2006, 107-110, 139, 158, 169.

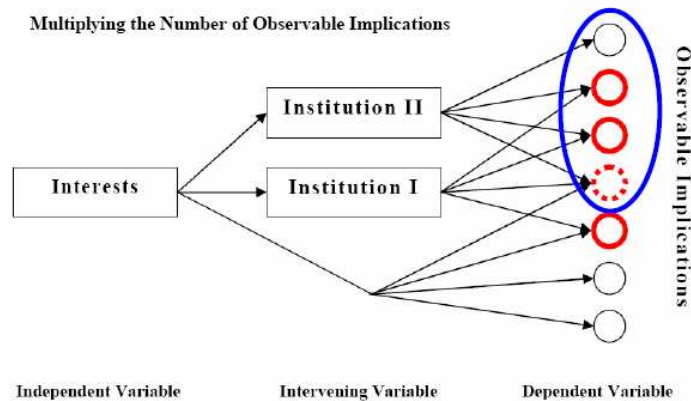
⁶⁶ Pierson 1996, 142-147, 2000, 260-262. Also Farrell and Héritier 2007, 234.

general: in order to identify equilibrium change, we need to know what the initial equilibrium was, on what grounds it had been chosen, and what the actual equilibrium is.⁶⁷ It is only on that basis that we are able to assess actors' motivation and ability to pursue or not to pursue a different strategy.

The Way Out: Specifying Motivations and Multiplying the Number of Observable Implications

Centering the analysis on the notion of institutions as equilibria that bring about regular patterns of behavior allows us to overcome the shortcomings that are prevalent in the institutionalist research agenda. Conjectures on actors' motivations for the design of institutional norms and rules and decision-making within those norms allow us to deduce several patterns of behavior that are observable in reality. Hence, by means of increasing the total number of observable implications at the behavioral level, this analytical approach permits to uncover otherwise invisible institutions, discriminate between different equilibria in interaction, and to seriously deal with the realist counter-argument.⁶⁸ As these deduced observable implications go beyond the measures we used in the description of our puzzle, we avoid the functionalist pitfall to assert that the suggested motivation is sufficient to account for the already observed behavior. Yet, since every observable implication can always also be generated by a completely different equilibrium, none of them is by itself sufficient to corroborate the conjecture.⁶⁹ It is therefore only in conjunction that they lend credence to the existence of the suggested institutions!

Figure 6: Multiplying the Number of Observable Implications



To sum this section up, I contend that the bulk of empirical studies are plagued by the problem of endogeneity, which impedes a thorough understanding of European decision-making.⁷⁰ Whether institutions exist and how they are being adapted cannot be decided through definitions. They remain empirical questions that this dissertation seeks to answer for the puzzle under study. To that effect I center my analysis on the notion of institutions as equilibria and multiply the number of observable implications at the behavioral level. The added-value of this approach is then an integrated explanation of several phenomena in decision that provides the basis for any further explanation of institutional change.

4. A Theory of Institutions in Decision-Making

The dilemma of uncertainty, that is, the trade-off between international and domestic uncertainty, may confront domestic groups with concentrated costs and create gaps in the chain of political support for coopera-

⁶⁷ For a critique see Caporaso 2007, 398.

⁶⁸ See King, et al. 1994, 28, 223.

⁶⁹ Greif 2006, 355.

⁷⁰ A recent evaluation of the predictive power of formal models of decision-making procedures testifies to this assertion. See Achen 2006a, 295 and Achen 2006b, 103.

tion. An accommodation of legitimate preference outliers facing domestic recalcitrance could in fact close these gaps and create the self-enforcing conditions for cooperation in such a way that formal rules do not permit. But when is such a practice of diffuse reciprocity functional? How can it be sustained without undermining governments' credible commitment to cooperation?

The principal micro-mechanism that I suggest underpins diffuse reciprocity is joint gains from vote exchange. Governments concede on one decision where they lose little in order to gain it on another; if marginal changes on the issue over which they gain power affect them more than changes on the issue over which they lose power, all actors can be made better off.⁷¹ A regular accommodation of preference outliers is therefore sustainable under two conditions: First, preference intensities are sufficiently heterogeneous as to create joint gains. Second, governments are able to commit credibly to these exchanges in order to reap joint gains from exchange under uncertainty.

I shall argue below that informal institutions and decision-making practices vary with actors' expectation about domestic uncertainty. Each of the following conjectures describes the actors' motivation, particular sets of norms and rules that create the equilibrium's self-enforcing conditions, and finally distinct observable implications at the behavioral level that will subsequently guide the empirical analysis. At first, however, I state the assumptions on which the theory is based and subsequently discuss its rival explanation of decision-making in an institution-free environment.

Assumptions: Domestic Uncertainty and Incomplete Information

Decision-making takes place in complex environments of which uncertainty is a general feature. The theory is therefore based on two assumptions about the context of cooperation:

1. The first assumption is outright liberal in that it regards governments to represent a variety of politically responsive interests. Governments' preference intensities, that is, the value they put on a particular outcome may shift frequently and unexpectedly in response to structural trends. The extent of domestic uncertainty is in turn contingent on previously existing institutional arrangements.⁷²
2. Information about domestic recalcitrance and, thus, preference intensities is private. This does not mean that negotiating actors are not aware of their counterparts' preferences, but governments can be expected to be better informed about their own constituencies' demands than others.

Both assumptions are initially plausible, but they imply that repeat play, the standard explanation for cooperation, cannot hedge against defection exactly because governments may quickly value uncertain future gains less than sure gains today.⁷³ The mere anticipation of domestic uncertainty and incomplete information may therefore impede cooperation (here: mutually beneficial vote exchanges) in the first place. Yet, they may also bring about specific norms and rules that help create the self-enforcing conditions for such exchanges.

Rival Explanation: Decision-Making in an Institution-Free Environment

What kind of behavior would we expect to arise when decision-making in the face of incomplete information and domestic uncertainty is not governed by any institution, formal or informal, at all? The Coase theorem in economics pinpoints the necessity of specified property rights, low transaction costs, and, most importantly, complete information for actors to be able to arrive at efficient outcomes.⁷⁴ If these conditions did hold in reality, negotiations would in fact be redundant. Encounters do occur, however, because information

⁷¹ For the general argument see Buchanan and Tullock 1962. For the EU see Mattila and Lane 2001, 46-48.

⁷² Downs and Rocke 1995, 4.

⁷³ See Axelrod 1984, Tomz 2007, 4-9.

⁷⁴ For an application in IR and negotiation analysis see Keohane 1984, chap 6 and Moravcsik 1999, 272.

cannot be considered complete from the outset. Yet, an instantaneous leveling of informational asymmetries is difficult to achieve, because negotiating actors seek to attain two objectives at the same time: they want to reach efficient agreements on the one hand, and distribute joint gains from cooperation on the other hand. Actors therefore have an incentive to withhold private information about their “red lines” and to bargain hard in expectation of extra gains.⁷⁵ This does not imply that negotiations go on forever and mutually beneficial deals are impossible to strike. The reason is that withholding information for some time diminishes the collective gain from an early agreement to a point that the anticipated extra gain approaches zero. Negotiating actors with intense preferences consequently become pressed for time and accept the deal.⁷⁶ Agreement is possible then, but negotiations have been rendered ex-post inefficient!⁷⁷

This dilemma is aggravated when actors bargain over multiple issues at the same time. Incomplete information induces them to build a reputation as an extreme type by taking a tough stance even on issues they prefer less in order to extract further concessions on more important issues.⁷⁸ Issues are held hostage in order to use them as bargaining chips in the end game. Because the number and nature of items thus influences the negotiating partners’ relative bargaining power, the agenda is set by all governments at high levels of authority. In addition to issue-hostage, the possibility of ex-post opportunism due to domestic uncertainty makes credible commitments and, thus, early concessions difficult. As a consequence of both problems, deals in an institution-free environment cannot be considered secure until agreement on the last pending issue has been found. They are therefore struck simultaneously on packages, even if items are not explicitly linked, and need to be authorized at the highest level of authority.⁷⁹ The discourse surrounding bargaining in an institution-free environment can be expected to be marked by threats and incentives.

Null Hypothesis – Bargaining in an Institution-Free Environment: Decision-making is not governed by any institution at all. Bargaining under this condition should generate the following observable implications:

Majority Voting: Negotiating actors do not vote.

Agenda-Setting: The agenda is set by all actors at high levels of authority.

Centralization: Deals are struck at the highest level of authority.

Timing: Deals are struck simultaneously on packages.

Discourse: The discussion is marked by threats and incentives.

Theory: Domestic Uncertainty, Preference Intensities and Institutions

I explained above that a regular accommodation of preference outliers may create joint gains when actors can expect preference intensities to be sufficiently heterogeneous, that is, when every government thinks there is a good chance that they suddenly end up as a single or one among few preference outliers. Institutions and patterns in behavior will therefore vary accordingly: Where domestic uncertainty affects countries unevenly, governments can anticipate heterogeneous preference intensities and consequently capitalize on a regular accommodation of preference outliers facing domestic recalcitrance.⁸⁰ This is the case when cooperation creates markets and increases competition. Where domestic uncertainty affects countries evenly, that is, when all governments face domestic recalcitrance at the same time, governments adopt the practice

⁷⁵ This is what Lax and Sebenius call the “negotiators’ dilemma.” See Lax and Sebenius 1986. For an excellent discussion of formal models of bargaining see McCarty and Meirowitz 2007, chap. 10.

⁷⁶ See Rubinstein 1982, 99 and Rubinstein 1985, 1153.

⁷⁷ For a similar line of reasoning see Fearon 1998, 270.

⁷⁸ Cameron and McCarty 2004, 425.

⁷⁹ IGC negotiations are therefore usually concluded at summits at the highest authorities.

⁸⁰ “Reciprocity refers to exchanges of roughly equivalent value in which the actions of each party are contingent on the prior actions of the others in such a way that good is returned for good, and bad for bad. (...) In situations characterized by *diffuse* reciprocity ... the definition of equivalence is less precise, one’s partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded.” See Keohane 1986, 4, 8.

of specific reciprocity and regularly take recourse to formal rules. This is the case when international cooperation absorbs international trends and shocks and lowers competition.

Heterogeneity in Preference Intensities and Diffuse Reciprocity

Where domestic uncertainty affects countries unevenly and negotiating actors anticipate heterogeneous preference intensities, governments may gain from accommodating preference outliers instead of pushing their own preferences through. This is the case because marginal changes in issues over which they lose power affect them less than changes in issues where they themselves hold intense preferences and are being granted the same consideration.⁸¹ Accommodating preference outliers thus becomes both a right and an obligation, a rational norm, that creates joint gains from exchange and embeds cooperation into domestic circumstances in such a way that formal rules do not permit.⁸²

The behavioral consequences of diffuse reciprocity are fourfold: first, because preference outliers are being accommodated, thresholds for the adoption of policies cease to be determined by formal voting rules and approach unanimity instead.⁸³ Second, the negotiation atmosphere is cooperative and marked by claims of domestic recalcitrance. Third, issues are being treated discretely on their own merits. They are not held hostage and are taken non-simultaneously instead of in packages.⁸⁴ Fourth, for this reason, and because governments concede on an issue where they lose little, decisions may be taken at low levels of authority. In other words, decision-making is highly decentralized.

Two problems, however, arise from incomplete information and domestic uncertainty that make these exchanges difficult to sustain: ex-post opportunism and moral hazard. First, because diffuse exchanges are not simultaneous, but span over time, domestic uncertainty implies that repeat play cannot hedge against the risk of ex-post opportunism.⁸⁵ Second, because governments are better informed about their constituencies' demands, the norm of diffuse reciprocity induces moral hazard in that governments have an incentive to exploit the norm and claim to face domestic recalcitrance even when they in fact do not.⁸⁶

I suppose that member states alleviate both problems by delegating the task of information provision about the true extent of domestic recalcitrance to an agent, the Presidency, clustering issue-areas with uneven domestic uncertainty, and granting this agent discretionary power. Clustering issue-areas raises the probability of a government requiring special consideration and creates opportunities for immediate punishment in case of defection. Hence, the shadow of the future might not be particularly long, but it is very broad. Since punishment creates a second-order collective action problem as it requires governments to collaborate and perhaps forego sure gains, they delegate discretionary to the Presidency, which adjudicates on the correctness of claims of domestic recalcitrance.⁸⁷ In short, by clustering issue-areas and delegating discretionary power to the Presidency, governments span reputational concerns over issue-areas, overcome second-order collective action problems and make threats of immediate punishment in another issue-area credible. We therefore expect it to be in charge of the agenda in various intergovernmental negotiations by exclusively penning compromise proposals. It furthermore intensifies bilateral contacts with one or a few recalcitrant governments.

⁸¹ Helen Wallace (1985, 455) describes this negotiation practice as making decisions "yesable." For a description and a sociological interpretation of the practice of diffuse reciprocity in the EU as well as of differences across issue-areas see Lewis 2000, 268, Lewis 2005, 949.

⁸² See Ruggie 1982, 399 on embedded liberalism.

⁸³ Schofield, et al. 1988, 207.

⁸⁴ This point helps us to distinguish diffuse reciprocity from log-rolling. Log-rolling involves specific vote exchanges that are decided on simultaneously. Its negative connotation is explained through the multiplication of negative externalities. See Riker and Brams 1973.

⁸⁵ For a discussion of reputation under the condition of domestic uncertainty see Tomz 2007, 20-24.

⁸⁶ Weingast and Marshall 1988, 140-141.

⁸⁷ This resembles the Law Merchant Model in Milgrom, et al. 1990. See also Tomz 2007, 240.

Conjecture 1 – Diffuse Reciprocity: The expectation of heterogeneous domestic preference intensities leads to practices of diffuse reciprocity. The main *motivation* underpinning the adoption of this norm and decision-making within it is gains from diffuse vote exchanges that render decision-making responsive to domestic uncertainty. In equilibrium, this institution should generate the following observable implications:

Majority Voting: Voting does not take place.

Agenda-Setting: The agenda is set by the Presidency. It intensifies bilateral interaction with one or a few recalcitrant actors.

NULL: The agenda is prepared at high levels of authority.

Centralization: Decision-making is highly decentralized.

NULL: Decision-making is highly centralized.

Timing: Decisions are taken non-simultaneously.

NULL: Decisions are taken simultaneously on packages.

Discourse: The atmosphere is cooperative and marked by claims about domestic adjustment costs.

NULL: The discussion is marked by threats and incentives.

Homogeneous Preference Intensities and Specific Reciprocity

Where governments expect the values they place on outcomes to vary evenly, a regular accommodation of preference outliers on the basis of diffuse reciprocity does not create any joint gains. In order to pay off, exchanges need to be very specific and take place within a short time frame. Decision-making on the basis of expected homogeneous domestic uncertainty should therefore in many ways be similar to governments' negotiation behavior in the absence of institutions. Yet, it differs from the Null Hypothesis in one important regard: since governments exchange property rights that they were endowed with by the treaty, the infeasibility of specific exchanges does not lead to cooperation failure as the Null suggests. Instead, it leads governments to take recourse to formal rules.

Specific reciprocity can therefore be expected to have the following behavioral consequences: first, decisions are taken simultaneously on packages. Second, decision-making is highly centralized as concessions on important issues need to be authorized at high levels of authority. Third, the discourse in decision-making is marked by threats and incentives. Fourth, governments frequently resort to formal rules, that is, to majority voting where the treaty provides for it. This leads, fifth, to the problem of issue-cycling and creates the demand for an independent actor to set the agenda.

Conjecture 2 – Specific Reciprocity: Homogeneous preference intensities lead to the practice of specific reciprocity and a frequent recourse to formal rules. The main *motivation* underpinning the adoption of this norm and decision-making within it is gains from specific vote exchanges. In equilibrium, this institution should generate the following observations:

Majority Voting: Votes are called more frequently and openly than in other issue-areas.

NULL: Voting does not take place.

Agenda-Setting: The agenda is primarily set by an independent agenda-setter.

NULL: The agenda is prepared by all actors at high levels of authority.

Centralization: Decision-making is highly centralized.

Timing: Decisions are taken simultaneously on packages.

Discourse: The discourse is marked by threats and incentives.

Table I about here

5. Empirical Analysis: Decision-Making in the 1960s

In 1958 the members of the European Coal and Steel Community (ECSC) extended their cooperation to additional policy fields. With the aim of creating a customs union and a common atomic energy sphere among them they established the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). The treaty set up an original institutional framework to deal with future streams of individual decisions necessary for the attainment of the treaties' objectives.⁸⁸ Interaction between the Commissions and the Council(s) was supposed to be based on the Community method described above. A European Parliamentary Assembly and the European Court of Justice were set up in order to consult governments and control the implementation of the treaty. Meetings in the Council took place under the aegis of the Foreign Ministers, who were usually accompanied by a specialized Minister. Initially, governments shied away from specifying rules for day-to-day decision making. They agreed that "such rules of procedure can only be established after a certain experience about the functioning of the Councils."⁸⁹

Customs Union and Economic Union were the two pillars on which the EEC rested. The creation of a customs union involved the abolition of tariffs, quotas, and other similar obstacles to the free movement of goods between its members and the substitution of a common external tariff for the separate national tariffs towards countries outside the Community. It was completed ahead schedule in mid-1968. The Customs Union was supposed to be accompanied with an Economic Union, that is, common policies on the free circulation of workers and capital, the removal of restriction for the right of firms to set up in other member countries and other issue-areas. In these areas the Treaty had remained a *traité cadre* in that it only gave an outline of how these objectives were to be achieved. Particularly with regard to a common market in Agriculture the treaty had left many issues vague and to be resolved by unanimity vote. Eventually, the member governments created a common system of levies that would permanently protect farmers against fluctuations in world prices, and by mid-1969 a market organization that basically preserved if not increased the already high level of national protection on the basis of high common support prices and a broad coverage of agricultural production.⁹⁰

These were the questions that created streams of future decisions to be dealt with in the EC's institutional framework. In the course of these negotiations, however, and in the first half of the decade in particular, the decision-making system underwent considerable and lasting changes. They primarily entailed a vertical differentiation through development of a Council substructure as well as a horizontal differentiation along issue-areas. These changes came along with the aforementioned behavioral deviation from formal rules. In the following, I use five types of evidence in order to evaluate whether these deviations were indeed induced by informal institutions allowing for flexibility by enabling vote exchanges among governments or simply by the absence of institutions: majority voting, agenda-setting, centralization, timing, and discourse. The theory predicts variation in patterns of behavior both across issue-areas as well as over time. To repeat, no single observable implication is in itself sufficient to unveil informal institution; it is only in conjunction that they lend credence to our conjectures.

The analysis is based on a variety of sources: whenever possible it draws on newly acquired or already collected quantitative data. Qualitative data stems from archival material and contemporary reports

⁸⁸ Until the merger of the Communities into a single framework in 1965, there were thus initially three different sets of institutions.

⁸⁹ Conseils de la C.E.E. et de la C.E.E.A. 1958.

⁹⁰ Pryce 1967, 43-47.

from a broad spectrum of different schools of thought.⁹¹ The study is complicated by three aspects: First, some formal rules were phased in in two steps until 1966 so that variation over time is difficult to identify exactly. Second, the sources usually juxtapose Agriculture to other issue-areas so that a fine-grained analysis of variation across issue-areas is not always feasible. Third, some types of evidence are better examined in more detailed case studies of individual negotiations. This, however, goes beyond the scope of this article and will be subject of a different paper.

Majority Voting

The Null Hypothesis and the conjecture on diffuse reciprocity predict an increasing abstention from majority decisions. The former regards formal rules on majority voting as inoperative. The latter, in contrast, regards the general search for consensus as the result of a reciprocal accommodation of preference outliers among governments. Our conjecture on specific reciprocity predicts a frequent recourse to majority decisions as specific deals may not always be feasible.

As mentioned above, data on majority decisions is obscure as the Council Secretariat did not officially keep account of majority decisions. Moreover, QMV was supposed to be phased in in two stages so that it is not possible to assess a variation in voting behavior over time. Yet, archival material and practitioner reports confirm that the rule in practice throughout the 1960s was the search for consensus even when the treaty provided for the use of majority voting. It furthermore describes an issue-specific variation in that majority decisions were used infrequently on budget decisions and in Agriculture.⁹² This assessment can be accepted as true as the context would actually create bias *against* such a variation: First, it compares Agriculture with all other policy fields, and the total number of decisions in CAP is lower relative to all other issue-areas. Second, many questions regarding CAP had been left subject to unanimity.

A more frequent, albeit sporadic, use of majority decisions in the Agriculture Council leads to two alternative conjectures: On the one hand, we might conclude that formal rules did have an impact in Agriculture, but not in other issue-areas. On the other hand, however, it also suggests that in all issue-areas except Agriculture governments regularly accommodated preference outliers with the effect that thresholds for the adoption of proposals reached unanimity. To assess these conjectures, let us now have a look at other types of evidence.

Agenda-Setting

The Null Hypothesis predicts that governments at high levels of authority come to share the task of setting the agenda, because its composition can influence negotiating actors' relative bargaining strength in an institution-free environment. Since governments regularly resort to formal rules, the conjecture on specific reciprocity predicts in contrast that it is an independent actor's prerogative to set the agenda. Our conjecture on diffuse reciprocity expects to see emergence of an actor with discretionary power in intergovernmental negotiations in several issue-areas. To assess these possible interpretations and identify the principal agenda-setter, I look at the sequence of moves and informational asymmetries.

I demonstrated above how the sequence of moves changed dramatically due to the involvement of governmental experts in decision-making. Since the Ministers refused to discuss issues that had not previously been prepared, the impulse for decision-making shifted more and more to the Council substructure and the Presidency, which was to determine the Council's work rhythm due to its ability to prioritize and let things slide. It therefore became common practice that the Council President would state his government's

⁹¹ Lustick (1996) cautions against the use of secondary sources, in particular on ideologically laden topics as is European integration. Yet, this ideological contestation is also a major advantage: Our conclusions gain in reliability if they are backed by authors of different schools of thought.

⁹² See FN 24.

six-month objectives in a speech given to the EP at the beginning of his term.⁹³ In addition, the Presidency gained importance and grew out of the formal role of a mere organizer of meetings to a genuine mediator in charge of compromise proposals. It assumed this responsibility in several issue- areas and various settings: the many WGs, COREPER, various Council formations, and, towards the end of the decade, during the infrequent summits among the Heads of State and Government. Practitioner reports describe it as primarily active at lower levels and in COREPER in particular. There, with the support of the Council General Secretariat, the Presidency established contacts with recalcitrant governments and sought to collect information about the “motives and problems of individual delegations,” as the German Permanent Representatives described his experiences during the third Council Presidency in 1965.⁹⁴ Emile Noël, the Commission representative to COREPER, described the presidency’s role as a mediator as follows:

“(It) is the chair that has the most scope for quietly taking soundings, putting out feelers, and coming forward at the right moment with compromise suggestions – particularly suggestions some distance away from the Commission’s original proposal.”⁹⁵

In WGs and COREPER the Presidency thus upstaged the Commission, which had originally perceived itself as the primary mediator between national interests. But the search for consensus made it difficult for the Commission to assume this role which had come to necessitate a watering down of its own proposal.⁹⁶ The Presidency on its part gained the opportunity to influence the Council’s agenda and to decide to what extent a claim of domestic recalcitrance required consideration in its compromise proposal.

Two developments make Agriculture an exception to these general patterns: First, the Commission possessed the by far highest policy expertise on agricultural questions. It was the DG VI (Agriculture) that was primarily responsible for the above mentioned growth of the Commission’s administrative apparatus in the 1960s. Endowed with a large staff, high financial resources and responsible for an enormous budget, the “Agricultural Empire” was said to never suffer from supply bottlenecks.⁹⁷ It thus became the largest policy DG within the Commission and gained a reputation for separateness.⁹⁸ Second, as I will argue below in more detail, the Council substructure was less important in this issue-area than elsewhere. It is on the level of Ministers of Agriculture where the Commission

“retained the initiative in tabling proposals or amendments to proposals, adopting individual ministers’ suggestions where they do not conflict too greatly with those of other ministers or with the Commission’s own views; identifying whatever consensus may have emerged during the course of the debate; or reconciling opposing points of view by means of compromises of its own.”⁹⁹

It shared rather than lost its role of mediator with the Council Presidency, which adopted the practice of tours de capitals and confessionals with all delegations,¹⁰⁰ usually in the presence of the Commission. These meetings were supposed to invite all delegation to say in confidence what they could really accept as a final package.¹⁰¹

In short, in most issue-areas the sequence of moves shifted radically and saw the emergence of the Presidency as a mediator, in particular at lower levels in the Council hierarchy. It established bilateral contacts with individual recalcitrant delegations in order to gain information about their particular problems on which basis it drew up compromise proposals. A more active Commission, practices particular to the Agriculture Council, and contacts with all rather than single delegations suggest that this issue-area was dominated by a different negotiation style.

⁹³ Edwards and Wallace 1978, 54.

⁹⁴ Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1965b.

⁹⁵ Noël and Étienne 1971, 438.

⁹⁶ Edwards and Wallace 1978, 60. For an assessment on part of the Commission see Ponzano 2002, 41.

⁹⁷ Pouillet and Deprez 1976, 41, Grant 1997, 157 and Harris, et al. 1983, 16.

⁹⁸ European Communities 1980.

⁹⁹ Neville-Rolfe 1984, 222.

¹⁰⁰ Moyer and Josling 1990, 58.

¹⁰¹ Edwards and Wallace 1978, 59 and Wallace 1985, 463.

Centralization

Our conjecture on diffuse reciprocity predicts that decision-making in the Council is largely decentralized. We should therefore observe both the development and regular use of a substructure for day-to-day decision-making. The Null Hypothesis and our conjecture on specific reciprocity, in contrast, predict centralized decision-making. Hence, decisions in this substructure are still primarily taken at the highest level of authority. In order to trace these different observable implications, I first describe the evolution of the Council substructure in the 1960s. Drawing on an original data set of the distribution of A- and B-Points per year by issue-area, I assess in a second step to what extent the substructure was in fact used.

After the Rome Treaty had come into effect, the Foreign Ministers decided to keep the committee of high-level representatives that had helped negotiating the Rome Treaties at the Intergovernmental Conference (IGC) in Messina. On the basis of a Council decision its members were granted the legal status of ambassadors and formed the Committee of Permanent Representatives (COREPER).¹⁰² They in turn set up specialized WGs composed of governmental experts. At the insistence of the Commission, it was confirmed that the decision-making power still rested exclusively with the ministers. Yet, as complaints about agendas overloaded with technical issues and a bad preparation of Council meetings became louder, the Council adopted several procedural improvements in October 1960, which were supposed to relieve the Ministers of their heavy workload: it was decided that Permanent Representatives, members of WGs as well as the Commission should be given more flexible instructions on issues that governments considered less important.¹⁰³ It was hoped that these procedural changes would enable the substructure to prepare preliminary decisions in a manner that did not require any further discussion among ministers.¹⁰⁴ In 1962 these preliminary decisions reached by COREPER were renamed A-Points, appeared as one item on the Council agenda and were to be adopted *en bloc* without further discussion.¹⁰⁵ Issues that remained contentious or that were questioned by the Commission (B-Points) were supposed to be referred back to the substructure with further instructions.¹⁰⁶ The same procedure was adopted by the growing number of WGs reporting to COREPER. According to the A- and B-Points, consensual decisions were decided on *en bloc* as what would later be called “Roman I”-Points while contentious items were referred to as “Roman II”-Points.

At the same time that the Council decided to confer greater power to the sub-structure, it also became more differentiated horizontally along issue-areas.¹⁰⁷ In particular, Agriculture developed a decision-system that differed in some respects from other issue-areas. At the occasion of the publication of the Commission proposal (Mansholt Plan) for the establishment of CAP in 1960, the Council established a Special Committee for Agriculture (SCA) that was to be composed “as homogeneously as possible and of very high-ranking representatives.”¹⁰⁸ In contrast to other specialized committees, the SCA was supposed to report directly to its ministers. It thus marked a move away from the exclusive management of Council business by the national ministries of foreign affairs and COREPER, which did not discuss agriculture unless it affected other policies.¹⁰⁹ The SCA’s relation with governmental WGs differed significantly from

¹⁰² Virally, et al. 1971, 566-567.

¹⁰³ Conseils de la C.E.E. et de la C.E.E.A. 1960.

¹⁰⁴ Rat der Europäischen Wirtschaftsgemeinschaft 1960b.

¹⁰⁵ Comité des Représentants Permanents 1962.

¹⁰⁶ Rat der Europäischen Wirtschaftsgemeinschaft 1960d, 1960c.

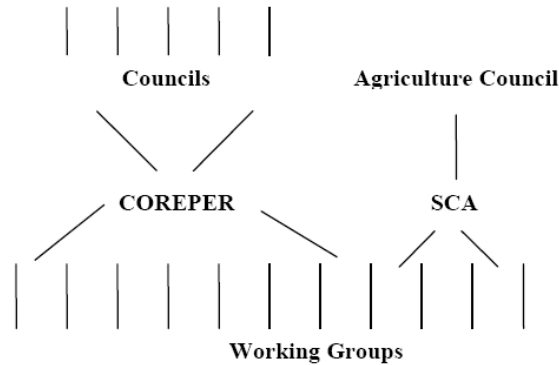
¹⁰⁷ Virally, et al. 1971, 651-653, 702-704. COREPER was divided into two parts of equal right: COREPER II, composed of the Permanent Representatives, usually dealt with “political” issues such as question of Euratom and external relations, while COREPER I, composed of the Deputy Permanent Representatives, was in charge of the remaining decisions. Yet, this change did not come along with changes in responsibilities at the national level – Permanent Representatives still received their instructions from Foreign Ministries and/or Ministries of Economy. A great shift of responsibilities, however, was the emancipation of Ministers of Agriculture from the original coordination of EC policies:

¹⁰⁸ Rat der Europäischen Wirtschaftsgemeinschaft 1960e.

¹⁰⁹ Neville-Rolfe 1984, 208.

other issue-areas in that the latter did not adopt the “I” point procedure. Every agriculture dossier was therefore destined to be discussed in the SCA, whose debates became much more detailed and technical.¹¹⁰

Figure 7: The Council Substructure by 1961



In short, all issue-areas underwent some sort of decentralization over time. We moreover observe Agriculture becoming encapsulated from the normal Council substructure. But to what extent was this substructure indeed used in practice? In the following I draw on an original data set of the number of A- and B-Points submitted to the Ministers for the period of 1964 to 1970. First, I expect an increasing decentralization over time. Contentious B-Points should therefore fall relative to A-Points and to the total number of decisions. Second, we should still be able to see issue-specific variation in this trend.¹¹¹

Both predictions challenge the conventional wisdom, which goes that the embittered atmosphere in the aftermath of the Luxembourg compromise affected decision-making in all issue-areas and rendered negotiations increasingly arduous. Yet, exactly the opposite happened: although the total number of Council legal acts rose steadily throughout the 1960s (annual growth of 33.6%),¹¹² the total number of B-Points adopted in all issue-areas except Agriculture fell by 94%. In 1970 every legal act therefore entailed discussion of only one B-Point (1:1.19)¹¹³ (The temporary decline of A- and B-Points in 1965-66 is best explained by the blockage of decision-making during the “empty chair crisis”). While Agriculture shows an increase in B-Points by 150%, its proportion relative to the number of legal acts (annual growth of 51.8%) fell as well. At the end of the decade, every single legal act in Agriculture entailed the submission of at least three B-Points (1:3.31).¹¹⁴ In short, these observations indicate an increasing decentralization in both issue-areas with a significant issue-specific variation in the number of contentious B-Points relative to legal acts. Moreover, there is no evidence at all for a “veto culture” affecting all areas of European integration.

Figure 8: Distribution of A- and B-Points 1964-1970¹¹⁵

¹¹⁰ Culley 1995, 203-204.

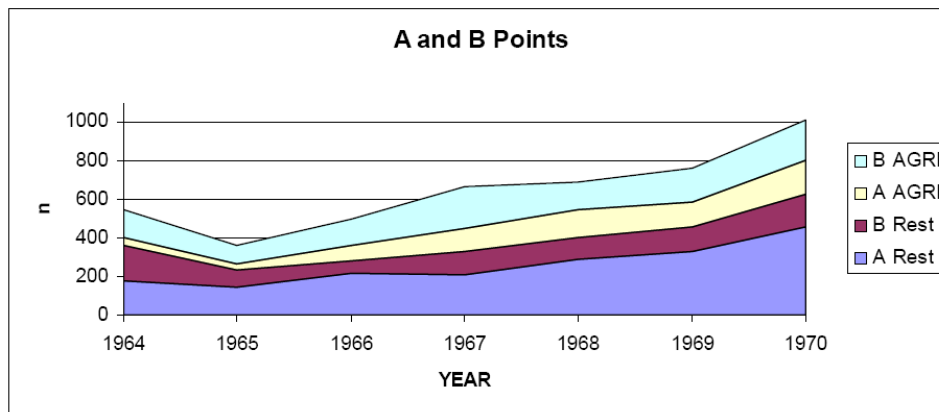
¹¹¹ Since most decisions eventually wind up as A-Points, one might argue that the A/B point distinction does not reflect the degree of controversy. See Golub 2008, 172. Yet, since every contentious A-Point is usually anteceded by a number of B-Points that are referred back to the substructure, the proportion of A- and B-Points does indeed indicate the level of controversy over time and across issue-areas.

¹¹² CELEX database.

¹¹³ Own data and CELEX data base.

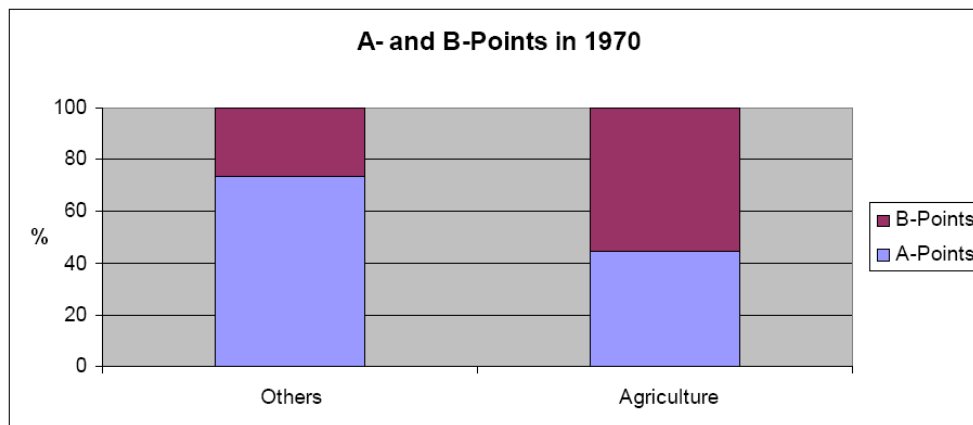
¹¹⁴ Own data and CELEX database. See also Vertretung der Bundesrepublik Deutschland bei den Europäischen Gemeinschaften 1971.

¹¹⁵ Own data drawn from CM2 Council session dossiers.



If we control for the total number of submitted points, the issue-specific variation in decentralization becomes even more apparent. The proportion of B- per A-Points in issue-areas except Agriculture fell from 1:1 to 1:3. In other words, while in 1964 A- and B-Points balanced each other, Ministers would by the end of the decade adopt three A-Points for every B-Point discussed among them.¹¹⁶ Although the proportion of A- and B-Points submitted by SCA to the Ministers of Agriculture fell even more dramatically in this issue-area, it still remained very high compared to other issue-areas as we can see from the following figure. By the end of the decade in 1970 and after the establishment of the common market organization, every A-Point was accompanied by discussion of circa two contentious B-Points, and every single legal act in Agriculture entailed at least the submission of three B-Points (1:3.31).¹¹⁷

Figure 9: Distribution of B- per A-Points 1964-1970¹¹⁸



Accordingly, the Agriculture Council met much more frequently than any other Council formation and was responsible for circa 40% of all Council sessions throughout the 1960s.¹¹⁹ This issue-specific variation was sometimes attributed to the Ministers of Agriculture “appetite for negotiating face-to-face with each other.”¹²⁰ Others complained about a poor preparatory work by the SCA, which was deemed ill-suited to relieve Ministers of the burden of “technical” decisions.¹²¹ I will argue below, however, that attempts to

¹¹⁶ Own data and CELEX data base.

¹¹⁷ Own data and CELEX database. See also Vertretung der Bundesrepublik Deutschland bei den Europäischen Gemeinschaften 1971.

¹¹⁸ Own data drawn from CM2 Council session dossiers.

¹¹⁹ Data available from 1963 on in the General Reports of the Council, 1963-1970.

¹²⁰ Culley 1995, 202.

¹²¹ Bundesministerium für Landwirtschaft 1967a.

improve the SCA's preparatory work were doomed to fail as these technical decisions reached the Council level only because they were used as bargaining chips.¹²²

In sum, shortly after the inception of the Rome Treaties, the Council developed a substructure that was supposed to relieve the Ministers of their workload. Yet, it was used to a different extent across issue-areas. In most issue-areas except Agriculture, it enabled governments to take preliminary decisions at low levels of authority – evidence for the development of a norm of diffuse reciprocity. The German Permanent Representative explained: “It is not just ‘technical’ decisions COREPER takes; A-Points also include decisions, on which we find agreement within COREPER even despite their great importance.”¹²³ It was much harder to take preliminary decisions in Agriculture, which indicates that decision-making was either governed by the norm of specific reciprocity or that it took place in an institution-free environment.

Timing of Decision-Making

The conjecture on diffuse reciprocity predicts that decisions are increasingly taken non-simultaneously and are dealt with on their own merit. The Null Hypothesis and the conjecture on specific reciprocity in contrast predict previously unlinked decisions to be taken simultaneously on packages. Two different reasons may lead to simultaneous decision-making: first, incomplete information and domestic uncertainty induce actors to hold issues hostage until agreement on the very last pending issue has been found. Second, packages may involve specific exchanges in that the outcome of one issue is explicitly linked to the outcome of another issue. The timing of decisions, however, and the two logics behind simultaneous decision-making are difficult to identify in reality. The reason is that issue-hostage and package-deal may generate protests of those domestic actors who deem their interests being sold out. Negotiating actors therefore have incentives to conceal and deny linkages after a deal has been struck.¹²⁴ Yet, two observable implications may point to simultaneous decision-making in contrast to non-simultaneous decision-making: first, as argued above, these tactics require authorization at high levels of authority. Second, exactly because negotiating actors have an incentive to conceal issue-hostages and linkages, references to these tactics strongly indicate their existence.

I demonstrated above that the bulk of decisions in most issue-areas except Agriculture were taken at low levels of authority in WGs and by COREPER, which both were not authorized to construct packages of previously unlinked issues. But what happened to the remaining contentious issues at the Council level? There is little if any evidence that these were lumped together and decided on in packages, particularly because a number of specialized Council formations developed towards the end of the decade. Although they were still prepared by COREPER, this increasing vertical differentiation at the highest level made linkages more difficult. It is therefore plausible that the construction of packages consequently remained an exception, as Emile Noël observed:

“[Decisions] are seldom sufficiently important to justify bringing six specialist ministers to Brussels for a whole day, while it is not possible to lump several of them together because they fall within the provinces of different ministers.”¹²⁵

Differences in the timing of decisions between Agriculture and other issue-areas become apparent when we contrast this statement to the analysis of the German representative to SCA at the occasion of a review of its preparatory work in 1967:

¹²² Bundesministerium für Landwirtschaft 1967b.

¹²³ Vertretung der Bundesrepublik Deutschland bei den Europäischen Gemeinschaften 1968.

¹²⁴ It might be argued that negotiating actors use information on issue-linkages in order to mobilize interests groups to lobby against recalcitrant domestic actors. See Davis 2003, 44. This tactic, however, is only reasonable in a few domestic systems where foreign policy is subject to many veto points. In the case of EC decision-making, however, where decisions at the European level do not require any further ratification, we would not expect negotiating actors to play interests groups off against each other.

¹²⁵ Noël and Étienne 1971, 439.

“Our work is inhibited by the “package-style” practice in decision-making that we have been using in the last years. Many problems remain unresolved, because they are needed as goods to be traded in the moment the really big decisions are being discussed.”¹²⁶

Hence, B-Points were more frequent in Agriculture than in any other Council formation both in absolute and in relative terms, because they were needed as bargaining chips in horse trading at the level of Ministers. Contemporary practitioners accordingly describe negotiations in Agriculture as dominated by package-deals that are usually adopted in the middle of the night in marathon sessions under great political pressure.¹²⁷ In sum, it is plausible to conclude that decisions in Agriculture were more than in any other issue-area taken simultaneously. It suggests that it was marked by either specific reciprocity or bargaining in an institution-free environment, whereas evidence for the remaining policy fields rather points to decision-making being governed by a norm of specific reciprocity.

Discourse

Both the Null Hypothesis and the conjecture on specific reciprocity predict that the negotiation discourse is marked by threats and incentives. Diffuse reciprocity, however, should lead to a more collegial atmosphere marked by claims of domestic recalcitrance. Yet, it is particularly difficult to acquire reliable evidence for discourses as threats and incentives often come in disguises. Practitioner reports, however, help us gain insights about the negotiation atmosphere. It is usually regarded as particularly collegial at low levels of authority.¹²⁸ The Permanent Representatives, for instance, unequivocally described the negotiation atmosphere in COREPER as particularly familial and jovial.¹²⁹

Negotiations in Agriculture, in contrast, appear to have been dominated by a rather dogged atmosphere. They usually resulted in marathon sessions during which ministers met daily, often until four or five in the morning, in an atmosphere of deepening crisis. Maneuvers, counter bids and shifting alliances were said to have unfolded in rapid succession.¹³⁰ Compromises were therefore only reached in the middle of the night “when the most obstinate delegation concedes to the majority or when the most tired delegation concedes to the most alert.”¹³¹ The former French Representative and Minister for Agriculture, Michel Cointat, moaned about delegations, even small Luxembourg, usually adopting a strategy of “all or nothing” with the result that, toward the end of a marathon, the ambience became embittered and negotiating actors raised their voices. He concludes: “It is far easier to be a trade strategist than to come to an understanding among neighbors about the selling of carrots.”¹³²

Summary and Interpretation of Evidence

Five types of evidence on issue-specific and historical variation in decision-making behavior lend credence to the claim that informal institutions came to govern decision-making during the 1960s. A more frequent, albeit sporadic, use of majority decisions in the Agriculture Council than in other issue-areas initially suggest two possible explanations: on the one hand we might conclude that formal rules did have some impact in Agriculture, but remained without influence in other issue-areas. On the other hand, however, we may

¹²⁶ Bundesministerium für Landwirtschaft 1967b.

¹²⁷ See Bundesministerium für Landwirtschaft 1966, Pearce 1981, 9. Also Nugent 1999, 430 and Culley 1995, 203-204.

¹²⁸ Mayne 1968, 34.

¹²⁹ Van der Meulen 1966, 25. Likewise the Dutch Permanent Representative Linthorst-Homan, cited in Van der Meulen 1966, 26, the Frenchman Jean-Marc Boegner (1974, 159) and Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft 1965b, Vertretung der Bundesrepublik Deutschland bei den Europäischen Gemeinschaften 1968.

¹³⁰ Lindberg 1965, 64, Culley 1995, 202.

¹³¹ Alting von Geusau 1969, 103.

¹³² Cointat 2002, 118. [Translation from French by the author].

hypothesize that in all issue-areas except Agriculture governments regularly accommodated preference outliers with the effect that thresholds for the adoption of proposals reached unanimity.

Additional types of evidence support this second explanation: first, in most issue-areas the agenda was primarily determined by the work rhythm of governmental experts at low levels of authority and by the Council Presidency. The Presidency was granted discretionary power in intergovernmental negotiations and stripped the Commission of its formal agenda-setting powers. This is inconsistent with the behavior we would expect to arise in an institution-free environment where the scope of the agenda may alter the negotiating actors' relative bargaining strength. Second, the bulk of decisions were decided at low levels of authority – something we would not expect to see neither under specific reciprocity, nor in an institution-free environment where the problem of issue-hostage and the practice of package-deals result in highly centralized decision-making. Third, and related, the functional differentiation as well as practitioners accounts indicate that package-deals were not a regular feature of decision-making. Fourth, discourses were not marked by threats and incentives, common features of specific exchanges, but instead in a collegial atmosphere. These five types of evidence together point to the emergence of a norm of diffuse reciprocity in the first half of the decade.

The evidence in Agriculture is more equivocal. Centralized decision-making, the practice of package-deals and issue-hostage as well as threats and incentives marking negotiation discourses indicate bargaining in an institution-free environment just as well as exchanges on the basis of specific reciprocity. On the one hand, formal rules do seem to determine decision-making behavior in several regards. A more frequent recourse to majority voting as well as the Commission's greater expertise and agenda-setting role in this policy field indicate specific reciprocity. On the other hand, it is difficult to assess how many majority decisions it takes to talk about specific reciprocity rather than of bargaining in an institution-free environment. The observable implications and findings are summarized in the following table.

Table II: Summary of Evidence

	Others	Agriculture
Voting	No Voting	More Frequently
Agenda-Setting	Presidency Governmental Experts Contacts with few negotiating partners	Commission Presidency Contacts with all negotiating partners
Centralization	Decentralized	Centralized
Timing	Non-Simultaneously	Simultaneously
Discourse	Cooperative	Threats and Incentives
Finding	Norm of Diffuse Reciprocity	Norm of Specific Reciprocity Decentralized Bargaining

6. Brief Excursus: Institutions and Social Practices

Why was Agriculture encapsulated from the broader policy arena? I suppose that this is explained by the fact that institutions are ultimately embedded in social practices. Institutions are created and persist as long

as no actor is better off in individually choosing a different course of action. The costs and benefits of following a particular strategy, however, are not constantly calculated but taken for granted as long as the behavior does not persistently violate an actor's interests. Different institutions and, thus, practices of diffuse reciprocity and specific reciprocity may therefore come into conflict in that either negotiating actors take issues hostage that are usually treated discretely on the basis of diffuse reciprocity, or they concede on issues on which counterparts are not going to reciprocate. As a result, joint gains diminish and equilibria are upset. In other words, in order to sustain two different institutions within the same organization they need to be encapsulated from each other.

Conflicts of competencies at the domestic level, for instance, suggest that the two negotiation practices indeed initially interfered with one another. In the German case this led to an unusually sharp conflict between the Ministries of Foreign Affairs and Economy on the one hand, and the Ministry of Agriculture on the other hand. The former wished to see the coordination of policies remain in the hands of Foreign and Economic Ministers.¹³³ The Minister of Agriculture, however, argued that the Ministry of Foreign Affairs had in the past sacrificed German interests through naïve unilateral concession on agricultural issues that could not be expected to be reciprocated by Germany's partners.¹³⁴

7. Conclusion

The puzzle that forms the basis of this paper is the observation that decision-making in the EC bears little resemblance to its formal rules. I argued that the regular deviation from formal rules is induced by informal rules that governments design around formal rules on the basis of their precise, issue-specific imperatives. The seemingly imperfect deviations are in fact optimal and functional in that they sustain the EC's self-enforcing domestic conditions in such a way that formal rules do not permit. This is the case because they solve the dilemma of uncertainty, that is, the trade-off between uncertainty at the international and at the domestic level. Five types of evidence were used to uncover informal institutions at the behavioral level: majority voting, agenda-setting, centralization and timing of decision-making, and discourses. I demonstrated how informal institutions and, thus, the governments' decision-making behavior varied with expectations about domestic uncertainty. In most issue-areas except Agriculture, decision-making came to be governed by a regular accommodation of preference outliers facing domestic recalcitrance. This norm of diffuse reciprocity proved remarkably stable throughout the decade even in times of severe crises. In Agriculture, however, the evidence points to decision-making on the basis of specific reciprocity and bargaining in an institution-free environment. These findings vindicate the EC as an effective institution that is functional, even if its norms and rules are informal and adaptive. The result, I suppose and shall address in a different paper, is a solid basis of political support, low levels of non-compliance, and a subsequent deepening of cooperation that is without equal.

The theory has several empirical, theoretical and normative implications. Empirically, the descriptive inference exposed how the emergence of informal institutions radically shifted the institutional balance in favor of the governments. In particular, the regular search for consensus and the practice of consultation of governmental experts strongly curtailed the Commission's agenda-setting power as well as its role as the motor of and honest broker in European integration. The practice of consulting governmental experts has not changed since, which should lead us reconsider our textbook knowledge on the workings of the current EU's decision-making process. The analysis also questions the conventional wisdom, which goes that governmental decision-making behavior was heavily affected by the so-called Luxembourg compromise. I found, in contrast, that most issue-areas remained entirely unaffected. This does not come to a surprise as I showed furthermore that the *heptalogue* that formed the Luxembourg compromise merely reiterated the practices that had already become the norm at the beginning of the decade. This extralegal document there-

¹³³ Bundesminister des Auswärtigen and Bundesminister für Wirtschaft 1963.

¹³⁴ Bundesminister für Landwirtschaft 1963.

fore did not lead to a change in behavior – it merely brought it into the open.¹³⁵ Together, these examples demonstrate the value of an institutional analysis centered on the notion of institutions as equilibria. It helps us unveil informal institutions and sheds light on the consequences of and reasons for further institutional change as, for instance, the disempowerment of the Commission in areas where it had lost its functions anyway.

The theory also provides an integrated explanation for several phenomena in European decision-making: first, the emergence of the Council substructure is explained by a demand for information about domestic recalcitrance, but the extent of its actual use follows a distributional logic. Second, in contrast to existing theories, it regards the Council Presidency to be instrumental in overcoming second-order collective action problems. Its primary functions are the provision of information about and adjudication on the true extent of domestic recalcitrance. It thus makes threats of punishment across issue-areas credible, spans reputational concerns over issue-areas and thereby creates the self-enforcing conditions for exchanges on the basis of diffuse reciprocity.¹³⁶ The practice of consensus-seeking was therefore accompanied by the emergence of the Presidency that replaced the Commission, which had no incentives in watering down its own proposals in order to accommodate preference outliers. Third, in contrast to sociological institutionalism, the theory is able to explain variation in informal decision-making practices across issue-areas. Conceiving institutions as embedded in social practices, however, both theories explain why different institutions within the same organization were encapsulated from each other in terms of persons. The theory finally sheds some light on the relation of informal and formal rules. In my theory, formal rules create property rights that are being exchanged, but to which actors may always take recourse. These exchanges are mutually beneficial and render decision-making responsive to domestic circumstances. A formalization of informal institutions would change the initial allocation of property rights and may thwart their function to minimize socially disruptive adjustment costs under the condition of uncertainty.

My findings finally raise a normative question. If the bulk of decisions in the EC are taken at low levels of authority by officials that are only indirectly accountable to citizens, we have to ask for the repercussions on the legitimacy of European integration. Transparency is necessary for holding power-wielders accountable.¹³⁷ On the one hand it might therefore be argued that this complex decision-system conceals information necessary for holding decision-makers accountable. But the regular accommodation of preference outliers with the goal of minimizing socially disruptive adjustment costs implies, on the other hand, that decisions are deliberately made un-contentious. In other words, even if information were readily available at a reasonable cost, citizens would not be interested in obtaining it. This suggests further that accountability mechanisms should primarily apply to domestic interest aggregation. Research on the true amount of information available at the domestic and European level promises to shed further light on the question of a democratic deficit in European integration and international politics in general.

¹³⁵ Mayne 1968, 48. Hence, contemporary commentators' assessment according to which the compromise "did not amount to a change in the behavior of the Council; it merely brought that behavior out into the open." Clark 1967, 25-26. For a similar view see Ludlow 2001, 259.

¹³⁶ I therefore disagree with Jonas Tallberg's (2006) explanation of the emergence and tasks of the Council Presidency, whose functions he implicitly derives from an interaction on the basis of intergovernmental bargaining.

¹³⁷ Grant and Keohane 2005, 11.

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Abbreviations

AA	Auswärtiges Amt (German Foreign Ministry)
BAK	Bundesarchiv Koblenz
CM2	Council of Ministers Archives
CAP	Common Agricultural Policy
COREPER	Comité des Représentants Permanents (Committee of Permanent Representatives)
EC	European Communities
ECHA	European Commission Historical Archives Brussels
ECSC	European Coal and Steel Community
EEC/CEE	European Economic Community/Communauté économique européenne
EP	European Parliament
EU	European Union
EURATOM/CEEA	European Atomic Energy Community/Communauté européenne de l'énergie atomique
HI	Historical Institutionalism
IR	International Relations
IGC	Intergovernmental Conference
P-A	Principal-Agent
QMV	Qualified Majority Voting
SCA	Special Committee for Agriculture

ANNEX I

Table I: Conjectures on Institutions and Observable Implications

<i>Independent Variable: Expected Preference Intensities</i>	N/A	Heterogeneous	Homogeneous
Motivation	Efficient Exchanges	Gains from diffuse exchanges Minimization of adaptation costs	Gains from specific exchanges
Problems	Ex-Post Opportunism Issue-Hostage	Ex-Post Opportunism Moral Hazard	Ex-Post Opportunism Issue-Hostage
<i>Intervening Variable</i>	N/A	Formal Rules Norm of Diffuse Reciprocity Clustering Adjudication	Formal Rules Norm of Specific Reciprocity
<i>Dependent Variables</i>			
Voting	No Voting	No Voting	More Frequently
Agenda-Setting	High levels of authority	Presidency in contact with one or a few recalcitrant actors	Independent Agenda-Setter
Centralization	Centralized	Decentralized	Centralized
Timing	Simultaneous	Non-Simultaneous	Simultaneous
Discourse	Threats and Incentives	Cooperative	Threats and Incentives

