

Oxford Research Encyclopedia of Politics

Rational Choice Institutionalism and European Integration

Gerald Schneider and Anastasia Ershova

Summary and Keywords

Rational choice institutionalism (RCI) conceives of European integration as the outcome of three interplaying forces—interests, information, and institutions. Cooperation in the European Union (EU) is thus based on collective choices among a diverse set of actors ranging from voters to member states that disagree over the potential outcome of the decision-making process, are uncertain about the motives and resources of other players, and are exposed to decision-making rules with varying distributional consequences. RCI distinguishes between two fundamental choices the supranational organization can make. EU actors can in this perspective either decide how the EU should be governed (“decision-making about rules”) or how a policy should be changed with the help of a given rule (“decision-making within rules”). The first perspective deals largely with the intergovernmental conferences during which the European Union has changed the rules that structure the interactions among the member states. The latter viewpoint addresses how the relevant decision makers of the European Union have amended or prevented policy changes alone or in collaboration with other actors.

Both perspectives draw on the standard assumptions of the rational choice research program that actors engage into means-ends calculations in a consistent way, process new information efficiently, and are aware of the preferences and rationality of other relevant actors. This implies, in the context of EU decision-making, that the adoption of new rules and policies is the consequence of the strategic behavior of those players who possess the power to influence the collective choice. The application of the RCI approach to EU integration has resulted in a multitude of studies seeking to explain its capacity for institutional reform, policy change, or absorption of new members. While the European Parliament, like any other legislature, concludes its deliberations through voting, other EU decision-making bodies mainly decide either through bargaining or through delegating certain tasks to a subordinate actor. RCI has adopted different workhorse models borrowed from game theory to reflect the variety of decision-making modes: the spatial theory of voting, non-cooperative bargaining theory, and principal-agent models have become the standard approaches to study European integration.

RCI research has faced several challenges since becoming a mainstream approach in the study of EU decision-making. The first set of criticism focuses on the axiomatic basis of the RCI research program in general and questions its usefulness for understanding the evolution of an organization as complex and large as the EU. Other objections that are frequently raised refer to the empirical tests of the hypotheses derived from the game-theoretic models. Finally, critics of the approach question the ability of the RCI program to deal with the role of informal institutions.

Keywords: rational choice, European Union, game theory, political institutions, decision-making, bargaining, voting, delegation, European Union politics

Introduction

The literature on European integration has for a long time studied ungainly topics such as the “nature” of regional collaboration or whether the European Union (EU) is a case *sui generis* that cannot be compared to other political entities. This situation only started to change in the 1990s when an increasing number of examinations introduced theories from which testable hypotheses could be deduced. Rational choice institutionalism (RCI) has been instrumental in transforming research on European Union decision making into a flourishing subfield within studies of European integration and comparative regionalism.

RCI perceives institutions as equilibriums of strategic interactions between groups of rational decision makers (Aspinwall & Schneider, 2000; Schneider & Aspinwall, 2001). From this perspective, institutions are the formal or informal rules that guide the choices voters, the governments of the member states, the European Parliament, and other relevant actors make. To explain collective choices, rationalist scholars typically expect that the interplay of three factors determines the behavior of the decision makers and the

outcome they finally adopt: institutions, interests, and information. It depends largely on the research question whether the interest divergence or possible information asymmetries between the relevant decision makers are deemed crucial for the understanding of a particular choice.

RCI studies the multitude of decisions that define the state of European integration through the lenses of deductive reasoning. The rationality assumption, which underlies the approach, demands (at the very least) that decision makers be goal oriented and have transitive preferences over the possible outcomes of the interaction they are jointly involved in. The transitivity criterion requires them to make consistent binary choices over pairs of outcomes. Hence, if a voter prefers her country to join the EU rather than secure a free-trade agreement with the supranational organization, and equally selects the latter option over complete independence of the country, she should also favor EU membership over full-fledged sovereignty if such a binary choice emerges.

RCI provides a set of modeling approaches that help analysts to understand and predict the outcome of the political interactions that they are studying. Researchers typically prefer models that explain as much of the observed variance in the behavior of the agents with as few modeling assumptions as possible. A second criterion to judge the value of a rationalist model is its ability to narrow down the prediction to a few, or even better, to unique equilibria to which the behavior of the agents jointly converges. Finally, these forecasts should be as accurate as possible (Schneider, Steunenberg, & Widgrén, 2006; Thomson, Stokman, Achen, & König, 2006).

In studies on European integration, analysts have resorted mainly to the non-cooperative branch of game theory for the development of models of interdependent decision-making. This deductive approach defines the equilibria through the best responses the involved actors make in reaction to the optimal responses made by the other agents. If every player conditions his or her optimal actions on the strategies of other players, they end up in a situation in which nobody has an incentive to move away. Technically, outcomes that unite the best responses of game players to each other represent Nash equilibria (NE). This concept is based on one of the key contributions to game theory made by the mathematician and Nobel Prize laureate John Forbes Nash Jr. (Nash, 1950A, 1951). As even simple strategic models imply a multitude of equilibrium predictions, game theorists have developed refinements of the Nash Equilibrium concepts, such as subgame perfect (SPE) or perfect Bayesian equilibria (PBE). Some of these theoretical innovations are, however, controversial, as they introduce further rationality consideration to which the modeled actors are supposed to live up to (Binmore, 1987, 1988).

Some rationalist contributions also draw on cooperative game theory. This approach is axiomatic and predicts political outcomes that should result if the actors respect certain rules that are “outside” of the game and are thus not explicitly modeled. One example of the axiomatic approach is the Nash Bargaining Solution (Nash, 1950B), which predicts the fair outcome as the unique equilibrium of the negotiation model. This forecast directly results from the four axiomatic conditions, including Pareto optimality, to which any

solution to the bargaining problem has to live up to. As the players do not challenge these rules by definition, the final outcome maximizes social welfare but does not necessarily combine the best responses of the participating actors.

A classic illustration of the tension between individual incentives and aggregate social welfare is the well-known Prisoners' Dilemma game. While the optimal outcome for a criminal society is the joint silence of both prisoners, such adherence to "omertà" or similar Mafia-like codes of honor is not a Nash equilibrium, as the criminals cannot communicate with each other. The main reason for this collective decision is the offer by the prosecutor to both prisoners that they would receive a reduced sentence if they inculcate the other side in the crime. This creates a unilateral incentive to deviate from the outcome that the criminal gang would prefer collectively. The mutual accusations that the prosecutor's clever interrogation strategy provokes, reduce, in other words, the payoffs in comparison to the Pareto superior outcome in which the criminals keep quiet.

The non-cooperative approach that assumes Nash behavior has been more influential in RCI than its cooperative companion. Non-cooperative game theory is well suited to study how information asymmetries influence decision-making outcomes. Such imbalances are the backbone of the literature on bureaucratic decision making where a typically well-informed "agent" is hired by a "principal" to provide expertise. Such an assignment makes sense as long as the principal's gain, due to the adaption of a "better" decision, dwarfs the utility loss implied by such a move away from their own ideal point. A myriad of equivalent trade-offs also lurks in EU decision-making—for instance, when voters evaluate the proposal by the government to ratify an integrationist treaty.

RCI models of EU integration focus on the three ideal-type decision-making modes—bargaining, voting, and delegation. Contributions to the literature consider at least one of these modes and try to understand how EU actors create or amend rules, or how they act under the shadow of a particular rule. Constitutional conventions or (in the case of the European Union) intergovernmental conferences are typical examples of "decision-making about rules."¹ Such decisions typically involve delegation (to diplomats who prepare the agenda), bargaining, and an implicit or explicit vote on the negotiation outcome. "Decision-making within rules" takes place between and within the key intergovernmental and supranational bodies of the EU; it equally involves frequently different decision-making modes. The key intergovernmental institutions of the EU are the European Council, which unites the heads of state and heads of government of the member states, and the Council of Ministers in which ministers with the same portfolios mainly convene to influence legislative decisions. The main actors that are often assumed to advance supranational tendencies are the European Parliament, the European Commission, and the European Court of Justice (ECJ).

After a brief sketch of some of the groundbreaking bargaining, voting, and delegation models that have been developed in political science and economics, this article will introduce and discuss some of the key models that RCI has developed to analyze and

predict collective choices of the EU. The chapter closes with a discussion of the main achievements and limitations of past and current RCI scholarship.

Decision-Making in the EU: Some Base-Line Models

Bargaining

Media often portray negotiations in the EU and elsewhere as dramatic contests in which one side wins triumphantly, while the other side experiences a frustrating failure. However, such an interpretation of bargaining misrepresents its voluntary nature: if the initial offer is worse than the current situation, no rational actor would feel enticed to enter such a negotiation. Although all negotiation partners ultimately only agree on a bargaining outcome that is better than the status quo, they disagree over the division of the spoils. In the EU and any other social context, bargaining thus involves both cooperation and conflict.

RCI applications on European integration have resorted to both cooperative and non-cooperative bargaining models to assess the myriad of decisions in which negotiating is the dominant decision-making mode. All these analytical contributions are responses to what has been called the “bargaining problem”: can we reasonably forecast the outcome of negotiations? The most famous solution to this theoretical challenge is the aforementioned Nash Bargaining Solution (NBS). In his key contribution to cooperative game theory Nash (1950B) predicted that negotiators should choose an outcome representing what came to be known as the Nash product—the maximal product of the individual differences between the utility attached to the share x of the bargained good and the utility of the minimal expectation.

To understand the NBS, imagine that two actors negotiate over how to divide one Euro between themselves. We also assume for convenience that they minimally expect to obtain zero cents out of this bargain and that they implicitly agree with the axiomatic conditions for the final outcome such as Pareto optimality. The NBS predicts that they will agree on $\frac{1}{2}$ for each of them. We can easily calculate this by setting the differenced Nash product $x(1-x)$ to zero, so that $1-2x=0$ and $x=\frac{1}{2}$.

However, in the European Union negotiators are not always equally powerful or skilled, as Nash (1950B) assumed. In the Council of Ministers, they cast a different number of votes. This provides the more populous member-states with more power, which is, however, not linear to the number of votes that they possess (Brams & Affuso, 1976). The final bargain is not only influenced by the resources of an actor but also by her minimal expectation. The outcome that one receives if the negotiations fail or stall needs to be at

least as good as the “outside option.” This outcome represents the utility an agent could achieve without engaging into a bargaining process. Nobel Prize awardee T. C. Schelling (Schelling, 1960) employed this notion to derive his counterintuitive “paradox of weakness” according to which the less flexible negotiator possesses a bargaining advantage. A restrictive negotiator, which is for instance held back by EU-skeptic voters, can commit more convincingly to a tough bargaining position than a delegate whose voters are less concerned about further integration.

Non-cooperative bargaining models also help to understand how other facets of power influence negotiations. This is particularly the case for the most prominent non-cooperative framework: the Ståhl-Rubinstein model (Ståhl, 1972; Rubinstein, 1982). It relies on a strict bargaining protocol (a term referring to the order in which the actors are allowed to move) where the right to make an offer moves back and forth between the players. One version of this analytical framework assumes that actors discount the future with the factor $\delta_i (0 < \delta_i \leq 1)$. Hence, the bargain becomes less attractive the longer the bargaining goes on. The model predicts again a unique outcome that is largely driven by the size of the discount parameters and, hence, the patience of the negotiators. In general, the more patient an actor is, the larger is the share of the pie that she can bring home. If the intervals between the negotiation rounds converge towards zero, the Ståhl-Rubinstein bargaining model coincides with the NBS.

Voting

The various decision-making bodies of the European Union cannot (as is the case with any other political institution) always locate an outcome that improves the welfare of all relevant actors. Such conflicts of interests can, in the rationalist perspective, only be solved through a majoritarian decision that leaves a minority worse off. Voting is particularly important in the decision made by the main legislative bodies, the European Parliament, and the Council of the European Union, which is most often referred to as the “Council of Ministers.”

The spatial theory of voting provides the analytical backbone for RCI analyses of legislative decision making. At least since the Middle Ages analysts have been trying to figure out what outcome in a given ideological space of available options would be chosen by a set of legislators who vote together in a committee or a plenary (McLean & Urken, 1995). Black (1948) established that such a body chooses the median position through majority voting when it has the option to choose between three alternatives. His “median voter theorem,” however, hinges on a number of assumptions, including the rationality requirement that the voters have transitive preferences and that the body decides on a single issue (or, more technically, on a single dimension). If these assumptions are relaxed, decision making can become cyclical, with losing minorities making ever new counter-proposals to the last outcome that the body had agreed upon before.

In the 18th century French revolutionary Marquis de Condorcet had already discovered the risk of indeterminate voting cycles in which outcomes meander through the political space. McKelvey (1976) and Schofield (1978) generalized these “chaos results” to multidimensional policy spaces. Yet, the pessimistic assessment (Riker, 1980) that political science is a dismal discipline as it cannot identify stable voting outcomes was quickly challenged. Especially the “structure induced equilibrium”(SIE) approach pioneered by Shepsle (1979) played an important role in this respect. The SIE research agenda attempts to figure out whether the legislative powers granted to a particular actor restrict the set of feasible outcomes to a subset of the political space.

The key measures of political stability are the core and the win-set. The former concept stands for the set of possible outcomes that a group unanimously or by qualified majority prefers over the outcomes that are located outside of it. If a core exists, and the status quo is located inside it, the core cannot be changed. This is because any reform would reduce the utility of a pivotal player who is needed for an agreement on a policy reform. If a voting body decides on a single issue by majority, the core corresponds to the median position. In multidimensional spaces, a qualified majority core exists depending on the voting threshold used and the number of dimensions that delineate the relevant political space (Greenberg, 1979).

The win-set also considers the location of the status quo. A unanimity (qualified majority) win-set consists of the outcomes that all voters (or the required number of voters) prefer over the status quo. Technically, the win-set is the union of the relevant “preferred-to-sets,” which stands for the collection of possible outcomes that a voter considers at least as good as the current policy.

The concepts that the spatial theory of voting provides can be used to study the impact of particular legislative procedures on political outcomes. The power of legislative actors typically differs according to whether they are able to control what sort of proposals can reach the plenary session (gatekeeping), whether an actor controls the bargaining protocol at least partly (agenda-setting), or whether it can reject a proposal (veto). Agenda-setting power is granted to an actor if it can engage in ultimatum bargaining and offer to a subsequent decision-making body a proposal that can only be accepted or rejected but not amended. In a unanimity setting, every actor has the chance to veto a proposal.

Delegation

The European Union is, as any other organization, an institution in which the political executive (be it the European population or its governments) delegates certain tasks to subordinate agencies, be it the European Commission, the European Central Bank, or even more specialized agencies. It has become customary to analyze these hierarchical relationships through the lenses of principal-agent (PA) models. These models, originally developed in economics, study the difficulties a principal has in hiring when there is

incomplete information about applicants' qualifications. This situation resembles the classic bureaucratic decision-making dilemma identified by Niskanen (1971). His "budget maximizing bureaucrat" profits from the lack of oversight by its political principal, resulting in the oversupply of the public good that the bureaucratic agency provides.

The Niskanen model, however, does not take into account that principals engage an agent for a reason—to compensate for their lack of expertise in a specific policy domain. More recent developments to PA reasoning in political science therefore stress the trade-off that exists between information provision and the policy loss that the delegation to a biased agent implies (Epstein & O'Halloran, 1999A). Principals seek to limit the "bureaucratic drift" that the delegation of political task creates through a number of measures that limit the discretion of the agents or the incentives for using them. The multilevel character of the European Union, however, limits the effectiveness of attempts to control the agents. As the collective of member-states attempts to control the implementation of measures delegated to the agent, disagreement among these multiple principals can help the agent to force through a policy closer to its ideal point than in a confrontation with a single principal. Technically, this means that the agent can profit from an expansion of the decision-making core of the supervising principal.

The three decision-making modes described here are the ideal types that RCI models of EU decision-making frequently blend to grasp the relevant facets of the interaction that they are studying. However, we can quite safely assume that intergovernmental institutions which typically demand a high level of agreement before a policy is reformed rely to a large extent on negotiations, while voting is an important feature of the European Parliament and, to a lesser extent, the Council of Ministers. Administrative decision making finally is of great importance in both the European Commission and the European Court of Justice where the agents have to consider how much they can exhaust the discretion granted to them by their intergovernmental principals.

Intergovernmental Decision-Making: European Council and Council of Ministers

The European Union has two main intergovernmental actors: the European Council and the Council of Ministers. Early RCI research on the European Council, in which the head of government or heads of state convene, produced two straightforward theoretical expectations: the lowest common denominator and the issue linkage hypotheses. According to the first tenet, the pace at which European integration proceeds is determined by the member state closest to the status quo. The hypothesis is valid for situations in which the governments disagree along a single policy dimension and in which all of them prefer to move the status quo in the same direction. Hence, all member states are aligned either to the right or to the left of the current policy. The conservative expectation of the lowest common denominator thesis follows from the unanimity

principle that lends every member state veto power (Moravcsik, 1991, 1998). In such a constellation, the bargaining range is equivalent to a preferred-to set of the most conservative member. Its limits are two outcomes, the status quo and so-called reversion point, to which the maverick country attributes the same disutility in comparison to its own preferred option.

Scharpf (1988) has added to the lowest common denominator hypothesis—the pessimistic expectation that once a multilevel system such as the EU has reached a certain level of integration, further progress becomes impossible because at least one member will always profit from a socially suboptimal status quo. This conjecture is, however, only correct if, technically speaking, the status quo is located inside the unanimity core. The second intergovernmentalist thesis, the issue linkage expectation, qualifies this pessimism further. It means that the addition of a bargaining dimension or, more prosaically, in case no further issue can be included into the negotiation agenda, the usage of side payments may be sufficient to “convince” the reluctant member-state to accept more integration. The typical illustration for this situation are the negotiations over the Single European Act (SEA), which has reaffirmed qualified majority voting as the dominant decision-making rule in the Council of Ministers and has strengthened the European Parliament. According to Moravcsik (1991, 1998), British Prime Minister Margaret Thatcher only accepted this loss of sovereignty because the EU linked the SEA to the liberalizing internal market program.

The models of Scharpf and Moravcsik implicitly assume that the negotiations are taking place in a situation of complete information. Schneider and Cederman (1994) question this assumption and show how the effort through which the most conservative member commits itself to its own timid negotiation stance increases its chance of obtaining the preferred outcome. Such commitment tactics are possible in the sense of Schelling’s “paradox of weakness” for governments that can credibly threaten that the ratifying body or a powerful group within the government party would torpedo an integrationist treaty so the status quo would prevail. Hug and König (2002) provide further support for the Schelling logic but simultaneously put the issue-linkage thesis on its head. According to them, the EU negotiators agreed to scrap the most contentious topics from the Amsterdam treaty to render the intergovernmental negotiations successful. The chance for a successful “de-linkage” increased with the number of constrained governments being skeptical about a particular proposal.

In line with Schneider and Cederman (1994), Hug and Schulz (2007) show that a referendum possibility increases the gains that negotiators can make. However, playing the referendum card is always tricky. It is thus not surprising that governments have timed the dates of a possible referendum for the constitutional treaty strategically (Prosser, 2016). At the European Council meetings, the power of the supranational actors is increasingly present. According to Benedetto and Hix (2007), the European Parliament

tends to win power in areas that have become newly Europeanized and where the preferences of the member states are not yet fully established.

In the intergovernmental negotiations of the European Council, European and left-right dimensions have structured the political space at the European convention where the Constitutional treaty was debated (Proksch, 2012, p. 72). The question of whether or not similar cleavages manifest themselves during the deliberations of the Council of Ministers is debated. Bailer, Mattila, and Schneider (2015) maintained that economic interests rather than ideological conflict dominate these negotiations, attributing the influence of special interests to the lack of scrutiny by domestic institutions. This effect will probably not last. Otjes and Katsanidou (2017) clearly demonstrated that the experience of the Southern European electorate translates into their political attitudes, a trend to which political elites will have to respond if they have not yet done so. According to Winzen (2013) and Finke and Herbel (2015), member states have increased the powers of national oversight institutions. Domestic actors use such instruments to influence the bargaining position of the governments. It remains to be seen how successful substantially the attempts are to tie the hands of the executives.

The increasing importance of domestic politics probably also means that the deliberations in the Council of Ministers may become more controversial. Heisenberg (2005) contended that a “culture of consensus” dominates the interactions of the council, rendering the intergovernmental institution a unique political organization. Schneider (2008) responded that many systematic factors contribute to the reliance on unanimity at the final voting stage, including the lack of controversy for many legislative proposal and the reliance on issue linkage in order to increase the size of a coalition. Aksoy (2012) showed that vote trading, to use another term for issue linkage, is indeed a key feature of decision making in the Council of Ministers.

An Almost Normal Legislature: The European Parliament

The European Parliament (EP) is the only EU institution whose members are directly elected in each member state by the citizens of the Union. Over the years, it has evolved from a consultative body into a co-legislature that is on an equal footing with the Council of Ministers. However, the proponents of the spatial voting approach have for a long time quarreled whether institutional reform such as the introduction of the Single European Act has empowered the Parliament. (e.g., Crombez, 1997; Tsebelis, 1997; Garrett & Tsebelis, 1996, 1997; Kreppel, 2002; Costello & Thomson, 2013).

Tsebelis (1994), for instance, argues that a key reform of the SEA, the newly introduced cooperation procedure, transformed the legislature into a conditional agenda-setter. The empowerment of the Parliament is, from this perspective, due to its ability to make “take-

it-or-leave-it” proposals to the Council during the second reading of a legislative proposal. The influence of the legislature is conditional in the sense that only a unanimous Council could amend it, while a qualified majority can only accept or reject it. This key result is, however, controversial. Moser (1996, 1997) contends that it hinges on a Tsebelis focus on the second reading of a proposed bill in which the EP can only assume conditional agenda-setting after an external shock. In the absence of unforeseeable preference-changing events, the Commission remains the key agenda setter. Similarly, Crombez (1996) and Steunenberg (1994) find that without the support from the Commission, the EP is rather powerless under the cooperation procedure.

The introduction of the *co-decision* procedure and its reform into *co-decision II* (now called the ordinary legislative procedure) further empowered the Parliament. However, the proponents of the spatial voting approach disagreed again whether the EP had now finally become an equal co-legislator and whether the role of the Commission has been reduced to the administrative task of preparing the legislative proposals. Tsebelis (1997) and Tsebelis and Garrett (2000) posit that the Parliament, in fact, lost decision-making power through the adoption of *co-decision I*. This perspective as well as the modeling technique have been widely criticized (Crombez, 2000; Steunenberg & Selck, 2006; Scully, 1997). For instance, Scully (1997) stressed that the counterintuitive conjecture depends on the assumption that perfect information is available to the actors only on the last stage of the decision-making process. Drawing on a similar set of the underlying assumptions as Tsebelis and Garrett (2000) and assuming complete information throughout the game, Crombez (2000) develops uni- and multidimensional models to demonstrate that the EP has become a true co-legislator under *co-decision*.

Early empirical analyses could not solve these disputes. Kreppel (2002) finds in line with Tsebelis and Garrett (2000) that amendments are more likely to succeed under *co-decision*, while Kasack’s (2004) study of one legislative domain contradicts this insight. Yet, several examinations established that this empirical basis was not an appropriate way to assess the power of a particular institution as the amendments may have been proposed by various actors, such as interest groups, national governments, the Council or even the Commission (Marshall, 2010). The growth of first-reading amendment moreover indicates that the Council and the EP coordinate their activity and propose texts in order to increase the chance of adoption (Hix & Høyland, 2013).

Growing criticism of the method motivated researchers to turn to different methodological tools. Relying on the data obtained from expert interviews to identify key issues in a legislative act as well as actor’s preferences, Thomson et al. (2006) find that the simple mean of the actors’ positions and other atheoretical measures predict the outcome of EU legislature more accurately than simple spatial voting games. This result suggests that the decision-making process is less contentious than these formal models imply. An extension of the Decision Making in the European Union data set allowed Costello and Thomson (2013) to re-assess the power of the Parliament vis-à-vis the Council of Ministers. Their analysis indicates that the *co-decision* procedure strengthened the EP but

weakened the Commission. The authors nevertheless conclude that the two main co-legislators remain unequal in their bargaining positions (Costello & Thomson, 2013, p. 1033).

A true co-legislator would also have full budgetary powers. Yet, only the Treaty of Lisbon has increased the power of the EP in this domain. Crombez and Høyland (2015, p. 2) examined the procedural reform and argue that it “puts the EP on equal footing with the Council.” However, it seems that the Parliament does not derive its power from the possibility to veto its intergovernmental counterpart but rather from its amendment and proposal rights. More recent studies have moved beyond this debate about the power implication of co-decision and other legislative procedures. Junge, König, and Luig (2015), for instance, used the core to calculate the risk of policy blockades (“gridlock danger”), showing that legislative conflict increases bureaucratic activism.

The European Commission and the European Court of Justice: The Power of Agents

The EU Commission has multiple functions, but its core task is one of a bureaucratic agent. Brandsma and Blom-Hansen (2016), Franchino (2000, 2004, 2007) and others have examined how administrative powers are delegated to the supranational agent and how much discretionary power it receives in this realm.

Most of the RCI studies of the European Commission draw on and further develop the principal-agent models (Ballmann, Epstein, & O’Halloran, 2002; Franchino, 2005) that have been introduced to understand bureaucratic decision making in the United States (Epstein & O’Halloran, 1994; Calvert, McCubbins, & Weingast, 1989). The EU legislators can principally choose to delegate the implementation to either national (national-level administrators) or supranational (the EU Commission) agents. The Council and the Parliament typically endow, as any other principal (McCubbins & Page, 1987), the selected agent with a certain amount of discretion but simultaneously put some control mechanisms in place to diminish the risk of bureaucratic drift. These institutional choices largely reflect the principle attributed to Russian revolutionary Lenin that “trust is good, but control is better”: the larger the bureaucratic leeway, the more controls are set in place (Epstein & O’Halloran, 1994). The decision to delegate and the choice of the agency largely depend on how conflictual the interests between the principal and the agent are (Hug, 2003). Studies of the U.S. Congress indicate that increasing preference divergence deters the principal from delegating responsibilities, especially if it was not able to appoint the agent in the first place (Epstein & O’Halloran, 1999B).

Although these results seem to be rather straightforward, the application of PA models to the context of the EU is more involved because of the overlapping competencies of the Commission. The European Commission possesses the right of legislative initiative while

belonging to the executive branch and simultaneously acting as the main bureaucratic agent. Neither the EP nor the Council can fully control the implementation process and the behavior of the selected agent, be it the Commission or national agencies. The two principals can resort to the different implementation mechanisms that the “committee procedure,” informally known as “comitology,” provides. This rule refers to the myriad of committees the EU uses in its lawmaking.

Initial RCI studies focused on the effects of comitology system on the decision to delegate the implementation powers (Epstein & O’Halloran, 1999B; Franchino, 2000). Franchino (2000) shows that the tradeoff between the control over implementation (using the so-called management committee) and the extent of the executive discretion can disappear in the EU setting: if the preferences of the principal and the agency converge, the leeway granted to the agent will be rather large, and the principal would prefer not to use the committee system to limit the agent. However, once the preferences diverge, principals would be reluctant to grant wider room for the adjustment and instead choose to take advantage of the existing controls that the comitology system implies.

Further extensions of this model by Franchino (2005, 2007) integrate the work of Epstein and O’Halloran (1999A) and Crombez (1996) so that the stage of legislation is analytically linked to the delegation decision. The formal results suggest that majority voting, as opposed to unanimity, facilitates delegation to the EU Commission and increases its discretion over the implementation process. At the same time, growing conflict within the Council increases the executive leeway available for the Commission. Given the fact that the Commission and the Parliament are often allies, it is not surprising that the legislature grants more discretion to the Commission rather than to national administrations in comparison to the Council.

Case studies as well as macro-quantitative tests provide ample support for the expectation that the Council plays an important role at the implementation stage. On a theoretical level, Franchino’s intergovernmental perspective contradicts the implications from the simple spatial voting games by Garrett and Tsebelis (2001). Examining the changes in the “balance of power” between EU institutions since the Treaty of Rome (1957), Garrett and Tsebelis (2001, pp. 376–383) stressed that the core limits the discretionary authority of the supranational agents of the EU, the Commission and the European Court of Justice (ECJ). The analysis implies that the executive discretion of the Commission is greater under unanimity and that the move toward qualified majority voting should have gradually reduced the leeway of the supranational institutions.

This conjecture misses, however, the possibility that a mistrustful Council can delegate the implementation to its national administrations rather than the Commission. The comitology system can also be seen as a mechanism to balance the unique proposal power of the Commission. It is therefore not surprising that the reforms of comitology in 1999 and 2006 and the expansion of co-decision have affected the patterns of delegation in the EU. Héritier and Moury (2011) argue that the Commission and the Council anticipated the gradual increase in the power of the EP. The two authors maintain that

the Council was willing to delegate more to the Commission as long as it maintained control through the use of regulatory procedures. Brandsma and Blom-Hansen (2016) examined the preferences over the delegation and control mechanisms for 64 legislative files proposed after the Lisbon Treaty entered into force. The systematic study unravels that the Council prefers stricter control over the delegation process in comparison to the EP and the Commission. Interpreting their results as lending partial support to their RCI argument, Brandsma and Blom-Hansen (2016) maintained that the attempts of controlling the Commission did not cease after the most recent institutional reforms.

The RCI approach has also made some inroads in the study of judicial decision making. Garrett, Kelemen, and Schulz (1998), for instance, developed a simple non-cooperative bargaining game to unravel the conditions under which the ECJ is able to decide against the member states. The Court can minimize the risk of negative reactions by the member states if previous decisions have set a clear precedent. A further consideration is how costly it is for a member state to accept a negative ruling. Strategic judges will also anticipate whether the losing member state can mobilize other governments to support new legislation that renders the ECJ decision obsolete. Carrubba, Gabel, and Hankla (2008, see also Stone Sweet & Brunell, 2012) corroborate similar hypotheses with macro-quantitative evidence. They show that the danger of a legislative override reduces the risk of a decision that goes against the interests of a large number of member states.

Achievements and Failures of Rational Choice Institutionalism

The value of a theoretical model is largely whether it helps us to understand the reality it purports to describe and whether we can derive falsifiable predictions from it. Like any other positive theory, RCI also has to live up to this standard. This approach has reached this lofty goal quite often despite the many criticisms it has received over the years.

These objections refer to the rationality assumption, the ability to test the hypotheses both meaningfully and rigorously and to the capacity to generate accurate forecasts. The first criticism is the most serious one. A plethora of experiments in the social sciences have shown that subjects violate some of the axiomatic foundations of the approach quite frequently and consistently. This is bothersome, but the RCI approach stipulates in contrast to some of its competitors deductively gained benchmarks such as Nash equilibria against which human behavior can be judged. Moreover, the regularities that the experimental work has established have inspired some researchers to modify the axiomatic foundations of the approach or to develop simple models that are much more in line with human behavior (Starmer, 2000; Camerer, 2003). The second objection is that the RCI approaches either do not come up with convincing tests, or that the models imply regularities that cannot be easily observed. It is indeed the case that some of the early work such as Schneider and Cederman (1994) only offered illustrative evidence. However, such information can suffice if the main achievement of a contribution is in the development of new causal mechanisms whose empirical implications are left for future falsifications. The counter-argument that only such processes should be studied for which a sound empirical basis exists is purely inductive. It would also lead to the neglect to study important decision-making processes before they have happened, as for instance clear analyses of what a fateful decision such as Brexit means politically, economically, or socially. Furthermore, the rationalist research agenda helps us to understand non-decision making. It is sometimes sufficient to threaten a veto in order to prevent a certain actor such as the European Commission from making a proposal. Careful theoretical reasoning inspired by a deductive theoretical framework prevents applied scholars from introducing selection bias or endogenous regressors into their research designs.

The RCI approach has also made progress in coming up with careful predictions about day-to-day decision making. As the comparative evaluations of competing game-theoretic models by Thomson et al. (2006) or Schneider, Finke, and Bailer (2010) show, RCI can be used to develop theoretically guided forecasts where the outcome of the complicated deliberations of EU member states and institutions will be located. All we need to know is information about the preferences of the actors, the minimal expectation they attach to a particular decision-making process, and how well they are informed about the resources and preferences of the other actors.

This does not mean that the RCI approach cannot be improved. There are many decision-making processes for which further empirically informed deductive reasoning is still needed. We have, for instance, no clear analysis of how decisions in the European Central Bank, with its various decision-making bodies, are made. The RCI approach has also been largely silent so far in the analysis of disintegration decisions. We are quite confident that the RCI approach can enlighten our understanding of what happens even behind closed doors, given the broad and sophisticated toolbox RCI analysts can rely on.

References

- Aksoy, D. (2012). **Institutional arrangements and logrolling: Evidence from the European Union.** *American Journal of Political Science*, 56(3), 538-552.
- Aspinwall, M. D., & Schneider G. (2000). **Same menu, separate tables: The institutionalist turn in political science and the study of European integration.** *European Journal of Political Research*, 38(1), 1-36.
- Bailer, S., Mattila, M., & Schneider, G. (2015). **Money makes the EU go round: The objective foundations of conflict in the Council of Ministers.** *JCMS: Journal of Common Market Studies*, 53(3), 437-456.
- Ballmann, A., Epstein, D., & O'Halloran, S. (2002). **Delegation, comitology, and the separation of powers in the European Union.** *International Organization*, 56(03), 551-574.
- Benedetto, G., & Hix, S. (2007). **Explaining the European Parliament's gains in the EU Constitution.** *Review of International Organizations*, 2(2), 115-129.
- Bergström, C. F. (2005). *Comitology: Delegation of powers in the European Union and the committee system.* Oxford Studies in European Law. Oxford: Oxford University Press.
- Binmore, K. (1987). **Modeling rational players: Part I.** *Economics and Philosophy*, 3(02), 179-214.
- Binmore, K. (1988). **Modeling rational players: Part II.** *Economics and Philosophy*, 4(01), 9-55.
- Black, D. (1948). **On the rationale of group decision-making.** *Journal of Political Economy*, 56(1), 23-34.
- Brams, S. J., & Affuso, P. J. (1976). **Power and size: A new paradox.** *Theory and Decision*, 7(1-2), 29-56.
- Brandsma, G. J., & Blom-Hansen, J. (2016). **Controlling delegated powers in the post-Lisbon European Union.** *Journal of European Public Policy*, 23(4), 531-549.

- Calvert, R. L., McCubbins, M. D., & Weingast, B. R. (1989). **A theory of political control and agency discretion**. *American Journal of Political Science*, 33(3), 588-611.
- Camerer, C. F. (2003). *Behavioral game theory: Experiments in strategic interaction*. Princeton, NJ: Princeton University Press.
- Carrubba, C. J., Gabel, M., & Hankla, C. (2008). **Judicial behavior under political constraints: Evidence from the European Court of Justice**. *American Political Science Review*, 102(04), 435-452.
- Costello, R., & Thomson, R. (2013). **The distribution of power among EU institutions: Who wins under codecision and why?**. *Journal of European Public Policy*, 20(7), 1025-1039.
- Crombez, C. (1996). **Legislative procedures in the European Community**. *British Journal of Political Science*, 26(2), 199-228.
- Crombez, C. (1997). The co-decision procedure in the European Union. *Legislative Studies Quarterly*, 22(1), 97-119. Retrieved from <http://www.jstor.org/stable/440293>.
- Crombez, C. (2000). **Institutional reform and co-decision in the European Union**. *Constitutional Political Economy*, 11(1), 41-57.
- Crombez, C., & Hix, S. (2015). **Legislative activity and gridlock in the European Union**. *British Journal of Political Science*, 45(03), 477-499.
- Crombez, C., & Høyland, B. (2015). **The budgetary procedure in the European Union and the implications of the Treaty of Lisbon**. *European Union Politics*, 16(1), 67-89.
- Epstein, D., & O'Halloran, S. (1994). **Administrative procedures, information, and agency discretion**. *American Journal of Political Science*, 38(4), 697-722.
- Epstein, D., & O'Halloran, S. (1999a). *Delegating powers: A transaction cost politics approach to policy making under separate powers*. New York: Cambridge University Press.
- Epstein, D., & O'Halloran, S. (1999b). **Asymmetric information, delegation, and the structure of policy-making**. *Journal of Theoretical Politics*, 11(1), 37-56.
- Finke, D., & Herbel, A. (2015). **Beyond rules and resources: Parliamentary scrutiny of EU policy proposals**. *European Union Politics*, 16(4), 490-513.
- Franchino, F. (2000). **The commission's executive discretion, information and comitology**. *Journal of Theoretical Politics*, 12(2), 155-181.
- Franchino, F. (2004). **Delegating powers in the European Community**. *British Journal of Political Science*, 34(02), 269-293.

- Franchino, F. (2005). **A formal model of delegation in the European Union.** *Journal of Theoretical Politics*, 17(2), 217-247.
- Franchino, F. (2007). *The powers of the union: Delegation in the EU.* New York: Cambridge University Press.
- Garrett, G., Kelemen, R. D., & Schulz, H. (1998). **The European Court of Justice, national governments, and legal integration in the European Union.** *International Organization*, 52(1), 149-176.
- Garrett, G., & Tsebelis, G. (1996). **An institutional critique of intergovernmentalism.** *International Organization*, 50(02), 269-299.
- Garrett, G., & Tsebelis, G. (1997). **More on the co-decision endgame.** *Journal of Legislative Studies*, 3(4), 139-143.
- Garrett, G., & Tsebelis, G. (2001). **The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union.** *International Organization*, 55(2), 357-390.
- Greenberg, J. (1979). **Consistent majority rules over compact sets of alternatives.** *Econometrica*, 47(3), 627-636.
- Hagemann, S., & Høyland, B. (2010). **Bicameral politics in the European Union.** *Journal of Common Market Studies*, 48(4), 811-833.
- Hawkins, D. G., Lake, D. A., Nielson, D. L., & Tierney, M. J. (2006). *Delegation and agency in international organizations.* New York: Cambridge University Press.
- Heisenberg, D. (2005). **The institution of “consensus” in the European Union: Formal versus informal decision-making in the council.** *European Journal of Political Research*, 44(1), 65-90.
- Héritier, A., & Moury, C. (2011). **Contested delegation: The impact of co-decision on comitology.** *West European Politics*, 34(1), 145-166.
- Hix, S., & Høyland, B. (2013). **Empowerment of the European Parliament.** *Annual Review of Political Science*, 16(1), 171-189.
- Hug, S. (2003). **Endogenous preferences and delegation in the European Union.** *Comparative Political Studies*, 36(1-2), 41-74.
- Hug, S., & König, T. (2002). **In view of ratification: Governmental preferences and domestic constraints at the Amsterdam intergovernmental conference.** *International Organization*, 56(2), 447-476.
- Hug, S., & Schulz, T. (2007). **Referendums in the EU’s constitution building process.** *Review of International Organizations*, 2(2), 177-218.

Junge, D., König, T., & Luig, B. (2015). **Legislative gridlock and bureaucratic politics in the European Union.** *British Journal of Political Science*, 45(04), 777–797.

Kasack, C. (2004). **The legislative impact of the European Parliament under the revised co-decision procedure: Environmental, public health and consumer protection policies.** *European Union Politics*, 5(2), 241–260.

Kreppel, A. (1999). **What affects the European Parliament's legislative influence? An analysis of the success of EP amendments.** *JCMS: Journal of Common Market Studies*, 37(3), 521–537.

Kreppel, A. (2002). **Moving beyond procedure: An empirical analysis of European Parliament legislative influence.** *Comparative Political Studies*, 35(7), 784–813.

Marshall, D. (2010). **Who to lobby and when: Institutional determinants of interest group strategies in European Parliament committees.** *European Union Politics*, 11(4), 553–575.

McCubbins, M. D., & Page, T. (1987). A theory of congressional delegation. In M. D. McCubbins & T. Sullivan (Eds.), *Congress: Structure and policy* (pp. 409–425). New York: Cambridge University Press.

McKelvey, R. D. (1976). **Intransitivities in multidimensional voting models and some implications for agenda control.** *Journal of Economic Theory*, 12(3), 472–482.

McLean, I., & Urken, A. (Eds.). (1995). *Classics of social choice*. Ann Arbor: University of Michigan Press.

Moravcsik, A. (1991). **Negotiating the Single European Act: National interests and conventional statecraft in the European Community.** *International Organization*, 45(01), 19–56.

Moravcsik, A. (1998). *The choice for Europe: Social purpose and state power from Messina to Maastricht*. Cornell Studies in Political Economy. Ithaca, NY: Cornell University Press.

Moser, P. (1996). **The European Parliament as a conditional agenda setter: What are the conditions? A critique of Tsebelis (1994).** *American Political Science Review*, 90(4), 834–838.

Moser, P. (1997). **A theory of the conditional influence of the European Parliament in the cooperation procedure.** *Public Choice*, 91 (3–4), 333–350.

Moury, C., & Héritier, A. (2012). **Shifting competences and changing preferences: The case of delegation to comitology.** *Journal of European Public Policy*, 19(9), 1316–1335.

- Nash, J. F. (1950a). **Equilibrium points in n-person games**. *Proceedings of the National Academy of Sciences*, 36(1), 48-49.
- Nash, J. F. (1951). **Non-cooperative games**. *Annals of Mathematics*, 54(2), 286-295.
- Nash, J. F. (1950b). **The bargaining problem**. *Econometrica*, 18(2), 155-162.
- Niskanen, W. A. (1971). *Bureaucracy & representative government*. Chicago: Aldine-Atherton.
- Otjes, S., & Katsanidou, A. (2017). **Beyond Kriesiland: EU integration as a super issue after the Eurocrisis**. *European Journal of Political Research*, 56(2), 301-319.
- Proksch, S. -O. (2012). Revealing constitutional preferences in the European Convention. In D. Finke, T. König, S.-O. Proksch, & G. Tsebelis (Eds.), *Reforming the European Union: Realizing the impossible* (pp. 62-75). Princeton, NJ: Princeton University Press.
- Prosser, C. (2016). **Calling European Union treaty referendums: Electoral and institutional politics**. *Political Studies*, 64(1), 182-199.
- Riker, W. H. (1980). **Implications from the disequilibrium of majority rule for the study of institutions**. *American Political Science Review*, 74(2), 432-446.
- Rubinstein, A. (1982). **Perfect equilibrium in a bargaining model**. *Econometrica*, 50(1), 97-109.
- Scharpf, F. W. (1988). **The joint-decision trap: Lessons from German federalism and European integration**. *Public Administration*, 66(3), 239-278.
- Schelling, T. C. (1960). *The strategy of conflict*. Cambridge, MA: Harvard University Press.
- Schneider, G. (2008). Neither Goethe nor Bismarck: On the link between theory and empirics in council decision-making studies. In D. Naurin & H. Wallace (Eds.), *Unveiling the council of the European Union: Games governments play in Brussels* (pp. 277-289). London: Palgrave Macmillan.
- Schneider, G., & Aspinwall, M. (Eds.). (2001). *The rules of integration: Institutional approaches to the study of Europe*. European Policy Research Unit Series. Manchester, U.K.: Manchester University Press.
- Schneider, G., & Cederman, L. -E. (1994). **The change of tide in political cooperation: A limited information model of European integration**. *International Organization*, 48(4), 633-662.
- Schneider, G., Finke, D., & Bailer, S. (2010). **Bargaining power in the European Union: An evaluation of competing game-theoretic models**. *Political Studies*, 58(1), 85-103.

- Schneider, G., Steunenberg, B., & Widgren, M. (2006). Evidence with insight: What models contribute to EU Research. In R. Thomson, F. N. Stokman, C. H. Achen, & T. König (Eds.), *The European Union decides* (pp. 299-316). Cambridge, U.K.: Cambridge University Press.
- Schofield, N. (1978). **Instability of simple dynamic games**. *Review of Economic Studies*, 45(3), 575-594.
- Scully, R. M. (1997). **The European Parliament and co-decision: A rejoinder to Tsebelis and Garrett**. *Journal of Legislative Studies*, 3(3), 93-103.
- Shepsle, K. A. (1979). **Institutional arrangements and equilibrium in multidimensional voting models**. *American Journal of Political Science*, 23(1), 27-59.
- Starmer, C. (2000). **Developments in non-expected utility theory: The hunt for a descriptive theory of choice under risk**. *Journal of Economic Literature*, 38(2), 332-382.
- Ståhl, I. (1972). *Bargaining Theory*, Stockholm: Stockholm School of Economics. Available **online**.
- Steunenberg, B. (1994). Decision making under different institutional arrangements: Legislation by the European Community. *Journal of Institutional and Theoretical Economics (JITE)*, 150(4), 642-669.
- Steunenberg, B., & Selck, T. (2006). Testing procedural models of EU legislative decision-making. In R. Thomson, F. N. Stokman, C. H. Achen, & T. König (Eds.), *The European Union decides* (pp. 54-85). Cambridge, U.K.: Cambridge University Press.
- Stone Sweet, A., & Brunell, T. (2012). **The European Court of Justice, state noncompliance, and the politics of override**. *American Political Science Review*, 106(1), 204-213.
- Thomson, R., Stokman, F. N., Achen, C. H., & König, T. (Eds.). (2006) *The European Union decides*. Cambridge, U.K.: Cambridge University Press.
- Tsebelis, G. (1994). **The power of the European Parliament as a conditional agenda setter**. *American Political Science Review*, 88(1), 128-142.
- Tsebelis, G. (1997). Maastricht and the democratic deficit. *Aussenwirtschaft*, 52(1-2), 29-56.
- Tsebelis, G., & Garrett, G. (2000). **Legislative politics in the European Union**. *European Union Politics*, 1(1), 9-36.
- Winzen, T. (2013). **European integration and national parliamentary oversight institutions**. *European Union Politics*, 14(2), 297-323.

Notes:

(1.) The European Union has tried to agree on a European convention through the “Treaty establishing a Constitution for Europe,” which was signed by 25 governments in 2004. This quasi-constitution did not, however, enter into force after voters in the Netherlands and France had rejected it. The organization has returned since this defeat to the status quo ante and uses the term “intergovernmental conferences” to describe the gatherings of heads of governments in which decisions about the general rules of interactions are made.

Gerald Schneider

Department of Politics and Management, University of Konstanz

Anastasia Ershova

Department of Politics and Management, University of Konstanz